

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re: MICHELE DICOSOLA - PETITIONER, Pro Se

VS.

RICHARD A. POSNER, et. al: - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ORAL ARGUMENT REQUESTED

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QUESTIONS PRESENTED FOR REVIEW

PETITION FOR A WRIT OF CERTIORARI

WANT AND LACK OF SUBJECT MATTER JURISDICTION

1. Is the district court in want and lack of subject matter jurisdiction, prosecution, and warrant, from both the Grand Jury and Department of Justice, when both the Foreperson and U.S. Attorney failed or refused to sign and disclose the original indictment from the time of arrest and through sentencing, causing plan error under Rule 52(b) for violation of substantive rights under Rule 6(c) and 7(c)(1), which is in compliance with the 5th and 6th Amendment of the Constitution's "Due Process Clause" and "Notice for Nature and Cause Clause" for felonies accused of?

TRUE BILL OF INDICTMENT WITHOUT SWORN DATE UNCONSTITUTIONAL

2. Is an indictment without a sworn date affixed to it after it is signed by the U.S. Attorney, Foreperson or both, unconstitutional if not dated and filed as Docket No. 1, in order to prevent the invitation of abuse from both the Grand Jury and or Prosecutor through involuntary or unknown waiver of indictment and probable cause hearing and or the backdating of said indictment in favor of the prosecution case?

STANDARD WHEN CUMULATIVE HARMLESS ERRORS CONVERT TO PLAIN ERROR

3. What is the standard for review on loss of jurisdiction or new trial when more than one harmless error is grounds for conversion to plain error?

USURPATION OF JURY FACT FINDER THROUGH USE OF PROBATION OFFICER WITNESS HEARSAY TESTIMONY IN VIOLATION OF APPRENDI RULE, 5TH, 6TH, AND 7TH AMENDMENTS

4. Can a non-judicial probation officer provide hearsay testimony of restitution, without affidavit, first hand knowledge and sworn testimony and or any documentation to support the monetary injury claimed, in order for the district court to adopt both the monetary injury total and sentencing guidelines, while facts contested are at issue, without being in violation of Apprendi Rule, 5th Amendment "Due Process Clause", 6th Amendment "Confrontation Clause" and "Compulsory Clause", and the 7th Amendment "Value in Controversy" and "Re-examination of Facts According to Common Law" Clauses?

SUPERSESSIONS AND UNCONSTITUTIONALITY ISSUE(S) OF CRIMINAL JUSTICE ACT VS ALL WRITS ACT AND 7TH AMENDMENT

5. Does the CJA cause a supersession issue with the All Writs Act in addition to it being simultaneously unconstitutional and in direct conflict with the supervisory powers of the one supreme court, the 1st, 6th and 7th Amendment(s), when petitioner invokes his right to "Petition for Redress of Grievances" on direct criminal appeal to the Supreme Court's original jurisdiction for re-examination of facts in a common law court with request for assistance of counsel, but access to this Court under CJA is restricted only to Certiorari, abrogating both the All Writs Act and the supervisory and discretionary powers of the original jurisdiction, knowing that misappropriations of facts will rarely be reviewed Certiorari?

ABUSE AND AVOIDANCE OF SUPERVISORY POWERS

6. Is avoidance of supervisory power from appeal court abuse of discretion when under direct criminal appeal, questions of prosecutorial abuse, abuse of discretion, and a collateral attack of an injunction on the merits related to a challenge of subject matter jurisdiction in the district court are completely discarded and ignored without de novo as if complicit in sanctioning the lower court's abuse?

QUESTIONS PRESENTED FOR REVIEW CONTINUED

COLLATERAL ATTACK ON DIRECT CRIMINAL APPEAL TO SUPREME COURT
CHALLENGING SUBJECT MATTER JURISDICTION NOT BARRED BY 2255 OR FAILURE TO
ARGUE ON DIRECT APPELLATE REVIEW

7. Can Petitioner challenge subject matter jurisdiction under collateral attack while under direct criminal appeal with new found evidence, notwithstanding availability under 2255 or failure to argue on direct appellate review, with or without newly discovered evidence being at issue?

LIST OF PARTIES

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

FOR THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RICHARD A. POSNER- RESPONDENT

DANIEL A. MANION- RESPONDENT

MICHAEL S. KANNE- RESPONDENT

Note: All Respondent(s) consist of the appeal court's three panel judges in this instant matter.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI
OPINIONS BELOW

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

[X] For cases from federal court(s):

The opinion of the United States court of appeals appears at Appendix A, under App. 1-8 to the petition and is

[X] reported at 867 F.3d 793; 2017 U.S. App. LEXIS 15054; 2017-2 U.S. Tax Cas. (CCH) P50, 316 Case No. 16-3497, argued May 24, 2017, decided August 14, 2017.

The opinion of the United States district court appears at Appendix B, under App. 9-17 to the petition and is

[X] reported at United States v. DiCosola, 2015 U.S. Dist. LEXIS 63625 (N.D. Ill. May 14, 2015) Case No. 1:12-cr-00446-1

The order of the United States court of appeals denying review for rehearing, appears at Appendix C, under App. 18-20 to the petition and is

[X] reported at 2017 U.S. App. LEXIS 18436 Case No. 16-3497, declined on September 22, 2017.

The order of the United States court of appeals denying motion to direct appointed counsel to seek certiorari or in the alternative prohibition, appears at Appendix D, under App. 21-26 to the petition and is

[X] unpublished

The order of the United States court of appeals denying Criminal Justice Act motion to recall mandate of the appeal court and appoint new substitute counsel to represent defendant-appellant to determine whether petitions for review, including a writ of certiorari, where necessary, appears at Appendix E, under App. 27-37 to the petition and is

[X] unpublished

The order of the United States court of appeals denying Collateral Interlocutory Appeal and confirming injunction on the merits of subject matter jurisdiction challenge from the United States district court, under Case No. 13-1434, appears at Appendix F, under App. 38-209 to the petition and is

[X] unpublished

JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 14, 2017.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 22, 2017.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including February 19, 2018(date) on January 4, 2018(date) in Application No. 17 A 712. February 19, 2018 falls on a Federal holiday which amends the date to February 20, 2018.(5 U.S.C. § 6103 and Rule 30.1)

[X] An extension of time to file the petition for a writ of certiorari to correct and comply with Rule 33 and Rule 34 of the deficiency letter was granted to and including May 5, 2018(date) on March 7, 2018(date). May 5, 2018 falls on a Saturday which amends the date to May 7, 2018.(Rule 30.1 and Rule 14.5)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Rule 10(a), (b), and (c).of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Constitution of the United States: Article I, Section 9, Clause 3. Violation.

"No Bill of Attainder or ex post facto Law shall be passed."

2. The Constitution of the United States: Amendment I. Violation.

" Congress shall make no law...abridging the freedom...to petition the Government for a redress of grievances."

3. The Constitution of the United States: Amendment IV. Violation.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

4. The Constitution of the United States: Amendment V. Violation.

"No person shall be held to answer...infamous crime, unless on presentment or indictment of Grand Jury...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

5. The Constitution of the United States: Amendment VI. Violation.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

6. The Constitution of the United States: Amendment VII. Violation.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law."

7. The Constitution of the United States: Amendment IX. Violation.

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

8. Title 26 CFR CRIMES, OTHER OFFENSES, AND FORFEITURES. §§ 301.7811-1: Taxpayer Assistance Orders. et. seq. Violation(s).

See App. 519-522. Petitioner has been violated his rights of administrative exhaustion under the Administrative Procedures Act and more specifically under the herein above title. He was unlawfully instructed, denied notice, nature and cause, and was entrapped into an ex post facto violation under 18 U.S.C. § 287. App. 351-359 and App. 360-376 is incorporated by reference as though fully stated into the injuries and arguments claimed in the petition.

STATEMENT OF THE CASE

A. Procedural background.

Michele ("Mike") DiCosola(hereinafter "Petitioner") stands convicted of bank fraud, making false statements to a bank, and wire fraud, under 18 U.S.C. §§ 1344, 1014, 1343, respectively, and of filing a false, fictitious or fraudulent claim against the United States, under 18 U.S.C. § 287, under Case No. 12CR446. Although the charges were brought in a single indictment,(App.377-394), they were severed by the district judge who found that joinder of the loan fraud and tax fraud cases was improper under Rule 8 of the F.R.Crim.P. R.210, at p.14. The indictment also contained two counts alleging that the defendant made a false statement in connection with his Chapter 13 petition for bankruptcy. These two counts were also severed by the district court and were later dismissed by the government. R.210; R.399. Prior to the two cases being tried at pre-trial, Petitioner represented himself pro se for over one year. Petitioner's pre-trial motions and objections were denied on the merits. Most important, was a challenge to subject matter jurisdiction and the existence of an original signed indictment by the U.S. Attorney and Foreperson. On February 28, 2013, a "Memorandum Opinion and Order" was issued on all pending motions and objections, on the merits.(App.49-69). The order was back dated to February 12, 2013, which is supported by the Minute Order dated February 27, 2013, which continued all the motions and objections from February 19, 2013 to February 27, 2013.(App.47-48). All rulings were made outside Court and without the U.S. Attorney responding under order of the court. Petitioner was not allowed to argue any of the motions or objections on February 27, 2013 hearing for the out of order ruling made outside of Court, so that same day, he filed his "Interlocutory Appeal of Injunction"(App.46) from the district court, with supporting docketing statement(App.91-112) and his "Jurisdictional Memorandum" on March 18, 2013, to support it(App.113-180), along with his reply brief(App.186-203) on April 22, 2013. On June 10, 2013, the United States Court of Appeals for the Seventh Circuit, "DISMISSED" the appeal for "lack of jurisdiction".(App.205) The two cases charging bank or loan fraud were tried separately, one to a jury(bank/loan fraud) and one before the Judge(tax fraud). Both trials resulted in findings of guilty.(App.10-17) Defendant challenged both convictions together with the order of restitution, on direct criminal appeal to the 7th Cir. as a consolidated appeal on March 20, 2017, by his post-interlocutory appeal appointed counsel for separate and distinct government and judge misconduct and abuse from this appeal.(Case No.16-3497 Doc.11) After being fully briefed, on May 24, 2017, Petitioner's counsel had oral argument, dicta., against the government, before the Respondent(s) Posner, Manion, and Kanne. On August 14, 2017, the 7th Cir. unanimously affirmed the district court's rulings.(App.1-8) On August 28, 2017, Appellant-Defendant filed a motion for reconsideration through his appointed trial and bench attorney. Arguments presented as reasons for granting rehearing based on the panel's dictum holding that Appellant was a true believer, but that a fraud conviction can sustain on ambiguous

circumstantial evidence against direct evidence in favor of the Appellant-Defendant's actual state of mind(mens rea), showing him to be a true believer in the 1099 OID Recovery Rebate Tax Theory he went to seminars and did extensive supporting due diligence for. Additional arguments that panel's finding that the probation officer provided reliable information sufficient to sustain the restitution award to Amcore Bank, both misapprehended and overlooked important evidence on the record at issue. On September 22, 2017, the 7th Cir. denied the petition for rehearing unanimously(App.19-20), noting order's footnote shows Respondent, Posner entered his vote to deny rehearing before his abrupt retirement on September 2, 2017. Is Posner's retirement pre-vote premature and void? Because it was stamped by the Clerk on August 29, 2017 and decided within 3 days of Respondent, Posner's purported date of retirement. This is the second judge who retired after their act of abuse on Petitioner's case. Further noting that the judge who issued a bench warrant in open court also abruptly retired after Petitioner ordered transcripts for the open court forum from the grand jury, ruling on June 12, 2012, only to find out by the Director of Court Reporters that there was no open court hearing that date and that the Judge abruptly retired shortly after the request, so no transcripts were existing.

Petitioner's counsel that withdrew as appointed counsel of record, felt the case was too fact driven for appeal certiorari to this Court to be approved. On November 2, 2017, Petitioner motioned to the 7th Cir. to direct appointed counsel to seek certiorari or in the alternative, prohibition, pursuant to the Criminal Justice Act Plan of 1964, § 3 and Rules of the Supreme Court, Part IV., other jurisdiction, Rule 20, procedure and petition for an extraordinary writ-Article III Court.(App.24-26) On November 16, 2017, the motion was denied.(App.22) On December 2, 2017, Petitioner motioned to the 7th Cir. for a motion to recall mandate of the appeal court and appoint new substitute counsel to represent Defendant-Appellant to determine whether petition for review, including certiorari, were necessary.(App.29-37) On December 15, 2017, the motion was denied. (App.28) On December 21, 2017, Petitioner filed his Application for an extension of time to file a petition for writ of certiorari, or in the alternative, prohibition. On January 4, 2018, Petitioner was granted Application No. 17A712 for an extension to file a petition for a writ of certiorari by February 19, 2018. Said date falls on a federal holiday, allowing pursuant to S.Ct.R.30(1) and 5 U.S.C. § 6103 to make the final date for said filing to be February 20, 2018. On February 20, 2018, Petitioner timely filed his Petition by the U.S.P.S. through the Federal Prison Camp, Duluth, Minnesota, mail system. On March 7, 2018, the Supreme Court granted an extension to correct and comply with Rule 33 and 34 of the deficiency letter to and including May 5, 2018(date). May 5, 2018 falls on a Saturday, which amends the date to May 7, 2018. Rule 30.1 and Rule 14.5.

REASONS FOR GRANTING THE PETITION

I. ARGUMENT.

A. SUBJECT MATTER JURISDICTION. WANT AND LACK THEREOF.

1. UNSIGNED INDICTMENT.

Petitioner argues that the indictment is fatally flawed for the lower court to have subject matter jurisdiction over the proceedings pursuant to F.R.Crim.P.R. 6(c) and 7(c)(1). The Seventh Circuit's standard for review has been reliant on two cases argued. In *United States v. Irorere* 228 F.3d 816; 2000 U.S. App. LEXIS 23789, decided September 26, 2000; and under *United States v. Anzaldi, De Salvo, and Latin*, 2013 U.S. Dist. LEXIS 13035. In petitioner's interlocutory appeal that challenged subject matter jurisdiction, which among other arguments, (App. 91-112) argued an unsigned indictment by both the U.S. Attorney and Foreperson (App. 394), the 7th Cir. denied petitioner's petition challenging a "Memorandum and Order" on the merits, (App. 68) against one of the issues among many, of subject matter jurisdiction, and relied on *United States v. Kaufmann*, 951 F.2d 793 (7th Cir. 1992), quoting "Generally, a defendant in a criminal case may not take an appeal until he has been both convicted and sentenced." (App. 39) A "Jurisdictional Memorandum" was supported with the petition (App. 113-178) per the order of the 7th Cir. (App. 87), prior to that ruling.

In *United States v. Irorere supra.*, the 7th Cir. reviewed the sufficiency of the indictment de novo. *Frank v. United States*, 914 F.2d 828, 830 (7th Cir. 1990). "Because of the defendant's failure to raise objections to the indictment prior to trial, his indictment should be upheld unless it is so defective that it does not, by any reasonable construction, charge an offense for which the defendant is convicted." *United States v. James*, 923 F.2d 1261, 1266 (7th Cir. 1991). They further discuss the F.R.Crim.P. under Rule 6(c) which states "The foreperson...shall sign all indictments."; and Rule 7(c)(1) "The indictment shall be signed by the attorney for the government.", but then sites precedent of both this Court and the 7th Cir., indicating that both of those signatures are technical deficiencies that are not necessarily fatal to the indictment. *United States v. Wright*, 365 F.2d 135, 137 (7th Cir. 1966) "The signature of the prosecuting attorney is not an essential part of the information; nor is improper signing of the instrument [the Bill of Information] a defect such as to invalidate it."; *Hobby v. United States*, 468 U.S. 339, 345, 82 L. Ed. 2d 260, 104 S. Ct. 3093 (1984) "Even the foreman's duty to sign the indictment is a formality, for the absence of the foreman's signature is a mere technical irregularity [only for indictments] that is not necessarily [during waiver] fatal to

the indictment." (citing *Frisbie v. United States*, 157 U.S. 160, 163-165, 39 L.Ed. 657, 15 S. Ct. 586 (1895)). Concluding that "Because the alleged failure of the grand jury foreperson and the attorney for the government to sign the indictment would be mere technical deficiencies [under waiver Rule 7(f) or pleading of guilt], and because the defendant does not allege that the indictment did not adequately inform him of the charges against him [by request of bill of particulars] or otherwise prejudice his defense, the defendant's challenge to the sufficiency of the indictment is without merit." Noting that petitioner had claimed all three elements pre-trial.

In *United States v. Anzaldi, De Salvo, and Latin*, 2013 U.S. Dist. LEXIS 13035, Case No. 11 CR 820, Judge Leinenweber [petitioner's trial judge for both trials] conceded that "The Court does not deny that the Federal Rules of Criminal Procedure instruct that indictments are to be signed by both the foreperson of the grand jury and by an attorney for the government. [unless by waiver or plea of guilt] However, the Seventh Circuit and the Supreme Court have held that the absence of such signatures are "technical deficiencies that are not necessarily fatal to the indictment." *United States v. Irerere*, 228 F.3d 816, 830-31 (7th Cir. 2000); F.R.Crim.P.R.6(c); F.R.Crim.P.R.7(c)(1). In this case, Ms. Anzaldi did not receive a copy of the signed indictment. Then Judge Leinenweber points out that ECF No.4, clearly shows a signed indictment. Petitioner's Docket No.1 does not. (App.394) Then concludes by arguendo, assuming the indictment was not signed, "his deficiency does not without more, render the indictment void and consequently deprive the Court of jurisdiction." [As does the Case in Chief.] *Frisbie v. United States*, 157 U.S. 160, 163-65, 15 S Ct. 586, 39 L.Ed. 657 (1895).

In *Frisbie, supra.*, Justice Brewer delivered the opinion on the "objection that the indictment lacks the endorsement, "a true bill" as well as the signature of the foreman of the grand jury when made for the first time after trial, comes too late." Petitioner's objections and interlocutory appeal related to the same were pre-trial. Justice Brewer argues "No objection was made on this ground in the circuit court either before or after trial. [petitioner did both] There is in this Federal statutes no mandatory provision [at that time] requiring such endorsement or authentication, and the matter must, therefore, be determined on general principles." He conceded however, that "The endorsement is parcel of the indictment and the perfection of it." *King v. Ford*, Yelv. 99. "...endorsement became the evidence, if not the only evidence, to the court of their (grand jury) action." Justice Brewer then goes on to claim that "But in this country the common practice...they return into court only those accusations which they have approved, and the fact that they thus return them into court is evidence that the indictment has been found, and the formal endorsement loses its essential character." Beasley, C.J., in *State v. Magrath*, 44 N. J.L.227, 228; by Moncure, President of the Court of Appeals, in *Price v. Com.* 21 Gratt, 846, 856; and by Merrick, J., in *Com. v. Smyth*, 11 Cush. 473, 474, the latter saying "this omission

in an indictment is simply the omission of a form, which, if oftentimes found convenient and useful, is in reality immaterial and unimportant."

In each of these cases reviewed by Justice Brewer, it was held by the court "that the lack of the endorsement was not necessarily and under all circumstances fatal to the indictment." Noting that he was not foreclosing on all circumstances. 1 Bish. Crim. Proc. § 700, it is said "in the absence of a mandatory statute, it is better view that both words 'a true bill' and the signature of the foreman may be dispensed with, if the fact of the jury's finding appears in any other form in the record." Noting Rule 6(c) and 7(c)(1) are mandatory statutes but the prosecution has used the jury as a tool to aid in their prosecutorial abuse. See also, State v Creighton, 1 Nott. & McC.L. 256; State v. Cox, 28 N.C.440. In Gardner v. People, 4 Ill. 83, the court held that the signature of the foreman, though a statutory requirement, would be presumed if the indictment was recorded. Docket No. 1 of petitioner's indictment clearly takes away any such presumption that it was.(App.394)

Justice Brewer lays out that "The defect, however, is waived if objection is not made in the first instance and before trial,[Petitioner did both] for it does not go to the substance of the charge, but only to the form [indictment or information] in which it is presented." In State v. Agnew, 52 Ark. 275, it was held that a statute requiring an endorsement of a "true bill" signed by the foreman was directory[for waiver or information], and the defect of a lack of such endorsement was waived unless made before pleadings. In McGuffie v. State, 17 Ga. 497, while holding that the usual practice of endorsement was advisable, the court said that the objection on account thereof was "an exception which goes rather to the form than to the merits of the proceedings," and too late after trial. See also State v. Mertens, 14 Mo. 94; State v. Murphy, 47 Mo. 274; State v. Shippey, 10 Minn. 223, 88 Am.Dec.70; People v. Johnston, 48 Cal. 549; and Wau-kon-chaw-neek-law v. United States, Morris (Iowa) 332."

However, all of these cases supra., relate to a foreman signing an indictment or a U.S. Attorney signing an information or a U.S. Attorney and foreman not signing either under waiver. First the argument related to where there was no statutes(which developed through time) related to still the foreperson who signed an indictment. Then the argument explains waiver if objection is not timely made in the first instance and before trial, by a foreperson or U.S. Attorney goes to form not substance as an exception on form rather than the merits of the proceedings by way of waiver. He supports this with 1025, Rev.Stat., which reads: "No indictment found and presented by a grand jury in any district or circuit or other court of the United States shall

be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection, [157 US 165] in matter of form only, which shall not tend to the prejudice of the defendant." Here, the revised statute and case supporting "form" related again to the endorsement of the foreperson on the indictment and not both the foreperson and the U.S. Attorney, as in the Case in Chief. He supports his ruling under State v. Clarkson, 3 Ala.378, 383. "The very fact of pleading to it admits its genuineness on a record." However, he instructs the reader "Instead of denying the existence of any legal accusation [as petitioner did during arraignment and specifically during pre-trial using the word "existence"], the defendant demurred to it on the ground of insufficiency, thus abandoning all question of form and challenging only the substance. When demurrer was overruled he entered a plea of not guilty, and that being determined against him by the verdict of the jury, he interposed a motion for a new trial and one in arrest of judgment, without ever suggesting to the court that there was before it no indictment returned by the grand jury of the district. The objection, now for the first time made, comes too late..." The indictment June 12, 2012 was objected to (App.56-59,67-69,71,91-180,186-201) Petitioner's first instance of the proceedings was his arraignment. At his initial appearance, he told the Magistrate Judge Sidney I. Schenkier, that he did not understand the charges P.4 of Document # 147, filed March 11, 2013. He further explains that he has not read the charges. P.5, to where the court passes the case. After recess, the petitioner, as instructed by his Bond Attorney, plead to the charges that were on the indictment that his attorney was given. Mr. Herbert Hill, who was petitioner's attorney that had bailed him out, explained the charges he had possession of but also instructed petitioner to tell the Judge he understood the charges or else the court would not let him go. (App.132-133,189-190) The petitioner insisted that he did not understand the charges, but under threat of being detained for an undertermined time, as conveyed by Mr. Hill, petitioner told the Judge he understood the charges explained by his bond attorney. It was only after there was another recess of 45 minutes that Mr. Hill provided the petitioner a copy of the indictment. However, the entire time of that 45 minutes was used by Mr. Hill talking to the petitioner's wife or father, depending on who's turn it was with the Probation Officer, Mr. Maldonado. At no time did Mr. Hill go through the copy he provided petitioner. Mr. Hill was not even present during the interview with the Probation Officer. Petitioner was going on over 36 hours of no sleep and was nodding off several times. When reconvened, the Court asked "But why don't we do the arraignment while we're here. We can take care of that. It will just take a minute. I know the defense has received the indictment." Without consent

of such proceeding to represent petitioner, Mr. Hill proceeded as going from a Bond Attorney, to petitioner's trial Attorney, without hire, by agreement, without authority to proceed in the arraignment or enter his plea. A plea that petitioner had not discussed on an indictment that was never explained to him until just before reconvening. P.17-20. By the time the petitioner was actually having Mr. Hill do what he was hired to do by Petitioner's wife, which was to bail him out on bond, it was after the arraignment and the entering of a plea of not guilty, to which the petitioner was not given any choice for, if he wanted to be released per his Bond Attorney, Mr. Hill. P.24. During the bond hearing, the Judge asked if petitioner's signature was on the bond form. However, the only signature petitioner knew of was one page where he signed. There was no documents that were attached to the page so when asked if the signature was his on the bond form, he stated "yes". P.28. This was the only part of the process that Mr. Hill explained not to violate or else Petitioner could be arrested. This arraignment was on June 29, 2012.

During the first hearing before Judge Leinenweber, Petitioner had submitted a Request for a Bill of Particulars and an Ineffective Assistance of Counsel Motion due to Mr. Hill's lack of representation and unauthorized representation of the arraignment related to the indictment disclosure and the required timely submission related to all discovery and Bill of Particulars. An Affidavit was filed to this effect(App.73). Instead of the Judge granting petitioner's motion as the party negatively affected, he made the grant of withdraw as counsel as if Mr. Hill was withdrawing on his own accord. The Judge then continued the Bill of Particulars several times based on Petitioner getting counsel or until one was appointed. Once it was understood that the Petitioner was proceeding pro se, but was not waiving his right to assistance of counsel till one was found, the Judge ruled on the Bill of Particulars and denied it as unnecessary. Document No.144, p.9-12, filed March 8, 2013 for December 6, 2012 hearing pro se. Petitioner attempted to explain that there were a lot of defects, that everything was conclusive and that nothing showed substantive facts. P.12. Judge Leinenweber responded with "Anyway, I've read over your motion for a Bill of Particulars. I've read the indictment, and I think the indictment is crystal clear as to the charges. So the motion for a Bill of Particulars is denied." P.12. Part of the ineffective counsel claim was that Petitioner did not know the indictment was not signed by either the U.S. Attorney and or Foreperson until after he was arraigned. At the first hearing July 31, 2012, Petitioner informed the Judge of this issue. The Judge assured that he would allay Petitioner's concerns by reviewing the signatures in camera. Petitioner objected that this was procedurally out of order. Mr. Madden(U.S.Attorney) assured that a copy of the original indictment was filed on the Docket. Judge Leinenweber confirmed it was

Docket No.1(App.71) That docket entry was unsigned by both the U.S. Attorney and the Foreperson.(App.377-394) On December 6, 2012's hearing, Petitioner asked a second time under following up from a former hearing request, objecting to the denial of the Bill of Particulars. This was right after Petitioner was beaten, and arrested by U.S. Marshal(s) on his way to court and issued a bogus ticket to which Mr. Madden would argue on a later date by interrupting an already started hearing between a different Prosecutor and the Petitioner, over the bogus ticket that successfully covered up the Obstruction of Justice and Assault against Petitioner. P.1-20 for the December 6, 2012 hearing. Petitioner was in threat of his life and needed to find an Attorney or else be in threat of further unprovoked arrest, threats and intimidation for defending his case pro se. Throughout the proceedings pre-trial and acting pro se, Petitioner would bring up the unsigned indictment issue and on two other occasions, the in camera hearing that the Judge was going to have to inspect the indictment not provided as signed. It was not until Petitioner was forced by Mr. Madden and Judge Leinenweber electing to motion up an Evaluation hearing, did Petitioner finally go get himself an Attorney to represent him in fear of his life and further deprivation of liberty. It must be noted that this was all after Petitioner's substantive rights were violated under the 4th, 5th and 6th Amendment in relation to "Assistance of Counsel" Clause of Petitioner's liking and approval; "Unlawful Warrant for Arrest, Search and Seizure"; "Speedy Trial Act" claim; "Indictment of a Grand Jury" claim; and "Due Process" Clause.

Judge Leinenweber also ruled on the merits in relation to challenge of subject matter jurisdiction, which among other things, argued an unsigned indictment by the U.S. Attorney and Foreperson. The Petitioner even attempted to stop that meritorious ruling (App. 49-69) and injunction, by filing a Collateral Interlocutory Appeal on the merits of Judge Leinenweber's "Memorandum and Opinion", dated February 27, 2013 and filed under "Notice of Appeal" on the same day. See 7th Cir. Case No. 13-1434 (App.38-209) This evidences that Petitioner was preserving his oral and expressed objections to the unsigned indictment and challenge of subject matter jurisdiction that he disclosed to the Court, further claiming there was no controversy before the Court because there was no indictment that existed from the Grand Jury. Once Petitioner finally accepted appointed Counsel from the Court pre-trial, his issues related to jurisdiction and the existence of an actual indictment were already ruled on the merits and were denied by the Appeal Court under appeal as premature until after he has been both convicted and sentenced, in complete violation of due process. Petitioner has met the burden of Justice Brewer's court findings by denying the existence of any legal accusation. He further preserved the record on appeal pre-trial. However, this burden was met for the Foreman argument in his Court, as relied on by Judge Leinenweber in United States v. Anzaldi, DeSalvo, and Latin. The second reliance was United States v. Irerere.

In Irerere, supra., Judge Manion, which must be noted, is the same Judge who had ruled on the Case in Chief at the 7th Cir., ruled on the claim that the defendant challenged the sufficiency of the indictment, in violation of the 5th Amendment, stating "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.." Unlike petitioner's challenge that an indictment or charge even existed, since there was no charge, because there was no signatures from the U.S. Attorney and Foreperson, challenging subject matter jurisdiction and in personam jurisdiction; and further claiming the want of indictment, want of prosecution, and want of warrant, this case was "sufficiently" different. Although the indictment complained of was not signed as claimed in Irerere, supra., by the U.S. Attorney and Foreperson, as in the Case in Chief, the 7th Cir. relied on reviewing the proceedings on sufficiency of the indictment de novo. Frank v. United States, supra., "Because of [the defendant's] failure to raise objections to the indictment prior to trial[unlike Petitioner], his indictment should be upheld unless it is so defective that it does not, by any reasonable construction, charge an offense for which the defendant is convicted." United States v. James, supra.. Which is exactly what happened to Petitioner. Here in Irerere's Court, as in Anzaldi's Court, under Judge Leinenweber, both Courts conceded that the Federal Rules of Criminal Procedure state under Fed.R.Crim.P. Rule 6(c) "The foreperson...shall sign all indictments."; and that under Fed.R.Crim.P. Rule 7(c)(1) "[The indictment] shall be signed by the attorney for the government." What they both fail to give notice to is 7th District's Local Rule 10.1 under Arraignments, which states "Following the filing of an indictment [June 12, 2012] the Clerk shall..where the defendant is in custody, the arraignment shall be set for no later than the second business day following such filing. This is important in that it shows that the indictment was in fact filed on June 12, 2012 per docket entry No.1, which did not show any signatures of either the Attorney for the government or Foreperson. There was no reason to delay providing Petitioner a copy of the signed indictment for 36 hours, unless there was no indictment issued on that date but instead on the next business day after arrest on June 29, 2012, right before arraignment. One can only conclude that if there was a signed indictment later in the record, it was surely signed as backdated, in aid of not requiring a sworn date on the indictment. However, to date, Petitioner has never seen a signed indictment. Local Rule 49.4(B)(1) states "All charging documents (including the complaint, information, indictment, & superseding indictment) must be filed conventionally and then uploaded by the Clerk. Both Mr. Madden and Judge Leinenweber stated on the record more than once that the indictment filed as Docket No.1 is a copy of the original indictment. Nowhere on the record was it stated that anything was redacted or that the original is not the same charging document as filed online. It is still unanswered if discharge of the Grand

Jury, was not illegally beyond the 18 month and 6 month extension, being petitioner was investigated since early 2010 when he counter-claimed in his foreclosure for fraud; and Mr. Cerami ("CPA") testified by subpoena before the Grand Jury on November 16, 2011, just one day before Ms. Anzaldi et.al.'s Minute Order Bench Warrant and Indictment was issued on November 17, 2011, noting Petitioner's name was mentioned in Anzaldi's case and Petitioner was not indicted until June 12, 2012. There is clear and calculated selective prosecution and abuse here. However, with all that said, the lower Court was in violation of F.R.Crim.P. Rule 6(c) and 7(c)(1). Irerere's Court points out however, that "precedent of the Supreme Court and of this Court indicate that both of these signatures are technical deficiencies that are not necessarily fatal to the indictment." See United States v. Wright, supra.. Petitioner never waived indictment pursuant to F.R.Crim.P. Rule 7(b) and the Court conceded he did not since he showed countless times in affidavits, declarations, motions, objections and a 7(f) request for a bill of particulars, that he did not knowing do so and withdraws any assumed waiver pre-trial. So waiver is not an issue in the Case in Chief. Anzaldi's Court relies on Wright's ruling that "The signature of the prosecuting attorney is not an essential part of the information." Petitioner's case is not an "Information", it is an "Indictment" which has been conceded by Mr. Madden and Judge Leinenweber on several occasions. Anzaldi then relies on Hobbs v. United States, supra., "Even the foreman's duty to sign the indictment is a formality, for the absence of the foreman's signature is a mere technical irregularity that is not necessarily fatal to the indictment." Citing Frisbie v. United States supra. Here we are talking about an indictment not signed by a Foreperson. The 7th District and Circuit do there best to muddy the signatures and charging document requirements between Forepersons and Prosecuting Attorneys for the untrained eye. The Case in Chief is at issue of both the endorsements not being signed on the indictment by either the U.S. Attorney or Foreperson, so this cannot be relied on. Finally, in Anzaldi, a signed indictment was entered under Docket No.4 and her challenge was post-trial with no bill of particular request. Petitioner was pre-trial, with a bill of particular, motion to dismiss for want of subject matter jurisdiction, interlocutory appeal colateral attack on the merits of the denials, and the challenge that the indictment even existed from a Grand Jury. Justice Brewer instructed supra., "Instead of denying the existence of any legal accusation, the defendant demurred to it on the ground of insufficiency, thus abandoning all question of form and challenging only the substance." This heavy burden by a pro se litigant with no former learning of the law, is beyond combersome, but is not beyond reproach, as demonstrated Infra.

On July 31, 2012, Document No.140, filed March 3, 2013, P.5, "Okay. Judge, just for the record, I'd like to place a few things on the record that my former attorney [during bonding and arraignment] did not place on the record. When the arraignment occurred, I was brought before the honorable judge that was presiding at the time

[Judge Magistrate Sidney I. Schenkier]. He had asked me how I wished to plead, and at the time I had not been given, up to that second, any of the charges. When I received the charges after recess, the actual charges did not have a signature from the Attorney General or from the Foreman that I received. So I request from the Court that I see the original charging papers with signatures." P.6. MR.MADDEN: "And he did. He did receive a copy of the official indictment, Your Honor. The reason--in this district, typically for privacy concerns the indictment that goes onto the docket does not have the signature of the foreperson on it." [Noting that he does not address no signature from the U.S. Attorney also not on it.] That's usually maintained under seal for the protection of the identity of the foreperson, I believe." P.6. Noting this is in violation of Local Rule 10.1 and 49.4(B)(1), supra.. Mr. Madden is told by Petitioner "That's in violation of the U.S. Attorney Manual[at this stage and after custody but before arraignment]" MR. DICOSOLA: "Judge, just for the record, Your Honor, I would like to see the original charging papers with the signatures, because the rules preclude such a transaction to occur on charges without signatures. Nobody has stepped forward under penalties of perjury to enter in their signatures of indictment against me, and there is no affidavit attached to the complaint. The mere fact that the indictment needs to be signed by a forman in front of a grand jury, that is the rules and requirements." COURT: "Well, it can be verified in Court, you know. I'll tell you what." MR. DICOSOLA: "I should be entitled to see it." COURT: "To allay your concerns, I will review it for the appropriate signatures in camera." MR. DICOSOLA: "Well, Your Honor, just for the record, I do object to that because--" COURT: "Well, that's fine." MR. DICOSOLA: Just for the record, I do object to that because it's against procedure." COURT: "Fine. So you do -- how much time will it take you to get a lawyer?" P.7. MR. DICOSOLA: "Secondly, Your Honor, there is a motion for a bill of particulars. So just for clarification purposes, the exclusion of time--" COURT: "Why don't you wait till you get your lawyer and have your lawyer refile the motions if you feel they're appropriate. All right?" MR. DICOSOLA: "Okay. Thank you. Your Honor." P.9.

On August 30, 2012, Document No.141, filed March 3, 2013, defendant received approval for the recording device he brought into court and was later beaten and wrongfully arrested for it, on his way to the court hearing. Supra. MR. DICOSOLA: "Just for the record, I also have a recorder just in case. I do object to that denial. It is my due process right to have my own court reporter. I should not rely upon this Court to be able to hold their own information. I should be able to hold my own information as well." COURT: "All right. There's a number of motions." P.2. MR. DICOSOLA: "Well, just for the record, I do have a recorder here that I'm going to start ~~recording~~ recording." P.3.

On September 27, 2012, Document No.142, filed March 8, 2013, where Petitioner wishes to stay outside the bar, since he does not wish to engage in controversy, since

there is no signed indictment so none exists. MR. DICOSOLA: "Good morning, Your Honor. I would like to stay outside the bar." COURT: "What?" MR. DICOSOLA: "I would wish to stay outside the bar." COURT: "Why?" MR. DICOSOLA: "Because I don't wish to engage in controversy, I wish to stay outside the bar. Just for the record, are we on the record?" COURT: "Yes, we're on the record." MR. DICOSOLA: Okay. I do have a recorder for myself, for memorialization of the events." P.2. "Okay. For and on the record, my name is Michele. I am not Mike DiCosola. I challenge this Court instant that this Court has subject matter jurisdiction." P.3 COURT: All right." MR. DICOSOLA: "I have not received to this date a signed indictment. I've requested it in every hearing. I've had an unlawful arraignment which was out of order, and the prosecution has failed to prove that." COURT: "All right. Let me ask the prosecutor. What's the status of the case?" MR. MADDEN: Your Honor, there are a number of pending motions that the Court took under advisement at the last status. There's a few other motions that have been filed since then. I don't know if they all--" Noting that Judge Leinenweber was addressing the status of the Court's jurisdiction, not the pending status of hearing. This was a challenge of jurisdiction. P.3. MR. DICOSOLA: I do not have assisted counsel at this time, but I have not found any that is capable of handling my affairs, and those who are are in actual conflict with their Oath of Office." P.4. "As for the prosecutor proceeding, he's now proceeding fraud upon the Court here, and I am giving him caveat that he must produce a signed indictment. I have never been provided a signed indictment by a foreperson. I've never been provided a signed indictment by--(Court reporter concealed "an Attorney")P.6. COURT: "In any event, I'm appointing standby counsel."P.6. MR. DICOSOLA: "Your Honor, just for the record, I do object. I am prepared, able and willing to stand right now before this Court and challenge subject matter jurisdiction. This Court lacks it. It lacks its want of indictment, want of subject matter jurisdiction, want of affidavit from a complaining witness under penalties of perjury. It is out of order. It did not have a preliminary hearing. It went straight to arraignment. This entire proceeding is illegal, unlawful, and needs to be dismissed with prejudice." COURT: "Well, I'm appointing standby counsel, and we will continue the matter for 30 days, at which time I will determine whether or not you are competent to proceed on your own. 30 days, Wanda." P.6-7. MR. DICOSOLA: I do object on the record." P.7. I do not agree to any exclusion of time for the record." P.8. CLERK: November 6th. P.8. MR. DICOSOLA: "Objection." COURT: "All right. Over objection, the time is excluded." P.8. MR. DICOSOLA: "Okay. Can it be noted on the record that I do object, and the reason why I object is I have a right of due process and I have a right to a speedy trial." P.8-9. COURT: "Time will be excluded, continuity of counsel and interest of justice." P.9. MR. DICOSOLA: I object for the record. Judge, for the record, I also object to the fact that we are continuing this proceeding. This Court is in want of prosecution. It does not have a complaining witness. It does not have an indictment. I ask this

Court for the last time to produce a signed indictment." COURT: "All right. We'll see you on November 6th." P.9. MR. DICOSOLA: Okay. This is out of order.." P.9.

Here, the Petitioner has met beyond a reasonable doubt the burdensome task of meeting the prong of Justice Brewer's inferred instruction that "Instead of denying the existence of any legal accusation, the defendant demurred to it on the ground of insufficiency.." Petitioner has been prejudiced of his right to Rule 7(c)(1) in compliance to the 4th, 5th & 6th Amendment and the government is in violation thereof, by causing a grave deprivation of substantive rights and remedies afforded under the "Due Process" Clause, "Assistance of Counsel" of Petitioner's liking and approval Clause, "Unlawful Arrest Warrant and Search and Seizure Warrant" Clause. "Speedy Trial" Clause and Act, "Indictment by a Grand Jury" Clause, "Notice" and "Nature and Cause" Clauses, "Witness Against Himself" Clause, when forcing competency hearing for acting pro se, and "Wrongful Arrest". Although Petitioner has met the burden for either a signed indictment by a U.S. Attorney, but without a Foreperson; a signed indictment by a Foreperson, but not a U.S. Attorney; an unsigned information, by waiver, from a U.S. Attorney and Foreperson; and finally, an unsigned information, from a U.S. Attorney and Foreperson; and does not need to meet the burden of Anzaldi's additional prong and element that Judge Leinenweber claimed that "even assuming arguendo that the indictment was not signed, this deficiency does not without more, render the indictment void.", supported under *Frisbie vs. United States*, supra.; and under *United States v. Irerere* (7th Cir.) supra., where it states "Because of [the defendant's] failure to raise objections to the indictment prior to trial, his indictment should be upheld **unless** it is so defective that it does not, by any reasonable construction, charge an offense for which the defendant is convicted." *United States v. James*, supra., Petitioner will take on that challenge to meet that burden as well. However, we will first site some citations that support Petitioner's claim.

(a) Relationship with other rules and laws (Rule 7, Indictments)

"..Rule calls for indictment or information to be signed by attorney for government, but includes no provision for signer's address.." *United States v. White* (1992, CA2) 980 F.2d 836. Notwithstanding any dates sworn under perjury to prevent abuse. "... Compliance with Rule 7(c) insures satisfaction of 3 constitutional rights: it satisfies Sixth Amendment guaranty that in criminal prosecution accused must be informed of nature and cause of accusation; it protects right of accused to be free from double jeopardy, as guaranteed by Fifth Amendment; and it guarantees that the accused has been indicted by grand jury, as required by Fifth Amendment, for offenses on which accused is to be tried." *United States v. Sugar* (1985, SD NY) 606 F Supp 1134, 18 Fed. Rules Evid Serv 1443. "...the fact that Supreme Court's Ring decision requires decisions by grand jury in addition to Department of Justice before defendant is subject to possible imposition of death penalty is consistent with usual practice in

criminal cases, as F.R.Crim.P. Rule 7(c)(1) required that attorney for government sign indictment; signing requirement of Rule 7(c)(1) provides means by which Department of Justice served as check against possible abuse of power by grand jury." United States v. Sampson 2003, DC Mass) 245 Supp 2d 327.

(b) Construction of indictment and information.

"When indictment is questioned prior to trial, it should be construed more strictly than when question is first raised after trial and judgment." Hagner v. United States, (1932) 285 US 427, 76 L Ed 861, 52 S Ct 417; Kane v United States (1941, CA8 Mo) 120 F.2d 990; United States v. Sehon Chinn (1946, DC W Va) 5 FRD 226, affd (1946, CA4 W Va) 157 F.2d 1013; United States v. Linderman (1957, DC Mont) 20 FRD 459. "Indictment must be construed as a whole" McCoy v. United States (1948, CA9 Mont) 169 F.2d 776, cert den (1948) 335 US 898. 93 L Ed 433, 69 S Ct 298; United States v. Sessions (1968, ND Ga) 283 F Supp 746. "Indictment is construed more liberally in favor of its sufficiency after judgment than before; conversely, when indictment is questioned prior to trial, it should be construed more strictly." Finn v United States (1958, CA4 Va) 256 F.2d 304; United States v Norman (1968, CA6 Ohio) 391 F.2d 212, cert den (1968) 390 US 1014, 20 L Ed 2d 163, 88 S Ct 1265; United States v Gibson (1975, CA6 Mich) 513 F.2d 978. Which explains why the 7th Cir. relied on Pollard v. United States, 352 U.S. 354, 358 (1957); United States v. Kaufmann, 951 F.2d 793 (7th Cir. 1992) when ruling on Petitioner's interlocutory collateral appeal as DISMISSED for lack of jurisdiction quoting Pollard supra., "Generally, a defendant in a criminal case may not take an appeal until she has been both convicted and sentenced."(App.205) by postponing a pre-trial objection of form as premature until it becomes a post-trial objection converted to sufficiency. "Allegations of information [as done by petitioner pre-trial] are to be most strongly construed against government." Which explains why the government conceded that the indictment was not an information, when challenged pre-trial by Petitioner. United States v. Jones (1952, DC Fla) 108 F Supp 266, remanded (1953) 345 US 377, 97 L Ed 1086, 73 S Ct 759.

(c) Subscription.

"Provision of Rule 7(c) requiring signing of indictment by attorney for government is recognition of power of government counsel to permit or not to permit bringing of indictment, and **if attorney refuses to sign, as he has discretionary power of doing, there is no valid indictment.**" United States v Cox (1965, CA5 Miss) 342 F.2d 167, cert den (1965) 381 US 935, 14 L Ed 2d 700, 85 S Ct 1767. "Primary purpose served by affixing United States Attorney's signature to indictment is to indicate that he joins with grand jury in instituting criminal proceeding and that without his agreement no criminal proceeding could be brought on indictment; requirements of Rule 7 are met when assistant United States Attorney signs indictment or information, since signature is not essential part thereof." Speaking of grand jury foreman signature. United States

v. Wright (1966, CA7 Ind) 365 F.2d 135, 5 ALR Fed 911, cert den (1967) 386 US 918, 17 L Ed 2d 789, 87 S Ct 879. "Document signed by foreman of grand jury [which this indictment did not have] and delivered to court cannot properly be considered indictment or institution of criminal prosecution where Attorney General has refused to authorize United States Attorney to sign indictment; court has no jurisdiction to order Attorney General or United States Attorney to sign indictment or to prosecute persons named therein." In re Grand Jury (1970, DC Md) 315 F Supp 662. Which explains why Judge Leinenweber asked Mr. Madden "All right. Let me ask the prosecutor. What is the status of the case?" on September 27, 2012, Document No.142 P.3., when the Petitioner challenged subject matter jurisdiction for no signed indictment or the existence thereof.

(d) Allegations, Generally: Conclusions.

Indictment is insufficient if it states conclusions rather than facts upon which conclusions are based." Johnson v United States (1924, CA9 Cal) 294 F 753; Boykin v United States (1926, CA5 Ala) 11 F.2d 484; Alabama Packing Co. v. United States (1948, CA5 Ala) 167 F.2d 179; Butzman v United States (1953, CA6 Ohio) 205 F.2d 343, 53-2 USTC P 9450, 44 AFTR 61, cert den (1953) 346 US 828, 74 S Ct 50, 98 L Ed 353. As Petitioner argued in trial court pre-trial, since the indictment failed to state a claim upon which relief can be granted with conclusions of facts. "Nature and cause of accusation in indictment is determined by facts therein allged, not by conclusions of law therein stated if erroneous conclusinos did not mislead defendant to his prejudice. Babb v United States (1954, CA5 Tex) 210 F.2d 473. Petitioner requested a bill of particulars because the unsigned indictment was conjunctive and conclusive when the charged accusation of violating statutes §§§§ 1344, 1343, 1014, and 287 where couched in the disjunctive. Which fact did each member jurer decide on unanimously on?

(e) Intent.

Specific intent should be specified with grater particularity than general criminal intent." As in the Case in Chief. United States v Morrison (1976, CA9 Nev) 536 F.2d 286.

(f) Count.

Each count in indictment is regarded as if it was separate indictment and consequently each count must stand on its own, and cannot depend for its validity on allegations of any other count not specifically incorporated. United States v. Fulcher (1980, App DC) 200 US App DC 121, 626 F.2d 985, cert den (1980) 449 US 839, 66 L Ed 2d 46, 101 S Ct 116. Since Count(s) §§§ 1344, 1343 and 1014 were Ex Post Facto violations to be argued later in this petition, none of those charges can stand on its own. Count § 287 was conceded by Judge Leinenweber during bench trial that the IRS could not have relied on the tax refund form as claimed in the indictment (App.379) and therefore cannot survive on its own by incorporation of such misappropriation of fact.

(g) Conjunctive and disjunctive pleadings.

"Count of indictment which alleges several acts constituting statutory offense in disjunctive or alternative, lacks necessary certainty, and is wholly insufficient." Confiscation Cases (1874) 87 US 92, 20 Wall 92, 20 Wall 92, 22 L Ed 320, 22 L Ed 327 superseded by statute as stated in United States v \$39,000 in Canadian Currency (1986, CA10 Colo) 801 F.2d 1210); Ackley v United States (1912, CA8 Mo) 200 F 217; Price v United States (1945, CA5 Ala) 150 F.2d 283, cert den (1945) 326 US 789, 90 L Ed 479, 66 S Ct 473, reh den (1946) 327 US 813, 90 L Ed 1038, 66 S Ct 519; Heflin v United States (1955, CA5 Ala) 223 F.2d 371; United States v Dedof (1941, DC Pa) 42 F Supp 57; United States v MacKenzie (1959, DC Me) 170 F Supp 797.) "Use of conjunctive language in indictment to charge violation of statute which is couched in disjunctive language does not comply with plain requirements of Rule 7(c)." United States v Trinastich (1973, WD Mo) 354 F Supp 54. Petitioner's indictment for Count(s) §§§§ 1344, 1343, 1014, and 287 are couched in disjunctive but are charged in conjunctive, in violation of Rule 7(c)(1) which supports the 6th Amendment, to be informed of nature and cause of accusation.

(h) Bill of Particulars: Generally.

"For purposes of demurrer to federal indictment, bill of particulars forms no part of record. United States v. Boston & Railroad"(U.S. Mar.8, 1965), 380 US 157, 85 S Ct 868, 13 L Ed 2d 728. "Therefore, government cannot claim petitioner demurred when he asked for a bill of particulars after arraignment and explained that he did not understand the charges before arraignment." As in the Case in Chief, Petitioner never demurred prior to a request for a bill of particulars, when explaining he did not understand the charges.

(i) Nature of Right.

"Where it appears that indictment does not inform defendant with sufficient particularity of charges against which he will have to defend at trial, he is **entitled to bill of particulars, and defendant may demand this as matter of right where charge is couched in such a language that defendant is liable to be surprised and unprepared.**" Singer v United States (1932, CA3 NJ) 58 F.2d 74, 11 AFTR 142. Petitioner demanded on several occasions to see the unsigned indictment and to provide a bill of particulars to no avail.

2. INDICTMENT CHARGING 18 U.S.C. §§ 1344 and 1343 FATALLY FLAWED.

Count One of the indictment charges Petitioner with a violation of Title 18, United States Code, Section 1344. 1(a) states "Amcore Bank, which had an office in Wheaton, Illinois, was a financial institution, the deposits of which were insured by the Federal Deposit Insurance Corporation ("FDIC");". This factual conclusion is defective and in violation of 18 U.S.C. §§ 20 and 27; and 12 U.S.C. §§ 1813 and 1841, et. seq.. Petitioner's accused act of violating 1344 and 1343 was purportedly committed on July 9, 2008. Pursuant to 18 U.S.C. §§ 1344 and 1343, the definition of "financial

institution" for a insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 USCS § 1813(c)(2)]), was not amended to 18 U.S.C. §§ 1344 and 1343 until May 20, 2009. Causing an Ex Post Facto Article I, Section 9, Clause 3 violation. 131 L Ed 1043.

18 U.S.C. § 1344 is couched in the Statute as disjunctive. The indictment is alleged in the conjunctive. § 1344 Bank fraud, reads as follows:

"Whoever knowingly executes, **or** attempts to execute, a scheme **or** artifice--
(1) to defraud a financial institution; **or**
(2) to obtain any of the moneys, funds, credits, assets, securities, **or** other property owned by, **or** under the custody **or** control of, a financial institution, by means of false **or** fraudulent pretenses, representations, **or** promises; shall be fined not more than \$1,000,000 **or** imprisoned not more than 30 years, **or** both."

A..Conjunctive obligation of charges.

Mr. Madden had elected to allow for the purported charging papers to be conjunctive using the word **"and"** throughout all the charges and incorporating the same. Specifically, 18 U.S.C. §§ 1344 and 1343 are couched in the disjunctive **"or"**. This imposes an obligation composed of multiple performances that could be separately rendered **or** enforced; by connecting several factual allegations of the Petitioner's acts of declaring something to be true and provable, without its having yet been proved. This severely prejudices the Petitioner since it is unknown what conclusive facts were and were not agreed with by all the jury members on each allegation, using the word **"and"**. A clear 52(b) violation of 5th Amendment due process rights. Had Petitioner been provided a bill of particulars and a signed indictment by the U.S. Attorney and Foreman, he would have accepted the indictment as authentic from a grand jury and had been able to attempt to cure the defects by arguing to the fact that the defense was very confused how to defend the charges due to its allegation; and the fact that the Jury could not be reasonably responsible to know with a unanimous verdict on each and every conclusive allegation, each jury member accepted as factual evidence. A reasonable trier of facts could not possibly be held to this standard, while the prosecution plays fast and loose; and nor should a defendant defending for his innocence in a criminal proceeding. The burden of the prosecutor is to prove all facts alleged in the conjunctive since this is what Mr. Madden had chosen, in order to have justice properly served.

B. Conjunctive denial of indictment.

Had the petitioner been able to receive his proof of indictment, then he provided his bill of particulars as a matter of right in the conditions this case provided, he would have had to accept that an indictment existed and that he did not in fact become a victim of selective prosecution and an unknown waiver of indictment by plea, which was forced on Petitioner without almost two days of sleep from a Bond Attorney not authorized to proceed as petitioner's trial counsel and enter plea, being told that Petitioner would be held indefinitely if he did not say he understood the charges against him. Coercing the Petitioner into a plea without reading the indictment and

possibly becoming a victim of waiver without consent or knowledge. However, the trial court conceded that there was an indictment, but they would not produce a signed one. This was not the case though. The acceptance of an indictment as existing never transpired, so the Petitioner could not argue conjunctive denial of the indictment and further could not argue "Surplusage" if he did not believe a "True Bill" existed. This was a violation of the "Due Process" Clause, of the 5th Amendment of the Constitution. This also allowed for Mr. Madden to act on "surprise at trial". "Function of a bill of particulars is to inform the defendant of nature of charge against him with sufficient precision to avoid or minimize danger of surprise at trial." United States v. Sullivan (1970, CA5 La) 423 F.2d 805, cert den (1970) 400 US 836, 27 L Ed 2d 68, 91 S Ct 73. "Use of conjunctive language does not comply with plain requirements of Rule 7(c)." United States v Trinastch (1973, WD Mo) 354 F Supp 54.

C. Amcore Bank not federally insured.

Mr. Madden had convinced both the jury and the Petitioner, that the charges alleged under 18 U.S.C. § 1344, were against a "financial institution", the deposits of which were insured by the Federal Deposit Insurance Corporation "FDIC";, but they were not. Mr. Madden misled through surplusage as the first entry under Count One as "The SPECIAL FEBRUARY 2011-GRAND JURY charges:", in order to misguide the reader into not questioning the time of the offense, in order to preemptively provide an artful extrinsic interpolation that would have a reasonable trier of facts look at the offense being charged as within the time frame of the alleged act. In fact, it did just that. Both to the jury and to the Petitioner. Had the Jury known that Amcore Bank was not federally FDIC insured, nor a financial institution(App. 210-245), they reasonably would have not charged the Petitioner for a crime that was Ex Post Fact at the time of the loss of control and custody of the funds accused of. Article I, Section 9, Clause 3. Denying this disclosure so as to allow jury instruction to be properly provided for such defense denied Petitioner of Due Process. "For reasons explained in United States v Brandon, 17 F.3d 409 (1st Cir. 1994), term "financial institution" in 18 USCS § 1344 is read restrictively in light of another definition, 18 USCS § 20, confining statute's reach to certain types of financial institutions including banks that are "federally insured" United States v Edelkind (2006, CA1 Mass) 467 F.3d 791, cert den (2007, US) 127 S Ct 1921, 167 L Ed 2d 574.

18 U.S.C. § 20. Financial Institution defined.

"As used in this title, the term "financial institution" means--(1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 USCS § 1813(c)(2)]); 18 U.S.C. § 20(6), a "depository institution holding company" (as defined in section 3(w)(1) of the Federal Deposit Insurance Act [12 USCS § 1813(w)(1)]; and 18 U.S.C. § 20(10) a "mortgage lending business" (as defined in section 27 of this title [18 USCS § 27]) or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974 [12 USCS § 2602]."

Amendment to hereinabove Act for paragraph (1) was May 20, 2009, which was after the offense alleged of loan(s) with Amcore Bank in July and October of 2008.

18 U.S.C. § 27. Mortgage Lending Business defined.

"in this title, the term "mortgage lending business" means an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce."

Amendment to hereinable Act Added May 20, 2009, P.L. 111-21, § 2(b)(1), 123 Stat. 1617.)

This was after offenses alleged of the loan(s) with Amcore Bank and CitiMortgage, Inc. and after the control and custody of the same. Showing an Ex Post Facto violation.

12 U.S.C. § 1813(c)(2) Definitions (i.e. Federal Deposit Insurance Act)

"(c) Definitions related to depository institutions. (2) Insured Depository institution. The term "insured depository institution" means any bank or savings association the deposits of which are insured by the Corporation pursuant to this Act. [12 USCS §§ 1811 et. seq.]"

12 USCS § 1813(w)(1). Definitions relating to affiliates of depository institutions.
"(1) Depository institution holding company. The term "depository institution holding company" means a bank holding company or savings and loan holding company.

(2) Bank holding company. The term "bank holding company" has the meaning given to such term in section 2 of the "Bank Holding Company Act" of 1956 [12 USCS § 1841].

(4) Subsidiary. The term "subsidiary"--

(A) means any company which is owned or controlled directly or indirectly by another company; and

(B) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation."

(5) Control. The term "control" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956 [12 USCS § 1841(b)]."

12 U.S.C. § 1841. Definitions relating to the Bank Holding Company Act of 1956.

"(a)(1) Except as provided in paragraph (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act.

(2) Any company has control over a bank or over any company if --

(A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company;

(B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 per centum of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this Act, other than a proceeding under paragraph (2)(C) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 per centum or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under (2)(C)."

Newly discovered evidence fatal to this indictment proves beyond a reasonable doubt, suppression of evidence from Mr. Madden, in violation of the Brady Doctrine and relates directly to all the controlling statutes related to 18 U.S.C. § 1344 and 1343. More specifically, under 12 U.S.C. § 1841(a)(4), since Amcore Bank, is a subsidiary of Amcore Financial, which was never disclosed as exculpatory information, filed bankruptcy under Amcore Financial parent company, with the Federal Bankruptcy Court in the 7th District on August 25, 2010, causing an administrative and judicial proceeding, pursuant to 12 U.S.C. § 1841(a)(4); and under declaration by and through its attorney of record, Mr. George N. Panagakakis; filed a Debtor's Application for Debtor and Debtor-in-Possession; claiming and disclosing under penalties of perjury; "...AMCORE was incorporated under the laws of the State of Nevada in 1982 and prior to the Bank Closure [defined below] was registered with the Federal Reserve Board as a Bank Holding Company. (App.213) Corporate headquarters were at 501 Seventh Street, Rockford, Illinois 61104." (App.213) Case No. 10-37144, Doc 24, filed August 25, 2010, P.3. "AMCORE acted as a registered bank holding company for its wholly owned subsidiary, AMCORE Bank, N.A., a nationally chartered bank (the "Bank"), whose deposits were insured by the Federal Deposit Insurance Corporation (App.247a-b)[AMCORE FINANCIAL, INC](the "FDIC") up to the maximum amount permitted by law. Prior to being closed[April 23, 2010], the Bank was subject to oversight and regulations by its primary regulator, the Office of the Comptroller of the Currency (the "OCC"), and AMCORE is subject to regulations under the Bank Holding Company Act of 1956, as amended. On April 23, 2010, the Bank was closed by the OCC (the "Bank Closure"), and the FDIC was named receiver for the Bank. The FDIC sold substantially all of the assets of the Bank to Harris National Association ("Harris Bank").P.3(App.214) AMCORE FINANCIAL, a parent Bank Holding Company of its subsidiary bank holding company, AMCORE BANK, N.A., in "Wheaton, Illinois"(App.378), who was not a Bank, but was in fact a "Bank Holding Company" by association, was not directly insured by the FDIC under "Rockford, Illinois's" FDIC No. 3735(App. 247a-b). Nor was it a "financial institution" as defined at the time of the alleged offense. AMCORE FINANCIAL, accepted Skadden, Arps, Slate, Meagher & Flom LLP("Skadden" or the "Firm") on March 1, 2010.(App.234-244) The Bank was already in dire straits prior to the acceptance letter for the Firm's services, since they were under and subject to oversight and regulation by the Office of Comptroller of Currency. Which makes sense why all of the Petitioner's assets were missing as a credit for his liquidated machines toward the restitution and why Ms. Devitt was willing to act with intentions of predatory lending, based on Petitioner's beliefs. Notwithstanding her perjured testimony that Amcore Bank in Carol Stream, Il. or Wheaton, Il. were in fact not FDIC Banks. P.25.

12 U.S.C. § 1841(a)(6)(b)

"Company" means any corporation[,], partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five

years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State, and shall not include a qualified family partnership. "Company covered in 1970" means a company which becomes a bank holding company as a result of the enactment of the Bank Holding Company Act Amendments of 1970 and which would have been a bank holding company on June 30, 1968, if those amendments had been enacted on that date.

(c) Bank defined. For purposes of this Act---(1) In. general. Except as provided in paragraph (2), the term "bank" means any of the following:

(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act[12 USCS § 1813(h)].

(B) An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which both--

(i) accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(ii) is engaged in the business of making commercial loans."

Noting this would qualify for both Amcore Bank and its sister locations that are subsidiaries of the parent Bank Holding Company, "Amcore Financial" in Rockford, IL.; further connecting Amcore Bank in both Carol Stream, IL. and Wheaton, IL., as also being a Bank Holding Company subsidiary.

18 U.S.C. § 1841(k). Affiliate.

For purposes of this Act, the term "affiliate" means any company that controls, is controlled by, or is under common control with another company."

Pursuant to 18 U.S.C. 1813, under the Federal Deposit Insurance Act, "Where defendant's mortgages were fraudulently procured from mortgage lender, wholly-owned subsidiary of bank, but lender was not federally insured, lender was not "financial institution" under 18 USCS § 20(1), 12 USCS § 1813(c)(2), and his conviction for bank fraud under 18 USCS § 1344 failed for lack of evidence that bank had "custody or control" of funds defendant obtained. United States v Bennett (2010, CA9 Cal) 621 F.3d 1131. Federal court lacks jurisdiction to determine merits of alleged violation of "Bank Holding Company Act" (12 USCS §§ 1841 et.seq.) since Act vests exclusive jurisdiction of such cases with Federal Reserve Board." Central Nat'a Bank v Rainbolt (1983, CA10 Okla) 720 F.2d 1183, 1983-2 CCH Trade Cases 65709. Noting that Amcore Bank at time of the alleged offense, was not a Bank, but was in fact a Bank Holding Company Subsidiary. Therefore, the district Court was without jurisdiction. "Mortgage company which does not accept demand deposits does not constitute "bank" under 12 USCS § 1841." Flintridge Station Associates v American Fletcher Mortg. Co. (1985, CA7 Ind) 761 F.2d 434, 1985-1 CCH Trade Cases 66612. Noting that at the time of the alleged offense, CitiMortgage, Inc. was not considered a financial institution or bank. (18 USC §§ 20 and 27). Noting further supra., that Amcore Bank was not a financial institution at the time of the alleged offense. (18 USC §§ 20 and 27) "Companies controlled by principal of applicant, which would continue to be controlled by principal after formation of holding company and acquisition of bank are themselves holding companies within definition of

12 USCS § 1841(a)(2)(A); applicant is precluded from forming holding company under 12 USCS § 1842(a)(1) where companies, engaged in impermissible nonbanking activities under Bank Holding Company Act (12 USCS §§ 1841 et.seq.), were to acquire substantial voting shares of applicant Commercial Bank Corp. [Noting that Amcore Bank was a subsidiary bank holding company at the time of the offense charged.] Subsidiary relationship of bank and mortgage company [as in the Case in Chief for both Amcore Bank and CitiMortgage, Inc.] to the same parent corporation is insufficient to establish agency relationship between mortgage company and bank." *Flintridge Station Association v American Fletcher Mortg. Co.* (1985, CA7 Ind) 761 F.2d 434, 1985-1 CCH Trade Cases and 66612. Noting that both Amcore Bank(Wheaton and Carol Stream) and CitiMortgage, subsidiaries of Amcore Financial and Citigroup, fall short of being an FDIC insured bank, financial institution, or agency relationship thereof. "Under former 18 USCS § 20, prior to May 20, 2009, term "lending institution", at least on its face, does not fall within statutory definition of "financial institution"." *United States v Matos* (2010, CA1 Mass) 611 F.3d 31. Amcore Bank and CitiMortgage, Inc. also fail in supporting the second prong which would extend its control and custody date of the funds to fall within the May 20, 2009 amendment. "Although mortgage lending business did not constitute "financial institution" under former version of 18 USCS § 20, bank fraud was still proven under second prong under former version of 18 USCS § 20, bank fraud was still proven under second prong of 18 USCS § 1344, because until such time as business decided to fund loan, funds comprising line of credit were owned by, and in custody and control of, bank." *United States v Irvin* (2011, CA10 Kan) 656 F.3d 1151.

D. Proof that FDIC insured status is defective on its face.

Ms. Denise Devitt, Assistant Vice President Relationship Manager of former Amcore Bank, testified against Petitioner and on behalf of the government that Amcore Bank was in fact, FDIC insured. See P.327 of Denise Devitt testimony.(App. 249)

U.S. ATTORNEY MS. FRIMPONG: "To your knowledge, Ms. Devitt, was Amcore Bank FDIC insured at the time the defendant applied for a loan?"

MS. DEVITT: "Yes."

MS. FRIMPONG: "So it was FDIC insured in 2008?"

MS. DEVITT: "Yes."

MS. FRIMPONG: "One moment, your Honor. I have no further questions."

U.S. Attorney Ms. Frimpong and U.S. Attorney Mr. Madden, knew that Amcore Bank was not FDIC insured or at minimum, should have known they were not FDIC insured due to the company being a Bank Holding Company subsidiary. Ms. Devitt has perjured her testimony, making the fruit of all her testimony tainted on behalf of Amcore Bank and Harris Bank. Ms. Devitt knew or should have known that Amcore Bank was not insured. The government violated Evidence Rule 602 "Need for Personal Knowledge" since witness did not know the answer to that question and lied anyway or she knew the answer to that question and lied

anyway to cover up the former accusation that she was a predatory lender against the Petitioner, pre-indictment. Ms. Devitt's testimony was material to the element and finding of fact that would support the sufficiency of the purported indictment. The jury relied on that testimony and so did the defense. This perjured elicited testimony from the prosecution was improperly admitted and had irreparably prejudiced the defenses substantive due process rights. Had a reasonable jury known that this claim that Amcore Bank was a financial institution whose deposits were insured by the FDIC, was false, Petitioner would have not only had a better defense prepared, he would have not been violated of his right of confrontation under the "Confrontation" Clause, to examine a witness who had not perjured their testimony and who had personal first hand knowledge of the type of company Amcore Bank was as well as if it was FDIC insured. The government suppressed exculpatory information that was material to the defense for §§§ 1344, 1343, and 1014.

To cause further injury to the Petitioner's defense, the government offered and was admitted for publication, GEX18 for the Mortgage Fraud Trial. (App.247) This document represents an FDIC Certificate of Insurance on October, 1999 issue date to Amcore Bank, National Association, Rockford, Illinois. Petitioner never did business with Rockford. Nor did he do any business with the Wheaton, Illinois location that was on the indictment under 1(a). (App.378) Petitioner only did business with the Carol Stream, Illinois branch to which Ms. Devitt admitted during examination, was where we once met. However, the material issue here is that this Certificate represented the parent Bank Holding Company, Amcore Financial's subsidiary bank holding company in Rockford, Illinois, which was FDIC insured until April 23, 2010. This tactic of misleading the defense in the indictment by surprise and the jury by misrepresenting the Certificate evidence using a bait and switch tactic, was in fact, fatal to the defense at the time. The Certificate shows a CLOSED EFFECTIVE: April 23, 2010" date on it. The document itself is 10 years from the approximate time the alleged offense occurred. No other questions were asked to confirm the validity of such an old Certificate that shows a closed date of 2010 on it from a different State Holding Company Bank location, to confirm that at the time of the offense charged, the specific Amcore Bank was insured by the FDIC. This is because it is compelling on its face when supported by a testimony from a former Vice President who knew or should have known personally that at the time of the offense, Amcore Bank, a Non-Financial Institution, was federally insured. They would naturally believe that it was a financial institution and was FDIC insured. No different than the Petitioner's defense attorney would. This is a Rule 52(b) plain error and prosecutorial misconduct and abuse by both Ms. Frimpong and Mr. Madden. "Reversal of defendant's conviction for bank robbery under 18 USCS § 2113 was necessary because Government failed to introduce sufficient evidence that bank's deposits were insured by FDIC at time of robbery, required element of federal bank robbery charge under § 2113;

bank employee's statement was not supported by personal knowledge as required by Fed.R.Evid. 602, and admission of FDIC employee's affidavit violated defendant's U.S. Const. amend. VI rights under Confrontation Clause. *United States v. Sandles* (6th Cir. Mich. Nov. 27 2006), 469 F.3d 508, cert. denied, (U.S. Oct. 1, 2007) 552 US 893, 128 S Ct 229, 169 L Ed 2d 156. As in the case for the above reversal, so should be the instant Case in Chief. Although the above case represents a bank robbery under §§§ 2113, 1344, and 1343, both cases require elements of a financial institution and § 1344 requires an element of FDIC insured status. Additionally, as in *Sandles*, supra., both proceedings had a bank employee statement which was not supported by personal knowledge as required by Fed.R.Evid. 602, and admission of FDIC employee's affidavit violated Confrontation Clause rights that are substantive and plain error. Here, the testimony from Ms. Devitt has done the same damage. Even if Ms. Devitt was correct, *aurguendo*, her statement could not be incorporated as part of her testimony. "When witness has only secondary personal knowledge of prior statement, i.e. where witness currently lacks personal knowledge of matters addressed by prior statement but knows statement to be true, lacks personal knowledge and is unavailable for cross-examination as to prior statement; therefore, statement is hearsay. *BCCI Holdings(Lux.), S.A. v. Khall*(D.D.C. Jan. 7, 1999), 184 FRD 3, 51 Fed R Serv 3d (callaghan) 130, 51 Fed R Evid Serv (CBC) 130. Ms. Devitt's testimony would have been harmless error under Rule 52(a), however, government relied on a coconut shell game between bank locations stated in the indictment, the testimony from a second hand perjured testimony of a Bank Key Witness for the government, and a FDIC Certificate that did not represent the subsidiary bank at issue, all elicited by the government. "An error in allowing corporate representative to testify to matters that may have been hearsay and outside representative's personal knowledge was harmless, as hearsay testimony was largely corroborated by other admissible evidence. *Union Pump Co. v Centrifugal Tech., Inc.* (5th Cir. La. Dec. 16, 2010), 404 Fed Apprx 899. However, it was not harmless. It had substantively prejudiced Petitioner of his due process and compulsory process rights. Central issues of the case were affected by this prosecutorial abuse that with high probability, could have affected and influenced the jury in favor of the Petitioner, had such deception not been made and the Petitioner was able to challenge the testimony as perjured, based upon Amcore Bank not being FDIC insured. Even if testimony was only speculative and not perjured, irreparable injury has been caused against Petitioner's defense, life, liberty and property.

Count Two of the indictment charges Petitioner with a violation of Title 18, United States Code, Section 1344, on or about July 9, 2008, for a second loan from Amcore Bank. (App. 382) All facts and arguments stated hereinabove are incorporated into this challenge as though fully restated. Count Two is fatally flawed.

Count Four of the indictment charging Petitioner with a violation of Title 18, United States Code, Section 1343, for Fraud by Wire, Radio or Television, on or about

August, 2008. (App. 384-386) 1(b) states "Citigroup, a financial institution, was a depository institution holding company and a bank holding company. Citigroup had an office in Chicago, Illinois; (c) CitiMortgage, a subsidiary of Citigroup, was in the mortgage-lending business;" This factual conclusion is defective and in violation of 18 U.S.C. §§ 20 and 27; and 12 U.S.C. §§ 1813 and 1841, et.seq. All facts and arguments stated hereinabove are incorporated into this challenge as though fully restated. The Petitioner never did business in Chicago, it was Schaumburg, Illinois, to which the government concedes, The government further concedes, as evidenced in the indictment, that Citigroup, a financial institution, was a depository institution holding company and a bank holding company. The government additionally concedes, that CitiMortgage, a subsidiary of Citigroup, was in the mortgage-lending business. Therefore, all arguments that support a Bank Holding Company are conceded and Count Four of the indictment is fatally flawed.

18 U.S.C. § 1343 is couched in the Statute as disjunctive. The indictment is alleged in the conjunctive. § 1343 Fraud by Wire, Radio, or Television, reads as follows: "Whoever, having devised **or** intending to devise any scheme **or** artifice to defraud, **or** for obtaining money **or** property by means of false **or** fraudulent pretenses, representations, **or** promises, transmits **or** causes to be transmitted by means of wire, radio, **or** television communication in executing such scheme **or** artifice, shall be fined under this title **or** imprisoned not more than 20 years, **or** both. If the violation occurs in relation to, **or** involving any benefit authorized, transported, transmitted, transferred, disbursed, **or** paid in connection with, a presidentially declared major Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), **or** affects a financial institution, such person shall be fined not more than \$1,000,000 **or** imprisoned not more than 30 years, **or** both." Since CitiMortgage, Inc. is a subsidiary bank holding company, then Count Four is without jurisdiction due to the Ex Post Facto violation. For reasons stated above, Petitioner has been severely and substantively prejudiced.

3. INDICTMENT CHARGING 18 U.S.C. § 1014 is FATALY FLAWED.

Count Three of the indictment charges Petitioner with a violation of Title 18, United States Code, Section 1014, on or about July 3, 2008, for false statements to Amcore Bank. (App. 383) All facts and arguments stated hereinabove are incorporated into this challenge as though fully restated. Document 1, Page 6 of the indictment reads: "2. On or about July 3, 2008, at Wheaton, Illinois, in the Northern District of Illinois, and elsewhere, MICHELE DICOSOLA, defendant herein, knowingly made and caused to be made a false statement and report to Amcore Bank for the purpose of influencing the bank to fund two business loans to DICOSOLA."

18 U.S.C. § 1014 is couched in the Statute as disjunctive. The indictment is alleged in the conjunctive. § 1014 reads as follows:
§ 1014 Loan and credit application generally; renewals and discounts; crop insurance.

"Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Federal Housing Administration, the Farm Credit Administration, Federal Crop Insurance Corporation or a company the Corporation reinsures, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof, or of any regional agricultural credit corporation established pursuant to law, or a Federal Reserve Bank, a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958(15 U.S.C. § 662), or the Small Business Administration in connection with any provision of that Act, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation,[,] any Federal home loan bank, the Federal Housing Finance Agency, the Federal Insurance Corporation, the Farm Credit System Insurance Corporation, or the National Credit Union Administration Board, a branch or agency of a foreign bank(as such terms are defined in paragraphs(1) and (3) of section 1(b) of the International Banking Act of 1978[12 USCS § 3101(1) and (3)], an organization operating under section 25 or section 25(a) of the Federal Reserve Act, or a mortgage lending business, or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974 [12 USCS § 2602], upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, or insurance agreement or application for insurance or a guarantee, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefore, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years or both. The term "State-chartered credit union" includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States."

Amendment to act date, Act May 20, 2009.: "2009, Act May 20, 2009, deleted "or" preceding "an organization operating", and inserted ", or a mortgage lending business, or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974"."

Government conceded to the charge alleged being based on Amcore Bank and not CitiMortgage. Based on the arguments and facts that support both §§ 1344 and 1343, incorporated by reference, Amcore Bank is not an FDIC insured Bank in Wheaton or Carol Stream, IL. (App. 247a-b) or a mortgage lender (App.378) as defined for subsidiary bank holding companies. This factual conclusion in the indictment is defective and in violation of 18 U.S.C. §§ 20 and 27; and 12 U.S.C. §§ 1813 and 1841, et.seq. Petitioner was accused of violating Act of § 1014, committed on or about July 3, 2008. (App.383) Pursuant to 18 U.S.C. § 1014, "a mortgage lending business.." was amended to the Act on May 20, 2009. Causing an Ex Post Facto violation for charges §§§ 1344, 1343, and 1014. 131 L Ed 2d 1043. Arguments of §§§ 1344, 1343, and 1014 from the government are fatally flawed."18 U.S.C. § 1014 applies to all false statements made to influence action of state banks insured by FDIC. United States v Sabatino (1973, CA2 NY) 485 F.2d 540, cert den (19740 415 US 948, 39 L Ed 2d 563, 94 S Ct 1469. Amcore Bank has been established by evidence of the Bankruptcy Declaration proceeding(App.210-245) and FDIC BankFind Search(App.247b), not to be an FDIC insured financial institution or mortgage lending business prior to and or after the ammended Act under 18 U.S.C. § 1014. "Evidence is insufficient to sustain that institution was insured by FDIC where only evidence introduced by government was copy of certificate of insurance

which antedated charged events by 7 years. United States v Plateenburg (1981, CA5 La) 657 F.2d 797. Here, as in § 1344, § 1014 is relying on an FDIC Certificate that is for Amcore Financial in Rockford, IL. (App.247a), as Parent Bank Holding Company for a Subsidiary Bank Holding Company, by the name of Amcore Bank, N.A., to which it is argued by the government as a financial institution that is FDIC insured...clear suppression of evidence and and abuse of the court. The very fact that the Certificate is 13 years from the time of indictment and 9 plus years from the time of the alleged offense and charge, makes the government exhibit GEX18 (App.247a) of the loan fraud jury trial, insufficient to sustain that the institution was insured by the FDIC. "Defendant's conviction under 18 USCS § 1014 were vacated because the government failed to present sufficient evidence that bank that financed defendant's mortgage and entity that received defendant's two fraudulent hardship letters were independantly insured by Federal Deposit Insurance Corporation (FDIC) to support jurisdiction element as to three counts of § 1014; there was also insufficient evidence that bank and entity were alter egos of another bank that defendant stipulated as FDIC insured so that FDIC-insured status extended to them. "United States v Alexander (2012, CA8 Iowa) 679 F.3d 721. "Certificate of insurance from 1985 and testimony of loan officer that only identified certificate were insufficient to prove that bank was federally insured financial institution in May 1997 when defendant obtained loan allegedly in violation of 18 USCS §§ 1344 and 1014." United States v Ali (2001, CA9 Cal) 266 F.3d 1242, 2001 CDOS 8580, 2001 Daily Journal DAR 10641 (criticized in United States v Ayewoh (2010, CA1 Puerto Rico) 2010 US App LEXIS 25370). As is the case for §§ 1344, 1343, and 1014.

4. RESTITUTION UNDER 18 U.S.C. §§ 3663A AND 3664, IN VIOLATION OF APPRENDI RULE IS FATALY FLAWED AND MOOT.

Since §§ 1344, 1343, and 1014 fail to meet the standards and elements necessary to charge a claim of manditory restitution within the jurisdiction of the Court; and since there was no bank whose deposits were insured under the FDIC, there was no loss. The only loss is the assets that Amcore and CitiMortgage deceptively won under predatory lending and fraud on the court, standards. Another argument of course which initially caused the selective prosecution when Petitioner filed a Civil Conspiracy Action against the banks pre-indictment. Respondent Manion, abuses his discretion further by arguing United States v Scalzo, 746 F.3d 739, 744 (7th Cir. 2014). However, this is about a case where someone pled guilty as a mortgage broker who was kitting refinanced loans that were fraudulent and taking cash out for himself while leaving the debtors and banks with the bag for loss. There were issues that held supplemental pleading reports from the PSR and Probation Officer to which has nothing to do with a claim of innocense for a refinancing of loans, in this case. More important, is the fact that there are unresolved issues of fact related to the unproven claim of losses and the fact that not one penny of credits of a business and home that totaled almost \$2,000,000 for losses claimed of \$850,000 for the sale of his entire life due to acts that could not be viewed no less than predatory lending to obtain his life's work. Issues of fact that related to sentencing enhancements and dollars in

controversy are to be left to the jury. The Judge adopted the PSR Report and thirdary hearsay testimony that came from the Probation Officer, which came from the Case Agent, which came from a short 302 report over the phone with Harris Bank, above the verbal loss Amcore sustained, per a Vice President that could not provide any documentation or attend the trial. This was a Fed.R.Evid.R.602 and Apprendi Rule and Doctrine violation against Petitioner's substantive rights. 567 US 343, 132, S Ct 2344, 183 L Ed 2d 318, 2012 US LEXIS 4662. Therefore, no restitution should have been awarded to Amcore. Additionally, neither Amcore or CitiMortgage are FDIC insured and therefore, no manditory restitution can apply under §§ 3663A and 3664. Finally, since neither Amcore or CitiMortgage fall within the jurisdiction of the Court, in order to sustain §§§ 1344, 1343, and 1014, there can be no restitution. A clear abuse of both the trial court and appeal court being complicit in the misconduct of the government.

5. 18 U.S.C. § 287. FALSE, FICTICIOUS OR FRAUDULENT CLAIMS IS FATALLY FLAWED.

Petitioner was charged with Tax Fraud in the same indictment but it was severed as a Bench Trial.

Count Six of the indictment charges Petitioner with a violation of Title 18, United States Code, Section 287 and 2, on an act done on or about September 15, 2009. The charge reads as follows:

"Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title."

Notwithstanding that Petitioner was entrapped by the Tax Advocate Office and Agent, to send in a copy of the 2008 return, in order to be helped with the frivolous filing fee, since they claimed they could not help the Petitioner due to the IRS losing the original 1099 OID 2008 Tax Return that was sent to them, which caused the frivolous fees, in violation of 118 L Ed 2d 703 (App.360-376); the IRS and Tax Advocate Office additionally violated the Administrative Procedures Act and Primary Administrative Jurisdiction Doctrine, under 26 CFR Regulations and Procedures, et.seq.(App.351-359) for exhaustion of remedies of taxpayer. Entrapment Doctrine of Sorrells lays out the elements of entrapment. The Tax Advocate Ms. Maureen Green induced the Petitioner to commit the offense under the guise that he was sending a duplicate return, not for filing purposes, but to send it directly to the Frivolous Filing Department, so he can fix the problem that could not be fixed with over six months of correspondence (App.399-418,429-470) and the multiple attempts to resolve the issues over the phone (App.471-487), that he created and believed in but needed answers and guidance in the errors not disclosed by the Tax Advocate or IRS. There was no law or notice at that time to the contrary of his beliefs, on the IRS website and the Petitioner begged for help to fix the \$30,000 in frivolous filing fee problems. So the Petitioner was not predisposed to commit such an offense on the second filing(App.402) after the first was given a frivolous filing fee of \$30,000. The panel Respondent(s)

conceded with the former defense counsel, Mr. Len Goodman, under oral argument, by dictum, that the direct evidence of the state of mind, through his effort and beliefs, that the Petitioner had in the 1099 OID Recovery Rebate Credit Theory(App.419-420) was clear he was a true believer. Therefore, there was no mens reas. The Panel abused its discretion when ruling unanimously against the Petitioner, after conceding to his beliefs and knowledge, not supporting intent. The trial Court was also without jurisdiction due to Primary Administrative Jurisdiction. The Tax Advocate Office violated the Administrative Procedures Act remedies by not allowing the exhaustion of all remedies afforded Petitioner. The Policy Statement and Title 26 CFR are clear on the IRS and Tax Advocate Office's internal regulations, policies and procedures that they violated. See the folowing under App.251-259):

"Title 26 CFR CRIMES, OTHER OFFENSES, AND FORFEITURES. §§301.7811-1; Taxpayer Assistance Orders..26 CFR§301.7481-1; Date When Tax Court Decision Becomes Final, Decisions Modified or Reversed. 26 CFR § 301.7482-1; Court of Review, Venue. 26 CFR § 301.7483-1; Petition for Review. 26 CFR § 601.107; Criminal Investigation Functions. 26 CFR § 601.101; Introduction. 26 CFR § 601.102; Classification of Tax Collected by the Internal Revenue Service. 26 CFR § 601.105; Examination of Returns and Claims for Refund, Credit or Abatement, Determination of Correct Tax Liability. 26 CFR § 601.601. et.seq."

Rules, Regulations and the Administrative Procedures Act hereinabove, were all violated by the IRS, IRS Lead Agent(s) and the Tax Advocate Office, for abridging the remedies that were afforded the Petitioner. This created another Ex Post Facto violation in addition to a Bills of Attainder violation under Article I, Section 9, Clause 3. Notwithstanding a violation of the 6th Amendment for not being informed of the "Nature and cause of the accusation". Petitioner was charged for an offense that was never disclosed to him and was deliberately evaded from and misdirected to Notices that did not apply to 1099 OIDS on multiple occasions(App.491-518) over several months of communications with the Petitioner. (App.399-418,429-470, 471-487) The second filing was September 15, 2009 or thereabout but the first Notice ever provided to the public which disclosed the 1099 OID as a "Frivolous Position" was on the Interl Revenue Bulletin: 2010-17, under Notice 2010-17(App.488-490). Petitioner was provided correspondence that was constantly leading to other statutes, having nothing to do with 1099 OID filings that was claimed to be frivolous. There was no Notice and misrepresented instruction, showing clear entrapment, even if the policy was in fact made but it was not disclosed, Petitioner could not fix what was in error if the experts themselves would not disclose where he was in error and or how to fix it."18 U.S.C § 287 did not apply to attempt to defraud the United States if statute providing for such claims and benefits was invalid. "United States v Kapp (1937) 302 US 214. Petitioner was being pointed to rules, notices and statutes that had nothing to do with the frivolous filing fees. Finally, the second set of returns was not a filing but was in fact an attempt to replace the old filings that were lost, that was perportedly claimed by the IRS, so as to allow for them to see what was the error and instruct to amend the returns where needed. There was no claim for any amount of money or property for the second mailing that he was

charged for, that was mailed directly to the IRS Frivolous Filing Department(App.402) " Offense described in 18 USCS § 287 requires that claim for money or property be presented to department or agency of United States, upon or against United States; offenses described in 18 USCS § 1001 requires only statement or representation, which need not involve money or property, within jurisdiction of any department or agency of United States." United States v Johnson (1968, WD Mo) 284 F Supp 273, affd (1969, CA8 Mo) 410 F.2d 38, cert den (1969) 396 US 822, 24 L Ed 2d 72, 90 S Ct 63. Here, as in Johnson, supra., there was no presentment upon or against the government when the returns were sent a second time. The Court asked a question that was critical during the Bench trial for the tax case tha related to who can use the forms for the 1099 OID's. It was at this point that jurisdiction was temporarily lost under comity since primary administrative jurisdiction should had gone now to the body of government (IRS) that is the expert in that critical question. The proceedings should have been tolled and was in violation of the Primary Administrative Jurisdiction Doctrine. 38 L Ed 2d 796. For these reasons, the trial Court abused its discretion in continuing the trial and being both the fact finder and the trier of law in both the case and administrative agency, by ruling without jurisdiction on issues of fact that could not be resolved without the IRS agency. Additionally, the indictment charging § 287 was in factual conclusions and drafted in the conjunctive, when Statute § 287 was in fact disjunctive. Making § 287 charges fatally flawed.

6. Unconstitutionality of Criminal Justice Act and Supersession Issue.

A. Criminal Justice Act in violation of 1st, 6th and 7th Amendment of Constitution.

1. **1st Amendment.** "...or the right of the people..to petition the Government for redress of grievance." The "All Writs Act" provides for common law remedy by way of writ to apply the proper form of writ where and when ever needed. The Criminal Justice Act ("CJA") abridges the 1st Amendment by only allowing for Certiorari writ to this Court on direct criminal appeal. The CJA also abridges the Statutory 28 U.S.C. § 1651 ("All Writs Act") and Extraordinary Writs under Rule 17 and 20 of the Rules of the Supreme Court of the United States.

2. **6th Amendment.** "In all criminal prosecutions, the accused shall enjoy...and to have assistance of counsel for his defense." Relating to direct appeal up to the Supreme Court of the United States. CJA abridges the 6th Amendment by only allowing for assistance of counsel on direct criminal appeal to the Supreme Court by way of Writ of Certiorari only. Providing for only limited assistance of counsel by way of only one writ, when in fact, there are a bundle of writs afforded defendant on his defense pursuant to the "All Writs Act" under 28 U.S.C. § 1651. This does not only limit the defense counsel from using defendant's 1st Amendment right to petition for redress of grievance, but it also limits the representation or assistance of counsel, that appointed counsel can act upon without worry of sanctions when remedy must be reviewed for misappropriation of facts; abuse of power, abuse of discretion, and or prosecutorial misconduct and abuse, that the appeal court has either

directly or indirectly sanctioned as permissible, as in the Case in Chief. Any major departure of review from the appeal court cannot be reviewed by the Supreme Court unless it is weighing toward Circuit issues not related to misappropriation of facts, and therefore takes away from the aid of the supervisory and discretionary powers of this Court, if defendant is on direct criminal appeal with an appointed counsel. The affect of this conflict between the CJA, 1st Amendment and 6th Amendment is that a defendant not learned in the law, acting pro se, does not know how to argue their defense when the appeal and trial court misappropriate facts on their rulings that are so far departed from the truth that their counsel finds no remedy to proceed certiorari to the Supreme Court, when, as in here, the case is so fact driven that the Supreme Court would not invite such a writ as reviewable. Which both takes away the supervisory power of the Supreme Court over the appeal court and locks out the defendant's access to the Supreme Court's original jurisdiction, with appointed counsel. This imposes another abrogation under the 7th Amendment.

3. 7th Amendment. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law." The Petitioner was not provided assistance of counsel when properly requested from the appeal court for his already appointed counsel pursuant to the CJA.(App.21-26) Since the Petitioner and his counsel knew that the defense weighed heavily on misappropriation of facts, his counsel declined to file a Writ of Certiorari, to stay in compliance with the CJA. The CJA abrogates the 7th Amendment by not allowing for direct criminal appeal to the Supreme Court under an Extraordinary Writ, pursuant to Rule 17 and 20, as well as 28 U.S.C. § 1651, by limiting appointed counsel to certiorari writ only. This abrogation: 1) takes away the access to the Supreme Court's original jurisdiction for appellate review, virtually robbing the Supreme Court of its Supervisory powers over the lower courts when in relation to a remedy not provided for under the CJA for a defendant under direct criminal appeal; 2) it denies the defense to invoke their 1st Amendment right of redress of grievance by way of petition to us the "All Writs Act" under 28 U.S.C. § 1651, in order to re-examine jury facts under the Supreme Court's, one supreme court's original common law jurisdiction, when the value in controversy, as in this case, is over twenty dollars; 3) the effects of misappropriation of facts, in relation to arguments on appeal, restitution, and sentencing, are devastatig substantively to the defendant's defense and remedies afforded her or him, during and after appeal. The Petitioner's case has unresolved issues of facts related to restitution. However, the trial Court completely ignored the rules under 18 U.S.C. 3664, when such facts are in dispute. The restitution had a direct effect on the sentencing and restitution judgment. This argument is of national importance because the effects and types of injury caused by limiting access to re-examination of facts from a jury by foreclosing on all but a writ of certiorari, when appointed counsel under this situation. Petitioner's substantive rights of re-examination of facts from a jury have been violated under Rule 52b of the F.R.Crim.P. and he has been deprived of a jury to determine the facts of restitution

simply because it would have exposed under the Apprendi Rule, the prosecution and court concealing the facts that both Amcore Bank and CitiMortgage were not financial institutions or banks, let alone FDIC insured, at the time of the crime accused of. This also would have exposed the fact that this was an Ex Post Facto charge against the Petitioner.

4. 'Supersessions Doctrine at issue. CJA creates a SuperSessions conflict with the All Writs Act. 28 U.S.C. 1651, which supports the 1st Amendment for petitions under redress of grievance. The Criminal Justice Act simultaneously is unconstitutional and in direct conflict with the Supervisory power for appellate review of the Supreme Court's "one supreme court" original jurisdiction; the 1st Amendment, 6th Amendment, and 7th Amendment, when a Petitioner invokes his right to "Petition for Redress of Grievance" on direct criminal appeal to the Supreme Court's original jurisdiction for re-examination of facts in a common law court of record tribunal; while further invoking his right to maintain appointed assistance of counsel, pursuant to 6th Amendment, where misappropriation of facts at trial and on appeal, as well as issues of facts being unresolved regarding restitution and sentencing over monetary claims of injury; and invoking 7th Amendment regarding values in controversy over twenty dollars and re-examinations of facts in a court according to the rules of common law. Petitioner was locked out of the All Writs Act, the right to assistance of counsel, the right to petition for redress of grievance, the right to re-examination of facts in the original jurisdiction and the right of due process under the 5th Amendment; all due to and in direct relation to the CJA. These many substantive rights violations are each and of its own Rule 52(b) violations and at minimum Rule 52(a). The 7th Circuit has decided against Petitioner's two motions invoking the CJA to direct appointed counsel to seek certiorari or in the alternative prohibition, for an extraordinary writ (App.21-26); and a motion to recall mandate of the appellate Court and appoint new substitute counsel to represent Defendant-Appellant to determine whether petition for review, including a writ of certiorari, were necessary. (App.27-37) The Seventh Circuit Appeal Court of the United States has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Pursuant to Rules of the Supreme Court of the United States Rule 10(c), this Court has jurisdiction for appellate review on an issue of first impression that is of national importance and in violation of Petitioner's rights and remedies substantially. The abuse of discretion shown by both the trial court and the appeal court from arguments shown hereinabove, additionally invoke the jurisdiction of this Court under Rule 10(a), since it is so far departed from the accepted and usual course of judicial proceedings, or has sanctioned such a departure of the prosecution and trial court(s), as to call for an exercise of this Court's Supervisory power.

7. PROSECUTORIAL ABUSE FATAL TO JURISDICTION.

Prosecutor(s), Mr. Madden and Ms. Frimpong, have both violated several Rule 52(a) and (b) rights and remedies of due process that are substantive in nature and effect, that would these violations not have happened, a reasonable trier of facts could have ruled in favor

of the defense. Brady, Giglio, and Jencks material and testimony has been suppressed and violated against the petitioner. He had timely filed pre-trial motions for all such material and statements to which the prosecution conceded that it knew its duty and would comply with such requirements under those doctrines. Under United States v Bell, a decision was ruled on in the 7th Circuit in relation to evidence that was improperly used to show propensity and for failure to disclose material impeachment evidence to the defense. Mr. Madden was the prosecutor for that trial. Both convictions were vacated and the case was remanded for a new trial on August 29, 2017. On August 14, 2017, the Petitioner's appeal to the 7th Cir. was denied. (App.1-8) On August 28, 2017, the Petitioner's motion for reconsideration was denied. (App.18-20). On August 29, 2017, the 7th Circuit ruled on United States v Bell, against the government due to Mr. Madden's Brady violations and in favor of Bell. There is no coincidence that the 7th Cir. waited to rule on United States v Bell, until after they ruled on United States v DiCosola, just one day later. The 7th Cir. knew or should have known that there were two cases unrelated cases before them in relation to Mr. Madden's prosecutorial abuse. Neither having anything to do with each other. Both cases from the 7th Cir., from the same prosecutor and from the same court house. Mr. Madden has demonstrated that the two overturned cases and this case shows serial type habits as his standard operating procedure that is within his standards of ethical acceptance. The 7th Cir. has demonstrated that they protect their own and not the Halls of Justice for All. The 7th Cir.'s clear abuse of discretion proves there cannot be any remedy that this Petitioner can be afforded in that Circuit, that would not be abuse without the supervision of this Court.

8. CUMULATIVE ERROR FATAL TO INDICTMENT AND BOTH THE JURY AND BENCH TRIAL.

Both the lower trial and appeal court have demonstrated bias, prejudice, abuse of discretion and abuse of power. The prosecution has demonstrated prosecutorial misconduct pursuant to Rule 52(a) and (b). Petitioner's former appointed counsel of record, Mr. Leonard Goodman, presented to the trial court and to the appeal court several issues that were abuse of grand jury and trial proceedings by the prosecutor(s), in addition to all that was at issue in the herein petition. However, both Courts were complicit in the acts that they witnessed and subsequently, became a part of. Those 52(b) arguments done by Mr. Goodman, were not even a part of this pro se argument on direct appeal to this Court; but by and of itself, justifies reversal and setting aside the verdict on both trials. When coupled with Petitioner's argument, this case is so tainted that repair is equivalent to a ship riddled with holes submerged in water. Statements made from the prosecutor were multiple improper comments about both the Petitioner's counsel and the Petitioner, that prejudiced the proceedings during trial and closing arguments. Branding Petitioner as a criminal before ruling and his counsel as someone compared to his little child. The prosecution did not comply with discovery orders and had no restraints on his character assassination against the Petitioner and his counsel, notwithstanding the government's Grand Jury witness that

was in fact Petitioner's key witness for both trials, who was forced by threat to perjure himself during the Grand Jury proceeding to make his testimony worthless as a CPA, on behalf of the defense during trial. During the appeal bond hearing, the prosecution conceded to deliberately perjuring Mr. Cerami(CPA) just in case defense used him during trial. Under Black v State, 2017 BL 414632, Wyo., No. S-15-0295, 11/17/17, it "applied the Doctrine of Cumulative Error, under which two or more individually harmless errors ha[ve] the potential to prejudice the defendant to the same extent as a single reversible error." In Haskell v Superintendent Greene SCI. 2017 BL 266640. 3d Cir. No. 15-3427. 8/1/17, the prosecutors who knowingly present perjured witness testimony or fail to correct it violate a defendant's right to a fair trial, the U.S. Court of Appeals for the Third Circuit ruled. "At root is how can a defendant possibly enjoy his right to a fair trial when the state is willing to present (or fails to correct) lies told by its own witness and then vouches for and relies on that witness's supposed honesty" in its closing argument? He answered the question by quoting the U.S. Supreme Court in Napue v. Illinois. "A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth, he said." This supports this Court's jurisdiction under Rule 10(a),(b) and (c).

II. CLOSING ARGUMENT.

Petitioner is finishing his sentencing May 9, 2018 that was imposed upon him under wrongful conviction of §§§§ 1344, 1343, 1014, and 287. Irreparable damage of his substantive rights, remedies, property, life and liberty have been prejudiced against him. Remedy inside the 7th Cir. has proven to be hostile and life threatening. Coram nobis would be only remedy at the 7th District and Circuit. Prisoner will be released and served his sentence before being able to use a 2255 habeas corpus motion. Petitioner is in direct criminal appeal pro se. He was forced to have representation before trial and forced to not have representation on direct criminal appeal to this Court. Denying a right enjoyed by pro se litigants and in violation of Article I, Section 9, Clause 3, Bills of Attainder, since each time was against his will. He would not receive a fair and impartial trial even if he had has 2255 available for the trial court or 7th Cir. Petitioner is in fear of his life, liberty and freedom to even attempt to do such a thing in his district in fear of further retaliation. Noting that even typing this very petition to this Court, puts the Petitioner and his family, in fear that the government will retaliate in one way or another to get their pound of flesh. Rules of the Supreme Court of the United States under Rule 10(a),(b), and (c), as well as Rule 17 and 20, if needed, pursuant to 28 U.S.C. § 1651; notwithstanding 28 U.S.C. § 1254(1) have been met to provide this Court jurisdiction over the instant proceedings and lower Court(s), showing both direct appeal and an exceptional circumstance within this Case in Chief. He has further shown abuse of discretion is at both the trial and appellate level for the 7th Cir.. Adequate relief cannot be obtained from the courts that retaliate against a bank whistleblower for predatory lending and securities fraud, who in fact committed fraud

upon the court for wrongful foreclosure of the petitioner's home from CitiMortgage who conceded to having no standing to foreclose in the bank fraud trial and from Amcore Bank who created a suicide loan without the knowledge of the defendant until after funds were released. in order to obtain a lifetime of assets worked for in his business. It has been shown in the Petitioner's case, that framing Petitioner is not outside the ethics that the 7th District and Circuit have adopted. Mr. Madden was in the middle of a case being reversed for Brady violations in Bell, supra., while simultaneously arguing Petitioner's appeal for abuse, unknown at the time by Petitioner. In Bell, the case was reversed for suppression of evidence, however in order to protect Mr. Madden from the same offense on a different case, in order to protect Mr. Madden from further exposure of his standard operating procedures of unethical practice, the Respondent(s) turned a blind eye on the arguments that were being put before them under United States v DiCosola. The Respondent(s) did not even address the arguments and questions of the abuse of discretion or prosecutorial misconduct from the former defense counsel of record, Mr. Goodman. There is no justice for Petitioner in any Court in Illinois or the surrounding 7th Cir. jurisdiction. "Pursuant to 52(b) under "Prior inconsistent statements" "Although prior inconsistent statement of witness may be used for impeachment purposes, it may not be used for substantive evidence; attempt by prosecutor to introduce into evidence, by means of witness' statement, material which would not have been properly elicited from witness amounts to plain error within the meaning of Rule 52(b) regardless of whether objection was made during trial. "Benson v United States (1968, CA9 Nev) 402 F.2d 576. Mr. Madden and Ms. Frimpong, allowed an FDIC Certificate that did not apply to Amcore Bank in Wheaton or Carol Stream, to be submitted under false testimony that was elicited at minimum under hearsay from a witness who perjured herself to allow for the element of FDIC insured status to conflict Amcore's true status, VP. of Customer Relations Ms. Devitt. Mr. Madden elicited Mr. Troutwine of CitiMortgage to testify a cash out loss was over \$200,000, when in fact, Petitioner paid \$7,000 at closing. This perjured testimony was corrected by defense counsel later but not corrected by prosecution. Mr. Madden perjured defense key witness Mr. Cerami (CPA), through threats and intimidation in order to make Mr. Cerami's testimony worthless in defense for Petitioner. The cumulative effect of errors has caused substantive injury to petitioner. Respondent(s) and their lower Court has sanctioned these acts by simply allowing it to happen, causing their own abuse of discretion. Petitioner has shown in oral argument review dictum, where the panel Respondent(s) admitted that the Petitioner was a true believer, but boldly admitted with chuckles during review that they had sent many true believers to prison. That is not American and in complete violation of their Canons. Knowing that there was no mens rea from Petitioner with overwhelming direct evidence that showed his state of mind he was in, and knowing that the trial court's ruling was based on circumstantial evidence, the Respondent(s) felt no remorse for condemning an innocent man. Petitioner has proven beyond a reasonable doubt, that this was nothing more than retaliation and selective prosecution from

the government, charging him with false offenses, in order to suppress the real crimes by the banks against him. The very banks that he filed complaints against way before any grand jury convened or indicted, with the FBI, U.S.A.G. and Illinois A.G.. Respondent(s) knew there was neither knowlegde or intent to defraud, yet they willfully and knowingly allowed the charges to stand. By charging Petitioner with a wrongful conviction, who would believe his claims that his banks took advantage of him and wrongfully foreclosed on his home and business. Exhibits 56-60 were denied by the jury trial court that supported predatory lending from Amcore Bank with emails that perjured her testimony and supported her dealing direct with the CPA and filing out her own financials for the Petitioner. (App.351-359) This case proves that someone must go to prison for a crime that the banks commit, and its not the bankers. They are "too big to fail" and "too big to prosecute". Prior to the indictment, petitioner was suing both Amcore Bank and CitiMortgage, Inc., notwithstanding the FBI, U.S.A.G. and I.A.G. complaints filed against them. The government through Mr. Madden and Ms. Frimpong, aided them in their crime, simply because Petitioner was trying to stand up for his rights. Just as he had attempted to do so in this trial and appeal, to no avail. Petitioner has shown multiple plain and harmless errors. He has presented 7 questions for the Court to consider. Even the Respondent(s) have admitted to one harmless error for the Loan Fraud jury trial, which was not harmless in no respect, "Combination of two errors is sufficient prejudicial to require reversal of conviction of crime.." *Gordeon v United States* (1953) 344 US 414, 97 L Ed 447, 73 S Ct 369. For the instant proceeding, Mr. Madden and Ms. Frimpong, produced false testimony to the grand jury from the CPA, the V.P. of Customer Relationships, the Fraud Investigator and the Agent of the Petitioner's CPA, Amcore Bank, CitiMortgage and the IRS Agent. He lied to the Grand Jury that Petitioner was making his own false personal and business tax returns for his loans, which can be debunked by App. 250-350 of Defense Exhibts that were denied into evidence. Then using a coconut shell game, switched between old returns and new returns which did in fact have signatures of both the accountant and the Petitioner; then completed the deception by telling the grand jury that the signature of the accountant was doctored. Mr. Madden is no stranger to prosecutorial misconduct and suppression of evidence. Without the transcripts of the grand jury that the signature of the accountant was doctored, Petitioner has been deprived of a defense, notwithstanding the charges itself were without jurisdiction and its own coconut shell game, since Mr. Madden dooped everyone into thinking Amcore Bank was an FDIC insured financial institution and that CitiMortgage was a financial institution at the time of the act charged under §§§ 1344, 1343, and 1014, but they were in fact, not. This all makes sense now, why the Foreperson and U.S. Attorney did not want to sign an indictment. They knew they were framing Petitioner and did not want to endorse on that, so they pushed the buck on the jury, not expecting the Petitioner to object to the existance of an indictment. The case of *United States v DiCosola* is tainted and the Aquifers of Justice at the 7th Cir. and District have been poisoned; and therefore the mandate of the lower Court(s) is in violation of Rule 52(b).

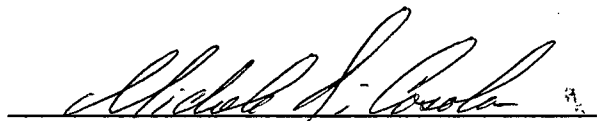
RELIEF SOUGHT

Petitioner prays for a writ of Certiorari, directed to RICHARD A. POSNER-RESPONDENT; DANIEL A. MANION-RESPONDENT; and MICHAEL S. KANNE-RESPONDENT, and the Honorable Judge of the United States District Court, Northern District of Illinois, JUDGE HARRY D. LEINENWEBER, directing and commanding these Respondent(s) to immediately vacate and dismiss with prejudice, the action against Petitioner, MICHELE DICOSOLA, Want and Lack of Subject Matter Federal Jurisdiction and to preserve the privildge against having to respond in any way to federal court suits for damages for officials such as the one(s) Petitioner has announced in this Court's pleadings and decisions for United States v DiCosola, 867 F.3d 793; 2017 U.S. App. LEXIS 15054; 2017-2 U.S. Tax Cas. (CCH) P50. 316. No. 16-3497 (7th Cir.)

CONCLUSION

The petition for a writ of certiorari should be granted, judgment vacated, reversed and dismissed, with prejudice.

Respectfully submitted,



Michele DiCosola, Petitioner, Pro Se

Date: 4/3, 2018