Mr. Gregory Wayne Burwell
Reg. No. 38047-083
FCI Manchester
P.O. Box. 4000
Manchester, KY 40962-4000

No. In Re Burwell

IN THE
SUPREME COURT OF THE UNITED STATES

GREGORY WAYNE BURWELL

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A EXTRAORDANARY WRIT OF HABEAS CORPUS

QUESTION(S) PRESENTED

I. Whether the District Court and Fourth Circuit Court of Appeal's had subject matter jurisdiction over the criminal case entitled United States of America v. Gregory Burwell, Criminal No. (CR-03-203), when it convicted and sentence Burwell on a forged manufactered second superseding indictment that was not returned and issued by a sitting empanelled federal grand jury, in violation of Federal Rule of Criminal Procedure 6 and the Fifth Amendment.

II. Whether the District Court had subject matter jurisdiction to convict and sentence the Petitioner to 32 years for two non-existant federal firearm offenses that all the parties involve in Petitioner's case knew was not crimes under federal law.

LIST OF PARTIES

Pursuant to Supreme Court Rule 14.1 (b), the parties to the proceeding below were Petitioner Gregory Wayne Burwell and the United States of America. The United States is the Respondent before this Court.

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JURISDICTIONAL STATEMENT

This Court has jurisdiction of to issue the requested writ under 28 U.S.C. § 1651(a) and Supreme Court Rule 20 or in the alternative a writ of habeas corpus under 28 U.S.C. § 2241 and Supreme Court Rule 20.4.

CITATION OF LOWER COURT DECISIONS

The decisions of the United States District Court for the Eastern District of Richmond, Virginia are set out in the written orders attached to this petition on pages B & D of the Appendix, as noted above.

The decisions of the United States Court of Appeals for the Fourth Circuit are set out in the written order attached to this petition on pages A & C of the Appendix, as noted above.

REASONS FOR NOT MAKING APPLICATION TO THE DISTRICT COURT OF THE DISTRICT IN WHICH THE APPLICANT IS HELD ARE

Petitioner has to petition directly to the Supreme Court for relief because the Petitioner can not get a fair hearing from a biased district court and Appellate court which is part of the fraud and has knowledge of the fraud. Also Petitioner cannnot get a fairing hearing from the district court because Judge Robert E. Payne has a financial holding in one of the company's robbed in the Petitioner's criminal case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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 descibing the place to be searched, and the persons or things to be seized. U.S. CONST., amend. IV.

The Constitutional provision involved is the Due Process clause of the Fifth Amendment, which provides in relevant part that "no person shall be deprived of life, liberty, or property without due process of law." U.S. CONST., amend. V.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual puishments inflicted. U.S. CONST., amend. VIII.

The Due Process clause of the Fourteenth Amendment of the US Constitution applies these protections to criminal defendants in cases brought by states. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. CONST., amend. XIV.

Violating the right's of Gregory Wayne Burwell to be free from a arbitrary arrest, detention, and imprisonment as guaranteed by the Universal Declaration of Human Rights (UDHR) Art. 9 (G.A. Res. 217 (III 1948)); International Convenat on Civil and Political Rights (ICCPR), Art. 9 (999 UNTS 171, 1969); American Convention on Human Rights (ACHR), Art. 783; U.S. Constitution, 4th, 5th and 8th Amendments.

Violating the right's of Gregory Wayne Burwell to a fair and prompt trial before an independent tribunal, to a presumption of innocence and the right to bail while awaiting trial, as guaranteed by the UDHR, Art. 10; ICCPR, Art. 9 § 2; Art. 14 §§ 2 and 3; U.S. Constitution, 5th and 6th Amendments; ACHR, Art. 8.

Violating the right's of Gregory Wayne Burwell to be free from torture and other cruel, inhumane, or degrading treatment or punishment as guaranteed by the G.A. Res. 3452 (XXX9 Dec. 1975) Art 1-4; G.A. Res. 39/46 (10 Dec. 1984); ACHR, Art. 5; Standard Minimum Rule's for Treatment of Prisoners (MSTP); UDHR, Art. 5; U.S. Constitution, 1st and 8th Amendments.

STATEMENT OF THE CASE AND GOVERNING FACTS

The Fourth Circuit and the Supreme Court of The United States under it's jurisdiction have adopted a test crafted by this Court for making the Extraordanary Writ of Coram Nobis determinations to be entitled to Coram Nobis relief, a petitioner must demonstrate that:

(1) a more usual remedy is not available;

(2) valid reasons exist for not attacking the conviction earlier;

(3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and

(4) the error is of the most fundamental character.

In United States v. Bazuaye, 399 Fed, Appx. 822, 2010 W.L. 4366456, 1 (4th Cir. 2010) (unpublished), citing Hirabayashi v. United States, 828 F.2d 591, 604 (9th Cir. 1987). A court reviewing a petition for Writ of Coram Nobis to vacate a conviction must presume that the underlying proceedings were correct, and the burden of showing other wise rests on the petitioner. See also Hanan v. U.S. 402 F.Supp. 2d 679, 684 (E.D. Va. 2005), citing Morgan, 346 U.S. at 512. In United States v. Hansen, 906 F. Supp. 688 (D.D.C. 1995), the Judge Joyce Green described the Writ of error coram nobis as an eqaitable tool for federal court to fill the interstices of the federal post-conviction remedial framework. Hansen 906 F. Supp at 692 (quoting United States v. Ayala, 894 F.2d 425, 428, 282 U.S. App. D.C. 266 (D.C. Cir. 1990). This Writ allows for convictions and sentence's which, for a valid reason, should never have been entered. Hansen, 906 F. Supp. at 692.

Prong (1) a more usual remedy is not available for Petitioner.

Petitioner appealed his case at each stage of the proceeding only to face a multitude of mistakes and fraud from the district court and appeal court's. Petitioner has no other remedy available other than a Writ of error coram nobis from this Court.

Prong (2) valid reason exist for not attacking the conviction earlier;

Petitioner appealed his case at each stage of the proceeding only to have a complete breakdown in the legal system. Certainly, where a man is convicted for actions that are not for illegal valid reasons is irrelevant, when a court is without subject matter jurisdiction convicts and sentences a defendant, the conviction and sentence are void from their inception and remain void long after a defendant has fully suffered their direct force. The district court had no subject matter jurisdiction to try, convict, or sentence the Petitioner for conduct that does not constitute 18 U.S.C. § 924(c), and the doctrine of procedural default therefore does not bar Burwell's present challenge. Also it has come clear as ever that the district court or the Court of appeals for the Fourth Circuit is involve in a modern day kidnapping, false arrest and false imprisonment. The second superseding is a bogus/fake fraudulent document.

The DOJ and ATF both "knowingly lied, misled, and fraudulently enrolled a federal judge...to secure a fraudulent conviction and sentence. They is no record of a arrest warrant for the fraudulent second superseding indictment in Burwell's criminal case. Burwell was never fringerprinted or booked for the second superseding indictment by the U.S. Marshall's. Once again when Judge Robert E. Payne dismissed the first superseding indictment and arraigned Burwell on the fake/bogus second superseding indictment the district court lost all it's jurisdiction over the criminal matter. This created a unlawful detention of Mr. Burwell for the last "15" fifteen years as a false arrest and false imprisonment of the Petitioner. The issuance of an arrest warrant represents a classic example of the institution of leagl process. Burwell was never arrested pursuant to an arrest warrant on the superseding indictment so Burwell's illegal detention is therefore not preceded by the institution of legal process.

Prong (3) The error is of the most fundamental character;

Petitioner argues that the actions of the AUSA prosecutor's office, the federal district court Judge Robert E. Payne are the reasons that Burwell is wrongfully convicted and why the Petitioner is being illegally confined in a Federal Correctional Institution. The evidence in Burwell's case show's that the underlying criminal action in this case was clealy done without "official authority", there by perpetrating afraud on the court and securing a conviction against the Petitioner based on trickery and fraud. In Bailey v. United States, 516 U.S. 137, 116 S. Ct. 501 (1995) the Supreme Court had established that the mere possession of a firearm does not constitute an offense pursuant to section 924(c), Id that defendant had been convicted based on his mere possession of a firearm and, therefore had been imprisoned for a nonexistent offense.

In any case, the Supreme Court has explicity held that "there can be no room for doubt" that when a conviction and punishment are for an act the law does not make criminal... such a circumstance inherently results in a complete miscarriage of justice and present's exceptional circumstance.

Even though it has been stated on numerous occasions that this Court is not primarily concerned with the correction of errors committed by lower courts, the erroneousness of a circuit court's opinion remains a factor in deciding whether to grant certiorari. Ross v. Moffitt, 417 U.S. 600 (1974); Skidmore v. Swift & Company, 323 U.S. 134 (1963). Williams v. Lee, 358 U.S. 217 (1959). Although the erroneousness of the Fourth Circuit's decision affirming Petitioner's criminal judgment and conviction may not be the determinative factor for granting a writ of certiorari in this case, it should be a factor meriting weight in the Court's decisional process. Skidmore, 323 U.S. at 136-38.

The Petitioner filed a timely notice of appeal on March 15, 2004 only to have Judge Payne and the prosecutor pull some string's to get the court of appeals to affirm the petitioner's § 924 (c) convictions for use and carrying a firearm during and in relation to a crime of violence. Crimes the petitioner was never charged, tried, or convicted of.

Judge Robert E. Payne has issued multiple absurd and bogus rulings against the Petitioner, over the years. Petitioner filed his § 2255 appeal on July 18, 2007 and it was denied on June 2, 2008. On January 12, 2010, the Petitioner filed a motion under Federal Rule of Civil Procedure 60 (b), requesting an order setting aside both of his convictions under 18 U.S.C. § 924(c). The district court denied the motion on Febuary 5, 2010. The Petitioner filed a § 2241 in the Eastern District of Kentucky which was denied on December 17, 2009. (Civil No. 6:09-CV-386-GFVT.) The Petitioner then moved to file a Motion to Recall Mandate to the 4th Circuit Court of Appeals. The motion was denied on April 28, 2010, NO 04-4200. The Petitioner then tried to get the gross injustice heard by filing a motion under 28 U.S.C. 2244 for an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C. § 2255. The Court of appeals denied the motion on March 10, 2010. No. 10-124.

The Petitioner has filed a number of motions only to have the District Court's and Fourth Circuit Court of Appeals work together to keep this fraud on the court scandel alive. It's clear when you don't have federal and subject matter jurisdiction anything go's.

The Petitioner in this case argues that he will face devastating consequences if this Court fails to grant immediate relief by way of this writ. What has happen to the petitioner is a grave injustice and a refusal to vacate a sentence for a two non-existent § 924 (c) firearm offense's would result in a complete miscarriage of justice. Also the evidence show's that Burwell was convicted and sentence on a fake and bogus second superseding indictment that was not handed down by a federal grand jury.

I. Whether the District Court and Fourth Circuit Court of Appeal's had subject matter jurisdiction over the criminal case entitled United States of America v. Gregory Burwell, Criminal No. (CR-03-203), when it convicted and sentence Burwell on a forged manufactered second superseding indictment that was not returned and issued by a sitting empanelled federal grand jury, in violation of Federal Rule of Criminal Procedure 6 and the Fifth Amendment.

Charles Arthur Gavin did knowing, intentionally and unlawfully conspire with Judge Robert E. Payne, Shannon Leigh Taylor, Daniel Lee Board Jr. and others aided and abetted to fabricate, manufacture, obtain and produce false physical evidence designed to influence, mislead, confuse, impede, and obstruct the tribunal, Jury and Appeal Court judges to intentionally corruptly influence, obstruct and impede the due administration of justice in case entitled United States of America v. Gregory Burwell, Criminal No. (CR-03-203), in the United States District Court for the District of Richmond by forging, and manufacturing fabricated evidence in submitting Burwell's SECOND SUPERSEDING INDICTMENT counts SEVEN, EIGHT and NINE.

The record will show in this case that the Secord Superseding indictment that was used to charge Petitioner was forged and manufacture by Judge Robert E. Payne and others. The indictment was not found by a sitting federal grand jury, and was not indorsed as a true bill by the Grand Jury foreman, and filed in open court according to law like Petitioner's Original and First Superseding Indictment. See Docket Numbers 31, Petitioner was arraign in front of Judge Payne not a Magistrate Judge like his Original and First Superseding Indictment see Docket number 5, 9, 12 and 13.

Petitioner has hired a private investigator to track down all the grand jury record's concerning the fraudulent second superseding indictment from the district court in Richmond Virginia only to receive the news that the court does not hold the grand jury records. All calls for grand jury logs and transcripts to the clerk's office in this case were met with statements that the U.S. attorneys are holding the records.

What a copy of the grand log will show is that no grand jury even convened on the day that the second superseding indictment was handed down in Petitioner's criminal case. In other words, no grand jury existed. What has the district court done over the years ? It has covered up the fraud. They have been covering up for the prosecutor's office.

Unfortunately, the district court has now become part of the fraud. Any time you allow one branch of the government to control such important information belonging to another branch, it violates the Separation of Powers Doctrine and invites abuse of the system. If the prosecutor's office is allowed to control such sensitive documents, then abuse is evitable.

MANNER AND MEANS OF THE CONSPIRACY

It was part of the conspiracy that Judge Payne and others would fabricate, manufacture, and forged Petitioner's SECOND SUPERSEDING INDICTMENT to teach him a lesson that this is what happens when you are accused of robbing McDonald's the scene of one of the robberies Judge Payne own's stocks and shares. On August 11, 2003, Petitioner was surpose to have his trial by jury on this day, but Judge Payne and Shannon L. Taylor had other plains in mind.

In what can only be call a 21 century Kangaroo fake Grand Jury and arraignment created by Judge Payne and Shannon L. Taylor. There is just no way around the massive fraud of the fake, Grand Jury and arraignment by Judge Payne and his good friend Ms. Taylor.

This is fakery and fraud at the core of the judicial process, Judge Payne directly attacking the Constitution. The proof of felony crimes is documented and overwhelming, a clear misuse of the court for personal gains and personal vendettas. There is a mountain of evidence in the record to support the facts Petitioner has stated and it would not be a fishing expedition to review the facts. In other words, no grand jury existed. These action's would constitute fraud from the inducement,

and require that the case be overturned and the prosecutors, agents and Judge's involved in this corruption be impeach, prosecuted and disbarred.

The U.S. Attorney and ATF agent violated the following rule's of Professional Conduct and Federal Law in this case as shown below:

1. The Assistant U.S. Attorney and ATF agent has controverted an issue having no basis in law and fact that is frivolous on a number of issue's.
2. The AUSA and ATF agent made false statement's of fact or law to a tribunal or failed to correct a false statement of material fact or law previously made to the tribunal by the lawyer, which is material to the question of the Petitioner's guilt.
3. The AUSA has Obstructed the Petitioner's access to evidence and altered, destroyed, concealed evidence, and counseled or assisted another person to do so, that the AUSA and ATF agent Board reasonably should have knew is or may be the subject of discovery or subpoena in any pending or imminent proceeding by: Communicating ex parte unlawfully with others, by filing in court or maintaing a charge that the prosecutor knows is not supported by probable cause, and prosecuting to trial a charge that the prosecutor knows is not supported by evidence sufficient to establish a prima facie showing of guilt.
4. The AUSA and ATF agent also intentionally avoided evidence and information because it may have damage the prosecutor's case or aid the defense.
5. In presenting the case to the original and secord federal grand jury, the ASUA and ATF agent intentionally interfered with the independence of the grand jury, preempted a function of the grand jury, abused the process of the grand jury, and failed to bring to the attention of the grand jury material facts tending substantially to negate the existence of probable cause.

ATF agent Board and AUSA Shannon L. Taylor manufactured a series of false and fraudulent police/ATF report that ended up in Burwell's case file. It goes without saying that this conduct was concealed from Burwell. The Petitioner was wrongfully arrested, convicted, and incarcerated as a result of the ATF agent and AUSA fabrication of evidence. Specifically, Burwell claims are based on many falsified reports

and indictment's. Due process of law does not permit ATF agents and AUSA to frame suspects. Indeed, it is self-evident that "a gents" fabrication and forwarding to prosecutors of know false evidence works an unacceptable corruption of the truth-seeking function of the trial process.

1. The Second Superceding Indictment was forged and fabricated by the AUSA and ATF agent. The RPD or the ATF never positively linked anyone to the Steady Flow Robbery until July 30, 2003. See Appendex W.
2. On July 31, 2003 the United States Attorney's Office - approved the robbery for prosecution and further investigation. See Appendex W.
3. On August 6, 2003 ATF agent Board determined that the Steady Flow Store robbery affected the movement of goods/services. See Appendex W.
4. On that same date, ATF agent Board interviewed the Store owner and received from him a original invoice, from Mitchell & Ness Nostalgia Co. The UPS ground packing list only has one item with no price on how much the item cost. See Appendex W.
5. On August 1, 2003 Burwell's Co-defendant Antonio Gray pleads guilty to a criminal information concerning the Steady Flow Clothing. See Appendex V.
6. During this first week of August 2003 Burwell's lawyer informed the Petitioner that he needs to pled guilty to the Stedy Flow robbery. Burwell refused to pled guilty at this time.
7. On August 7, 2003 the AUSA and ATF agent teamed up to fabricate evidence and obstruct justice by adding charges to the first superseding themselves and never presented it to a grand jury. See Appendex R. This is the true and original second superseding indictment. This indictment was created at the U.S. Attorney's Office in Richmond Virginia and fix to the Richmond Police Department at 14:38 08/07/2003, FAX number 804-771-2316.
8. The final three counts in the second superseding indictment does not begin with the language "THE GRAND JURY FUTHER CHARGES THAT".
9. It' impossible for the Government to find out about the Steady Flow robbery on July 30, 2003 and get a federal indictment from a sitting grand jury six days later on August 7, 2003.
10. Over the years the Petitioner has got word that no grand jury never convened on the day that the indictment was handed down.

11. On Count Four of the second superceding indictment the AUSA used malice intent when she rewrote the indictment on her own when she added added namely he stated he did not participate in the robbery of the J & D Market.

12. On Count Six of the second superceding indictment the AUSA again with out the grand jury rewrote the indictment on her own when she omitted at gun-point.

13. On August 6, 2003, ATF Agent Board determined that the Steady Flow Clothing Store robbery affected the movement of goods/services in interstate commerce. See Appendex W.

14. On this day the store's owner Anthony Grigsby provided a invoice dated August 4, 2003. Now if you look closely at the invoice it has no price on it and it's for only one retro-jersey. See Appendex W.

15. The next day August 7, 2003 ATF Agent Board and Shannon L. Taylor fabricated the Second Superseding Indictment because I refuse to plead guilty to the criminal information to the Steady Flow Robbery like my Co-defendant did. See Appendex R. and S.

16. If you look closely at count's seven, eight and nine, is nothing more then the criminal information I refuse to sign. AUSA Taylor fabricated the second superseding indictment by adding more count's to the first superseding indictment herself without going in front of any federal grand jury.

17. See Appendex V. the Petitioner's Co-defendant sign the criminal information. Burwell refuse to sign the same criminal information so this is what clearly motivated the AUSA to fabricate her own personal second superseding indictment her self and pull this fraud on the court scandel off.

18. Now it's clear why Counts seven, eight and nine of the second superseding indictment does not begin with the language that the grand jury further charges. That's because no federal grand jury ever charge anything dealing with the Steady Flow Clothing Store robbery.

19. It's absolutly no proof or evidence that any of the jersey's or merchandise cost $ 325.00 or any of the price's stated in the Incident/Investigation Internal Copy. Most of all the good's at the Steady Flow clothing store where counterfeit goods.

20. ATF agent Board knew the Store sold counterfeit designer clothes, bags, shoes and watch's. Petitioner has learned through a private investigator that the corrupt ATF Agent Board told and threating the store owner if he did it cooperate in this investigation he was going to close the store down for selling all the counterfeit goods, and prosecute him in federal court.

21. Please see Appendex's W. and all the Steady Flow Clothing ATF report's date's when they where submitted and reviewed you will notice that all the report's was fabricated and manufactured at the last minute at the same time on 9/16/2003.

22. This was the main reason why Burwell or his Co-defendant were never booked, fingerprinted or photographed by the U.S. Marshall's or ATF (for the Steady Flow Clothing Robbery) because the corrupt ATF agent Board knew he was commiting a fraud on the court with the bogus Steady Flow robbery prosecution.

The Government, District Court and Fourth Circuit Court Of Appeals has put in place and action in Burwell's criminal case: Malicious Prosecution, False Arrest, False Conviction's and False/Fraudulent Indictment's means that this is no more than a legal kidnapping, extortion, false imprisonment, false arrest, fraud and other crimes. The Government, District Court and 4th Circuit Court of Appeals actions were not judicial in nature because they were not normally performed in a legal judicial capacity.

ATF agent Board and former Assistant U.S. Attorney Taylor manufactured a series of false and fraudulent police/ATF reports that ended up in the case file. Plaintiff was wrongfully arrested, convicted, and incarcerated as a result of the Agent and Prosecutor fabrication of evidence. Specifically, Plaintiff claims are based on many falsified reports and indictments. Due process of law does not permit agent 's and former prosecutor's to frame suspects. Indeed, it is self-evident that "a agent or prosecutor" fabrication and forwarding to other prosecutors of know false evidence works an unacceptable corruption of the truth-seeking function of the trial process.

The "Independent Action" is designed to preserve the tradional remedy to overturn judgements. The most common ground asserted in independent action is "FRAUD". The drafter's of the rule apparently intended to distinguish between an "ordinary" Independent Action for fraud, and an action charging "fraud upon the court", although the two are (understandably) sometimes confused, "Fraud Upon The Court" refer's to in this matter a "fabrication" of evidence by an attorney in which in this is AUSA Taylor an officer of the court and ATF agent Board another officer of the court at the time. See Harrison v. Horan, U.S. Dist. Lexis 10114 Feb 13, 2007, Independent Action does not limit the power of the court to entertain an "Independent Action" to relieve a party from a judgement, order or proceeding, or to grant relief to a defendant or to set aside judgement for "Fraud Upon The Court" procedure for obtaining any relief from a judgement shall be by motion as prescribed by an "INDEPENDENT ACTION" Fed. R. Civ. P.

In Armament Sys. & Procedures, Inc. V. IQ. H.K Ltd, U.S. district Lexis 79084 (quoting Judge W.C. Gieasbach) petitioner sentencing Judge, opinion and judgement. " The Court finds fraud or an abuse of the judicial process. Amsted Indus, 23 F.3d at 378, here I have found that ASP, through Dr. Parsons, has submitted false and "fraudulent documents" both to the PTO and this court.

In Drobny V. Commissoner, 113 F.3d 670, June 5, 1996 footnote opinion by the Hon. Mary Ann Cohen. her example on "the element's of common law "Fraud" are:

1). A false statement of material fact: which in this case is the agent's sworn affidavit's statement's for an arrest and producing fraudulent ATF reports. The AUSA producing on her own without submitting the fake and bogus second superseding indictment to a sitting federal grand jury.

2). By one who know's or believe's it to be false;

3). Made with the intent to induce action by another in relience on the statement;

4). Action by the other in relience on the truthfulness of the statement; and

5). Injury to the resulting from that relience. See Athey Products Corp. v. Harris Bank Roselle, 89 F.3d 430, 434 (7th Cir. 1996) (Emphasis added), In Stringel v. Methodist Hosp., 89 F.3d 415, Oct 27, 1995 see Rule 901(a) provides: The requirements of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what it's proponent claim's.

In Oxxford Cothes xx, v. Expeditor Int., 127 F.3d 574 Sept. 3, 1997 (quoting; Since "fraud" on the court is more serious than fraud on the opposing litigant, the party complaining about the fraud is not bound by the one-year limitation on motions to vacate a judgment because of "Fraud". Fed.R.Civ.P. 60(b).

"Fraud on the court" embrases only that species of fraud which does, or a attempt's to, defile the court itself, or is a fraud perpetrated by officer's of the court so that the judicial machinary can not perform in the usual manner it's impartial task of adjudging cases that are presented for adjudication. See Drobny v. Commissioner, 113 F.3d 670 June 15, 1996 (7th Cir.), Such decision was produced by a "Fraud Upon The Court" of the most egregious nature, and when such "Fraud" goes to the very heart of the adjudicative process. A petitioner for a motion to vacate based upon a "fraud on the court" is required to demonstrate, not only that the respondant engaged in conduct that was intended to mislead the court, but, of paramount importance, that the actual conduct affected the outcome of the case.

In this case, Petitioner has establish that an intentional plan of deception designed to improperly influence the court in it's decision has had such an effect on the court. And that the "fraudulent document" conduct did have it's intended effect of misleading the court. An unconscionable plan or scheme designed to improperly influence the court in it's decision, forcing Burwell to go to trial and be convicted on a bogus/fake fraudulent second superseding indictment that was not returned by a sitting federal grand jury. The conviction/decision, resulted from a "fraud upon the court" as in Kenner, 387 F.2d 689. Petitioner comes forward with specific fact's

which pretty plainly impugn the official record. Id. U.S. attorney and agent's "fraudulent documents" used to obtain, arrest, indict and prosecute in the district court.

In Taylor v. Fannie Mae, 374 F.3d %29 Feb. 12, 2004, decided July. 04, 2004, plaintiff did not have a reasonable opportunity to raise the issue in court proceedings or on the one year time limitation for the 2255 because of the fact that it has become clear as ever that the U.S. district court and Fourth Circuit Court's of Appeals is helping to facilitate and cover up this massive fraud on the court scandal.

The U.S. Supreme Court has held many times that there is no time limit on bringing "Independent Action's" for "Fraud Upon The Court", [Independent action for "fraud on the court" to be brought at any time after judgment has been entered. See Stronger v. Sorrel, 776 N. E.2d 353, 357 (Ind. 2002), Federal authority holds that there is no limitation on bringing "Independent Action" for "Fraud Upon The Court".

History of Jurisdictional Challenge

By rendering a judgment, a court tacitly, if not expressly, determines its jurisdiction over both the parties and the subject matter. Stoll v. Gottlieb, 305 US 165, 171-72, 59 SCt 143 (1938).

A judgment is void if the court rendering judgment lacked jurisdiction. U.S. v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (1st Cir., 1990), and a void judgment is one where the court did not have jurisdiction over subject matter or did not have jurisdiction over the parties, Rook v. Rook, 233 Va. 92, 95, 353 SE 2d 756, 758 (1987).

A void judgment--as distinguished from an erroneous one--is, from its inception, a complete nullity and without legal effect, Lubben v. Selective Service System, 453 F.2d 645, 649 (1st Cir., 1972). A void judgment is void even prior to reveral, Valley v. Northern Fire & Marine Insurance Co., 245 US 348, 41 S.Ct 116 (1920). Thus, no court can confer jurisdiction where none existed and no court can make a void proceeding valid, Old Wayne Mutual Legal Association v. McDonough, 204 U.S. 8, 27 S.Ct 236 (1907).

There exists no time limit for raising a challenge on jurisdictional grounds. Judgments have been vacated thirty (30) years after being rendered. See: Crosby v. Bradstreet Co., 312 F.2d 483 (2nd Cir.) cert. denied, 373 U.S. 911, 93 S.Ct 1300, 10 Led 2d 412 (1963). A void judgment can be challenged in any court, Old Wayne Mutual, supra., emphasis added.

A Judge may not claim jurisdiction by fiat. All orders or judgments issued by a judge in a court of limited jurisdiction must contain the findings of the court showing that the court has subject-matter jurisdiction, not allegations that the court has jurisdiction. "...in a special statutory proceeding an order must contain the jurisdictional findings prescribed by statute." In re Jennings, 68 III.2d 125, 368 N.E. 2d 864 (1977) A judge's allegation that he has subject-matter jurisdiction is only an allegation. Lombard v. Elmore, 134 III. App.3d 898, 480 N.E. 2d 1329 (1st Dist. 1985), Hill v. Daily, 28 lll. App.3d 202, 204, 328 N.E.2d 142 (1975).

Inspection of the record of the case is the controlling factor. If the record of the case does not support subject-matter jurisdiction, then the judge has acted without subject-matter jurisdiction. "If it could not legally hear the matter upon the jurisdictional paper presentened, its finding that it had the power can add nothing to its authority, it had no authority to make that finding." The People v. Brewer, 328 111. 472, 483 (1928) Without the specific finding of jurisdiction by the court in an order or judgment, the order or judgment does not comply with the law and is void. The finding can not be merely an unsupported allegation.

The law is well-settled that a void order or judgment is void even before reversal. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal." Vallely v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S.Ct. 116 (1920).

The district court in Richmond, Virginia can not be unbiased because they are part of the fraud, if anyone was to hold the grand jury records, it would be the court. They knew, or should have know, that the Supreme Court does not allow such violations of the Separation of Powers Doctrine. This is a serious fraud perpetrated by the Department of Justice. The second superseding indictment is illegal, fraudulent, and void ab initio for lack of subject matter jurisdiction.

When Burwell filed a federal lawsuit under the Freedom of Information Act in the District of Columbia the record show's that the EOUSA nevered interviewed the U.S. Attorney's Office grand jury coordinator as to what date the grand jury sat and what term the grand jury convened. Nor did the EOUSA search or contact the district court in Richmond, Virginia where the grand jury logs should have been located. The EOUSA did not go that route because the district court had already informed Burwell and his family members that the grand jury logs can not be located concerning the second superceding indictment in Burwell's case. Please see Appendex's L.

In this case, there was fraud; there was fraud on the court; and there was a conspiracy to defraud. This fraud was intentional and the fraud was perpetrated by officers of the court. Herring, 424 F.3d at 386. A judge is an officer of the court, as are all member of the Bar. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. A judge is not the court. People v. Zajic, 88 111.App. 3d 477, 410 N.E. 2d 626 (1980).

In this case presented by the Petitioner, the fraud was directed at the judicial machinery itself. The fraud subverted the integrity of the courts. The fraud was designed to deceive the courts into believing facts that were not true . The courts were unable to adjudicate the matter properly because the court were influenced by false information.

Chief Justice John Marshall acknowledged that a court may grant relief from a judgment where a new matter "clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself before judgment.

One of the essential elements of an independant action in equity is a showing of the absence of any adequate remedy at law. Bankers Mortgage Co. v. United States, 423 F.2d 73, 79 (5th Cir. 1970). This Court has further noted that an independant action in equity should be available only to prevent a grave miscarriage of justice. United States v. Beggerly, 524 U.S. 38, 47 (1998). The absence of any adequate remedy at law. In re Machne Israel, Inc., 48 F. App'x 859, 863 n.2 (3rd Cir. 2002)(quoting Nat'l Sur. Co. of N.Y. v. State Bank of Humboldt, 120 F. 593, 599 (8th Cir. 1903). "[A]n independent equitable action for relief from judgment may only be employed to prevent manifest injustice." ld. at 863. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944), and United States v. Beggerly, 524 U.S. 38 (1998).

In this criminal matter before this court, evidence was fabricated by the United States Department of Justice (DOJ) and the Alcohol, Tobacco & Firearm (ATF). The (DOJ) and (ATF) were knowing participants in the fraud on the court. Bogus documents were placed into the record. Lies were told under oath, at criminal proceeding's and in

affidavits, and in various fillings with the courts, and schemes were concocted to attempt to cover-up certain falsehoods. Attorneys for the Petitioner were also involved in all of this to.

The fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud on the court." ld. at 1338 (citing to Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.CT. 997 (1944).

Professor Moore writes that Fraud on the court is limited to fraud that does, or at least attempts to, "defile the court itself," or that is perpetrated by officer of the court "so that the judicial machinery cannot perform in the usual manner its impartial task of adjudicating cases." Moore's Federal Practice 3d ¶ 60.21[4][a] (3rd ed. 2003). Thus, a "fraud on the court" is a fraud designed not simply to cheat an opposing litigant, but to "corrupt the judicial process" or "subvert the integrity of the court." Oxxford Clothes XX, Inc. v. Expeditors lnt'l. Inc., 127 F.3d 574, 578 (7th Cir. 1997); Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128, 1131 (9th Cir. 1995)(citation omitted); Transaero, Inc. v. La Fuerza Area Boliviana, 24 F.3d 457, 460 (2nd Cir. 1994). It is marked by an "unconscionable plan or scheme which is designed to improperly influence the court in its decisions," Dixon v. Commissioner, No. 00-70858, 2003 U.S. App. LEXIS 4831, at *11-12 (9th Cir. Mar. 18, 2003), amending 316 F.3d 1041 (9th Cir. 2003), or by "egregious misconduct directed to the court itself." Greiner v. City of Champlin, 152 F.3d 787, 789 (8th Cir. 1998)(citation omitted).

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court." In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury.

Fraud upon the court in obtaining a complaint, information, or indictment invalidates all orders of the court and causes the case to be null and void ab initio. "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

Under Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgement resulting from such fraud on that court are void, of legal force or effect.

In Mcmunn v. Mem'i Sloan-Kettering Cancer Ctr., 191 F. Supp. 2d 440 March 27, 2002. See Apotext Corp. v. Merck & Co., 229 F.R.D. 142 June 29, 2005 (7th Cir.), stating A prosecutor in a criminal case has a duty to disclose evidence that undercuts his case. But this obligation, which stems from the United States Constitution requirement of due process of law, is not imposed upon any other litigant, be it a "Civil Litigant or a Defendant in a Criminal Case". E.g., Kyles v. Whitley, 514 U.S. 419, 433, 131 L.Ed 2d 490, 115 S.Ct. 1555 (1995); Brady v. Maryland, 373 U.S. 83, 87 10 L.Ed 2d 215, 83 S.Ct. 1194 (1963).

Additionally, the rules of professional conduct impose upon attorney's a duty of condor vis-a-vis the court. Those rules provide that a lawyer may not, among other things, "make a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false or offer evidence that the lawyer knows to be "False", or whose falsity the lawyer comes to know.

In the case at hand AUSA Shannon L. Taylor, ATF Special Agent Daniel and Judge Robert E. Payne, knew that both the second superseding indictment including the

sworn affidavit's statements made by agent officers of the court was false and "fraudulent documents, but used them anyway even thought the second superseding indictment was never presented or returned from a sitting federal grand jury.

In the instant case, ("it is well settled that a conspiracy between AUSA Taylor and the ATF agent Board presented perjured testimony, affidavit's and document's "Constitutes all grounds" upon which relief could grant enforcement of judgment in a "independent action", as stated in Hazel-Atlas Glass Co. v. Harford-Empire Co., 322 U.S. 238, 244, 64 S.Ct. 997, 1000, 88 L.Ed. 1250 (1944).

"[F]aud upon the court as distinguishing from fraud on adverse party is limited to fraud which seriously effect's the integrity of the normal process of adjudic-tion," Id.at 659 (citing Kupferman v. Consol. research & MFG. Corp, 459 F.2d 1072, 1078 (2d Cir. 1972). "Fraud Upon the Court should embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by (officer's of the court) so that the judicial machinery cannot perform in the usual manner it's impartial task of adjudging cases.

As the Petitioner in this case Gregory Wayne Burwell has shown and produced to the Supreme Court Of The United States the "fraudulent documents" produced by the agent's sworn testamony affidavit's in which the AUSA knowingly knew but still chose to use it to convict Burwell and commit "Fraud Upon The Court". Fraud upon the court must be established by clear and convincing evidence. See Madonna v. United States, 878 F.2d 62, 65 (2d Cir. 1989), King v. first AM, Investigations, Inc, 287 F.3d 91, 95 (2nd Cir. 2002). Examples of conduct that meet the definition of "Fraud Upon The Court" includes bribery of a judge, jury tampering, or hiring an attorney for the sole purpose of improperly influencing the judge.. As Petitioner has shown in this case at hand is that fraud was commited and produce on a major level because it's clear the AUSA knew of the "fraudulent documents" and willingly, deliberately on her own did not put or place her signature on the second superseding indictment.

II. Whether the District Court had subject matter jurisdiction to convict and sentence the Petitioner to 32 years for two non-existant federal firearm offenses that all the parties involve in Petitioner's case knew was not crimes under federal law.

Charles Arthur Gavin, Shannon Leigh Taylor and Judge Payne convicted and sentence the Petitioner to 384 months --- 32 years for two non-existant federal crimes. The Petitioner was convicted of two 18 U.S.C. 924(c) offense's on Counts three and nine of the fraudulent second superseding indictment. The § 924(c) firearm statue does not and never did contain a simple possession provision and there is no general federal possesssion statue. "Possession of a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A) is not a legally cognizable crime under Federal Law. See generally 144 Cong. Rec. H530-35 (daily ed. Feb. 24, 1998) (possession must be shown to be in furtherance of the predicate crime, therefore the staute would not cover someone that merely possesses a firearm in the general vicinity of a crime or someone who might use a gun in self-defense. The Supreme Court made clear in 1995 that the mere possession of a firearm will not trigger the § 924(c) statue. See Bailey v. United States, 516 U.S. 137, 133 L. Ed. 2d 472, 116 S. Ct. 501 (1995).

Judge Payne and Shannon Taylor was fully aware the § 924(c) firearm statute does not and never did contain a simple provision and there is no general federal possession statue. The most damaging evidence of this is a written opinion by no one other then Judge Robert E. Payne three years before Petitioner's criminal case appeared before him. See Appendex Z. United States of America v. Jeffrey A. Pleasant. If you look even closer at the U.S. Attorney on this criminal case it's no other then Judge Payne and Shannon L. Taylor.

Judge Payne gives and explains the whole legislative background and history in

Judge Payne and Ms. Taylor was fully aware that 18 U.S.C. § 924(c) proscribes and punishes two kinds of conduct:

> (1) using or carrying a firearm during and in relation to a crime of violence or drug trafficking crime;
>
> (2) possessing a firearm in furtherance of any such crime;

Judge Payne gives and explains the whole legislative background and history in his opinion. Judge Payne was fully aware at all times that the mere possession of a firearm was not a crime under Federal Law. See also Appendex Y. Judge Payne even edited out the key elements of the firearm offense's. Judge Payne stated:

> "I struck "used" and "carried" because it hadn't been edited out. And those changes will be made. And the set of instructions will go back to the jury."

The Petitioner indictment is a mirror image of the indictment in United States v. Leon Combs 369 F.3d 925: 2004 6th Cir., charging Burwell with "possess[ing] a firearm during and in relation to "a crime of violence utilizing one element from each of the two district § 924(c) "possession" offense in conjuction with "during and in relation to the "element from the other "use" offense resulted in a failure to charge the Petitioner with any codified federal offense.

The Petitioner was never charged any indictment or convicted a federal jury of either prong under, 18 U.S.C. § 924(c). The Petitioner contends that Count's Three and Nine, failes to charge Burwell with a Federal offense and this clearly proved that the district and appeallte court therefore, lacked subject matter jurisdiction to impose the thirty-two years "32 years" to the Petitioner federal sentence.

Charles A. Gavin, Shannon L. Taylor and Judge Robert E. Payne violated Burwell's substantial rights by authorizing conviction's for two non-existent firearm offense's, thus depriving the Petitioner of his Fifth Amendment right to be indicted by a Grand Jury and his Sixth Amendment right to be put on notice of the charge with which he had to defend.

Petitioner asserts that Count's Three and Nine of the Fraudulent Second Superseding indictment is "fatally defective" for failing to allege the "in furtherence of" element of the "possession" offense under 18 U.S.C. § 924(c) (1)(A), which is an essential element and must be alleged in the indictment to charge a cognizable federal offense under § 924(c).

Under the Fifth Amendment, no criminal defendant "shall be held to answer for a capital, or otherwise infamous crime, unless on... indictment of a Grand Jury." U.S. Const. amend. V. The Sixth Amendment guarantees a criminal defendant the right "to be informed of the nature and cause of the accusation." U.S. Const. amend. VI. Under F.R. Crim. P. 7(c)(1), "the indictment...shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."

Petitioner asserts that Count's Three and Nine of the indictment fails to set forth an essential element of the offense, therefore, the indictment is deficient and fails to charge a cognizable federal offense, depriving him of his Fifth Amendment right to be indicted by a grand jury. United States v. Hooker, 841 F.2d 1225, 1230 (4th Cir. 1988)(en banc) ("The inclusion of all elements...derives from the Fifth Amendment, which requires that the grand jury have considered and found all elements to be present."); United States v. Cabrera-Teran, 168 F.3d 141, 145 (5th Cir. 1999)("The indictment ensures that the grand jury has had the opportunity to review evidence supporting, and find sufficient cause to charge a defendant with, each element of the offense before the court may entertain prosecution. Only the appearance in the indictment of all of the offense's elements meets this requirement.")(footnote omitted); see also United States v. Stafford, 248 F.3d 465, 484 (6th Cir. 2001)(quoting Russell v. United States, 369 U.S. 749, 771 (1962)("The very purpose of the requirement that a man indicted by a grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney and judge.").

In conjunction with the Fifth Amendment's Grand Jury Clause, Petitioner asserts that because the indictment failed to charge the "in furtherance of" element of the "possession" offense under § 924(c), he was never put on "notice" of the charge he faced as guaranteed to him by the Sixth Amendment's Notice Clause. This Circuit has repeatedly held that a sufficiently drafted indictment must first contain "all of the elements of the charged offense and must give notice to the defendant of the charges he faces; second, the indictment must be sufficiently specific to enable the defendant to plead double jeopardy in a subsequent proceeding, if charged with the same crime based on the same facts." United STates v. Douglas, 398 F.3d 407, 413 (6th Cir. 2005)(quoting United States v. Marinez, 981 F.2d 867, 872 (6th Cir. 1992)(citing Russell, 369 U.S. at 763-64). If the indictment does not satisfy the requirements "the proper results is dismissal of the indicment." United States v. Superior Growers Supply, Inc., 982 F.2d 173, 176-77 (6th Cir. 1992).

Were the Petitioner to be reindicted and charged in a valid indictment alleging the "in furtherance of" element of the "possession" offense under § 924(c), he could not plead double jeopardy, therefore, any subsequent prosecution butresses that he was never given "fair notice" of the charges against which he must defend. United States v. Prentiss, 206 F.3d 960, 964 (10th Cir. 2000)(overruled on other grounds)("an in indictment is sufficient if it contains the elements of the offense charged, putting the defendant on fair notice of the charges against which he must defend, and if it enables a defendant to assert a double jeopardy defense.").

Even if this Court were to assume that "notice emanated from the indictment" there would still be a "document that [does] not contain any part of one element of the offense, and thus [does] not satisfy the Fifth Amendment requirement that all elements of the offense have been considered and found by the grand jury." Hooker, 841 F.2d at 1230 (citing Stirone v. United States, 361 U.S. 212, 217 (1960); see also United States v. Cabrera-Teran, 168 F.3d at 143 ("To be sufficient, an indictment must allege each material element of the offense; if it does not, it fails to charge that offense.

Petitioner has not "procedurally defaulted" his argument that the firearm offenses that he was convicted of fails to charge a federal offense, even though his argument was not raised on direct review. United States v. Adesida, 129 F.3d 846, 850 (6th Cir. 1997)("If an indictment does not charge a cognizable federal offense, then a federal court lacks jurisdiction to try a defendant for violation of the offense. Lack of subject matter jurisdiction may be raised at any time ... and is never waived ... because if a court lacks subject matter jurisdiction, it does not have power to hear the case."); see also United States v. Harper, 901 F.2d 471 472 (5th Cir. 1990)(entertaining post conviction challenge under 28 U.S.C. § 2255 based on indictment's failure to charge an offense because such error "divests the sentencing court of jurisdiction").

Because subject matter jurisdiction "involves a court's power to hear a case, [and thus] can never be forfeited or waived ... correction [is mandatory] whether the error was raised in district court" or not. United States v. Cotton, 535 U.S. 635, 630 (2002). When a district court does "not have subject-matter jurisdiction over the underlying action ... [its] process[es] [are] void and an order of [punishment] based [thereupon] ... must be reversed." United States Catholic Conference v. Abortion Rights Mobilization, Inc., 487 U.S. 72, 76 (1988); Willy v. Coastal Corp., 503 U.S. 131, 139 (1992)("[T]he [punishment] order itself should fall with a showing that the court was without authority to enter the decree."); Ex parte Fisk, 113 U.S. 713, 718 (1885) ("When ... a court of the United States undertakes, by its process ... to punish a man ... [respecting] an order which that court had no authority to make, the order itself, being without jurisdiction, is void and the order punishing ... is equally void."); United States v. Peter, 310 F.3d 709, 713 (11th Cir. 2002)(" a district court is without jurisdiction" over "a 'non-offense'" and noting "such error 'divests the sentencing court of jurisdiction")(citing Harper, supra)("Failure to charge an offense may be raised for the first time in a § 2255 petition because such an error divests the sentencing court of jurisdiction.").

Charles Arthur Gavin, Shannon Leigh Taylor and Judge Payne did knowingly and intentionally violated Burwell's substantial rights by ordering the 4th Circuit Court of Appeals Clerk Patricia S. Conner to cover up and remove this fraud, from the court judicial operations. Manifesting Constitutional errors by extreme malice violating Burwell's due process and substantial rights. Petitioner appealed his case at each stage of the proceeding's, only to have a complete breakdown in the legal system. Burwell filed a timely notice of appeal on March 15, 2004 only to have Judge Payne, and others pull some strings to get the court of appeals to affirm Burwell's § 924(c) convictions for use and carrying a firearm during and in relation to a crime of violence. Crime's Burwell was never charged, tried, or convicted of. Burwell was charged, tried and found guilty of possession of a firearm during and in relation to a crime of violence.

When you have Clerk's and Judges fixing case's pending before them to favor Judeg Payne corruption and benefit. We have a grave problem here. Burwell due process and substantial rights was cleary violated because he never had a fair and accurate presentation of his issues in his direct appeal and a complete appellate determination of the true nature and seriousness of the alleged errors base on all of the evidence and a full and fair opportunity to be heard.

The Petitioner even filed a Motion to Recall the Mandate to inform the Fourth Circuit Court Of Appeals that the judgment had been entered on direct appeal as to defendant Burwell for a crime not charged in the fake/bogus second superseding indictment, that is "using a firearm" instead of the one's charged in Count's Three and Nine of "possession of firearm" there was a reasonable probability that the court would have found plain error and reversed the convictions for Count's Three and Nine for charging two non-existent crime's. The Fourth Circuit Court Of Appeals was well aware that there is no general federal possession of a firearm during and in relation statute under 18 U.S.C. § 924(c)(1)(A), it's clearly not a legally cognizable crime on the federal book's. See Appendex A. and G.

This requirement stems from one of the central purposes of an indictment: to ensure that the grand jury finds probable cause that the defendant has committed each element of the offense, hence justifying a trial, as required by the Fifth Amendment.") (emphasis added).

Because the requirement of a sufficient indictment serves these important purposes the indictment must be considered as it was actually drawn, not as it might have been drawn. See Sanabria v. United States, 437 U.S. 54, 65-66 (1978)("The precise manner in which an indictment is drawn cannot be ignored....").

In United States v. Savoires, 430 F.3d 376 (6th Cir. 2005), the Sixth Circuit reaffirmed its holding in United States v. Combs, 369 F.3d 925 (6th Cir. 2004), and held that"[i]t is now settled in this circuit...that § 924(c) criminalizes two [separate and] distinct offenses: (1) a use or carriage offense, which has during and in relation to as its stabdard of participation, and (2) a possession offense, which has in furtherance of as its standard of participation." Savoires at 379 (citing Combs at 930-33)(internal quotation marks omitted)(emphasis added).

Congress intended for the "in furtherance of" element of the "possession" offense to constitute a "higher standard of participation" than the "during and in relation to" element of the "use or carriage" offense. Savoires at 380 (citing Combs, 369 F.3d at 933). The two separate offenses requires proof of an additional fact that the other does not." Combs at 932-33; accord United States v. Gamboa, 439 F.3d 796, 810 (8th Cir. 2006). Thus, the "use or carriage" of the firearm must be "during and in relation to" the predicate offense, while the "possession" of the firearm must be "in furtherance of" the predicate offense. Combs at 931 (quoting United States v. Pleasant, 125 F. Supp. 2d 173, 178 (E.D. Va. 2000).

The jury found Petitioner "guilty of an offense--possession of a firearm during and in relation to a [crime of violence]--that is not criminalized by § 924(c)," Savoires, 430 F.3d at 380, and the Fourth and Sixth circuit has repeatdly held that where an indictment charges a person with "possess[ing] a firearm during and in

§ 924(c) offenses. Indicting, Combs, based on the conduct from the § 924(c) possession offense in conjuction with the standard of participation (during and in relation), from the other use offense results in a failure to charge him with any codified Federal crime.

In, United States v. Hunter, 558 F.3d 495, 6th Cir. Appeals, the defendant's conviction for possession of a firearm during a drug offense was reversed and the case remanded.

See also United States v. Ajan, 2009 U.S. Dist. LEXIS 78638, 6th Cir. Appeals, the defendant's conviction on Count Ten of the indictment (aiding and abetting possession of a firearm during and in relation to a crime of violence), 300 month, sentence imposed on that Count set aside and vacated. The Court lacked subject matter jurisdiction.

In United States v. Castano, 543 F.3d 826, June 5, 2008 6th Cir. Appeal, the Court reversed defendant's conviction under, § 924(c), which was non-existent offense and substantial doubt existed as to whether the defendant was convicted of non-existent offense.

In, United States v. Wilkins, 253 Fed. Appx. 538, (6th Cir. 2007) the instructions mixed the elements of the use or carry offense with those of the possession offense. This Constituted error, as well as plain error, which affected the defendant's substantial rights. The Court reversed the defendant's § 924(c), conviction on Count Two.

In, United States v. Williams, 475 Fed. Appx. 36, April 6, 2012 6th Cir. Appeals, The district court improperly amended the superseding information when it literally altered the superseding information and sentenced defendant for a non existent combination of the language of the first and second clauses of 18 U.S.C. § 924(c)(1)(A). This amendment was per se prejudicial to defendant and constituted plain error by the district court.

It's a number of § 924 (c) firearm case's that the district court and appeal's court clearly ignored in Petitioner's criminal case. Below is just a small list of § 924(c) case's.

See United States v. Pleasant, 125 F.Supp. 2d 173, held that the words of the statute are rather simple and straight forward they proscribe two different kinds of conduct. Counts, Two and Four, of the superseding indictment were dismissed without prejudice.

United States v. Woods, 271 Fed. Appx. 338, 4th Cir. Appeals the two prongs of § 924(c), not only prohibit different types of conduct (use and carry versus possession), but they also diverge in how strong the nexus between the firearm and the predicate drug trafficking crime or crime of violence must be: a firearm must be used or carried only "during and in relation to a" predicate crime but a firearm must be possessed, in furtherance of such a crime. Therefore, we agree with the conclusion -- reached, by the Sixth, Eighth, and Tenth Circuits, -- that § 924(c), indeed creates distinct use and carry and possession offenses.

See also Dean v. United States, 129 S.Ct. 1849: The most natural reading of the statute, however is that in relation to modifies only the nearby verbs "uses" and "carries". The next verb -- "Possesses" is modified by it's own adveribal clause, "in furtherance of". The last two verbs "is brandished" and "is discharged" -- appear in separate subsections and are in a different voice than the verbs in the principal paragraph. There is no basis for reading "in relation to" to extend all the way down to modify "is discharged". The better reading of the statute is that the adverbial phrases in the opening paragraph -- "in relation to", and in furtherance of" -- modify their respective nearby verbs, and that neither phrase extends to the sentencing factors.

In, United States v. Combs, 369 F.3d 925, 6th Cir. Appeals, the Court, held; that Count Three of, Combs, indictment charged him with possessing a firearm during and in to a, drug trafficking crime, -- utilizing one element from each of the two distinct

relation to" a crime of violence, the indictment fails to charge any codified federal crime. United States v. Lloyd, 462 F.3d 510, 513-14 (6th Cir. 2006)(quoting Combs, 369 F.3d at 934). Thus, when an indictment fails to set forth an "essential element of a crime." "[t]he court...ha[s] no jurisdiction to try [a defendant] under that count of the indictment." Hooker, 841 F.2d at 1231-32.

"Because an indictment must include all of the elements of the offense" and because the "in furtherance of" element is an element of the "possession" offense under § 924(c), the indictment is fatally defective." Gatewood, 173 F.3d at 987 (quoting Hamling v. United States, 418 U.S. 87, 117 (1974)("an indictment must fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished.").

Petitioner's indictment is a mirror image of the indictment in Combs, charging him with "possess[ing] a firearm during and in relation to" a crime of violence utilizing one element from each of the two distinct § 924 (c) offenses. Indicting and convicting Petitioner based on the conduct from the § 924(c) "possession" offense in conjunction with the "during and in relation to" element from the other "use" offense resulted in a failure to charge him with any codified federal offense. And, most "certainly, sentencing a man [for two non-codified federal offense's to 332 months] for crime's for which he has been neither charged nor convicted seriously affects the fairness, integrity, and public reputation of judicial proceedings." United States v. Promise, 255 F.3d 150, 190 (4th Cir. 2001) (en banc) (Motz, J. dissenting).

CONCLUSION

The outcome was preordained before the trial started. Charles A. Gavin, Shannon L. Taylor and Judge Payne knew what they wanted the end result to be. In the Old South, for example, a trial was a brief stop on the way to the lynch mob. They just wanted things to look correct. Shannon L. Taylor and her culprit's still has that kind of mentality today. Shannon L. Taylor has poured Kerosene on a raging fire. There is nothing more serious then helping other's in forging a federal indictment for personal gains and career building opportunitys.

This is because it's done in the nature of kidnapping, extortion, false imprisonment, false arrest, fraud and other crimes.

Conscience-Shocking Treatment by Public Officials like this clearly violate's Burwell's Fourteenth Amendment rights. Charles Gavin could have not made a bad situation worse by playing this outrageous and bizarre game with the Petitioner's life. Former AUSA Shannon L. Taylor presented herself as a smart and savvy person, but she was nonthing but a seriously misguided, self-serving, non-credible criminal using the Federal Government as her personal tool and weapon. Judge Payne alter ego was in full effect because Judge Payne was looking out for his shares in McDonald's.

A corporation personal business, the result being that he impose liabilty on on Burwell by piercing the corporate veil when fraud or wrong doing has been perpetrated on someone dealing with the corporation. Burwell was clearly under Judge Paynes alter-ego rule. The doctrine that shareholders will be treated as the ower of corporation's property, or as the real parties in interest, whenever it is necessary to do so to prevent fraud or to do justice.

The Petitioner's legal bases in this extraordanary writ of error coram nobis is that his constitutional and civil rights were violated by the "knowingly fabricating evidence" related to the federal charges that has resulted in a "malicious prosecution, false arrest, false imprisonment, and kidnapping."

Former AUSA Shannon L. Taylor acted "beyond the scope of her duties and authority, in clear violation of statutory, state, and federal law by conducting a blatant fake trial. Petitioner was never fingerprinted after the judicial appearance on August 11, 2003. Instead Petitioner was carried to a backroom in the court by my then attorney Amy L. Austin and was told not to say anything Shannon Taylor, ATF agent Daniel Lee Board and Richmond City police detective Lloyd Booth was waiting for Petitioner. Shannon Taylor told the Petitioner that she will send the Petitioner to prison for the rest of his life if he dont pled guilty and confess. Shannon Taylor used intimidation, threats, malice and outright malicious language in a attempt to get Petitioner to plead guilty A.S.A.P.

On October 17, 2003 the Petitoner again was carried to a backroom in the district court out of sight from everyone. Shannon Taylor, ATF agent Daniel Board, Detective Lloyd Booth, and Petitioner's former attorney Charles Gavin was waiting for Petitioner. Charles Gavin at this time was clearly and totally working with Shannon Taylor and Charles Gavin both used malice, intimidation, threats and outright malicious language in another attempt to get me to go back in the court-room and plead guilty A.S.A.P.

Charles Gavin did everything in his power to get the Petitioner to plead guilty and not go to trial.

1. Gavin tried to fight the Petitioner on two occasions at attorney visit's.
2. Gavin told the Petitioner we have no defense for trial and he was not going to stipulate to anything at trial. This threat came to be true because Gavin did not put up any legal defense at trial.
3. Gavin filed a direct appeal for the Petitioner with issues in it with incomplete argument's because it's clear now that Charles Gavin was a plant attorney that was placed on the Petitioner case by Judge Robert E. Payne to help him pull the fraud on the scandel off.

Federal Law Required The Automatic Disqualification Of Judge Robert E. Payne

Federal law requires the automatic disqualification of a Federal Judge under certain circumstances. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. Liteky v. U.S., 1147, 1162 (1994).

Courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194 (1988)(what matter is not the reality of bias or prejudice but its appearance); United States v. Balistrieri, 779 F.2d 1191 (7th Cir. 1985)(Section 455(a) "is directed against the appearance of partiality, whether or not the judge is actually biased.") ("Section 455(a) of the Judicial Code, 28 U.S.C. § 455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial process.").

That Court also stated that Section 455(a) "requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). In Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972), the Court stated that "It is important that the litigant not only actually receive justice, but that he believes that he has received justice."

The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", Levine v. United States , 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S.11, 14, 75 S.Ct. 11, 13 (1954). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice. "Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to

recuse herself sua sponte under the stated circumstances." Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989). Further, the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification. The Seventh Circuit Court of Appeals further stated that "We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed." Balistrieri, at 1202.

Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge. Should another judge not accept the disqualification of the judge, then the second judge has evidenced an "appearance of partiality" and has possibly disqualified himself/herself. None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect. Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996)("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process clause.").

Every criminal defendant should have the right to an impartial judge, the right to a judge who follows the Constitution and Supreme Court precedent and upholds the oath of office. See, Neder v. United States, supra, 527 U.S. at 8 ("biased trial judge" is 'structural error', and thus is subject to automatic reversal"); Edwards v. Balisok, 520 U.S. 641, 647 (1997)("A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him."); Johnson v. United States, 520 U.S. 461, 469 (1997); Sullivan v. Louisiana, 508 U.S. at 279; Rose v. Clark, 478 U.S. 570, 577-78 (1986); Tunney v. Ohio, 273 U.S. 510, 523 (1927).

In an opinion by: Judge Robert E. Payne on December 12, 2011, See Cent. Tel. Co. v. Sprint Communs. Co. of Va., Inc; 2011 U.S. Dist. LEXIS 142542. Judge Payne plays another deceptive bizarre game presiding on a case he owned 80 shares of Century Link stock and had owed these shares at all time during which he had presided over the Sprint/Century Link case. Judge Payne go's on to award to Century Link $ 23,376,213.76 in contract damages and interest. Judge Payne state's in his opinion that a reasonable person might ask whether a judge would run the risk of impeachment or perhaps prosecution for knowingly deciding a case from which he knew he should have recused himself. Well to answer Judge Payne question yes he will and all the evidence to prove it is in United States of America v. Gregory Burwell, Criminal No. (CR-03-203).

The Supreme Court has stated that the independent grand jury's purpose in not only to investigate possible criminal conduct, but to act as a "protector of citizens from arbitrary and oppressive governmental action". To perform its functions, the independent grand jury "deliberates in secret and may determine alone the course of its inquiry" United States v. Calandra, 414 U.S. 388 (1974). An independent grand jury is to "stand between the prosecutor and the accused," and to determine whether a charge is legitimate or is "dictated by malice or personal will". Hale v. Henkel, 201 U.S. 42 (1906).

The grand jury is designed to protect citizens against "hasty, malicious and oppressive persecution and to insure that prosecutions are not dictatted by an intimidating power or by malice and personal ill will". Wood v. Georgia, 370 U.S. 375 (1962). "Without thorough and effective investigation, the grand jury would be unable either to ferret out crimes deserving of prosecution, or to screen out charges not] warranting prosecution." U.S. v. Sells Engineering, 463 U.S. 4118 (1983). According to U.S. v. Williams, 504 U.S. 36 (1992), Justice Scalia stated that the grand jury is the equvalent of a Fourth Branch of government, not to be tampered with by any other branch.

For all the above reasons the Petitioner, Gregory W. Burwell prays that this Court grant the requested Extraordanary Writ of Error Coram Nobis and direct the United States District Court for the Eastern District of Richmond Virginia and the United States Department of Justice to dismiss the action filed in that court against petitioner, with prejudice, immediately and without condition.

Dated: 4-27-2018

Gregory Wayne Burwell
Reg. No. 38047-083
FCI Manchester
P.O. Box. 4000
Manchester, KY 40962

Gregg Burwell

The United States is a party to be served, and the undersigned states that service has been made on the Solicitor General of the United States, Room 5614, Dept. of Justice, 950 Pennsylvania Ave NW, Washington DC 20530-0001, pursuant to Supreme Court Rules 14.1(e)(v) and 29.4(a). Also C/C where sent to the following below:

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