28 May 2015

Office of the Clerk of Courts
Western District of Texas
525 Magoffin Ave, Room 105
El Paso, Texas 79901

Dear Sir or Mam,

This letter is being attached to my Pro Se Motion Under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody. Starting on page 4, question 12, it requests every ground on which I am claiming that I am being held in violation of the Constitution, laws, or treaties of the United States. Because there are more than four grounds, this is the attachment that was requested. I am requesting the appointment of counsel as I am unemployed and was declared indigent by the Court. I also respectfully request that this motion be assigned a change of venue as I now live in Canton, Georgia, which is in the Northern District of Georgia. Also, as detailed below, I wish for an impartial judge to handle this matter based upon the facts. Accordingly, if my request for a change of venue is not granted, I respectfully request that, for the reasons explained below, this matter not be assigned to Judge David Briones.

Ground One: My Constitutional right to a fair trial was violated.

Supporting Facts: I did not receive a fair trial due to several factors. First, my trial judge was Senior District Judge David Briones. Because I worked as a FBI Special Agent for my entire fourteen-year career in El Paso, I knew Judge Briones from my job. I also worked on an investigation in the FBI called Poisoned Pawns. This investigation was a public corruption case that led to the indictment and guilty plea of former El Paso County Judge Delores Briones, for her role in Conspiracy to embezzle federal program funds. The New Mexico US Attorney's Office handled the case, apparently because her brother, Senior US District Judge David Briones sits in the federal courthouse in El Paso. While she was under investigation and indictment by the FBI, I went to trial in front of her brother who knew of my employment with the FBI and the subsequent arrest and indictment of his sister. Judge Briones was not an impartial judge and he should have recused himself from my case. Secondly, Judge Briones was quoted in a Mexican newspaper and posted on a blog on July 16, 2009. His statement was posted and published almost a year prior to my trial in April 2010. His statement was, "According to the opinion by Judge David Briones of the Western District of Texas, Shipley was accused of selling arms and is associated with criminal organizations operating in the state of Chihuahua." This prejudicial statement shows a bias on behalf of Judge Briones prior to hearing the facts of the case. Because of my prior role in the investigation of his sister, Judge Briones should have recused himself from my trial. My Constitutional right to a fair trial was violated on this basis.

Direct Appeal of Ground One:

1. If you appealed from the judgment of conviction, did you raise this issue?

No.

2. If you did not raise this issue in your direct appeal, explain why:
I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal.

Post-Conviction Proceedings:

1. Did you raise this issue in any post-conviction motion, petition, or application?
No.
2. If your answer to the question is "No," explain why you did not appeal or raise this issue:
I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal.

Ground Two: My Constitutional Right to Due Process was violated.

Supporting Facts: An attorney who did not represent me at trial represented me on appeal. The Court lost an entire day of trial transcripts to include my direct and cross examinations, an ATF agent's testimony, the jury conference and the proffer, objections and ruling on a defense character witness. Fifth Circuit case law mandates a reversal for new trial. I was in the middle of direct examination on April 12, 2010 when the Court recessed the proceedings for the day. The Record on Appeal's next page is the trial transcript for April 14th. April 13th was skipped.

On April 13, 2010, a substitute court reporter attempted to record the day's proceedings. My attorney was notified by the Court Reporter, Anne M. Clark, that there exits no record of the proceedings from that day. The testimony lost was the second half of my direct examination, my entire cross examination, and redirect examinations and any and all objections attendant to same. There was also proffered testimony about my character witness (Attorney Enrique Moreno) that was not recorded, along with legal arguments, objections and a Court ruling regarding same. The courtroom deputy's minutes for April 13 indicate that "TRIAL HELD." "EVIDENCE PRESENTED ON BEHALF OF GOV'T/DEFT," and "DEFENDANT REST." It also indicates that court was in session from 9:10 a.m. – 12:15 p.m., and 1:50 – 2:10 p.m. Accordingly, there are 3 hours and 25 minutes of trial transcripts missing, within which was my direct and cross examination to the jury.

On April 12, 2010, the parties and the Court held an informal conference regarding the jury charge. The District Court then advised the parties that they would be

given a chance to make more formal objections and that the Court and the parties would "go over the rest of it later." There was no further discussion regarding the jury charge on April 12th. On April 14th, the District Court advised, "Counsel, I informed you yesterday that I would give you a final opportunity to make an additional objections to the Court's instructions. Your previous objections are on the record, and you're not waiving any of them at this time, if you failed to bring them up." From this passage, it is clear that the formal jury charge conference was conducted on April 13th, and that the parties' requests for instructions, objections and the Court's rulings were lost.

The transcript for April 14th also indicates that my counsel made a live proffer of defense witness Enrique Moreno on April 13th and that the Court explained its reasons for excluding Mr. Moreno. After the 5th Circuit Court of Appeals remanded the case to the District Court to determine whether the missing transcripts could be recovered, the United States reported to the District Court notwithstanding all available forensic recovery efforts, the April 13th record is gone.

There exists a grave problem with respect to my Due Process and Sixth Amendment rights to pursue an instant appeal: there exists no record of my testimony to the jury on April 13, 2010. There exists no record of the jury conference, no record of the ATF case agent's testimony to the jury, no record of the proffer regarding excluded defense character witness Enrique Moreno and no record of the other evidence, objections, legal arguments and Court rulings that occurred that day.

In *Hardy v. United States,* 375 U.S. 277, 84 S. Ct. 424, 11L. Ed. 2d 331 (1964), the Supreme Court held that where new counsel represents an indigent defendant on appeal, counsel must be furnished with a complete transcript of the trial. *Hardy, 375* U.S. at 282. The Court stressed that the duty of representation of an appellate lawyer included the duty to search out plain error, and that nothing less than a complete transcript suffices to meet this duty. *Id*., at 279-80. With respect to the parts of the transcript that the Supreme Court deemed most significant and substantial, the Court held: "We conclude that this counsel's duty cannot be discharged unless he has *a transcript of the testimony and evidence presented by the defendant* and also the court's charge to the jury, as well as the testimony and evidence presented by the prosecution." *Id*., at 282 (emphasis added).

The Fifth Circuit's law relating to incomplete records on appeal is set forth in *Unites States v. Selva*, 559 F.2d 1303 (5th Cir. 1977). Under *Selva*, an appellant must generally show prejudice from omissions or errors in the record before such lapses require reversal. *Id*., at 1305. If the appellant, however, is represented on appeal by an attorney other than the one who represented him at trial, no showing of prejudice is required. *Id.* All that is required is that the appellant demonstrate that the missing record portions are "significant and substantial." *Id*., at 1306.

The 5th Circuit expanded the required list of recorded trial segments beyond what the Supreme Court in *Hardy* deemed critical for a non-reversible and complete Record on Appeal: ("*testimony and evidence presented by the defendant* and also the court's charge to the jury, as well as the testimony and evidence presented by the prosecution"). In

Selva, the 5th Circuit deemed missing jury argument transcripts "Substantial and significant" and reversed and remanded for a new trial without any showing of prejudice because appellate counsel did not represent the appellant at trial. *Id*., at 1306. Similarly, in *United States v. Gregory*, 472 F.2d 484, 485 (5th 1973), the 5th Circuit reversed and remanded for a new trial because of missing voir dire and opening and closing transcripts where appellate counsel was not the trial counsel. In *Gregory*, the 5th Circuit made clear it was reversing because it could not tell whether objections were made during the portions of the trial not recorded, and could not tell whether plain error occurred during those portions in the absence of any objections. *Id*., at 486.

Attorney Leon Schydlower was my lone appellate counsel, having filed the notice of appeal alone. Attorney Schydlower was my only listed counsel in the Fifth Circuit docket. My trial counsel, Robert Perez and Marjorie Jobe, did not file any notice of appeal on my behalf and have not and will not enter appearances on my behalf.

Attorney Schydlower did not represent me at trial and he did not witness one single minute of the trial. Attorney Schydlower joined the case after the convictions to represent me as sentencing counsel, but participation as my sentencing counsel has no bearing on the standard to be employed in this case. *United States v. Pace*, 10 F.3d 1106, 1125 (5th Cir. 1993)(in another missing transcript case where appellate counsel participated in pretrial matters and appeared for appellant at sentencing but did not represent appellant at trial, the Fifth Circuit held that "on appeal appellant is being represented by counsel other than his attorney at trial").

There can be no more important piece of evidence than a criminal defendant's testimony to a jury in his own defense at trial. Indeed, as explained *supra*, the Supreme Court in *Hardy* focused only on the "*transcript of the testimony and evidence presented by the defendant* and also the court's charge to the jury, as well as the testimony and evidence presented by the prosecution" when it reversed because transcripts were missing. *Hardy v. United States*, 375 U.S. 277, 84 S. Ct. 424, 11 L. Ed 2d 331 (1964) (emphasis added). The Fifth Circuit later expanded the definition of "significant and substantial" to include jury arguments, *United States v. Selva*, 559 F.2d 1303 (5th Cir. 1977), and voir dire, *United States v. Gregory*, 472 F.2d 484 (5th Cir. 1973). Accordingly, longstanding Fifth Circuit jurisprudence under Selva and its progeny mandates a remand for a new trial.

Direct Appeal of Ground Two:

1. If you appealed from the judgment of conviction, did you raise this issue?
   Yes.
   Post-Conviction Proceedings:
2. Did you raise this issue in any post-conviction motion, petition, or application?
   Yes.
3. If your answer to the question is "Yes," state:
   Type of motion: **Brief of Defendant – Appellant.**

Name and Location of Court: **US Court of Appeals 5th Circuit.**
Docket or Case Number: **10-50856.**
Date of Court's decision: **Unknown to me.**
Result: **All convictions were upheld.**

Ground Three: My Constitutional Right to Due Process was violated.

Supporting Facts: As the record reflects, I was forced to file my opening brief in December 2011 without the benefit of a transcript containing a large portion of my testimony to the jury, the testimony of the ATF case agent, testimony and argument regarding the defense's only character witness and the jury charge conference. The United States then sought and was granted a remand to give the trial court an opportunity to reconstruct the missing transcript. Instead of generating a substantially verbatim account of what occurred, the trial court merely (and nebulously) summarized what it believed occurred on that day – an important part of which the defense disputes.

Fifth Circuit caselaw requires that the trial court's summary "reconstruction" be rejected because only a substantially verbatim reconstruction would vindicate my "right to a record on appeal which includes a complete transcript of the proceedings at trial."

"It is . . . established beyond any shadow of doubt that a criminal defendant has a right to a record on appeal which includes a complete transcript of the proceedings at trial." *United States v. Selva (Selva II)*, 559 F.2d 1303, 1305 (5th Cir. 1977)(Citing *Hardy v. United States*, 375 U.S. 277, 84 S. Ct. 424, 11 L. Ed. 2d 331 (1964)). To this end, the Court Reporter Act, 28 U.S.C. § 753, provides:

Each session of the court and every other proceeding designated by rule or order of the court . . . shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations promulgated by the Judicial Conference and subject to the discretion and approval of the judge. . . Proceedings to be recorded under this section included (1) all proceedings in criminal cases had in open court . . . 28 U.S.C. § 753(b).

The Act thus imposes a mandatory requirement that all criminal proceedings held in open court be recorded verbatim. *See United States v. Taylor*, 607 F.2d 153, 154 (5th Cir. 1979). In lost-transcript cases where there is a remand to try to reconstruct the record, the Appeal Court looks to the trial court to reconstruct a "*verbatim*" record to vindicate an appellant's right to a complete record on appeal. In *United States v. Pace*, 10 F.3d 1106 (5th Cir. 1993), the 5th Circuit Court held

From *Selva II* and its progeny, we thus discern three interrogatories to be answered in this case: (1) which standard of review to apply, which is dependent upon whether the defendant is represented on appeal by the same attorney who defended him at

trial; (2) if the appellate counsel differs, whether the lost portion is substantial and significant; and (3) if the portion is substantial and significant, whether the trial court's reconstruction amounts to a "*substantially verbatim account*" of the missing portion of the transcript. *Pace*, 10 F.3d at 1124-25 (emphasis added).

In the Fifth Circuit, then, when the lost portion is "substantial and significant," the Fifth Circuit mandates that the trial court's reconstruction amount to a "*substantially verbatim account*" of the missing portion of the transcript. Such *verbatim* reconstructions are indeed possible.

For example, in the unpublished case of *United States v. Virgen*, 386 Fed.Appx. 500 (5th Cir 2011), the appellant was represented by new counsel on appeal, as I was. Accordingly, the appellant in *Virgen* needed to show only that there is "a substantial and significant portion of the record" missing. *Id*., at 501, *citing United States v. Selva*, 559 F.2d 1303, 1306 (5th Cir. 1977). The Fifth Circuit agreed with Virgen that the missing transcript of the trial court's charge to the jury was a "substantial and significant portion of the trial record: and remanded to the trial court for reconstruction. *Id.* When the case returned to the Fifth Circuit after remand it found no error with respect to the missing transcript because there existed a verbatim jury charge which the Fifth Circuit said could substitute for the missing transcript. *United States v. Virgen*, 2011 U.S.App.LEXIS*4 (5th Cir. 2011).

Similarly, in *United States v. McCusker*, 936 F.2d 781 and n.4 (5th Cir. 1991)(per curiam), the Fifth Circuit deemed a record complete where tape recordings were played at trial but not simultaneously transcribed by the court reporter because the recording themselves were included in the record on appeal. In other words, the tape recordings were substantially verbatim accounts of the missing transcripts.

In this case, the trial court did not even attempt a verbatim reconstruction of the trial record of April 13, 2010. The trial court's final product is merely an attempt to summarize what subject areas ***may*** have been addressed on April 13, 2010. My attorney was forced to file his appeal in December 2011 and a reconstruction hearing wasn't attempted until June of 2012. There wasn't a complete and substantially verbatim transcript when he wrote my appeal in 2011 and there does not exist a complete record today. Moreover, there still remain grave concerns about the reliability and accuracy of what is contained in the trial court's summary. Most notably, during the record reconstruction evidentiary hearing attorney Enrique Moreno (the defense character witness whom the trial court excluded) testified as follows with respect to his April 13, 2010 testimony about the basis for his opinion about my credibility:

Q. And just to reiterate it, you think it now more likely than not that you were asked and you told Judge Briones that you had conducted interviews with other FBI agents and AUSAs?

A. And I don't mean to quibble with your words. But I didn't – I didn't hire an investigator. I didn't investigate his – you know, his reputation. His reputation, his credibility, was the subject of dis---that was involved in the case. And so in preparation

for my case, I had discussions with Assistant U.S. Attorneys, because you just can't get an FBI agent involved in a civil case. There's a proc—I believe the process calls—there's a Touhy process that's involved, and so I had discussions with Assistant U.S. Attorneys. There were depositions taken of other FBI agents. And so based on those overall discussions, that was the basis for the opinion I expressed. I'm not—I'm not quibbling here I just want to be precise with—with what I—what I did. And the best that I can remember.

Q. Right. And it's not the substance of what you did that's at issue. I guess the question is: Do you now believe it more likely than not that that – those interviews, those investigations, that basis was brought out during your voir dire on April 13th?

A. I think I was asked for the basis of whatever opinion I expressed. And that was the basis, so I believe it would have come out. Precisely what my – the question was, precisely what my answer is, I could not tell you. (Transcript of Record Reconstruction Hearing, 6/11/12, at 19- 21)(emphasis added).

The trial court's reconstruction summary simply rejects that Mr. Moreno testified on voir dire that he discussed my reputation with Assistant U.S. Attorneys and FBI agents in preparing to testify about my character. "Based in substantial part on the Court's own recollection," the trial court's summary recites that Mr. Moreno "based his personal opinion on a solitary-asserted example of the Defendant's honesty arising from a civil lawsuit in which he represented the plaintiff, Samantha Carrington." (Trial Court Reconstruction Order, at 9).

Moreover, the trial court's reconstruction order purports to rely on the notes of my father, which are in the Record on Appeal as Document 193-7. Those notes reflect that I was on direct and cross examination from 9:09 a.m. to 12:17 p.m., a period of more than three hours. The trial court's order summarizes these three hours of a defendant's testimony to the jury in a scant two and one half double-spaced pages. Three hours of testimony is much more than two and a half double-spaced pages. The record is still, clearly, not a substantially verbatim account as required by 5th Circuit case law.

Again, in Hardy v. United States, 375 U.S. 277, 84 S. Ct. 424, 11 L. Ed. 2d 331 (1964), the Supreme Court held that where new counsel represents an indigent defendant on appeal, counsel must be furnished with a complete transcript of the trial. Hardy, 375 U.S. at 282. The Court stressed that the duty of representation of an appellate lawyer included the duty to search out plain error, and that nothing less than a complete transcript suffices to meet this duty. Id., at 279-80. With respect to the parts of the transcript that the Supreme Court deemed the most significant and substantial, the Court held: "We conclude that this counsel's duty cannot be discharged unless he has a transcript of the testimony and evidence presented by the defendant and also the court's charge to the jury, as well as the testimony and evidence presented by the prosecution." Id., at 282 (emphasis added).

The 5th Circuit Court has expanded the required list of recorded trial segments beyond what the Supreme Court in Hardy deemed critical for a non-reversible and

complete Record on Appeal: ("testimony and evidence presented by the defendant and also the court's charge to the jury, as well as the testimony and evidence presented by the prosecution"). In Selva, the 5th Circuit Court deemed missing jury argument transcripts "substantial and significant" and reversed and remanded for a new trial without any showing of prejudice because appellate counsel did not represent the appellant at trial. Id., at 1306. Similarly, in United States v. Gregory, 472 F.2d 484, 485 (5th 1973), the 5th Circuit Court reversed and remanded for a new trial because of missing voir dire and opening and closing transcripts where appellate counsel was not the trial counsel. In Gregory, the 5th Circuit Court made clear is it was reversing because it could not tell whether objections were made during the portions of the trial not recorded, and could not tell whether plain error occurred during those portions in the absence of any objections. Id., at 486.

Finally, and most importantly, if the missing portion is substantial and significant, the Fifth Circuit demands that the trial court's reconstruction amount to a "substantially verbatim account" of the missing portion of the transcript. Pace, 10 F.3d at 1124-25 (emphasis added).

In Pace, the 5th Circuit Court held that where the missing trial record was a trial counsel's closing argument, it would be almost impossible to reconstruct it in a substantially verbatim manner. Pace, 10 F.3d at 1125. In this case, there are hours- worth of my testimony to the jury missing; there are critical pieces of testimony, objections, arguments, and exhibits about the sole defense character witness missing; there is testimony from the case agent missing; and the jury charge conference and attendant objections are missing.

Governing Fifth Circuit case law mandates a substantially verbatim account of what occurred on April 13, 2010. The 5th Circuit Court in Pace opined that a reconstruction of a trial counsel's closing argument would be almost impossible to reconstruct in a substantially verbatim manner. Pace, 10 F.3d at 1125. If a verbatim reconstruction of a closing argument would be almost impossible, a verbatim reconstruction of several hours-worth of a defendant's testimony, a case agent's testimony, a character witness' testimony, and a jury charge conference with attendant argument and objections is implausible fantasy.

The trial court did not even attempt such a verbatim reconstruction, and its disputed and abbreviated summary of what occurred on April 13th does not satisfy the Fifth Circuit's dictates. Accordingly, longstanding Fifth Circuit jurisprudence under Selva and its progeny mandates a remand for a new trial.

Judge David Briones, who was far from impartial and should have recused himself from the trial, was supposed to have been protecting my Due Process and ensuring the integrity of the Court. He has, however, violated my Due Process with his incomplete summary of events instead of a "substantially verbatim" transcript as required by law. In the process, he calls his own integrity and impartiality into question by his futile reconstruction attempt. Judge Briones stated on May 25, 2011 in a status conference transcript that, "And it's up to you to argue whether there is a substantial

portion of the transcript missing, quite frankly. There might not be. ***I don't know what went on that date."*** (emphasis added). So in 2011, thirteen months after the trial, Judge Briones states that he doesn't know what happened on that date and then in June of 2012, twenty-six months after trial, Judge Briones is suddenly able to remember what happened at trial well enough to construct a "substantially verbatim record?" This defies logic. Judge David Briones was born in 1943. How does a sixty-nine year old man suddenly have the ability to recall a substantially verbatim account of events, testimony, evidence, objections, rulings, motions and instructions from one day of court that happened over seven hundred and ninety days ago? And how does he remember it well enough to provide the court with a substantially verbatim record when even the four significantly younger attorneys cannot remember and agree on what happened? He can't. What is even more impossible is doing it without the assistance of any notes or recordings. I would argue that this feat is impossible to the average human at any age unassisted, let alone a sixty-nine year old man.

According to the reconstruction hearing transcripts dated June 11, 2012, AUSA Juanita Fielden couldn't even remember the charges against me:

"Q. You said it was your first gun trafficking case.\
What -- do you remember what the charges were against Mr. Shipley?\

A. Conspiracy to traffic in firearms. And then it was the -- what we call lying and buying, basically, lying on the 4473. And then I believe it was making a material misrepresentation to the ATF agent.\

Q. Do you think that first count was dealing in firearms without a license?\

A. It could be.\

AUSA McDonald stated in the reconstruction hearing transcripts dated June 11, 2012, that "There are no notes that were taken contemporaneously during the testimony, and I believe that's what's covered by the scheduling order, notes that were taken during the day of testimony. And I have not generated any of that." In McDonalds cross-examination by Attorney Schydlower, McDonald states:

"Q. Let me\
ask you. Give me one question that was asked during that period of time while Mr. Perez continued his direct.

A. I'm not pretending or offering a verbatim transcript. I can tell you my impression.

Q. That's not the answer to my question.\
Can you name me one question that was asked?

A. No.\

Q. Were there any exhibits introduced during that direct examination?

A. On that day?\

Q. Yes, sir.\

A. I don't recall.\

Q. Do you remember whether or not Judge Briones had to make a ruling on the admission of any evidence that was tendered for admission during that direct examination?\

A. No.\

Q. Do you remember any exhibits that were referred to --\

A. No.\

Q. -- during that direct examination?\

A. In de- -- well...\

Q. Let's go to the cross-examination. That was your examination of Mr. Shipley yourself, correct?\

A. Yes.\

Q. Do you remember whether or not there were any objections on behalf of Mr. Perez?\

A. I don't recall any.\

Q. Is that yes or no?\

A. No.\

Q. Do you remember what exhibits you introduced during your cross-examination of Mr. Shipley?

A. I don't recall offering exhibits through the Defendant.

Q. Do you remember whether or not Judge Briones had to make a ruling on any evidentiary issues?\

A. If I would have recalled it, sir, I would have put it in the declaration. But I didn't recall it, so I left it out of the declaration. That was how I was -- approa- -- conservatively approaching my best recollection.

Q. So do you remember whether or rulings in that regard?\

A. I believe I answered it no.

Q. Do you remember what exhibits

A. No. “

AUSA McDonald and AUSA Fielden, who were present for the entire trial and is significantly younger than Judge Briones, cannot remember several important factors of the case. Are we to believe that Judge Briones possesses some super ability of recall far superior to the four other attorneys, two for the defense and two for the prosecution, present for trial that were unable to agree on what transpired? He does not possess this ability and he failed to provide a substantially verbatim transcript to the Fifth Circuit as required by law, thus violating my Due Process. Accordingly, longstanding Fifth Circuit jurisprudence under Selva and its progeny mandates a remand for a new trial.

Direct Appeal of Ground Three:

3. If you appealed from the judgment of conviction, did you raise this issue?
   No.
4. If you did not raise this issue in your direct appeal, explain why:
   My appeal was written prior to the reconstruction hearing taking place.

Post-Conviction Proceedings:

3. Did you raise this issue in any post-conviction motion, petition, or application?
   No.
4. If your answer to the question is “No,” explain why you did not appeal or raise this issue:
   My appeal was written prior to the reconstruction hearing taking place.

Ground Four: My Constitutional Right to Due Process was violated. The Government failed to disclose that they allowed the gun at issue to be sold and trafficked to Mexico. Then they stated in front of the jury at my trial that my gun ended up in Mexico. They implied to the jury and argued as if I had responsibility for it ending up in Mexico. They knew this was false and they fabricated this to inflame the jury.

Supporting Facts:

The Department of Justice, to include the United States Attorney’s Office in El Paso and the ATF in El Paso, were involved and had knowledge of “Gunwalking” operations prior to my prosecution. They failed to disclose their involvement and knowledge of such operations as required by Discovery laws. This violates my Due Process as I was not able to raise this as part of my defense. The gunwalking operations did not become public knowledge until almost a year after my convictions while I was in prison. Because they were not known at the time of my trial, they were not used for my defense at trial and for my appeal.

I was convicted in April of 2010. Prior to my conviction, DOJ, the US Attorney's Office and ATF were aware that "Gunwalking" operations were being conducted along the Southwest Border. The El Paso US Attorney's Office and the El Paso Division of the ATF were involved and informed of these operations. They failed to disclose this information to me prior to trial, making it impossible to raise the defense that the ATF and their informants were involved in trafficking firearms to Mexico. It wasn't until US Border Patrol agent Brian Terry was killed in December of 2010 that the ATF gun walking operations became public knowledge. This was eight months after my conviction. According to Wikipedia, ""**Gunwalking**", or "**letting guns walk**", was a tactic of the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), which ran a series of sting operations[2][3] between 2006[4] and 2011." I was unable to properly defend myself because the government failed to disclose that they were walking guns to Mexico.

The ATF "initiated" my investigation under the premise that they were trying to identify how the Barrett .50 Caliber rifle, serial number 20488, was trafficked to Mexico. In fact, they already knew how it was trafficked to Mexico. Their informant, Paul Lee, sold the rifle to a suspected Mexican gun trafficker in December of 2007 who was under ATF and ICE investigation for many months prior to the sale. This fact is corroborated by Rodriguez's and Lopez's ATF interviews and the Barrett receipt of sale from Paul Lee to Lopez. It should be noted that Lee's writing is on the receipt of sale for the Barrett #20488 to Lopez and he has admitted to writing on the receipt. In order to cover up their involvement in trafficking the Barrett to Mexico, they illegally investigated, prosecuted and convicted innocent people. This scenario was repeated several times in several different areas. The common denominator was ATF's involvement and lies to cover up their illegal activities. In Deming, New Mexico, Rick and Terry Reese were arrested for assisting ATF in their illegal operations of walking guns to Mexican gun traffickers. They are innocent victims who were used to cover up ATF and DOJ's illegal "gunwalking" operations. After they assisted ATF, they were betrayed by ATF, prosecuted and imprisoned. Another similar case happened in Tucson, Arizona. Mike Detty assisted the ATF in their illegal operations and then was then betrayed by the ATF. ATF and DOJ have lied and imprisoned innocent people in an attempt to cover up their illegal operations.

The ATF used an illegal tactic in this plot to cover up their gunwalking, they created their own probable cause. They used their informant to sell the gun to a suspected Mexican gun trafficker and then they took no enforcement action to prevent the gun from entering Mexico. This directly violates ATF's mandate and mission. The Mexican gun trafficker gave ATF's informant a Texas driver's license that had an address in Juarez, Chihuahua, Mexico. ATF's informant, Lee, had a Federal Firearms License (FFL) and knew that selling any firearm to a Mexican national was against the law. Lee did it because the trafficker was under ATF investigation and surveillance and Lee was assisting ATF. If their informant, Paul Lee, was not selling this firearm with ATF approval and authority, his gun store, Collector's Gun Exchange, would be closed and Paul Lee would be in prison today. Instead, his store is still open and he is a free

man selling guns today. Either ATF authorized the sale of the Barrett to Lopez or ATF is allowing Lee to continue to sell guns knowing he illegally sold a .50 caliber rifle to a Mexican gun trafficker who was not legal to buy a firearm in the United States. Either way, the ATF is in violation of law and their mandate from Congress.

If a person sets his neighbor's house on fire and then calls 911, is he a hero? No, he is a criminal. ATF did the same thing. They created a problem and then tried to act like heroes by imprisoning "illegal firearms dealers." They created their own probable cause and used it to obtain illegal search warrants and deceive the Court. They violated my Constitutional Rights, lied to Federal Judges and imprisoned innocent people. DOJ and ATF knew I had nothing to do with that Barrett going to Mexico, yet on Page 1, paragraph 4 of the affidavit in support of search warrant, agent Eric Benn states, "Through my investigation, training, experience and in talking with other law enforcement personnel, ***who have conducted investigations on individuals trafficking in firearms***," (emphasis added). Then on Page 5, paragraph 1, "In the early morning hours of March 8, 2008, a gun battle, lasting approximately 2-3 hours, occurred between Mexican soldiers and hit men for the Cartel (unknown affiliation at this time) in Chihuahua, Mexico. During the gun battle, a Mexican Army Captain was killed. Six (6) suspected Cartel hit men were also killed. After the battle ended, multiple firearms were recovered in the house occupied by the suspected hit men. (Paragraph 2) On March 8, 2008, an ATF Special Agent (SA) from the El Paso Field Office traveled to Chihuahua, Chihuahua, Mexico to examine the recovered firearms ***in an attempt to identify and determine the origin of those firearms***. (emphasis added) One of the firearms recovered at the house was identified by the ATF SA as a Barrett, Model 82A1, .50 caliber rifle, serial number 20488." This clearly demonstrates that their intent was to deceive the Court and the Judge to obtain an illegal search warrant on the premise that they believed I was involved in trafficking this gun to Mexico.

Another interesting fact that demonstrates their illegal intentions to deceive the Court is the timing of the arrest of the Mexican gun trafficker, Jonatan Lopez, prior to my search warrant. Lopez was arrested on March 19, 2008. He was debriefed by ATF on April 7, 2008, and he told ATF that he purchased and trafficked the Barrett #20488 to Mexico. If Lopez had already told ATF that he purchased and trafficked the firearm to Mexico, why is the ATF writing a search warrant with deceptive language like "***who have conducted investigations on individuals trafficking in firearms***," and "***in an attempt to identify and determine the origin of those firearms***." They were lying to the Judge and falsifying their probable cause. They omitted important facts like their informant sold it to Lopez. They omitted the fact that Lopez had admitted to buying and trafficking the firearm to Mexico. They omitted the fact that Lopez was shown a photo lineup On April 7, 2008, and he did not recognize my photograph in the lineup. They made it sound like my search warrant was an attempt to identify how the Barrett was trafficked to Mexico and yet they already knew how it was trafficked and by whom it was trafficked. The US Attorney's Office, ATF and DOJ intentionally deceived the Court in order to obtain an illegal search warrant. They failed to inform the Court of their gunwalking operation, their informant's participation in selling the Barrett to the Mexican gun trafficker or their interview of the arrested gun trafficker. All of which could have

influenced the Judge's opinion regarding the validity and need of a search warrant conducted on my house.

It should also be noted that Lopez, who admitted trafficking Barrett #20488 to Mexico, was never indicted for trafficking this firearm to Mexico. This is because if they indicted Lopez for this firearm, they would have to provide Discovery information that would detail their knowledge and participation in this firearm being trafficked to Mexico.

Twice during the trial the prosecutor represented to the jury that a firearm that Shipley sold to Luis Armando Rodriguez made its way into Mexico and was used to kill a Mexican military officer – knowing full well that this representation was false. AUSA Juanita Fielden told the jury that a firearm that Shipley sold to Luis Armando Rodriguez "ended up in a drug shootout in Mexico where it killed somebody." Then, on closing argument, the same prosecutor told the jury with respect to the same firearm, "(w)ell, we know where at least one of those .50-calibers ended up, in a shootout with Mexican traffickers, where a Mexican military officer was killed. That's who used those types of weapons." AUSA Greg McDonald stated on closing argument that Shipley got a phone call during which the caller stated, "Your gun, the one you sold, was recovered at a murder in Mexico." There was no evidence supporting these representations - they were fabricated.

It was not until after the jury had rendered its verdict and one incarnation of the PSR generated that the fabrication was uncovered: "there was no evidence that revealed that the Barret Model 82A1, .50 recovered in Mexico, was the actual weapon used to kill the Mexican Army Captain or the other suspected cartel hit men."

Not only did the United States fabricate a story that a former firearm of mine was used to kill a Mexican Army officer, the United States knew I had no idea that one of my former firearms ended up in Mexico. I sold the firearm at issue to Luis Armando Rodriguez, who himself had no idea that the firearm ended up in Mexico. Rodriguez took the firearm, consigned at Collector's Gun Exchange, had the gun store sell the firearm for him while he was out of town, and had no idea who took the gun into Mexico. Indeed, ATF case agent Frank Henderson testified I had no idea what Rodriguez did with the firearm after I sold it to him.

Even though the there were at least three parties after me who owned/controlled the firearm that went into Mexico (Rodriguez, Collector's Gun Exchange, and Jonathan Lopez - who bought it on consignment from the gun store), the Government presented photographic evidence of .50 caliber ammunition, hand grenades, magazines for various firearms, military style rifles of different calibers, ballistic vests, ammunition pouches, and military helmets - all recovered by the ATF in Mexico and having absolutely nothing to do with the case against me.

Direct Appeal of Ground Four:

5. If you appealed from the judgment of conviction, did you raise this issue?
   No.
6. If you did not raise this issue in your direct appeal, explain why:
7. **I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal.**

Post-Conviction Proceedings:

5. Did you raise this issue in any post-conviction motion, petition, or application?
   No.
6. If your answer to the question is "No," explain why you did not appeal or raise this issue:
7. **I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal.**

Ground Five: The US Attorney's Office, ATF and DOJ/OIG conspired to Obstruct Justice.

Supporting Facts:

ATF wrote the affidavit in support of search warrant and could not have one of their agents sign the affidavit because ATF knew of the gunwalking operation that walked the Barrett #20488 to Mexico. ATF agent Frank Henderson wrote the affidavit in support of search warrant. The US Attorney's brought in another agent from another agency that had no knowledge of the gunwalking operation or the ATF's informant selling the Barrett and letting it walk. DOJ/OIG agent Eric Benn applied for the search warrant because he had no knowledge of ATF's gunwalking operations. This clearly demonstrates a conspiracy to Obstruct Justice.

This becomes evident when you examine the language of the Affidavit. On Page 6, paragraph #8, the last sentence reads, "SHIPLEY told your affiant that he was going to have his wife look through his records to provide more information about the sales to Rodriguez." That was not told to the affiant, DOJ/OIG agent Benn as it reads, it was told to ATF agent Henderson who wrote the affidavit. They forgot to change it prior to agent Benn submitting agent Henderson's affidavit to the Court. Then on Page 7, paragraph #13 states, "Your affiant asked SHIPLEY to bring all his firearms records so he could

look through the records to see if there were any other trafficking suspects in there." Again, that was not told to the affiant, DOJ/OIG agent Benn; it was, according to their recollection, ATF agent Henderson. They forgot to change this also prior to agent Benn submitting agent Henderson's affidavit to the Court. These "mistakes" clearly show that the affidavit was written by ATF agent Henderson and then signed by DOJ/OIG agent Benn. The reason this was done was because Benn had no knowledge of ATF's illegal gunwalking operation.

The fact that the affidavit was written by an ATF agent and then signed by a DOJ/OIG agent is disturbing. In my entire career in the FBI, I never wrote a search warrant and then had another agent from another agency sign it. It was clearly done to avoid having agent Henderson perjure himself. In my tenure as an FBI agent, my search warrants had to be reviewed by my supervisor, the FBI's Chief Division Counsel and an Assistant United States Attorney prior to submission.

Important facts were intentionally left out of the affidavit in support of the search warrant. They failed to inform the Court of their gunwalking operation, their informant's participation in selling the Barrett to the Mexican gun trafficker or their arrest and interview of the Mexican gun trafficker. They failed to inform the Court that they already had a confession from the Mexican gun trafficker or supply the Court with any information derived from the interview of the Mexican gun trafficker. They failed to inform the Court that they had shown the Mexican gun trafficker a photo lineup containing my picture and he did not recognize me. They failed to inform the Court that Lopez's description of the person who delivered the Barrett at Collector's Gun Exchange did not remotely resemble me. They forgot that the vehicle Lopez described did not match the vehicle I owned. They led the Court to believe that they were trying to determine how the Barrett was trafficked to Mexico. They knew from Lopez's interview after his arrest that I had nothing to do with it, other than owning the gun several months prior and at least three people since my ownership. These are all pertinent facts that should have been presented to the Court in order for the Court to make an informed decision as to the Probable Cause, yet they were intentionally omitted in order to deceive the court, Obstruct Justice and violate my Due Process.

Direct Appeal of Ground Five:

8. If you appealed from the judgment of conviction, did you raise this issue?
   No.
9. If you did not raise this issue in your direct appeal, explain why:

I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal.

Post-Conviction Proceedings:

8. Did you raise this issue in any post-conviction motion, petition, or application?
   No.
9. If your answer to the question is "No," explain why you did not appeal or raise this issue:
   I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal.

Ground Six: Both of the prosecuting attorneys for the United States Attorney's Office intentionally lied to the Court and the Jury at trial in order to Obstruct Justice and convict an innocent person.

Supporting Facts:

Twice during the trial the prosecutor represented to the jury that a firearm that Shipley sold to Luis Armando Rodriguez made its way into Mexico and was used to kill a Mexican military officer – knowing full well that this representation was false. AUSA Juanita Fielden told the jury that a firearm that Shipley sold to Luis Armando Rodriguez "ended up in a drug shootout in Mexico where it killed somebody." Then, on closing argument, the same prosecutor told the jury with respect to the same firearm, "(w)ell, we know where at least one of those .50-calibers ended up, in a shootout with Mexican traffickers, where a Mexican military officer was killed. That's who used those types of weapons." AUSA Greg McDonald stated on closing argument that Shipley got a phone call during which the caller stated, "Your gun, the one you sold, was recovered at a murder in Mexico." There was no evidence supporting these representations - they were fabricated.

It was not until after the jury had rendered its verdict and one incarnation of the PSR generated that the fabrication was uncovered: "there was no evidence that revealed that the Barret Model 82A1, .50 recovered in Mexico, was the actual weapon used to kill the Mexican Army Captain or the other suspected cartel hit men."

Not only did the United States fabricate a story that a former firearm of mine was used to kill a Mexican Army officer, the United States knew I had no idea that one of my former firearms ended up in Mexico. I sold the firearm at issue to Luis Armando Rodriguez, who himself had no idea that the firearm ended up in Mexico. Rodriguez took the firearm, consigned at Collector's Gun Exchange, had the gun store sell the firearm for him while he was out of town, and had no idea who took the gun into Mexico. Indeed, ATF case agent Frank Henderson testified I had no idea what Rodriguez did with the firearm after I sold it to him.

Even though the there were at least three parties after me who owned/controlled the firearm that went into Mexico (Rodriguez, Collector's Gun Exchange, and Jonathan

Lopez - who bought it on consignment from the gun store), the Government presented photographic evidence of .50 caliber ammunition, hand grenades, magazines for various firearms, military style rifles of different calibers, ballistic vests, ammunition pouches, and military helmets - all recovered by the ATF in Mexico and having absolutely nothing to do with the case against me.

Direct Appeal of Ground Six:

1. If you appealed from the judgment of conviction, did you raise this issue?
   Yes.
   Post-Conviction Proceedings:
2. Did you raise this issue in any post-conviction motion, petition, or application?
   Yes.
3. If your answer to the question is "Yes," state:
   Type of motion: **Brief of Defendant – Appellant.**
   Name and Location of Court: **US Court of Appeals 5th Circuit.**
   Docket or Case Number: **10-50856.**
   Date of Court's decision: **Unknown to me.**
   Result: **All convictions were upheld.**

Ground Seven: The government lost or destroyed trial evidence that was exculpatory and violated my Due Process.

Supporting Facts:

While I was a FBI agent, I kept a personal journal of my events in the FBI. These journals were taken during the execution of their search warrant. The government maintained them and introduced them as evidence at my trial. When I requested to review them for exculpatory information, the government stated that they could not find them. These journals contained information regarding the several times I contacted the ATF to ensure that everything I was doing was legal regarding gun purchases and sales. My journals also contained information about meeting and speaking with ATF agent Steven Hall, who testified for the prosecution at my trial. Still to this day, the government has been unable to locate my personal journals and the only record of them is a photocopy of certain pages the prosecution used at trial that were entered as evidence. We have been unable to review all the evidence and have no access to all the evidence because the government claims they have lost them. Because the government did not grant me access to these records and they either lost or destroyed them, my right to Due Process was infringed.

It should be noted that in my case, the government lost crucial documents that severely impact my ability to defend myself; exculpatory evidence in my FBI journals

and an entire day of trial transcripts. In an abundance of caution to ensure a defendant gets his Due Process and a fair trial, the Court should vacate the convictions and allow the US Attorney's office to decide if they would like to prosecute the case again. Nothing could be more important than the rights of a defendant in a criminal trial. No two pieces of evidence are more critical that transcripts and exculpatory evidence.

Direct Appeal of Ground Seven:

10. If you appealed from the judgment of conviction, did you raise this issue?
    No.
11. If you did not raise this issue in your direct appeal, explain why:

I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal.

Post-Conviction Proceedings:

10. Did you raise this issue in any post-conviction motion, petition, or application?
    No.
11. If your answer to the question is "No," explain why you did not appeal or raise this issue:

I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal.

Ground Eight: The government violated my Due Process by failing to provide all the discovery materials prior to trial.

Supporting Facts:

As previously stated, the government either lost or destroyed my FBI journals that contained exculpatory evidence. They also failed to maintain and protect evidence (FBI journals) they collected from a search warrant and lost my personal property. At my trial, the prosecution used this evidence against me. After my trial was over, the government returned a box of things taken from my desk at the FBI. In that box was the business card of ATF agent Steven Hall. The prosecution called ATF agent Steven Hall as a witness during my trial. Had they returned the business card of ATF agent Hall's to me prior to the trial as required under Discovery rules, I would have remembered our meeting and

conversation where we spoke about my buying and selling of guns. ATF agent Hall could have been questioned by my attorney about that conversation and my attempt to ensure that everything I was doing was perfectly legal. I could have also testified about our conversation and my attempt to ensure that my actions were legal and how ATF agent Hall told me that everything I was doing was perfectly legal.

The government also failed to disclose information about the shootout in Mexico or any information about the ATF's involvement in walking guns to Mexico. When the prosecutor's lied in trial to the Court and the Jury, we were unable to object because the government did not provide us with the information until after the trial and conviction occurred. The prosecution brought in evidence about the shootout but never gave us discovery materials that proved the Barrett was not used to kill someone. This is a crucial piece of evidence that, if we knew about it prior to trial, would have raised objections to the prosecutor's claim that it, "ended up in a drug shootout in Mexico where it killed somebody." Their lack of disclosure prevented the judge from hearing an objection and either sustaining the objection or overruling it. This undermines the very reasons we have Discovery and violates the defendants right to Due Process and offends the rule of law. This violation of Due Process prevents fundamental fairness, justice and liberty.

Direct Appeal of Ground Eight:

12. If you appealed from the judgment of conviction, did you raise this issue?
    No.
13. If you did not raise this issue in your direct appeal, explain why:

I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal.

Post-Conviction Proceedings:

12. Did you raise this issue in any post-conviction motion, petition, or application?
    No.
13. If your answer to the question is "No," explain why you did not appeal or raise this issue:

I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal.

Ground Nine: I was represented by ineffective counsel at trial.

Supporting Facts:

My trial attorney was ineffective and violated his position of trust as an Officer of the Court. He also failed to fully represent his client to the best of his abilities.

My trial attorney was Robert Perez. Perez told me that he had bought firearms from Collector's Gun Exchange in the past. He failed to inform me regarding the extent of his professional and personal relationship with Paul Lee, the ATF's informant and owner of Collector's Gun Exchange. Lee was also a client of Perez's. His ethical conflict became apparent at trial when I requested that he question Lee about the receipt for the sale of the Barrett to Lopez, the Mexican gun trafficker. He told me that he had already spoken to Lee and he knew Lee would just lie about his involvement in selling the Barrett to Lopez. I told him to ask Lee anyway, and if Lee lied, he would have to face the consequences. Perez refused to ask Lee any questions regarding the receipt for the Barrett sale to Lopez. This refusal was bases upon his personal relationship with Lee and he failed to fully represent the interests of his client, me. Although I knew of Lee and Perez's professional relationship, I wasn't aware that Lee was an ATF informant and he had been assisting ATF with their investigation of Lopez and the Mexican gun trafficking organization. I definitely did not know that his relationship with Lee would preclude him from fully representing my legal rights at trial. To my knowledge, Perez never asked Lee one single question in court about his role in selling the Barrett to Lopez.

Then there is the question of trust and ethics I now have regarding my attorney, Robert Perez. If he had a professional and personal relationship with Lee, did he violate my attorney client privilege with Lee? I only bring this into question because he demonstrated an ethical violation during my trial preparations. While we were preparing for trial, Perez received Discovery information about a government witness named Mark Benedict. After he read the documents, he gave me them in his office to review in his presence. I read them and they stated that Benedict was going to be indicted for stealing government property and not reporting bulk cash shipments from overseas to the United States. The reports detailed Benedict's involvement is stealing military night vision equipment, military thermal imaging equipment, other property and military weapons. Apparently he was stealing military gear and shipping it, along with large quantities of cash, back to his wife. It said that he stole fully automatic military weapons and shipped them back into the United States and sold them illegally. After I had read the entire report, I told him that we could use that information to impugn the testimony of Benedict and his character and veracity. My attorney, Robert Perez, then told me that what I had just read couldn't be used in Court because it was sealed and that he shouldn't have shown it to anyone, to include me. I asked him why he allowed me to read it and he stated that no one would ever know that I had read it. I then began to wonder if he had just violated the law and made me an accomplice to his criminal behavior. I was afraid to ask him if he had just broken the law and I was afraid that if I spoke about it to anyone, I could be charged criminally. I felt like if I asked him if he had just broken the law, he might not represent me well so that I would not be credible about his criminal action. If

he was willing to violate the law and show me sealed court documents I was not allowed to view, what other ethical violations did he commit that were detrimental to my defense?

Then there was the issue of subpoenaing witnesses for trial. I told Perez that he needed to meet the Touhy requirements before trial for ATF agent Henderson and DOJ/OIG agent Benn. He assured me that he had subpoenaed them and they would be testifying at the trial. When we were at trial, agent Henderson was sworn in, but he wasn't called as a witness for the prosecution. Agent Benn was not sworn in and he never testified at the trial even though he was the co-case agent and he was the affiant on the search warrant. The prosecution also stated that agent Benn conducted the financial analysis of my case, but they never called him as a witness. When we attempted to call agent Henderson and agent Benn to the stand, the prosecution objected because neither of them had been subpoenaed and my attorney did not meet the Touhy requirements. The judge decided that since agent Henderson was sworn in, he could be called, but because agent Benn was not subpoenaed and the Touhy requirements were not met, he could not be called to testify. It was a substantial blow to my defense because of my own attorney's incompetence in ineffectiveness. There were several legal issues we intended to question agent Benn about on the search warrant that were not allowed because my attorney failed to subpoena him. A critical and significant testimony was not allowed in court because my attorney failed to do his job.

If that were not enough, my attorney would not ask the judge to recuse himself at trial. I instructed Attorney Perez to ask the judge to recuse himself because the judge's sister was investigated and indicted on a case I worked in the FBI. Perez told me that it would only inflame Judge Briones that his integrity was being questioned and he would not recuse himself. Perez stated that if he asked him that, Briones would be mad and rule in favor of the prosecution whenever he could. He also stated that questioning Briones' ability to be fair and impartial could prove severely detrimental when and if a sentencing phase was needed. Perez stated that if I were convicted, Judge Briones would impose a lengthier sentence because we had questioned his ability and integrity. Perez refused to ask the judge to recuse himself despite my instructions. I feel that he failed to represent my best interests in order to ensure that he continued to have a good working relationship with Judge Briones.

Direct Appeal of Ground Nine:

14. If you appealed from the judgment of conviction, did you raise this issue?
No.
15. If you did not raise this issue in your direct appeal, explain why:
I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal. I was also afraid to tell anyone about this.

Post-Conviction Proceedings:

14. Did you raise this issue in any post-conviction motion, petition, or application?
    No.
15. If your answer to the question is "No," explain why you did not appeal or raise this issue:

I was incarcerated when my attorney prepared my appeal and there were numerous other legal issues he raised. Even without this issue, my attorney had to get permission from the Courts for an extended appeal response due to the number of issues for appeal. I was also afraid to tell anyone about this.

Should anyone need any further information about the information contained within this document, please feel free to contact me directly at jshipley77@gmail.com or the Court has my home address and phone number.

Thank you,

John Shipley