

1. As a Pro Se defendant, on or about March 25, 2009, I filed a **MOTION TO DISMISS FOR MALICIOUS, CRIMINAL AND OUTRAGEOUS PROSECUTORIAL/JUDICIAL MISCONDUCT AND REQUEST FOR A HEARING** (Docket Entry 422, pg. 8, pg. 13, pg. 14-16, exhibits #2 and #5) and alleged that the government engaged in a criminal misconduct, by falsely imprisoning Jive Network employees in order to interrogate them. On pg. 8, paragraph 7, defendant alleged under penalty of perjury that “on April 15, 2005, Magistrate Judge David A. Baker, signed a search warrant granting permission to Special Agent John F. Groeschner, Jr. of the Federal Bureau of Investigation, to retrieve corporate documents and electronic devices relating to Defendant’s Internet Pharmacy business. Defendant informed the Court of his intention of calling Magistrate Judge David A. Baker, to testify as a witness in this trial, in order to affirm that the Court did not grant any exceptions and did not corruptly invite the government to illegally usurp his authority and use the search warrant as a pretext to falsely imprison, detail, intimidate, and interrogate approximately 30 Jive Network employees who were present at the Daytona Beach location, during the execution of the corporate search warrant, on April 19, 2005.

The Court was advised that false imprisonment constituted a crime and that he will seek testimony from Special Agent John F. Groeschner, Jr. and prove beyond a reasonable doubt that on April 19, 2005, at the direction of prosecutor Karen Gable, the FBI agent intentionally and unlawfully exceeded the scope of the search warrant that Magistrate Judge David A. Baker approved on April 15, 2005.

Intentional violation of the law is a crime. “[*Ganwich v. Knapp 319 F.3d 1115; 2003 U.S. App. LEXIS 2394 (9th Cir.) The police officers ... told the employees ... "that they would not be released until they submitted to individual interrogations." Id. at 1121. Further, the officers should have recognized that coercing employees into interrogations was unlawful. supra.*] The Court and the Prosecutors ignored the allegations, denied Defendant a hearing, and failed to admit or deny the record. These allegations were re-alleged in the following motions, again, with no hearings or denial:

- **DEFENDANT’S MOTION FOR DISCOVERY AND REQUEST FOR A HEARING**, Docket Entry 375, filed 03/17/09
- **MOTION TO DISMISS BASED ON NEW EVIDENCE OF OUTRAGEOUS PROSECUTORIAL AND FBI MISCONDUCT INVOLVING PERJURY AND FALSE REPORTS**, Docket Entry 547 filed 04/27/09 (Pg 2, paragraph 3; Pg 13, paragraph B; Exhibit #1)
- **MOTION FOR JUDGEMENT OF ACQUITTAL**, Docket Entry 616, filed 05/20/09
- **MOTION FOR A NEW TRIAL**, Docket Entry 623 filed 05/28/09, Pg 10, paragraph 3; Pg 13, paragraph 2

2. Pursuant to Defendants **MOTION TO DISMISS FOR MALICIOUS, CRIMINAL AND OUTRAGEOUS PROSECUTORIAL/JUDICIAL MISCONDUCT AND REQUEST FOR A HEARING** (Docket Entry 422, filed 03/25/09, the allegation that on April 19, 2005, the FBI and United States Prosecutor Karen Gable **conspired** to use the execution of a Corporate Search Warrant as a pretext to falsely imprison, detain, intimidate and interrogate Jive Network employees, in violation of each employee's civil rights. (Docket Entry 422, filed 03/25/09, pg. 9, paragraph 9; exhibit #1, pages 18-20)

On Page 9, paragraph 9, defendant alleged under penalty of perjury that “The Defendant alleges under penalty of perjury that prosecutor Karen Gable, in concert with Special Agent John F. Groeschner, Jr. knowingly and willfully devised a scheme and artifice to commit various crimes and conspired, planned, and coordinated their illegal strategy long before they sought the search warrant from Magistrate Judge David A. Baker. The confederacy and conscious unlawful acts by the prosecutor and her agent was premeditated and necessitated the involvement of substantial resources, planning, and coordination, by some 50 law enforcement personnel. Conspiracy to commit an illegal act is a crime.” The Court and the Prosecutors ignored the allegations, denied Defendant a hearing, and failed to admit or deny the record. This allegation was re-alleged in the following motions with the Court and Prosecution once again denying the Defendant a hearing, and failing to admit or deny the record:

- **DEFENDANT’S MOTION FOR DISCOVERY AND REQUEST FOR A HEARING**, Docket Entry 375, filed 03/17/09
- **MOTION TO DISMISS BASED ON NEW EVIDENCE OF OUTRAGEOUS PROSECUTORIAL AND FBI MISCONDUCT INVOLVING PERJURY AND FALSE REPORTS**, Docket Entry 547 filed 04/27/09 Pg 6, paragraph 14
- **MOTION FOR JUDGEMENT OF ACQUITTAL**, Docket Entry 616, filed 05/20/09, page 5
- **MOTION FOR A NEW TRIAL**, Docket Entry 623 filed 05/28/09, page 10-11

3. Pursuant to Defendants **MOTION TO DISMISS FOR MALICIOUS, CRIMINAL AND OUTRAGEOUS PROSECUTORIAL/JUDICIAL MISCONDUCT AND REQUEST FOR A HEARING** (Docket Entry 422, filed 03/25/09 Pg 9, paragraphs 10-11; Pg 16; Pg 21; Exhibit #1 (Pg 20-23); Exhibit #4; Exhibit #7), the allegation was made that FBI Agent John F. Groeschner intentionally deleted evidence and falsified Federal Forms in an attempt to cover up multiple crimes. On Page 9, paragraphs 10 – 11, defendant alleged under penalty of perjury that “...that Special Agent John F. Groeschner,

Jr. is in possession of internal security surveillance camera tape that recorded the execution of the corporate search warrant. The existence of the tape has not been acknowledged or provided so as to impede and deny Defendant an opportunity to show the jury the government's excesses when they illegally detained, abused, interrogated, and terrorized his employees. Intentional concealment of evidence is misconduct.

Defendant alleges that government agents stayed at his corporate location for two days, and deleted exculpatory data from his computers and or servers to conceal their crimes and to deprive Defendant of his exculpatory evidence. Defendant further alleges that when FBI agent John F. Groeschner returned some of his computers and servers to Defendant, and that his property report contained wrong serial numbers. The examination of returned computers and servers revealed that some of them were tampered with and that selective information was expunged.

Defendant alleges that this act of misconduct was brought to the attention of prosecutor Karen Gable in May of 2005. Destruction of evidence is a crime." The Court and the Prosecution ignored this allegation, denied Defendant a hearing, and failed to admit or deny the record, just as they did when it was re-alleged in the following motions:

- **MOTION TO DISMISS BASED ON NEW EVIDENCE OF OUTRAGEOUS PROSECUTORIAL AND FBI MISCONDUCT INVOLVING PERJURY AND FALSE REPORTS**, Docket Entry 547, filed 04/27/09, page 6 paragraph 14
- **MOTION FOR JUDGEMENT OF ACQUITTAL**, Docket Entry 616, filed 05/20/09, page 7

4. Pursuant to Defendants **MOTION TO DISMISS BASED ON NEW EVIDENCE OF OUTRAGEOUS PROSECUTORIAL AND FBI MISCONDUCT INVOLVING PERJURY AND FALSE REPORTS**, (Docket Entry 547 filed 04/27/09) defendant alleged under penalty of perjury that the FBI asked a Jive Network employee to lie to the Grand Jury. On Page. 5, paragraph. 11, it states "In her statement, Dolores swore under penalty of perjury that on or about June of 2005, she was requested to make an appearance and to subject herself to an interview at the offices of the Daytona Beach FBI. She was interviewed by FBI Agent John Groeschner in front of two unidentified agents. During the interview agent(s) were trying to get her to say that there were no guns exhibited during the raid. She informed them that she was terrified and scared from the experience and that this was an event she would never forget." Once again, the Court and the Prosecutors ignored this allegation, denied defendant a hearing, and failed to admit or deny the record. This allegation was again made in the following motions with the same result:

- **MOTION FOR JUDGEMENT OF ACQUITTAL**, Docket Entry 616, filed 05/20/09, page 8
- **MOTION FOR A NEW TRIAL** (Docket Entry 623, filed 05/28/09, Pg 15, paragraph 3)
- **DEFENDANT JUDE LACOUR'S MOTION TO REVIEW THE GRAND JURY TRANSCRIPTS , GOVERNMENT NOTES AND SUBPOENAED DOCUMENTS PUT BEFORE THE GRAND JURY, ETC AND NOTICE OF ADOPTION** (Docket Entry 666 filed 6/26/09)

5. Pursuant to Defendants **MOTION TO DISMISS BASED ON NEW EVIDENCE OF OUTRAGEOUS PROSECUTORIAL AND FBI MISCONDUCT INVOLVING PERJURY AND FALSE REPORTS** (Docket Entry 547 filed on 04/27/09) On page 5, paragraphs 9 and 10, the allegation was made that FBI Agent John F. Groeschner falsified his 302 Report titled "Execution of Search/Seizure Warrants" by leaving out the fact that the agents pulled their guns on Jive Network employees. An African American employed by Jive Network was forced to be on his knees with his hands behind his head while the agent pointed his gun at him. Yet again, The Court and the Prosecutors ignored these allegations, denied Defendant a hearing, and failed to admit or deny the record. This allegation was again made in Defendants **MOTION FOR A NEW TRIAL** (Docket Entry 623, filed 05/28/09, Pg 14, paragraph 2), and was again ignored by The Court and Prosecution.
  
6. Pursuant to defendant's **MOTION TO DISMISS FOR MALICIOUS, CRIMINAL AND OUTRAGEOUS PROSECUTORIAL/JUDICIAL MISCONDUCT** (Docket entry 422, filed 03/25/09, pg. 14; Exhibit #1; Exhibit # 5, pg. 3) the allegation was made that the FBI falsified their Field Interview Sheets used to interrogate Jive Network employees. On pg. 14, paragraph 1, it states that "Dolores was searched and directed to go outside where she was interviewed by an agent. She was asked how Jive Network processed orders and she responded by saying that all orders had to be reviewed by a licensed physician and afterwards by a license pharmacist. The agent was interested in knowing if Jive Network shipped outside the country and her response was an adamant "No." Dolores was asked a couple times if her answer was "No" and noticed that the agent falsely marker her answer as "N/A" instead of "No". See also Exhibit #5. The Court and Prosecutors ignored this allegation, denied Defendant a hearing, and failed to admit or deny the record. This allegation was again made in Defendants **MOTION TO DISMISS BASED ON NEW EVIDENCE OF OUTRAGEOUS PROSECUTORIAL AND FBI MISCONDUCT INVOLVING PERJURY AND FALSE REPORTS** (Docket Entry 547, filed 04/27/09 Pg 3, paragraph 5) and again resulted with The Court and Prosecution ignoring the allegation.

7. Pursuant to Defendants **MOTION TO DISMISS BASED ON NEW EVIDENCE OF OUTRAGEOUS PROSECUTORIAL AND FBI MISCONDUCT INVOLVING PERJURY AND FALSE REPORTS** (Docket Entry 547, filed 04/27/09) the allegation was made that FBI Agent John Groeschner purposely falsified his "Master Affidavit in Support of Search and Seizure Warrants" that was Sworn before United States Magistrate Judge David A. Baker. In the Master Affidavit, FBI Agent Groeschner states that he caused a female undercover agent to get a job at Jive Network. In actuality, the undercover agent was a male who went by the name of "Tony Lamatta." "Tony Lamatta" participated in the execution of the Corporate Search Warrant. He was one of the agents pointing a gun at Jive Network employees. **Tony Lamatta's employee file was removed from the Jive Network corporate offices by the FBI** to cover up his undercover operation and illegal activities. This allegation was again made in the following motions with The Court and Prosecution once again ignoring the allegation, denying the Defendant a hearing, and failing to admit or deny the record:
- **MOTION FOR JUDGEMENT OF ACQUITTAL**, Docket Entry 616, filed 05/20/09
  - **MOTION FOR A NEW TRIAL**, Docket Entry 623, filed 05/28/09, page 12 paragraphs 1-2
8. Pursuant to Defendant's **MOTION TO DISMISS FOR MALICIOUS, CRIMINAL AND OUTRAGEOUS PROSECUTORIAL/JUDICIAL MISCONDUCT** (Docket Entry 422, filed 03/25/09), the allegation was made that United State Prosecutor Karen Gable and FBI Agent John Groeschner contacted, interrogated, and intimidated a represented party and requested that he fire his lawyer. On page 17, paragraphs 23 & 24, defendant alleged that "After conversing with attorney David Dowd [sic] on August 8, 2005, Karen Gable caused FBI agent John Groeschner to contact Jeff LaCour, a represented party. The call to Jeff LaCour was unethical and in violation of various rules and regulations, including U.S. Attorney's Manual. On August 18, 2005, Karen Gable and her agents met with Jeff LaCour..." In Exhibit #1, pg. 23-26, it was stated that, the "FBI Agent's 302 (memorializing the meeting) does not contain other discussions that took place at this meeting, most notably Karen Gable's request that Jeff LaCour terminates his attorney Jeff Dowdy." The Court and The Prosecution ignored this allegation, denied defendant a hearing, and failed to admit or deny the record.
9. Pursuant to Defendant's **MOTION TO DISMISS FOR MALICIOUS, CRIMINAL AND OUTRAGEOUS PROSECUTORIAL/JUDICIAL MISCONDUCT** (Docket Entry 422, filed 03/25/09) On page 17, paragraph 24, it was alleged that, "On August 18, 2005, Karen Gable and her agents met with Jeff LaCour and among other things discussed the Akerman-Senterfitt representation of Jive Network. Karen Gable used this meeting to corruptly and falsely obtain a

Grand Jury subpoena from Akerman Senterfitt law firm and knowingly misrepresented to Akerman Senterfitt that she had a valid waiver to obtain the defendant's corporation files. Defendant declares under penalty of perjury that the only person who could have provided such a waiver is the Defendant and that Karen Gable dishonestly and deceitfully obtained his files from the Akerman Senterfitt law firm. Using the Grand Jury to falsely obtain records is misconduct. (Exhibit #9) Once again, The Court and The Prosecution ignored this allegation, denied defendant a hearing, and failed to admit or deny the record. This allegation was again made in the following Defense motions with the same non-response from The Court and the Prosecution:

- **DEFENDANT JEFF LACOUR'S VERIFIED MOTION TO DISMISS INDICTMENT OR IN THE ALTERNATIVE TO INSPECT GRAND JURY MINUTES, DISQUALIFY PROSECUTOR AND CASE AGENT, AND SUPPRESS EVIDENCE**, Docket Entry 342, Filed 03/09/09
- **MOTION FOR RECUSAL/DISQUALIFICATION OF VISITING JUDGE DAVID D. DOWD AND MAGISTRATE JUDGE DAVID A. BAKER** Docket Entry 519, filed 04/13/09 page 5 paragraph 10; page 16, paragraph 3
- **MOTION FOR A NEW TRIAL**, Docket Entry 623, filed 05/28/09
- **JUDE LACOUR'S MOTION TO REVIEW THE GRAND JURY TRANSCRIPTS, GOVERNMENT NOTES AND SUBPOENAED DOCUMENTS PUT BEFORE THE GRAND JURY, ETC AND NOTICE OF ADOPTION**, Docket Entry 666, filed 06/26/09

**10.** Pursuant to Defendant's **MOTION TO DISMISS FOR MALICIOUS, CRIMINAL AND OUTRAGEOUS PROSECUTORIAL/JUDICIAL MISCONDUCT** (Docket Entry 422, filed 03/25/09) Defendant alleged that U.S. Prosecutors, Karen Gable and Daniel Eckhart, shopped for Akerman Senterfitt judges then chose not to conflict them out. In Exhibit 1, pg. 30 - 31, it states..."Following his arrest Jude LaCour informed The Court of the Akerman Senterfitt conflict causing three judges to recuse themselves because of their involvement with that law firm. He did not wait until the trial had started and unlike the prosecutor he was not seeking any tactical advantages from the information that was based on good cause. Mr. LaCour was honest and consistent in doing the right thing regardless if the conflict involved attorney Cheney Mason, Karen Gable, Rick Jancha or the judiciary." District Judge Gregory Presnell was one of the three Federal Judges that Defendant LaCour recused because of the Akerman Senterfitt conflict. Judge Presnell presided over the civil forfeiture case that was filed in the year 2005 for almost 3 years, in spite of the fact that Ms. Gable and Mr. Eckhart were aware of Akerman Senterfitt's representation of Defendant prior to Judge Presnell taking the case. The other two District Judges that were recused for an Akerman Senterfitt conflict are Magistrate Karla Spaulding and Gregory Kelly. Besides the three (3) federal judges Defendant recused for ties to Akerman Senterfitt, there are at least two (2) other federal

judges in the Middle District of Florida that also have ties to the law firm Akerman Senterfitt, one them being the former Chief Judge, Patricia Fawsett. District Judge Anne Conway became the Chief Judge during the pendency of the instant case. Judge Anne Conway also recused herself from the instant case; however, her recusal was a pretext to invite a friend of the court and or a judge from out of state to “fix” the case...

**11. Pursuant to Defendant's MOTION FOR RECONSIDERATION OF PRETRIAL DETENTION ORDER AND REQUEST FOR EVIDENTIARY HEARING** (Docket Entry 388, filed 03/19/09 ) Defendant's attorney outlined in over 40 pages that IRS Agent Don Metzger perjured himself at defendant's original bond hearing on 10/08/08. U.S. Prosecutor, Karen Gable, suborned Agent Metzger's perjury and made perjurious statements herself. In Defendant's **MOTION TO DISMISS FOR MALICIOUS AND OUTRAGEOUS PROSECUTORIA MISCONDUCT** (Docket Entry 486, Filed 04/01/09) defendant states...."This is exactly what the prosecutor, Karen Gable, did in the subsequent bond hearing when she suborned perjury from an IRS Agent who knowingly misrepresented the evidence of flight." The Court and Prosecution ignored these allegations, denied defendant a hearing, and failed to admit or deny the record. Defendant submits that after the bond hearing, Defendant's former Counsel, William Bryan, stopped by the Orange County Jail to inform me that U.S. Prosecutor wanted to know if I wanted to cooperate now. I asked him how I could possibly trust Ms. Gable after such a dishonest demonstration. His response was that as a former Federal Prosecutor, he used to do the same thing. He would say whatever he needed to say to keep a person from getting bond that he wanted to plea and cooperate. Then, once they thought they weren't going to get out, he would offer a plea deal. He informed that Ms. Gable had 5 cases and a lawyer that I could help her with. These allegations were re-alleged in the following:

- **MOTION FOR A NEW TRIAL**, Docket Entry 623, filed 05/28/09

**12. Pursuant to Defendant's MOTION TO DISMISS FOR MALICIOUS, CRIMINAL AND OUTRAGEOUS PROSECUTORIAL/JUDICIAL MISCONDUCT** (Docket Entry 422, filed 03/25/09) On pg. 12, paragraph. 15 it states, "The Defendant alleges that prosecutor Karen Gable is concealing the investigation that was conducted against the Defendant involving Volusia Bureau of Investigation and agent Harry Oakley. Defendant has known for quite some time that Harry Oakley, a highly decorated officer, under color of authority, perfected his technique of targeting vulnerable Daytona Beach women involved in minor vice activities and used them as confidential informants to advance his investigations and sexual appetite. The Defendant has not received any documents pertaining to Volusia Bureau of Investigation and or Det. Harry Oakley, who played such a significant role in targeting the Defendant because of his

relationship with Mona, his confidential informant. Defendant alleges that prosecutor Karen Gable, FBI agent John Groeschner and Volusia Bureau of Investigation are covering up agent Harry Oakley's activities so as not to reveal his confidential informants. The prosecutor is on record claiming there were no confidential informants used in this case, which is patently false. Over the years, agent Harry Oakley used numerous informants while investigating Defendant, including Defendant's former girlfriend, Mona. Defendant knows for a fact that on or about April 19, 2005, Volusia Bureau of Investigation interrogated Mona concerning Defendant's Internet Pharmacy business. Concealing witnesses that the prosecutor will not use at trial and hiding discovery concerning Operation CyberJive is misconduct." From this motion, see also page 12, paragraph 15; page 14, paragraph 2; page 16, paragraph 21; Exhibit 1, pages 1-5, 16-17, 20; Exhibit 2, page 4 paragraph 4; Exhibit 7, page 2. Though this allegation was re-alleged in the following motions, on each occasion The Court and Prosecution yet again ignored this allegation, denied Defendant a hearing, and failed to admit or deny the record:

- **MOTION TO CONTINUE TRIAL FOR GOOD CAUSE**, Docket Entry 369 filed 03/16/09 (Page 4)
- **DEFENDANTS MOTION FOR DISCOVERY AND REQUEST FOR A HEARING**, Docket Entry 375, filed 03/17/09 (pages 2, 4)
- **MOTION TO DISMISS BASED ON NEW EVIDENCE OF OUTRAGEOUS PROSECUTORIAL AND FBI MISCONDUCT INVOLVING PERJURY AND FALSE REPORTS**, Docket Entry 547, filed 04/27/09
- **MOTION FOR A NEW TRIAL**, Docket Entry 623, filed 05/28/09 Page 11, paragraph 3

13. Pursuant to a **DECLARATION** by Defendant's investigative consultant, Zvonko "Bill" Pavelic (Docket Entry 366, filed 03/16/09) and resubmitted to The Court in Defense **MOTION TO CONTINUE TRIAL FOR GOOD CAUSE** as an exhibit (Docket Entry 369 filed 03/16/09) the allegation of a criminal violation and the cover up of the Ethics in Government Act by former Federal Prosecutor, Rick Jancha was first made. On page 2 of the declaration it was alleged..."During the course of this proceeding, I became aware that Mr. William Bryan was renting his law office from Rick Jancha's law firm and Mr. Jancha, a former high level prosecutor, supervised Ms. Gable at the time she was investigating Jude LaCour....A review of the U.S. Attorney's Manual revealed that Mr. Jancha's involvement in this case constituted a crime....Mr. Bryan concluded that the prosecutor and the Orlando judiciary knew or should have known of this arrangement with Rick Jancha....the only way to resolve this matter was for William Bryan to contact an ethics attorney and obtain a legal opinion....Mr. Bryan reluctantly agreed and when he contacted a very reputable Assistant U.S. Attorney from the Southern District of Florida [Dexter Lee], his worst fears were

realized." The court and prosecutor failed to admit or deny the record, denied the defendant a hearing, and ignored this blatant violation. This very serious allegation was brought to The Court's attention numerous times in the following motions but each time was ignored by The Court and Prosecution:

- **MOTION TO DISMISS FOR MALICIOUS, CRIMINAL AND OUTRAGEOUS PROSECUTORIAL/JUDICIAL MISCONDUCT** Docket Entry 422, filed 03/25/09 Page 10 paragraph 14; Exhibit 1 pages 9-10, page 13, page 35
- **MOTION FOR RECUSAL/DISQUALIFICATION OF VISITING JUDGE DAVID D. DOWD AND MAGISTRATE JUDGE DAVID A. BAKER** Docket Entry 519, filed 04/13/09 Page 2 paragraphs 2-3; Page 3 paragraph 7
- **DEFENDANT'S MOTION FOR A MISTRIAL AND REQUEST THAT A SPECIAL PROSECUTOR BE APPOINTED** Docket Entry 540, filed 04/21/09, Page 2 paragraph 2
- **MOTION FOR A NEW TRIAL**, Docket Entry 623, filed 05/28/09, Page 20 paragraph 3

14. Pursuant to Defendant's **MOTION FOR RECUSAL/DISQUALIFICATION OF VISITING JUDGE DAVID D. DOWD AND MAGISTRATE JUDGE DAVID A. BAKER** (Docket Entry 519, filed 04/13/09) the allegation was made on page 4, paragraph 8 that "...immediately upon assuming the bench, after four federal judges were removed and or recused for good cause, visiting Judge David D. Dowd became an advocate for the government and proceeded to coerce plea agreements and "move the calendar" in such a way so as to ensure plea compliance. Visiting Judge David D. Dowd inserted himself in the instant matter weeks before he was certified for this case by United States Supreme Court Justice, John Roberts.

Judges are required to be selected at random for each case and using deceptive methods to shop for a favorable judge is illegal and reprehensible." [This is in direct and purposeful violation of 28 U.S.C. 294(d). Judge Dowd, in fact, confirmed this allegation in his order (Docket entry 549, filed 04/28/09) by stating on page 5, "The Court agrees that it conducted, along with Judge Conway, the first status conference on February 4, 2009 before the final approval from the Chief Justice arrived."] On page 4, paragraph 9, it was stated..."The Court hearing transcripts are replete with Judge David Dowd's plea bargaining comments and his downward sentencing caused almost a half dozen defendants to plea in order to secure much shorter sentences. All the defendants were told, more or less, if they go to trial they will get long sentences and if they plea the judge will be very lenient with them. Defendant was being pressured to plea guilty and was told that Judge David Dowd's personal role and conduct in administering his plea agreements gives rise to an appearance of impropriety and bias." This allegation was re-alleged in the following motions resulting in no relief for this Defendant:

- **DEFENDANT’S MOTION FOR A MISTRIAL AND REQUEST THAT A SPECIAL PROSECUTOR BE APPOINTED** Docket Entry 540, filed 04/21/09, Page 2 paragraph 4
- **MOTION FOR A NEW TRIAL**, Docket Entry 623, filed 05/28/09
- **DEFENDANT JUDE LACOUR’S MOTION FOR A NEW TRIAL AND MOTION FOR RECUSAL** Docket Entry 962, filed 1/31/10

15. Pursuant to **DEFENDANT JUDE LACOUR’S MOTION FOR A NEW TRIAL AND MOTION FOR RECUSAL** (Docket Entry 962, filed 1/31/10) on page 3, it was alleged that “The trial court erroneously became involved in plea negotiations in violation of FED. CRIM. RULE 11(c)(1), when on the record during the status hearing of February 4, 2009, (transcript at doc. 313 page 8,-23) the trial court initially started talking about sentencing and the difference between how the guideline scores would differ for those defendants who pled than for those defendants who decided to go to trial, ‘if I were counsel I would like to know at least what you think that client—assuming the plea of guilty with acceptance is one thing, a conviction with no plea acceptance is another thing.’

The court spoke continually how the codefendant physicians and pharmacists would lose their license to practice. Even to the point of hinting that a plea to one count may not affect a licensing commission as compared to being found guilty on numerous counts. (page 19, line 12-22). During this status conference the trial court spoke with each individual defendant about their positions and understanding as to offers made by the government. The trial court even cited a case, “*United States v. Lay* 568 F. Supp. 791” that he previously presided over, as an example of his liberalness in granting variances (page 27-28).” This instance was just the beginning of Judge Dowd’s repeated and intentional violation of Rule 11.

16. Pursuant to **DEFENDANT’S MOTION FOR A MISTRIAL AND REQUEST THAT A SPECIAL PROSECUTOR BE APPOINTED** (Docket Entry 540, filed 04/21/09) Defendant states beginning on page 4, “Jury tampering/misconduct occurred on or about 04/18/09, when approximately 12 deliberately targeted jurors, received letter(s) from unknown defense and or prosecution sources containing information that was not presented at trial, and was not subject to objection, to cross-examination, to explanation, or to rebuttal. The unlawful contamination of the jury, denies the due process right to an impartial jury capable of making their decision based on the evidence presented at trial.” Defendant goes on to state, “Not only was extraneous information brought to the jury in the instant case, but it is obvious from the restricted record that the jury tampering affected practically all the jurors and that the act was clearly an attempt at jury tampering. Moreover, the letters received by the jurors falsely implicated Defendant as the source of the letters in an attempt to frame the Defendant.” On page 5, “Federal case law hold that jury misconduct/tampering

creates a presumption of prejudice and in this case, the trial court failed to hold a probing hearing to ascertain what each of the jurors had heard, what discussion had taken place about the event among the jury and what impact the alleged tampering incident had on each of them. The highest court in the land has ruled on this need for an investigation long ago. When jury tampering is alleged as it was here, there is a presumption of prejudice and the government bears a heavy burden of showing that it was harmless beyond a reasonable doubt. In this case, the government failed to meet its burden. A hearing was never held to determine the extent the jury panel was impacted by the misconduct and alleged tampering.” While The Court dismissed the jury tampering as not serious enough to grant a mistrial, The Court did initiate an FBI investigation into the tampering. Only then did The Court reveal that he and Judge Anne Conway had received similar letters at or before the commencement of trial.

- 17.** Defendant alleges that the Prosecution and the Trial Court conspired to remove every possible defense to force pleas and to prevent an acquittal. And, in the process, committed several intentional structural errors:
  - 1.** The government returned a Superseding Indictment (Docket Entry 279, Filed 02/11/09) that deleted "willfully" from the conspiracy counts. This made the conspiracy count general intent rather than specific intent even though conspiracy has been a specific intent charge for over 30 years.
  - 2.** The government changing the conspiracy count to general intent rather than specific intent was done to keep the defense from being able to argue good faith as a defense. The 11th Circuit pattern instructions state that, "good faith on the part of the defendant is inconsistent with the existence of willfulness which is an essential part of the charge."
  - 3.** The government filed a Deliberate Ignorance limine motion (Docket Entry 425, filed 03/26/09). The Court granted it.
  - 4.** The government filed a Motion in Limine to prevent the defense from arguing government misconduct (Docket Entry 406, filed 003/24/09 pages 4-6). The Court granted it.
  - 5.** The government filed a Motion in Limine to exclude evidence of or argument concerning Conjunctive Proof and a Subjective Standard (Docket Entry 445 filed 03/27/09). The Court granted it.
  - 6.** The Court's pre-trial rulings did not allow the defense of advice of counsel to be argued.
  - 7.** The Court did not allow the doctors to argue good faith. In U.S. v. Hurwitz 459 F.3d 463 (4th 2006), the appellate court ruled..."Some latitude must be

given to doctors trying to determine the current boundaries of acceptable medical practice. Thus, courts have consistently concluded that it is proper to instruct juries that a doctor should not be held criminally liable if the doctor acted in good faith when treating his patients." Case reversed because of no good faith instruction.

8. The Court denied a co-defendant's motion to have an expert witness testify that would have testified that the doctors were prescribing based on a legitimate medical reason. U.S. v. Barnette 211 F.3d 803 (4th 200) Case reversed for denial of defense expert.

9. The Court did not allow the defense to argue the change in the law, the Ryan Haight Act. The Ryan Haight Act amended the Controlled Substances Act to specifically deal with online prescriptions.

Then, at sentencing, the Court said...."I never heard anything approaching a defense" (doc. 894, pg. 8, lines 18-19) as one of the justifications to giving defendant a double the guidelines sentence.

These issues were raised in the following pre-trial and pre-sentencing motions put before the Court:

- **DEFENDANT JEFFREY LACOUR'S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF DEFENDANT JEFFREY LACOUR'S VERIFIED MOTION TO DISMISS INDICTMENT OR IN THE ALTERNATIVE TO INSPECT GRAND JURY MINUTES, DISQUALIFY PROSECUTOR AND CASE AGENT, AND SUPPRESS EVIDENCE**, Docket Entry 353, filed 03/10/09
- **MOTION FOR JUDGEMENT OF ACQUITTAL**, Docket Entry 616 filed 05/20/09
- **MOTION FOR A NEW TRIAL**, Docket Entry 623 filed 05/28/09

18. Defendant alleges that on March 18, 2009, Judge Dowd illegally and intentionally used an ex parte conference to coerce Jeff LaCour into withdrawing his **MOTION TO DISMISS INDICTMENT OR IN THE ALTERNATIVE TO INSPECT GRAND JURY MINUTES, DISQUALIFY PROSECUTE AND CASE AGENT, AND SUPPRESS EVIDENCE** (Docket Entry 342, filed 03/09/09) in an effort to save the case for the government and secure a conviction. Judge Dowd threatened Jeff LaCour with helping the prosecution prosecute him for perjury and obstruction of justice if he continued to pursue the motion. But, if he withdrew the motion, Judge Dowd would give him a sentence of no jail time. The motion was withdrawn.

In an email, Jeff LaCour states the following... "He stopped the hearing yesterday, called the attorneys into his chambers, and told them. "You can continue. I will give you your hearing, but here is what I am going to do. I will make a declaration today, if you continue, that I do not believe your client....If that happens he will be subject to perjury and obstruction charges if the prosecutor wishes...." [See **DEFENDANT JUDE LaCOUR'S MOTION FOR A NEW TRIAL AND MOTION FOR RECUSAL** (Docket Entry 962, filed 01/31/10) Exhibit 1]

Jeff LaCour did, in fact, receive a sentence of no jail time. In Judge Dowd's Memorandum Opinion denying Defendant's Motion For A New Trial and Motion For Recusal (Docket Entry 962), the Court did not deny that this happened but instead latently admitted to it by misrepresenting the record and claiming that it was not new evidence. The government also did not deny that this happened in their response. This illegal ex parte conference and judicial plea coercion was not put on the record. The Court refused to grant a hearing on Defendant's Motion For A New Trial (Docket Entry 962). See the Following:

- **MOTION FOR RECUSAL/DISQUALIFICATION OF VISITING JUDGE DAVID D. DOWD AND MAGISTRATE JUDGE DAVID A. BAKER** Docket Entry 519, filed 04/13/09
- **GOVERNMENT'S RESPONSE OPPOSING DEFENDANT'S MOTION FOR NEW TRIAL AND MOTION FOR RECUSAL** (Docket Entry 963, filed 02/11/10)
- **TRIAL COURTS MEMORAMUM OF OPINION AND DENIAL OF DEFENDANTS MOTION TO DISMISS AND RECUSAL** (Docket Entry 965, filed 03/01/10)

**19. Pursuant to DEFENDANT JUDE LaCOUR'S MOTION FOR A NEW TRIAL AND MOTION FOR RECUSAL** (Docket Entry 962, filed 01/31/10) written and submitted by Defendant's Court Appointed Counsel, H. Kyle Fletcher, Judge Dowd conducted another illegal and off the record ex parte conference. On page 6, he states, "It is the undersigned attorney's understanding, after conferring with attorney Brian Philips, (attorney for the co-defendant, Ms. Chebbsi), that during the period of the trial and off the record, the trial court took the initiative to try and broker a plea deal for co-defendant Chebbsi....It is also the undersigned's understanding that because of the judge's involvement, a deal for three misdemeanors was offered to Ms. Chebbsi; however the United States Attorney declined to go along with his AUSA offering Ms. Chebbsi the deal. Neither the government nor the Trial Court denies that this took place in their respective responses. Again, this interaction was not put on the record. The U.S. Attorney in Tampa would also have been aware of these illegal ex parte Judicial plea negotiations during trial in purposeful violation of Rule 11. The Court refused to grant a hearing. See the following:

- **GOVERNMENT'S RESPONSE OPPOSING DEFENDANT'S MOTION FOR NEW TRIAL AND MOTION FOR RECUSAL** (Docket Entry 963, filed 02/11/10)
- **TRIAL COURTS MEMORAMUM OF OPINION AND DENIAL OF DEFENDANTS MOTION TO DISMISS AND RECUSAL** (Docket Entry 965, filed 03/01/10)

20. Pursuant to **DEFENDANT JUDE LaCOUR'S MOTION FOR A NEW TRIAL AND MOTION FOR RECUSAL** (Docket Entry 962, filed 01/31/10) Defendant's CJA lawyer, states on page 7, "Additionally, it is also rumored [that] the trial court may have also erred by becoming involved in plea negotiations between the government and the co-defendant Baranwal." Again, neither the government nor the Court denied the allegation. During trial, according to the transcripts, Judge Dowd requested an ex parte meeting with Karen Gable, the lead prosecutor, and attorney Leventhal, co-defendant Baranwal's counsel, not once but twice. Subsequent to Defendant's appeal brief being filed, Defendant's attorney received an email from co-defendant Baranwal that confirms what happened in these off the record. The email says...."**Hi Mr. Fletcher, I am a co-defendant with Jude LaCour. I just saw your motion for a new trial filed earlier this year, and the Honorable Judge Dowd's dismissal of the motion; Just wanted to let you know that Judge Dowd was doing private plea negotiations with me. There are two places within the transcripts where he asked my attorney and AUSA Gable to see him privately in his chamber, and that was for plea negotiations; Regards, Akhil Baranwal**" See also the following:

- Trial Transcript Volume IV, Page 4, Lines 3-9
- Trial Transcript Volume V, Page 126, Lines 9-15; Page 289 Lines 2-5
- **GOVERNMENT'S RESPONSE OPPOSING DEFENDANT'S MOTION FOR NEW TRIAL AND MOTION FOR RECUSAL** (Docket Entry 963, filed 02/11/10)
- **TRIAL COURTS MEMORAMUM OF OPINION AND DENIAL OF DEFENDANTS MOTION TO DISMISS AND RECUSAL** (Docket Entry 965, filed 03/01/10)
- Email from co-defendant Akhil Baranwal to Defendant Jude LaCour's attorney, H. Kyle Fletcher dated 05/14/10 Set forth in this complaint as an exhibit.

21. Defendant alleges and has alleged that Judge Dowd also intentionally violated Rule 11 to attempt to plea bargain in advance and to coerce this defendant into changing his plea. After successfully forcing co-defendant Jeff LaCour, this defendant's Father, to withdraw his **MOTION TO DISMISS INDICTMENT OR IN THE ALTERNATIVE TO INSPECT GRAND JURY MINUTES, DISQUALIFY PROSECUTE AND CASE AGENT, AND SUPPRESS EVIDENCE** (Docket Entry 342, filed 03/09/09), by threatening to prosecute him,

Judge Dowd did everything possible to force this Defendant to plea guilty. Immediately after Jeff LaCour's motion was withdrawn, Jeff LaCour's attorney, John Tanner talked to this defendant in the attorney room at the Federal Courthouse. He made it clear that he had discussed a plea deal for Jeff LaCour with Judge Dowd and that Jeff LaCour would not do prison time. He tried his best to convince this defendant to plea guilty. Subsequent to that, Jeff LaCour also tried to convince this defendant to plea guilty in recorded phone calls from jail. Jeff LaCour also sent an email to defendant's investigative consultant that says, among other things....**"I am going to review for you the ideas that have been put forth in conversations with Judge Dowd, the prosecutor, and my attorneys....Judge Dowd was brought here to facilitate a broad settlement. As a result he is making it clear that he will downscale anyone....he doesn't understand why some deal has not been worked out already, and he will assist in anyway. He even mentioned the name of a case where he had settled it for far less than the statutory sentences.... He went on to say, 'I will help him at sentencing. Let's talk about that' and he talked at length. He did agree at one point that maybe, if it was within his ability, he would agree to no jail time or house detention for me....you will be in a nice facility compared to what you are in now. In fact we will put it in the plea agreement."** [See **DEFENDANT JUDE LaCOUR'S MOTION FOR A NEW TRIAL AND MOTION FOR RECUSAL** (Docket Entry 962, filed 01/31/10 Exhibit 1)]

While waiting for trial to start one day, the Court arranged for Jeff LaCour to talk to this defendant in open court. The Trial Court was attempting, again, to use Jeff LaCour as a tool to convince this Defendant to plea. Prior to this, Defendant had requested a court appointed attorney to help with trial. The Trial Court admits to talking to Jeff LaCour's attorney, John Tanner, about the appointment of counsel for this Defendant for the sole purpose of negotiating a plea ( See Trial Transcript Volume X, Pages 18-20). Defendant was told, after sentencing, that Judge Dowd and John Tanner had exchanged cell phone numbers and had talked many times after the withdrawal of the motion. The trial court went on to say on April 15, 2009 that..."it's simply impossible for counsel for the government to speak directly to you about a possible guilty plea agreement as they have talked to other Defendants in this case..." The Court went on to state, "the appointment of counsel for Jude LaCour would be for the limited purpose of a change of plea, not for purposes of aiding with the trial." [See **DEFENDANT JUDE LaCOUR'S MOTION FOR A NEW TRIAL AND MOTION FOR RECUSAL** (Docket Entry 962, filed 01/31/10 page 6)] The Trial Court was only interested in a conviction. When Defendant refused the Court's plea bargain offer, the Court ruled that this Defendant would have to put on his case first, rather than last as it had been when the Government was putting on their case, knowing that it would be impossible for defendant to prepare over the weekend while in jail. See the following:

- **GOVERNMENT'S RESPONSE OPPOSING DEFENDANT'S MOTION FOR NEW TRIAL AND MOTION FOR RECUSAL**  
(Docket Entry 963, filed 02/11/10)
- **TRIAL COURTS MEMORAMUM OF OPINION AND DENIAL OF DEFENDANTS MOTION TO DISMISS AND RECUSAL** (Docket Entry 965, filed 03/01/10)