

FILED

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA 2:51

ORLANDO DIVISION DISTRICT COURT

MIDDLE DISTRICT OF FL

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 6:08-cr-118-Orl-DDD-DAB

JUDE LACOUR,

Defendant

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**MOTION FOR A NEW TRIAL**

COMES NOW IN PRO SE DEFENDANT JUDE T. LACOUR, moves this Court under Rule 33 of the federal Rules of Criminal Procedure, for a new trial. The following material supplements this motion.

**STANDARD OF REVIEW FOR MOTION FOR A NEW TRIAL - RULE 33**

Federal Rule of Criminal Procedure 33 provides that a “court may vacate any judgment and grant a new trial if the interest of justice so requires.” In determining whether to grant the motion, the Court must carefully weigh the evidence and may assess the credibility of the witnesses. See U.S. v. Tarango, 396 F.3d 666, 672 (5th Cir. 2005)(citations omitted); U.S. v. Martinez, 763 F.2d 1297, 1312 (11th Cir. 1985)(citations omitted). If after weighing the evidence and assessing the credibility of witnesses the Court concludes that, ““despite the abstract

sufficiency of the evidence to sustain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred,” the Court may set aside the verdict and grant a new trial. *Martinez*, 763 F.2d at 1312 (quoting *U.S. v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980)).

### **CUMULATIVE ERRORS**

The Court is on record acknowledging that in the instant internet pharmacy case there were plenty of “....reversible errors....” which will be addressed by the Defendant individually. The defendant affirms that the cumulative errors by the Court warrant a new trial. While the Court may rationalize that the Constitution does not guarantee a perfect trial or an error-free trial, under the same Constitution the Court has no right to deny a Defendant a fair trial, when its based on malice, bias, and prejudice. Federal Rule of Criminal Procedure 33 provides that a court may grant a new trial “if the interest of justice so requires”....and....any Court error which would require reversal on appeal is a sufficient basis for granting a new trial. *United States v. Walters*, 89 F. Supp. 2d 1206.

### **DEFENDANT’S THEORY OF DEFENSE STRIPPED BY THE COURT**

Since May 9, 2008, the Court and the prosecutors were informed through various motions and notices that his defense at the trial would be based on law enforcement and prosecutorial misconduct, shoddy investigation, entrapment, selective prosecution and multiple advice of counsel. The Defendant made an uncontested prima facie showing of judicial and prosecutorial misconduct and the Court intentionally elected not to direct the government to file a response to the alleged criminal misconduct . Furthermore, the Court failed to hold an evidentiary hearing to determine whether the government intentionally distorted the fact finding process by engaging in obstruction of justice and perjury.

The district court’s comments and evidentiary rulings prior to and during the trial created an absolute appearance of bias which deprived the Defendant of a fair trial. Defendant is entitled to a new trial when the record discloses actual bias on the part of the trial judge who is egregiously

partial and or becomes an advocate for the prosecution. The trial court's intervention and extreme overstepping of the proper judicial role denied the Defendant a fair trial, the moment visiting judge David D. Dowd inherited the instant case, under disputable circumstances.

### **DUBIOUS APPOINTMENT OF VISITING JUDGE DAVID D. DOWD**

Immediately upon assuming the bench, following the recusal of four local Orlando federal judges, newly appointed visiting **Judge David D. Dowd became an advocate for the government by proceeding to coerce plea agreements from (6) co-defendants and moved the calendar in such a way so as to ensure plea compliance....weeks before he was certified for this case by United States Supreme Court Justice, John Roberts.** It is apparent to Defendant that Judge David D. Dowd was not selected at random and that the tainted Orlando judiciary used deceptive methods to shop for a favorable visiting judge in order to protect the tainted prosecutors and the Orlando judiciary.

Judge David D. Dowd was relentless in his pursuit of plea agreements and he engaged in judicial misconduct by encouraging ex-parte conversations with other Co-defendants and or their representatives, including Defendant's father. As the Court is aware, during the trial the Court once again initiated and approached the Defendant's father (who pled guilty in the instant case) and used him to influence and persuade the Defendant to get a lawyer and to plea out his case. Judge David D. Dowd pressured Defendant's father (a government witness) to carry out the Court's tacit mandate knowing the father would do so in order to get a more lenient sentence from Judge David D. Dowd. The Court's personal role and conduct in administering coercive plea agreements gives rise to an appearance of impropriety and bias.

### **DISQUALIFICATION / RECUSAL OF JUDGE DAVID D. DOWD AND MAGISTRATE JUDGE DAVID A BAKER**

The Pro Se Defendant informed the Court that any groundless attack against the prosecutor and or seeking merit less and punitive recusal of the judiciary would be illegal, improper and or unethical. Defendant wrote dozens of letters, notices and motions and had he intentionally

misrepresented the facts concerning judicial and prosecutorial misconduct, the Court would have taken prompt action against the Defendant. Instead, as delineated in Doc. 519 entitled “Motion for Recusal / Disqualification of Visiting Judge David D. Dowd and Magistrate Judge David A. Baker”, the Court retaliated against Defendant by engaging in judicial lynching and procedurally denying this Pro Se inmate his fundamental due process rights to a fair trial.

The fact that the Defendant successfully disqualified so many federal judges would lead any reasonable person to question if the Court that condoned corruption and cover ups can set aside their bias, emotions, predilections and prejudices and give the Defendant a fair trial that was absent of judicial malice, perjury and vindictiveness. By engaging in judicial “Code of Silence” the Court lost its moral authority and objectivity to remain impartial in Defendant’s case. The Court erred when it failed to disqualify itself for injudiciously allowing the intrusion of insidious bias, perjury, obstruction of justice and prejudice to transcend justice.

#### **MISREPRESENTATION OF DEFENDANT’S JOINDER MOTION**

As the Court knows from Doc. 519 (Motion to Recuse Judge David D. Dowd) the Defendant alleged that Judge Dowd’s perversive overreaching of authority, went well beyond bad faith effort. On March 10, 2009, Defendant filed a “Notice of Joinder” to Co-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”**. Defendant had signed a Joint Defense Agreement with attorneys representing his father, Jeff Lacour. On March 11, 2009, the Court directed the government to file a response, which was done the following day. The Court ordered an evidentiary hearing to be held on March 18, 2009.

Defendant prepared a set of questions for the hearing pertaining to FBI agent John Groeschner and prosecutor Karen Gable. When this Pro Se inmate appeared at the hearing on March 18, 2009, he was **informed by the Court that his Joinder Motion was filed too late** and that he would not be able to participate at this evidentiary hearing. The prosecutor stood silent when the court denied the Defendant an opportunity to participate in the evidentiary hearing, confirming what defendant

suspected all along, that the court and the prosecutor were acting in concert in order to deprive the Defendant of a fair trial.

Defendant states with absolute certainty and conviction that the Court deliberately misrepresented his joinder motion as being too late and manufactured the excuse to prevent the Defendant from impeaching the prosecutor and the FBI agent under oath concerning their involvement in obstruction of justice. The Court was informed prior to this hearing that the Defendant had accused the prosecutor of using the Grand Jury subpoena to falsely obtain his corporate files and dishonestly claimed that she had a valid waiver. Defendant suffered irreparable prejudice by the Court that intentionally and shamelessly misrepresented Defendant's joinder motion for the sole purpose of protecting the government's obstruction of justice. By denying Defendant the right to impeach the prosecutor and her agent, the Court deprived the Defendant of a fair trial.

#### **DENIAL OF DISCOVERY AND DEFENDANT'S FORMAL DISCOVERY MOTION**

The district court abused its discretion by failing to grant Defendant's Motion for Discovery and or grant a defendant a hearing to determine the relevancy of his request. The District Court can exercise its supervisory powers and dismiss an indictment with prejudice even if the Assistant United States Attorney had committed no intentional discovery violation.....if there is "reckless disregard for the prosecution's constitutional obligations". United States v. Chapman F.3rd, 2008 WL 1946744 (9<sup>th</sup> Cir. May 6, 2008). The Defendant alleges that the prosecutor and the Court in the instant case intentionally and maliciously deprived Defendant of exculpatory discovery in an effort to undermine his case. In support of his conclusion, the Defendant respectfully submits the following:

At a June 23,2008, court appearance, the Defendant informed the Court (Magistrate Judge, David A. Baker) that the government's massive discovery was on multiple CDs, consisting of approximately 300,000 pages, notwithstanding electronic evidence and hard copied documents that were not scanned and or converted to PDF format. The Pro Se Defendant further

advised the Court that he will need a computer to access the discovery, causing Magistrate Judge Baker to respond; **“.....you've got a due process right to review these documents, we're going to make sure of that. ... I mean it's a significant disadvantage of representing yourself.. ..”**

At a July 22,2008, hearing the undersigned again raised the issue with the Court and argued that he needed a computer to review 300,000 pages of discovery. The Court graciously informed this inmate that he could be brought to the courthouse in the morning and set him up with a computer for as many days as he needed. Recognizing that Defendant's requests were reasonable the Court promised that it would see to it that the Defendant got an adequate opportunity to defend himself.

The Court's "good" intentions never materialized and Defendant's repeated requests to review his discovery went unfulfilled.... even during the trial. This Pro Se inmates letters, notices and motions were stricken for not comporting with proper federal forms and or local rules. The local rules and federal forms cited by the Court were not posted or available to federal inmates awaiting trial at Seminole or Orange County Correctional facilities. It was apparent to Defendant that Magistrate Judge David A. Baker and Judge Anne Conway were "toying" with him and that he would never realize his speedy trial, be able to review his discovery, and or get a fair trial.

Defendant was forced to go to trial without the benefit of knowing and or challenging the "evidence" introduced by the prosecutor by way of exhibits and or testimony. Defendant was prejudiced at trial because he was unable to rebut the evidence that was contained on (10) or so CD's. By denying the Defendant an ability to use a computer and review the evidence the Court in essence assured a guilty verdict.

On March 17, 2009, following the withdrawal of his private attorney, the Defendant respectfully filed his discovery motion and moved the Court to directing the Assistant United States Attorney to produce exculpatory discovery that was concealed from the Defendant. The defendant requested that the prosecutor preserve all the material in this case and in the absence of such

necessary to retain an attorney and review 400,000 pages of discovery. The Court granted attorney William Bryan the right to withdraw as Defendant's attorney just two weeks before the commencement of the trial and failed to give this Pro Se inmate any time to prepare for the trial, interview witnesses, serve subpoenas, comply with reciprocal discovery demands, and or to challenge or prepare appropriate exhibits. Defendant is entitled to a new trial because he suffered irreparable prejudice as a result of judicial bias and erroneous rulings which deprived the Defendant of a fair trial.

**JUDGE DAVID D. DOWD'S OFFENSIVE AND ABUSIVE INTERACTION WITH PRO SE DEFENDANT DURING TRIAL AND IN FRONT OF THE JURY**

The defendant contends the court made multiple errors in displaying and being overtly hostile and condescending toward this Pro Se Defendant.

The Court erred when Judge David D. Dowd failed to recuse himself for his personal embroilment and offensive / abusive interaction with this Pro Se inmate. Judge David D. Dowd's conduct toward the prosecutor could be summed up as one of patience, dignity and courtesy. The Judge even went so far as to inform the prosecutor in an endearing fashion that "she reminded him of his wife". It is incontrovertible that the Court treated the prosecutors with utmost admiration and the defendant with utmost disdain. The Court went out of its way to demean and debase the Defendant in front of the jury and at sidebar appearances. At one point during the trial and in front of the jury, the Court pointed a finger at Defendant and angrily/vociferously directed an unfitting comment at him by shouting "**....I must warn you that he who lives by the sword dies by the sword.....**".

There were many such inflammatory comments made by the Court. The actions by the Court clearly and convincingly reflected bad faith effort, bias, abuse of authority, disregard for fundamental fairness, and intentional disregard of the law. Widespread abrogation of fundamental rights by a judge becomes a matter of judicial misconduct, not just a mere legal error. The Court's bias and disdain for the Pro Se Defendant carried over to the jury and Co-Defendant's

lawyers. Accusing the Defendant of exhibiting a “bad attitude” is not an excuse for judicial “bad faith”. As the Court is aware, bad faith is the equivalent to actual malice and encompasses the intentional commission of acts which the judge should know is beyond his lawful power. The resulting misconduct entails the most insidious kind of official lawlessness—disregard for the statutory and constitutional rules by which a society of millions and a heritage of centuries have sought to preserve.

The defendant contends that the court made multiple errors in the treatment of Pro Se inmate Jude Lacour even before the start of the trial. The judicial confrontation and mistreatment of this Pro Se inmate was displayed by the Court the moment visiting Judge David D. Dowd was inserted in the instant case. It is undeniable that the Court favored the prosecutor and overwhelmingly ruled in favor of the government on every issue.

The court may comment on evidence, question witnesses, bring out facts not yet adduced, and maintain the pace of the trial by interrupting or setting limits on counsel. A trial judge has a duty "to conduct a trial in an orderly fashion, to insure that the issues are not obscured and to act at all times with a view toward **eliciting the truth.**" United States v. Tilton, 714 F.2d 642, 643 (6th Cir. 1983). While "improper" comments by the court do not entitle the defendant to a new trial, comments that are substantial and prejudicial to the defendant are viewed as reversible errors. Tolliver, 61 F.3d at 1207. The defendant contends that the record is replete that the Court engaged in discriminatory, unfair or inappropriate treatment of Pro Se Defendant Jude Lacour. The Court's discriminatory impatience, bias, and open frustration against the Defendant was intentional and favoring one side over the other had a chilling effect which ultimately undermined the verdict. The Defendant is adamant that this Court committed multiple fatal errors and tacitly guided the jury to render a guilty verdict.

#### **JUDGE DOWD BLOCKING DEFENDANT'S OPENING STATEMENT**

Defendant was prevented by the Court and the prosecutor from presenting his opening statement, to wit; that his defense was based on law enforcement misconduct, shoddy investigation, selective



prosecution, entrapment, and advice of counsel. The prosecutor and the Court repeatedly interrupted this Pro Se defendant and he was forced to abort his opening arguments. It was apparent that the Prosecutor and Judge David D. Dowd were acting in concert and bent on exploiting an embarrassing moment for the Defendant to make him look unprepared and disorganized in front of the jury. This Pro Se Defendant was humiliated and he suffered tremendous prejudice by not completing his opening statement and argue his theory of defense. Defendant is entitled to a new trial because he suffered irreparable harm as a result of judicial bias which deprived the Defendant of a fair trial.

**JUDGE DOWD PREJUDICIAL STATEMENT TO THE JURY FOR NOT TESTIFYING AT THE TRIAL**

During Defendant's closing argument the Court admonished the defendant that he can't say and or go into certain areas because he did not testify on his own behalf. The Court also stated in front of the jury that only defendants who take the stand and or testify on their own behalf will be permitted to argue reliance on the advice of counsel defense. Defendant paid out hundreds of thousands of dollars to multiple attorneys in making sure that his internet pharmacy business was legal. The prosecutor was aware of the identity of the lawyers and the payments made to those lawyers. The Defendant was improperly prevented from informing the jury of the above facts and suffered actual prejudice that deprived him of a fair trial.

**PRE INDICTMENT MISCONDUCT INVOLVING THE FBI AND THE PROSECUTOR**

Defendant contends that Prosecutor Karen Gable and Special Agent John F. Groeschner knowingly and willfully devised a scheme and artifice to commit various crimes against the Defendant and his employees. The two principals conspired, planed, and coordinated their illegal strategy to falsely detain Jive Network employees .....before they sought the corporate search warrant from Magistrate Judge David A. Baker, on April 15, 2005.

The confederacy and conscious unlawful acts by the prosecutor and her agent were premeditated and necessitated the involvement of substantial resources, planning, and coordination. A task force of some 50 law enforcement officers participated in the raid and the search warrant was just a pretext to arrest, detain, interrogate, intimidate and violate the civil rights of the defendant and approximately 30 employees who were at the corporate facility during the “Rambo” style raid.

The Prosecutor and her agents obtained an aberrant search warrant and misrepresented the involvement of undercover officers who penetrated the Defendant’s corporation. Moreover, the government concealed the participation of other law enforcement entities that were engaged in the investigation of the Defendant, since calendar year 2001. The Court was made aware of prosecutors illegal actions and the Court’s reaction was to silence the Defendant and disallow any impeachment inquiry in front of the jury concerning the misconduct and or the involvement of other law enforcement agencies. As a result of judicial bias and error by the Court the Defendant was denied a fair trial.

**COVERING UP THE INVOLVEMENT OF VOLUSIA BUREAU OF INVESTIGATION AND FLORIDA DEPARTMENT OF LAW ENFORCEMENT**

The Defendant contends that prosecutor Karen Gable and her agents intentionally concealed from the jury the investigation of Jude Lacour involving the Volusia Bureau of Investigation and Florida Department of Law Enforcement. The intentional cover up was designed to protect Det. Harry Oakley, a narcotics officer, who targeted the Defendant because he was cohabitating with Det. Oakley’s former girlfriend, a tested confidential informant. The prosecutor is on record saying there were no confidential informants and or undercover officers used in the investigation, which was patently false. The former “girlfriend” was interrogated by Det. Harry Oakley, his partner Joshua Seepersaud and FBI agent John Groeschner. The Court disallowed any testimony concerning the State investigation involving the three principals...and....their information was not incorporated in the 400,000 pages of discovery. Defendant is entitled to a new trial because he suffered irreparable prejudice as a result of judicial bias which deprived Defendant of arguing in front of the jury the truth and nothing but the truth.

### **CONCEALMENT OF UNDERCOVER OFFICER "TONY LAMMATTI**

Defendant contends that on April 12, 2005, at the direction of prosecutor Karen Gable, FBI agent John F. Groeschner used his "inside" sources and confidential informant to hire an FDA undercover agent using the name of "Tony Lammatta". During his undercover tenure with Jive Network, the undercover operative dispensed orders just as other Jive employees have done for years. The reports from "Tony Lammatta" are not contained in discovery and the audio/video tapes that captured him on various servers had not been acknowledged. Defendant sought to obtain the true identity of Tony Lammatta but was rebuffed by the prosecutor and the Court. "Tony Lammatta" was so important to the case that FBI agent was willing to perjure himself before Magistrate Judge David A. Baker and file false police reports in order to conceal his identity. The Jive Network employee file of "Tony Lammatta" was removed from the office without being acknowledged in the FBI agent's property report. The Court would not allow the Defendant to broach the subject of Tony Lammatta and his involvement is not mentioned in the 400,000 pages of discovery. This Pro Se inmate pleaded with the Court to subpoena agent "Tony Lammatta" and others....only to be rebuffed. **This Pro Se Defendant was denied a fair trial when the Court in essence dictated which government agents would testify as "defense witnesses" and then limited the scope of their testimony that favored the prosecution.**

### **FBI AGENT JOHN F. GROESCHNER, JR. MISREPRESENTING HIS "MASTER AFFIDAVIT IN SUPPORT OF SEARCH AND SEIZURE WARRANTS"**

On April 15, 2005, FBI agent John F. Groeschner, Jr. prepared his "Master Affidavit in Support of Search and Seizure Warrants" and he was very careful in making certain that he did not reference the involvement of Daytona Beach Detective Harry Oakley, the Volusia Bureau of Investigation and the Florida Department of Law Enforcement. To protect the identity of undercover officer Tony Lammatta, FBI agent John Groeschner filed a false affidavit and misrepresented the undercover officer as being a woman. In his affidavit sworn before Magistrate Judge David A. Baker, the FBI agent made the following statement:

"...On April 12,2005, an FDA agent acting in an undercover capacity responded to a classified advertisement in the Daytona Beach newspaper advertising employment at Jive Network, 420 Fentress Boulevard, Daytona Beach, Florida as a customer service representative. The agent met with two customer service managers. During her interview, the agent was told that Jive sells prescription drugs over the internet and that her job would require to answer 800 phone calls a day from consumers all over the country who ordered prescription drugs. While in the facility, the agent observed at least 20 stand alone computers and two rooms designated IT room (1) and IT room (2)....."

The entire statement is fraudulent and when the government's conduct during an investigation is sufficiently outrageous, the courts must not allow the government to prosecute offenses developed through such conduct, because prosecution in such a case would offend the Due Process Clause of the Constitution.

#### **ILLEGAL EXECUTION OF THE APRIL 19, 2005 SEARCH WARRANT**

Defendant has previously filed several prosecutorial misconduct motions and notices informing the Court that prior to the execution of the corporate search warrant in the matter of United States v. Jude Lacour, FBI agent John Groeschner and prosecutor Karan Gable used the April 19, 2005, search warrant as a premeditated pretext to falsely detain, interrogate and terrorize Jive Network employees in violation of the law. The officers involved in the raid stormed the corporate offices of Jive Network, pointed and brandished their weapons at them and moved the employees to a parking lot location where they were forcibly detained and interrogated, without being advised of their constitutional rights. In an effort to conceal their misconduct the agents unplugged the surveillance cameras and concealed the videotape depicting the raid. None of the police reports attributed to FBI agent John Groescher or prosecutor Karen Gable contained accurate information concerning the conduct of the officers during the raid of Jude Lacour's corporate offices. Defendant was denied a fair trial and had the jury been informed of the truth and nothing but the truth their verdict would have been "not guilty".

### **MISREPRESENTING STATEMENT(S) ATTRIBUTED TO JIVE EMPLOYEE(S)**

On April 19,2005 at approximately 0900 hours, employee Dolores A. was at work when she heard people shouting "Put your hands up". She saw agents point guns at her and other employees. No matter where she looked there were guns pointed at the employees. She was terrified, scared and in a state of shock. Dolores remembered seeing FDA agent "Tony Lammatta" with a gun in his hand. She recognized Lammatta as the person she hired and trained on or about April 12, 2005. Dolores recalled that Tony Lammatta personally made calls and placed orders with customers while employed by Jive Network. 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 licensed 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 of time if her answer was "No" and noticed that the agent falsely marked her answer as "N/A" instead of "No". Intentionally misrepresenting official reports is a crime and if the jury had been informed of this fact their verdict would have been in favor of the Defendant.

### **FBI AGENT JOHN GROESCHNER FALSIFYING HIS 302 REPORT**

On April 25,2005, FBI agent John F. Groeschner prepared an official report concerning his activities during the execution of the search warrant. In his 302 report on, page 3, Paragraph 5, agent Groeschner stated the following:

"....On April 19,2005, at 9:00 am, federal agents executed the Search warrant at 420 Fentress Boulevard, Daytona Beach, Florida. Upon initial entry to the premisses, all personnel were told to step away from their desks and remain in the center of main room of the central location. At the same time, all communications lines was disabled. All of the persons located on the premisses were frisked for officer safety, and were escorted to the parking lot, where they were interviewed by participating agents using a field interview sheet. Copies of these sheets were placed in an FD-

340 and are hereby made part of the file. During the execution of the warrant, access to the location was monitored and secured by uniformed officers from the Daytona Beach Police Department and the Volusia County Sheriff's office ...."

The Court was told time and again that FBI agent John F. Groeschner is a dishonest cop and that he has a problem speaking the truth. It was further communicated to the Court that agent John Groeschner and prosecutor Karen Gable are intentionally concealing the surveillance video that captured the "Rambo" like search warrant execution. 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 Jive Network employees. The Defendant was denied a fair trial and had the jury been informed of FBI agents true character the verdict would have been "not guilty".

#### **FBI AGENTS ASKING A GRAND JURY WITNESS TO LIE**

As the Court already knows from Dolores Leza's declaration (Doc. 547) prior to her testimony at the 2005 Grand Jury investigation, Ms. Leza was interviewed by agent John Groeschner and others at the offices of the FBI in Daytona Beach. During this meeting Dolores Leza was being pressured by the FBI to say that during the execution of the search warrant the federal agents did not brandish any weapons at the employees of Jive Network. Dolores informed the FBI that she was terrified and scared from the experience and it was something she would not forget.

The Court can not ignore the fact that the lead FBI agent was pressuring a Grand Jury witness to lie in an attempt to justify his patently false 302 report that he prepared on April 25, 2005. The Court was informed that Defense investigator Bill Pavelic recently questioned government witness John Congdon if he observed the agents brandishing weapons during the execution of the April 19, 2005, search warrant and he too said "yes". Preparing fraudulent 302's and or other law enforcement reports is a crime and persuading a Grand Jury witness to lie under color of authority is beyond reprehensible.

### **NOTIFYING PROSECUTOR KAREN GABLE OF FBI AGENTS MISCONDUCT**

On May 23, 2005, Defendant's attorney working for the law firm of Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro informed Karen Gable in writing of numerous allegations of misconduct involving her agents ....and.... the next day, on May 24, 2005, the prosecutor responded that she has checked into the issues and she found no evidence that the agents acted improperly. It is doubtful that the prosecutor who was herself involved in Outrageous Prosecutorial Misconduct conducted a proper investigation and or followed the U.S. Attorney's Manual in resolving potential misconduct issues.

### **RETAINING ATTORNEY JEFF DOWDY**

On or about June 9, 2005, Defendant retained the services of attorney Jeff Dowdy to represent him in both civil and pending criminal case. On August 8, 2005, Jeff Dowdy spoke with prosecutor Karen Gable at which time he was informed that if the Defendant can show his reliance on the advice of counsel that his business was legal she would reconsider prosecuting the Defendant. Jive Network was started with an attorney and Defendant has spent hundreds of thousand of dollars on lobbyists and lawyers in order to comply with his internet pharmacy business. **Defendant relied on advice of counsel just as the President of United States relied on DOJ to provide him with a legal opinion regarding torture.**

### **USING THE GRAND JURY SUBPOENA TO FALSELY OBTAIN DEFENDANT'S CORPORATION RECORDS FROM THE AKERMAN-SENTERFFIT LAW FIRM**

Defendant alleges that on or about September 23, 2005 prosecutor Karen Gable used the Grand Jury subpoena to fraudulently obtain his privileged corporation files from the law firm of Akerman-Senterfitt.

On November 11, 2005, pursuant to a Grand Jury subpoena, Akerman-Senterffit returned to the Grand Jury 563 pages of documents concerning its representation of Jude Lacour, Jeff Lacour, and Jive Network. The prosecutor was in contact with Akerman attorney Jonathan Goodman and she knowingly and intentionally misrepresented to Akerman-Senterffit law firm that she had a valid

waiver to obtain the files. The only person who could have provided such a waiver was the Defendant.

### **RECUSAL OF THREE FEDERAL JUDGES AND JUDGE ANNE CONWAY**

Defendant caused three federal judges to recuse themselves due to their involvement with the law firm of Akerman-Senterffit. Defendant did not wait until the trial had started to gain a tactical advantage and or a delay in the proceedings. He did what he thought was the right and his request was based on good cause. Defendant was honest and consistent in doing what was right regardless if the conflict involved the judges, the prosecutor and or a high profile defense attorneys, Cheney Mason and Robert Leventhal.. Unfortunately for the Defendant, Magistrate Judge David Baker and Judge Anne Conway took the recusal(s) personally as an attack on all the judges and their judicial bias and rulings have done irreparable harm to Defendant's case. Judge Conway ultimately removed herself from the case on the pretext that her docket was too full and that no other Orlando judge was able to handle a trial that was projected to last three months. Defendant believes that the Court and the prosecutor inflated the amount of time it would take to try this case in order to "justify" bringing visiting judge David D. Dowd to Orlando.

### **DENIAL OF DEFENDANT'S MOTION FOR SPEEDY TRIAL**

From June of 2008 to September of 2008, the undersigned represented himself in Pro Se and wrote numerous letters and notices informing the Court and the prosecutor that he was seeking a speedy trial. Defendant informed the Court that unlike other defendants he did not want to waive his speedy trial and Magistrate Judge David A. Baker reassured Defendant that while the Court can make certain exceptions the waivers by other defendants didn't waive his rights. Magistrate Judge David A. Baker and Chief Judge Anne Conway repeatedly misled the Defendant and consciously denied him his right to a Speedy Trial.

### **PERJURY DURING BOND HEARING**

Following the execution of the April 19, 2005 search warrant Defendant ceased his internet operation for good.....even after being told by a federal agent that he can take his operation off



shore. From April 2005 to May 2008, Defendant's attorneys kept the government aware of his whereabouts including his last residence outside Portland, Oregon. The prosecutor in the instant case suborned perjury during the bond hearing by causing an IRS agent to falsely testify that Defendant was a flight risk and in possession of two passports.

**DENIAL OF MOTION TO DISMISS FOR MALICIOUS, CRIMINAL, AND OUTRAGEOUS PROSECUTORIAL/JUDICIAL MISCONDUCT**

The defendant contends that the court erred in denying his motion (Doc. 422) for dismissal based upon Outrageous Prosecutorial / Judicial Misconduct. The Court failed to hold a hearing involving provable criminal misconduct and denied the motion without carefully examining the issues raised by the defendant.

**DENIAL OF TRANSCRIPTION OF TESTIMONY DURING TRIAL**

Defendant was prejudiced by not being able to read transcripts of the trial proceedings for purposes of cross-examination, closing argument, or the like. Pro Se Defendant Jude Lacour contends that as an inmate at the Orange County Correctional Facility during the trial (involving four other co-defendants) this Pro Se inmate averaged perhaps a couple of hours of sleep a night. Defendant requested the daily trial transcripts which the Court promptly denied. Without the transcripts the Defendant was disadvantaged and unable to properly prepare and or impeach government witnesses.

**DEFENDANT WAS IMPROPERLY RESTRICTED FROM CALLING AND QUESTIONING WITNESSES**

The district court abused its discretion by preventing Defendant from questioning and or impeaching government witnesses who were involved in criminal misconduct in the instant case. Defendant was also prevented from questioning his own witness Dolores Leza concerning her background of Jive Network's operation and her interaction with FBI agent John Groeschner prior to and after the 2005 Grand Jury investigation.

During a hearing on February 4, 2009, judge David D. Dowd is on record saying, “....I expect the defendants to provide me names of their witnesses if they expect to call witnesses. Normally the defense never provide me anything with respect to witnesses because usually they don’t call anybody anyhow....” When the Defendant provided the Court with his witness list he was rebuffed and restricted from questioning his own witness, Dolores Leza. The Defendant contends that the Court erred in not allowing testimony from defense witness Dolores Leza because her probative testimony was of great importance to Defendant’s theory of defense and her prejudicial impact was small.

As a result of Court’s errors the Defendant suffered actual prejudice and he was deprived of having a fair trial. The Court is obligated to order a new trial when the record discloses actual bias on the part of the trial judge or leaves the reviewing court with an abiding impression that the judge’s remarks, questioning and dismissal of defense witnesses projected an appearance of advocacy or partiality.

#### **QUESTIONABLE ALLEN CHARGE DURING JURY TAMPERING**

The Court erred by giving an impermissible and modified Allen charge just minutes before the Court was taking a 10 day prescheduled recess. Furthermore, the Court engaged in improper ex parte communication with the jury concerning judicial / jury intimidation at the time jury was deliberating. The Defendant was a victim and the target of the aforementioned crime. The intimidating letters sent to the Court and or to jurors home on multiple occasions made the Defendant appear as if he was the culprit because his name and his corporation was duly noted in the correspondence. The Court should have immediately conducted a bona fide hearing and when the Grand Jury investigation was initiated the Court should have dismissed the jury because they and the Court became witnesses in the criminal intimidation case. The jury / judicial intimidation crime was being investigated by the federal Grand Jury days before the jury reached its verdict and or before the Court initiated the coercive Allen charge. Defendant is entitled to a new trial because irregularities within the jury panel resulted in a denial of Defendant’s Sixth

Amendment right to a trial by a panel of impartial jurors and because Defendant suffered irreparable prejudice as a result of jury tampering.

#### **DENIED ADEQUATE TIME TO PREPARE OR PRESENT EVIDENCE**

The defendant contends that the court erred by denying him an adequate time to prepare or present evidence during various stages of the trial. Unreasonable time constraints imposed by a trial court can result in inadequate preparation. *United States v. La Monte*, 684 F.2d 672, 674 (10th Cir. 1982). Defendant sought a one day delay to take a stand and prepare for his testimony only to be denied that request. A constitutional violation occurs when the denials are unreasonable and or based on arbitrary insistence upon expeditiousness in the face of a justifiable request for delay. *United States v. Hall*, 200 F.3d 962, 964 (6th Cir. 2000). The Court should have allowed a one week continuance after the government rested its case to permit all the defendants the right to further review the government's evidence and seized materials; allow additional time to review the proposed instructions and allow additional time for the preparation of closing argument.

#### **ADMISSION/DENIAL OF CERTAIN EXHIBITS/EVIDENCE**

The defendant contend that the court erred at various times during the trial when it either admitted or denied certain exhibits and evidence. The defendant was not provided with discovery and therefore prevented from admitting his exhibits for jury's consideration.

#### **CONFLICT OF INTEREST INVOLVING THE PROSECUTOR AND DEFENDANT'S PRIVATE ATTORNEY**

With the trial set for early January 2009, on or about September 3, 2008, Defendant was forced to hire a private attorney (William Bryan III) who was a former federal prosecutor. The attorney promised he would file all appropriate motions and see to it that the Defendant would review his 400,000 pages of discovery.

On September 18, 2008, prosecutor Karen Gable filed a Notice of Possible Conflict of Interest against attorney William Bryan and other defense lawyers. Defendant demanded a conflict free representation and subsequently discovered that his lawyer was in conflict with defense attorney Rick Jancha and Karen Gable. It turned out that Rick Jancha was Karen Gable's boss and because his retirement became effective in January of 2007, Rick Jancha was precluded by U.S. Attorney's Manual and the law from engaging in a case that commenced during his tenure with the U.S. Attorney's Office.

Attorney William Bryan flat out lied to his client and ignored Defendant's pleas to file motions, obtain and provide him with government's discovery; inspect the evidence; serve SDT on various government witnesses and comply with reciprocal discovery obligations. Defendant's attorney did not disclose his friendship with prosecutor Karen Gable and defense attorney Rick Jancha. The conflicted attorney was renting his office space from attorney Rick Jancha and he was forced to withdraw his representation for undermining Defendant's case and acting as a Trojan Horse for the prosecution.

The Court once again erred by refusing to hold a hearing and defendant suffered irreparable prejudice by being forced to go to trial (within two weeks) knowing that attorney William Bryan failed to comply and or provide competent legal representation. As the Court knows, following attorney Bryan's withdrawal the Defendant filed numerous motions that were erroneously denied by the Court, including Prosecutorial Misconduct Motions, Motion to Continue, Violation of Speedy Trial Motion, Discovery Motion, Severance Motion, Dismissal Motions and Recusal Motion involving Judge David D. Dowd and Magistrate Judge David A. Baker, to name a few. .

#### **DENIAL OF MOTION TO SEVER DEFENDANTS**

Rule 14 authorizes a court to grant relief if a joint trial appears to prejudice one of the parties. Sufficient grounds for such severance exist where "there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence. Defendant requested that his trial be severed from the

trial of his co-defendants because they would unduly prejudice Defendant during opening statement and because the defendant has not interviewed any witnesses and or had the opportunity to subpoena law enforcement entities involved in his case. The Court denied Defendant's motion and as predicted defense attorney Robert Leventhal used the opening statement to falsely debase the Defendant. Defendant contends that the court erred in denying his motion for severance.

### **JURY INTIMIDATION AND THE PRESENCE OF FEDERAL AGENTS DURING JURY DELIBERATION**

The Court erred by not conducting an evidentiary hearing and engaged in improper ex parte communications with the jury that was intimidated. Normally, the district court would have to hold an evidentiary hearing to determine whether there was jury misconduct, but there is no need to do so when the court "can determine from the record that the allegations are without credibility." However, in the instant case the allegations were so serious that a Grand Jury investigation was initiated before the jury reached its verdict. Additionally, on the day the jury found defendant guilty of all counts there were many plain clothes agents present at the courtroom, something that was not there when the trial commenced.

### **EXCESSIVE GOVERNMENT OBJECTIONS THAT WERE SUSTAINED**

The defendant contends that the number of government objections sustained in his trial created an appearance of bias and Constitutional error occurred when the jury received a significantly different impression of Dolores Leza credibility that this Pro Se inmate been permitted to pursue his proposed line of cross examination. Even in cases where an improper evidentiary ruling limits cross-examination the test is 'whether the jury had enough information, ... to assess the defense theory. In particular, Defendant was not allowed to question Dolores Leza and that prejudicial error denied defendant a fair trial. The errors, either singularly or collectively, requires a new trial.

**CONCLUSION**

In light of the foregoing, Defendant JUDE LACOUR, pursuant to Rule 33, *Fed. R. Crim. P.*, requests that this Honorable Court set aside the verdict of guilt and grant Defendant a new trial.

I HEREBY CERTIFY that on May 18, 2009, I filed the foregoing with the Clerk of the Court and Assistant U.S. Attorney by hand delivering this motion to the following entities:

Clerk's Office, US. District Court  
Middle District of Florida, Orlando Division  
United States Courthouse, Suite 1200  
401 West Central Boulevard  
Orlando, FL 32801

Karen L. Gable, Assistant U.S. Attorney  
501 W. Church St., Suite 300  
Orlando, FL 32801

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jude T. Lacour", is written above a horizontal line.

Jude T. Lacour, Pro Se Inmate