allegations being presented within the facts, and he fully understands the serious nature of pleading the facts under penalty of perjury. Notwithstanding that knowledge, Fagnes is not hesitating to plead the allegations against Dempsey and the other officials under penalty of perjury, for Fagnes knows them to be true.

Fagnes also represents to this Court that Gerald L. Vines has all the documentation necessary to support the factual allegations against Dempsey and the other officials, and he is willing to appear at an evidentiary hearing along with each and every occurrence witness still living and discussed within the facts of this claim.

Accordingly, there is no doubt that if the allegations are accepted as true, or proven to be true after an evidentiary hearing, the guilty plea resulted from an actual conflict of interest based on Dempsey's private financial interest in the estate of Ada Jones, and the conflict affected specific instances of his performance during the criminal prosecution that were not within the wide range of professional competence.

(b) Argument:

A defendant making an ineffectiveness claim on a counseled guilty plea must identify particular acts and omissions of counsel tending to prove that counsel's advise was not within the wide range of professional competence. Hill v. Lockhart, 474 U.S. 52, 56-57 (1985); Strickland v. Washington, 466 U.S. 668, 687 (1984); Moore v. U.S., 950 F.2d 656, 660 (10th Cir. 1991).

The defendant must also show prejudice, "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill, 474 U.S. at 59; Moore, 950 F.2d at 660. The performance inquiry is made with deference to counsel's assistance, but also in recognition that the validity of a guilty plea depends upon a defendant's knowing and voluntary choice among alternatives. Hill, 474 U.S. at 56; Strickland, 466 U.S. at 688.

Notwithstanding the highly deferential review of counsel's performance required in an ineffectiveness claim, a defendant's right to counsel may be compromised by conflict. Strickland, 466 U.S. at 688 ("Counsel's function is to assist defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest."). The right to conflict-free representation extends to plea proceedings, including investigation and also negotiation. See, Moore, 950 F.2d at 660 (citing additional cases).

A defendant is entitle to a presumption of prejudice if he can prove that his lawyer "'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" Strickland, 466 U.S. at 692 (quoting Cuyler v. Sullivan, 466 U.S. 335, 348, 350 (1980)); see also, Buenoano v. Singletary, 963 F.2d 1433, 1438 (11th Cir. 1992).

If a defendant would have elected a trial, but an improper motivation precluded counsel from evaluating this alternative and advising defendant, a defendant has been prejudiced. Moore, 950 F.2d at 660.

A defendant cannot prevail on a conflict of interest claim if

he has waived it by consenting to the attorney's representation.

Although Fagnes was aware before trial that Dempsey had developed a private financial interest in the estate of Ada Jones, he did not waive his right to conflict-free representation. The waiver of the right to counsel must be knowing and intelligent. Whether there is a proper waiver should be determined by the trial court and any such waiver should appear on the record. Johnson v. Zerbst, 304 U.S. 458, 464-65 (1938).

In the instant case, the court was never made aware of the actual conflict and never warned Fagnes of the dangers of continued representation. Cf. Mannhalt v. Reed, 847 F.2d 576, 580-81 (9th Cir. 1988)(finding no waiver of conflict where defendant was not made aware of the dangers of continued representation); United States v. Powell, 708 F.2d 455, 456-57 (9th Cir. 1983)(finding waiver where conflict discussed in detail in open court), rev'd on other grounds, 469 U.S. 57, 69 (1984); United States v. Partin, 601 F.2d 1000, 1007-08 (9th Cir. 1979)(same), cert. denied, 446 U.S. 964 (1980).

On the record before this Court, it is impossible to find that Fagnes was informed of the risk associated with Dempsey's representation. Therefore, no waiver of the conflict between Dempsey and Fagnes can be found in the instant case.

Turning to the application of the **Cuyler** standard to the facts of this case, an actual conflict of interest has been found when the conflict is based on the attorney's financial interest. See e.g., United States v. Marrera, 768 F.2d 201, 206-07 (7th Cir. 1985)(**Cuyler** standard applies where the alleged conflict is based

on the attorney's financial interest); U.S. v. Magini, 973 F.2d 261 (4th Cir. 1992)(actual conflict of interest existed when counsel had a pecuniary interest); and Buenoano v. Singletary, 693 F.2d 1433, 1438 (11th Cir. 1992)(actual conflict of interest arising out of a book and move contract entered into by the attorney, his wife, and defendant).

The point need not be belabored here, the facts supporting the conflict of interest claim against Dempsey demonstrate an actual, as opposed to a possible, conflict of interest which affected the investigation and presentation of exculpatory evidence during the proceedings leading to the entry of the guilty plea. Instead of providing the representation to which the Constitution required, Dempsey merely agreed with the prosecutor's version of events in order for the embezzlement scheme to continue against the estate of Ada Jones.

For example, during the pretrial phase, Dempsey was aware that AUSA McGregor was contending Fagnes had been caught next to a vehicle driven by Miguel Angel Davila with 34 kilograms of cocaine on the ground in a cardboard box with the lid open; that Fagnes was on his knees pulling the plastic back that the cocaine was wrapped in, and the vehicle trunk open when Fagnes was arrested.

Dempsey also knew the arrest reports of Miguel Angel Davila discredited the contentions of AUSA McGregor, and that the arresting officers did not have any pictures of the arrest scene to support what AUSA McGregor was contending.

Dempsey had also seen a video tape, and listened to a tape recording of the events leading to the arrest of Fagnes. Thus,

Dempsey knew that Miguel Angel Davila had been given a recording device by the federal agents and wore that device on the day Fagnes was arrested. The recording device revealed that Fagnes never spoke to Miguel Angel Davila at the site of arrest, nor did Davila exit his vehicle prior to Fagnes being arrested.

Dempsey was also aware the arrest reports of Miguel Angel Davila had revealed that he told the arresting officers Fagnes was supposed to produce money for 10 of the 34 kilograms of cocaine once it was delivered (not 34 kilograms), and that Fagnes did not have the money to purchase a **single** kilogram of cocaine when the arrest occurred.

The subject reports were also in sharp contrast to the contentions being made by AUSA McGregor. AUSA McGregor was contending that Fagnes had delivered $200,000 the day **before** Fagnes was arrested in order to hold him accountable for all 34 kilograms of cocaine.

The subject reports would have cut directly through the contentions of AUSA McGregor, because if the arrest reports are believable, at most they show Fagnes did **not** give Miguel Angel Davila $200,000 the day **before** Fagnes was arrested. Instead, the arrest reports show that Fagnes was **waiting on the delivery** of 10 kilograms of cocaine before Davila would receive any money, however, even the statements of Davila suffer from credibility problems because Fagnes did **not** have the money to pay for a **single** kilogram of cocaine when the arrest occurred.

Dempsey knew the value of the information he gathered during the discovery process, for he commented at the detention hearing that he had the agent, Jay Bartholomew, for perjury and

referred to the arrest reports and tape recording involving Miguel Angel Davila when Agent Bartholomew testified that 34 kilograms of cocaine was at the back of the vehicle with Fagnes and the trunk open.

Notwithstanding the evidentiary value of the exculpatory evidence, Dempsey never used it to attack AUSA McGregor's case against Fagnes. Rather, Dempsey was motivated by the pecuniary interest in the estate of Ada Jones, and used that interest to urge Fagnes to plead guilty. Advising Fagnes to plead guilty to the criminal charge was a sure way of getting him "out of the way," and Fagnes specifically relied on that advice in entering his guilty plea.

At the conclusion of the detention hearing, Dempsey told Fagnes that he had to go to a luncheon with the "people" who had dismissed the previous charge against Fagnes **without** prejudice under the condition that he abandon his pursuit of the estate.

Dempsey told Fagnes those same "people" had advised Fagnes to stay away from the estate of Ada Jones, and because he had not followed their advice, AUSA McGregor prepared Agent Bartholomew's testimony to place Fagnes at the rear of the vehicle with the 34 kilogarms of cocaine on the ground and the trunk open. In other words, Dempsey was telling Fagnes that Agent Bartholomew was presenting fabricated evidence at the detention hearing.

Another area in which Dempsey's private financial interest in the estate of Ada Jones affected his performance, was during the guilty plea negotiations. Dempsey was so desperate to get Fagnes "out of the way" that he attempt to have Fagnes enter a

guilty plea to both counts of the indictment pursuant to a plea agreement he never allowed Fagnes to see, but explained that the terms of the plea agreement required a life sentence and abandonment of any avenue to collaterally attack the conviction and sentence.

What is worse, all of the events were occurring even though Fagnes had paid Dempsey a total of $69,000 to represent him in a trial!

Although it was unknown to Fagnes at the time, Dempsey was not interested in proceeding to trial because Fagnes intended to present a "police fabrication defense" that would have required development of a motive for fabricating evidence against Fagnes, and, of course, the motive rested upon the embezzlement scheme and those who participated in that scheme, including Dempsey!

Dempsey had an interest in avoiding implications of being involved in criminal activity, and an interest in preserving his reputation. Both of those interest would have been compromised had the case proceeded to trial. In contrast, Fagnes had an interest in presenting the police fabrication defense as an affirmative defense to the criminal charge. Thus, had the case proceeded to trial, the credibility of Dempsey and Fagnes would have eventually been pivoted against one another in a classic swearing contest about who was telling the truth. Moreover, Dempsey would have been placed in the awkward position of having to defend the allegations made against him.

The conflict of interest would have also affected Dempsey's cross-examination of witnesses, because those witnesses are the same people who continue to be involved in the embezzlement scheme, save Jay Bartholomew. Agent Bartholomew was unaware of the

embezzlement scheme as far as Fagnes knows, and merely testified in a manner consistent with AUSA McGregor's instructions at the detention hearing as a hindsight attempt to rehabilitate the premature arrest of Fagnes before Miguel Angel Davila could incriminate him on the recording device.

The reason Dempsey knew that Agent Bartholomew was committing perjury at the detention hearing, is because Special Agent Jeffery Burgess had told Dempsey before the detention hearing took place that Agent Bartholomew "messed up" the investigation by making the premature arrest of Fagnes, and accused him of not knowing what he was doing.

Nevertheless, possessing knowledge that Agent Bartholomew was committing perjury at the detention hearing, Dempsey did absolutely nothing to correct the perjury when it appeared before the court because of his divided loyalty to the officials who wanted Fagnes "out of the way" so that the embezzlement scheme could continue.

Accordingly, having paid Dempsey **$69,000** to represent Fagnes at trial, and having chosen a "police fabrication defense" that was strongly supported by the facts leading to the arrest of Fagnes, is objective evidence from which one can reasonably conclude that Fagnes intended to proceed to trial.

Had Dempsey not urged Fagnes to enter a guilty plea because of his private financial interest in the estate of Ada Jones, Fagnes would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985); and Moore v. U.S., 950 F.2d 656, 660 (10th Cir. 1991). It requires no more in order to prevail on the conflict of interest claim.

II.

THE DISTRICT COURT WAS WITHOUT SUBJECT MATTER JURISDICTION TO ACCEPT A GUILTY PLEA AND IMPOSE A SENTENCE UPON A MANUFACTURED AND FRAUDULENT INDICTMENT.

(a) Facts.

The facts set forth in support of this ground for relief are a mere continuation of the complex protracted history set forth in the first ground for relief, therefore, those facts are adopted and incorporated here by reference.

Fagnes never stopped pursuing the estate of Ada Jones, and on September 8, 2001, Fagnes was arrested by state officials and charged with Trafficking cocaine in Jefferson County, Alabama. Bond was set a $1,000,000.00. Defense Attorney, **Randy Allen Dempsey**, represented Fagnes on the state offense and petitioned the Circuit Court of Jefferson County for a writ of habeas corpus on September 25, 2001. As a result of the petition, the Circuit Court of Jefferson County reduced the bond to $250,000.00. On September 25, 2001, Fagnes posted a property bond and was released pending trial.

On September 29, 2001, Fagnes was arrested by State Trooper, J.B. Crews, Troup County, Georgia. The basis of that arrest arose from an alleged federal indictment signed by Assistant United States Attorney, Robert P. McGregor. (Exhibit A). The subject indictment was predicated on the same conduct for which Fagnes had been charged in Jefferson County, Alabama and released on a $250,000.00 property bond. The indictment did not contain a docket number, grand jury foreman's signature, or a court seal attesting to a true copy. Id. The indictment charged Fagnes with attempting to possess with the intent to distribute five (5)

kilograms or more of a mixture and substance containing a detectable amount of cocaine hydrochloride, a controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(A), and 846.

On October 2, 2001, Fagnes appeared before a Magistrate Judge in Atlanta, Georgia, for an identification hearing and preliminary examination of the offense charged in the indictment.

During the appearance before the Magistrate Judge, the court expressed concern over the fact that the indictment was not accompanied by a warrant for arrest. Thereafter, the Magistrate Judge ordered the Rule 40 hearing continued to allow the government an opportunity to obtain a warrant, and approximately four hours later, the government produced a warrant and a **second** indictment was sent through facsimile. (Exhibit B). The **second** indictment purported to be a copy of the **first** indictment and attempted to cure the defects by inclusion of a docket number and a grand jury foreman's signature. However, the **second** indictment did not have a court seal attesting to a true copy and the signature of AUSA McGregor was **not** identical to the signature appearing on the **first** indictment, thereby demonstrating that the two indictments were **not** one and the same. Id.

Upon production of the **second** indictment, the Magistrate Judge notice that the indictment did not contain a court seal, ordered a second continuance, and advised the government that Fagnes would be released unless a valid indictment was produced with a proper court seal.

The government produced a copy of the **second** indictment

containing a docket number, grand jury foreman's signature, and a courtseal attesting to a true copy. (Exhibit C).

Fagnes never returned to the courtroom for the remainder of the Rule 40 heairng, and the Magistrate Judge entered an order to remove Fagnes to the charging district, i.e., Northern District of Alabama, Southern Division.

On November 1, 2001, Fagnes was named in an alleged two count superceding indictment. (Exhibit D). Count One alleged that on or about the 7th day of September, 2001, in Jefferson County, within the Northern District of Alabama, William Anthony Fagnes, did knowingly and intentionally attempt to possess with the intent to distribute in excess of five (5) kilograms (approximately 29 kilograms) of a mixture and substance containing a detectable amount of cocaine hydrochloride, a controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A) and 846. Count Two alleged that on or about the 9th day of December 1998, in Jefferson County, within the Northern District of Alabama, William Anthony Fagnes, did knowingly and intentionally distribute a controlled substance, that is, a mixture or substance containing in excess of 500 grams (approximately two kilograms) of cocaine hydrochloride, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B). Id.

On March 18, 2002, Fagnes entered a plea of guilty to Count One of the superceding indictment and Count Two was dismissed upon motion of the government.

On October 23, 2002, Fagnes was sentenced to 204 months on Count One of the superceding indictment. The court also imposed

a five (5) year term of supervised release with special conditions, a $100.00 special assessment, and waived a $2,500.00 fine for an inability to pay. No appeal was taken, and the section 2255 motion followed with this supporting memorandum and exhibits.

(b) Argument.

The Fifth Amendment requires the Federal government to initiate prosecutions of capital or otherwise "infamous crimes" by indictment. See, Ex parte Bain, 121 U.S. 1, 12-13 (1887) (defendant may be tried for infamous crime only after grand jury indictment). The Supreme COurt has defined "infamous crimes" as those crimes "punishable by imprisonment in [a] penitentiary." Mackin v. U.S., 117 U.S. 348, 354 (1886).

Because persons convicted of offenses punishable by imprisonment for more than one year may be confined in a penitentiary (18 U.S.C. § 4083), crimes so punishable are infamous. See e.g., U.S. v. Coachman, 752 F.2d 685, 689 n.24 (D.C. Cir. 1985).

Rule 12 of the Federal Rules of Criminal Procedure requires the defense to bring all motions to dismiss a defective indictment before trial or entry of a guilty plea. See, Rule 12(b)(2).

Rule 12, however, does not apply to challenges to the court's jurisdiction. See e.g., U.S. v. Hanry, 288 F.3d657, 660 (5th Cir. 2002)(indictment not charging offense constitutes "jurisdiction defect" and may be challenged at any time). See also, U.S. v. Bell, 22 F.3d 274, 275 (11th Cir. 1994)(objection that indictment failed to charge offense of embezzlement properly raised first time after guilty plea); and United States v. Rivera, 879 F.2d 1247, 1251 n.3 (5th Cir.), cert. denied, 493 U.S. 998 (1998)(A claim that the

indictment failed to state an offense can be raised in a section 2255 motion because it challenges the jurisdiction of the convicting court and is not waived by a guilty plea).

Likewise, a claim that an indictment has been manufactured and therefore fraudulent, raises a question as to whether or not Fagnes was properly under the district court's jurisdiction when he entered the guilty plea. Such claims are also not waived by entry of a guilty plea, and may be brought in a section 2255 motion. See e.g., Hamilton v. McCotter, 772 F.2d 171, 183 (5th Cir. 1985).

The very purpose of an indictment is to shield a person from unfounded prosecutorial charges and to require him to defend in court only those allegations returned by an independent grand jury, as provided by the Fifth Amendment.

In the instant case, the facts and circumstances surrounding the first, second, and superceding indictments, are sufficient to rebut the presumption of regularity that normally attaches to grand jury proceedings, as explained hereafter.

The **first** indictment upon which Fagnes was arrested in Atlanta, Georgia, reveals that when the arrest occurred, the indictment had never been presented to a grand jury of competent jurisdiction, for the grand jury foreman's signature appears nowhere within the four corners of the indictment. (Exhibit A).

Further, the **first** indictment is devoid of a docket number and court seal, which demonstrates the document was never filed in the Office of the Clerk when Fagnes was arrested under that instrument. Id.

The record also reveals that a **single** indictment was allegedly filed in record on September 26, 2001. (R: 1)(Indictment). Common logic dictates that when a **single** indictment is filed in the record, it is **legally** impossible for **two** indictments purporting to charge the **same** offense with two **different** signatures from the **same** Assistant United States Attorney, to co-exist. But that is exactly what Exhibit A and B unequivocally display. Id.

Further, the **second** indictment, which attempted to cure the defects in the first indictment, has a "stamp-filed" date of September 26, 2001. That alleged indictment also shows that it was purported to be filed in the Office of the Clerk at 4:13 p.m. (Exhibit B). However, the docket sheet shows that the **second** indictment was **not entered in the record** until September 28, 2001. (R: 1)(Indictment). Under those circumstances, it is **legally** impossible for the **second** indictment to reflect the date and time markings that it does, because an indictment is not **filed** in the Office of the Clerk until it has been **entered in the record.** Thus, the **second** indictment could not **legally** reflect a filing date of September 26, 2001, when the docket sheet shows that it was not **entered in the record** until September 28, 2001. Id.

Moreover, the **second** indictment was produced approximately four hours after the **first** indictment was challenged at the Rule 40 hearing. Under the time restraints, AUSA McGregor would not have had sufficient time to present his case to a Federal Grand Jury in order to obtained the **second** indictment with a grand jury foreman's signature. This is so, because it would have required AUSA McGregor to assemble a grand jury, locate and prepare relevant

witnesses, present the case to the grand jury, obtain the grand jury foreman's signature, present the indictment to the Office of the Clerk to be entered and filed in record, obtain a warrant for the arrest of Fagnes from a Magistrate Judge, and fax those documents to Atlanta, Georgia within four hours. That is factually impossible.

In addition, Fagnes wrote to the Untied States Department of Justice, Executive Office for United States Attorneys, and made a request for information about whether or not any grand jury proceedings were held on September 26, 2001, and whether any indictments were handed down by the grand jury within the Northern District of Alabama containing the name of **Terrell Clement** as the grand jury foreman?

In response to the subject letter, the Executive Office of the United States Attorneys sent a copy of the superceding indictment containing the name of **Terrell Clement.** No other indictments were released, and no remaining indictments were indicated as being withheld. (Exhibit E).

Since the Executive Office of the United States Attorneys is the official record keepers for **all** United States Attorneys and their assistants, it follows that neither the **first or second** indictment actually existed, and the alleged superceding indictment is **not** a true superceding indictment.

What is more, Fagnes has evidence that **Winfield Burks** was the actual grand jury foreman for the Northern District of Alabama, Middle and Southern Divisions, on **September 26, 2001**, and not **Terrell Clement.** Such proof would show that the **first, second,**

and **superceding indictments** are manufactured and fraudulent.

The evidence to support the fact that **Winfield Burks** was the grand jury foreman on September 26, 2001 derives from the fact that **all** indictments returned for the Northern District of Alabama, Middle and Southern Divisions, are filed in the Office of the Clerk for the Northern District of Alabama, Southern Division. And on **September 26, 2001**, an indictment was returned against **Kenny T. Jackson, Jermaine Jackson, Lester Gene Jackson,** and **Surina Miller**, Case Number: CR-01-N-0403-M. (Exhibit F). The grand jury foreman in that case was **Winfield Burks**, and the same person who received that indictment and filed it in record, is the same person who received and filed the indictment in the instant case, **Yolanda Berry**. Id.

Fagnes also wrote to **Sharon Harris**, Chief Deputy Clerk for the Northern District of Alabama, and received a response that stated "[g]rand jurors in the Northern District are drawn from all thirty-one counties of the district, and [t]erms of grand jurors normally run six months, but the term can be extended." (Exhibit G).

Fagnes also wrote a second letter to **Sharon Harris** that was forwarded to **Cindy Kimbrell**, Jury Administrator for the Northern District of Alabama, and she responded by stating that "[t]he grand jury foreman, or in his/her absence the deputy foreman, signs indictments for all 31 counties that comprise the Northern District of Alabama." (Exhibit H).

Thus, according to the response Fagnes received from Sharon Harris and Cindy Kimbrell, a grand juror's term normally run for **six months**, and the grand jury foreman signs indictments for all

31 counties that comprise the Northern District of Alabama. Id.

From the statements of Sharon Harris and Cindy Kimbrell, it follows that Winfield Burks and Terrell Clement could not simultaneously serve as the grand jury foreman for the 31 counties that comprise the Northern District of Alabama on September 26, 2001.

There is no doubt that Winfield Burks was the grand jury foreman for the Northern District of Alabama, and continued as such up to and including February 8, 2002, when he signed an indictment in that capacity charging Ricky Jay Lewis and Marlaine D. Ward with a controlled substance offense. (Exhibit I).

The grand jury foreman changed on or before February 28, 2002, when William Hudson signed an indictment as the grand jury foreman for the Northern District of Alabama charging Mario Dejuan Sanders with a controlled substance offense. (Exhibit J).

Accordingly, Winfield Burks' service as a grand jury foreman for the Northern District of Alabama for sometime in September of 2001 until sometime in February of 2002, is consistent with the normal six month term a grand jury member serves in the Northern District of Alabama, according to Sharon Harris.

Further, because Terrell Clement was not the grand jury foreman when the first, second, and superceding indictment was signed with that signature, the indictments were never properly returned by a grand jury. The indictments were manufactured by AUSA McGregor, and therefore, did not confer jurisdiction upon the district court to accept the guilty plea from Fagnes, and the conviction and sentence is void. Hamilton v. McCotter, 772 F.2d 171, 183 (5th Cir. 1985).

(c) Evidentiary Hearing.

The rules governing sections 2255 proceedings require an evidentiary hearing unless the motion, record, and files of the case foreclose what Fagnes is claiming to be true. See, Machibroda v. United States, 368 U.S. 487, 494-95 (1962); and Fontaine v. United States, 411 U.S. 213 (1973). See also, Porter v. Wainwright, 805 F.2d 930 (11th Cir. 1986); and Holmes v. U.S., 876 F.2d 1545 (11th Cir. 1989).

The allegations made in the supporting memorandum to the section 2255 motion are not so palpably incredible or patently frivolous or false that they can be dismissed out of hand, and the need for an evidentiary hearing should be apparent. Fagnes request that the Court hold an evidentiary hearing on the claims presented in the section 2255 motion.

C O N C L U S I O N

Wherefore, the reasons stated, Fagnes prays that the Court vacate, set aside, or correct the conviction and sentence as the law and justice requires, and grant any other relief to which Fagens may be entitled.

Respectfully submitted,

William Anthony Fagnes

William Anthony Fagnes, pro se

DECLARATION

I, William Anthony Fagnes, hereby declare under penalty of perjury (28 U.S.C. § 1746), that the foregoing statements are true and correct, this 20th day of July, 2005.

William Anthony Fagnes
William Anthony Fagnes

CERTIFICATE OF SERVICE

I, William Anthony Fagnes, hereby certify that a copy of the "Memorandum In Support Of Motion Pursuant To 28 U.S.C. § 2255, To Vacate, Set Aside, Or Correct Sentence, including Exhibit A though J," has been mailed with sufficient postage to carry same, first class, U.S. Mail, to the person at the address appearing below, this 25 day of July, 2004:

Robert P. McGregor
Assistant U.S. Attorney
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