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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, vs. DAVID ROLAND HINKSON, Defendant.	Case No.: CR-04-0127-C-RCT **EXHIBIT A** STATEMENT OF FACTS TO ARGUMENT #3 MOTION TO DISMISS ENTIRE CASE BASED ON PROSECUTORIAL MISCONDUCT, OUTRAGEOUS GOVERNMENTAL CONDUCT AND VINDICTIVE PROSECUTION)

THIS EXHIBIT A is submitted by defendant as an attachment to Argument #3 of his *Memorandum in Support of Defendant's Rule 33 Motion for a New Trial or in the Alternative Motion to Dismiss* and shows the cumulative effect of the injustice created by ongoing prosecutorial misconduct, outrageous government conduct and vindictive prosecution in this case (herein generally referred to as "Governmental Misconduct"). This is a summary of the events of Governmental Misconduct, which started before defendant's Tax Case (CR-02-0142-C) and have continued, through, this, the Threats Case, to deny defendant his civil rights and Constitutional rights and a fair trial in each case. These events collectively are of such a magnitude that they have undermined the fair and impartial administration of justice and can now only be remedied by dismissal of this case.

BACKGROUND

Mr. Hinkson was charged in the Tax Case with 16 IRS tax-related failure to file income and employment tax returns violations, 10 FDA-related product adulteration and mislabeling violations, 16 IRS-Treasury currency-structuring transaction violations and one count of forfeiture. Mr. Hinkson was convicted by a jury on May 5, 2004, of 26 white-collar crimes, having pled guilty to two FDA business 'control person' type, vicarious liability offenses related to the selling of a misbranded product and a medical device. All of the remaining FDA charges will be dismissed at sentencing. Mr. Hinkson is in post-conviction incarceration pending sentencing. The trial in the Threats Case occurred January 10 to 27, 2005 with guilty verdicts on three counts, not guilty verdicts on five counts and hung-jury verdicts on three counts.

PROSECUTORIAL MISCONDUCT: THREATS CASE TRIAL

A prosecutor's job is first to see that justice is done. The prosecutors in this case have been focused solely on obtaining convictions at any cost, even at the expense of compromising their own integrity and participating in violation of the very laws they are sworn to enforce.

The trial of the Threats Case involved a superseding indictment (Dkt. #37) containing eleven counts of alleged law violations for crimes involving the spoken word (herein "Federal Speech Crimes," such as Solicitation for murder of a federal official 18 USC 373(a) or Threats to murder the family members of a federal official, 18 USC 115(a)(1)(A).) A jury found Mr. Hinkson guilty of Counts Seven, Eight and Nine only (herein the "Swisher Counts") which entailed allegations that Mr. Hinkson solicited Elven Joe Swisher (herein "Swisher") to murder three designated federal officials. These charges were based on alleged acts which are inchoate, incomplete and for which there was no physical act or substantial step that transcends the alleged spoken requests, purportedly uttered by Mr. Hinkson; i.e., no harm was inflicted on anyone and there was no injured party. These Federal Speech Crimes arise out of hearsay statements allegedly made by Mr. Hinkson with no hard evidence to back them up.

Swisher, a government informant, who declared he was just repeating what Mr. Hinkson had said to him, out of court (i.e., hearsay), was allowed to recite the details of a request for a torture-murder that he claimed was Mr. Hinkson's plan for the deaths of three federal officials. These were hearsay statements that were supposedly made by Mr. Hinkson and were admissible because of a technicality in the rules of evidence. Generally, a person is not allowed to repeat what another person said out-of-court or "hearsay," which is excluded from the evidence at trial.

However, because of an accepted deviation from the general rule, know as the A*dmission by Party-opponent* rule (Federal Rules of Evidence, Rule 801(d)(2)) Swisher, was allowed to spew

forth a litany of false and fraudulent statements about Mr. Hinkson, unchecked, made up by him concerning the supposed 'solicitations for murder' of these federal officials purportedly requested by Mr. Hinkson.[1] There are no evidence rules that prevent a liar from making such wild claims, especially a liar who has the skill and finesse of Swisher.[2]

The government's obvious ploy was to shock the jury with such a gruesome and abhorrent tale that they would be horrified and outraged into rendering a guilty verdict. It worked, with Swisher's dramatic tales of mayhem and no one would be able to say any different the jurors were indeed shocked into submission to the government's plan. Of course Mr. Hinkson, denied it, but, the jury viewed his testimony as self-serving. Thus, it Mr. Hinkson would be convicted based on hearsay just as Sir. Walter Raleigh was convicted on hearsay, the only difference is that in Mr. Hinkson's case, the hearsay-liar showed up but Mr. Hinkson was denied his right to effective cross-examination by impeachment. The government simply deprived Mr. Hinkson of the military record information that would prove Swisher a liar.

Ironically, Swisher was able to present these lies to the jury with impunity. Only a proper investigation by prosecutors, motivated to do justice, could possibly have prevent this kind of travesty. Here, in spite of strong indications that Swisher was lying[3] rather than looking into the military record of Swisher to be certain that it was correct and not a forgery, the prosecutors, whose only motivation was obtaining a conviction, ignored their duty to investigate. Yet a prosecutor has a special duty to prevent and disclose frauds upon the court and to guard against due process violations caused by false testimony. (See Comm. of N. Mariana Islands v. Bowie, 234 F.3d 1109, 1116-1117 (9th Cir. 2002).)

A prosecutor is charged with the duty to act to correct what he knows to be false and elicit the truth. This duty:

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[1] Swisher testified: "He [Mr. Hinkson] would like to see them stripped, bound and gagged, and then burned with cigarettes or cigars. And then while Albers was down on his knees observing this occurring to his wife and any other family members that might be present, he wanted to have a plastic bag put over her head so that she would suffocate to death in front of him, along with other family members. Then he wanted that procedure repeated on Mr. Albers, himself." (See Exhibit UU, Excerpt Re: Swisher Trial Testimony, January 14, 2005, Tr. Pg. 25, ll. 4-13.) Later he was asked if Mr. Hinkson specified how he wanted to have the designated federal officials killed and Swisher replied, "… he wanted them treated in the same fashion as he had initially described for Mr. Albers and his family." (Id. at 33, ll. 19-21.)

[2] With respect to the charges involved here, Federal Speech Crimes, there is simply no check or balance against a good liar. If he is a successful conman, as Swisher is, one who has the ability to gain people's confidence, there is no defense – except impeachment with the truth. Every criminal becomes over confident. Swisher also. One of his crimes is related to a major fraud against the United States by obtaining veteran's benefits as a result of forgery of his Replacement DD 214 by means of false or fraudulent pretenses or representations. 18 USC 1031. The action of the prosecutor in failing to make Brady/Giglio disclosures in a timely fashion, prevented defendant from presenting the truth of Swisher's scheme or artifice related to his military record deprived defendant of the only defense available.

[3] Swisher's April 16, 2002 grand jury testimony reveals that he was claiming that he was a combatant in the Korean War, however, Swisher had changed his story to a post-War classified mission by the time of the January 2005 Hinkson trial. Since the government refused to produce FBI 302 witness statements for Swisher, it is reasonable to assume that he put the government on notice of such a change. Because Swisher was age 16 at the conclusion of the Korean War, it is impossible for him to have sustained a grenade injury.

> Requires a prosecutor to act when put on notice of the real possibility of false testimony. This duty is not discharged by attempts to finesse the problem by pressing ahead without a diligent and good faith attempt to resolve it. A prosecutor cannot avoid this obligation by refusing to search for the truth and remain willfully ignorant of the facts. Id at 1117-1118.

In *Bowie*, the court held that the prosecutor's failure to investigate a letter suggesting fraud constituted reversible error. Id.

Equally shocking is the fact that the prosecutors knew, or had reason to know, and if they had investigated, they would have found out that **all** of Swisher's statements about his military classified combat experience, combat injuries and medals were false, fraudulent and lacked even a shred of truth. Agent William Long, a part of the prosecution team, rather than acting as an investigator of Swisher tales, has been an enabler in Swisher's efforts to obtain recognition from the Veterans Administration and the U.S. Marine Corps as a disabled veteran to secure disability payments and Veterans medical benefits. The magnitude of the fraud perpetrated against the U.S. Government is just now being uncovered.

Likewise, it was Agent Long who was in a position to have discovered the fraud perpetrated upon the U.S. Government by Swisher. Given his track record, it is unlikely Agent Long, would have, on his own initiated such an investigation. It was Agent Long who neglected for 17 months his responsibility to investigate the statements of Mariana Raff that put Mr. Hinkson in jail in the first place and which, 17 months later, were determined by a mere phone call, to be absolutely false and fraudulent. However, if the prosecutors had been doing their job, and Agent Long had he been assigned to that task by the U.S. Attorneys involved in this case, they would have discovered the anomaly. Correspondence shows that AUSA Wendy Olsen has been another enabler, being continually involved with Swisher in his efforts to defraud the U.S. Government, which is not proper because her Idaho branch of the U.S. Attorney's Office was conflicted out and not supposed to be involved in this case.

All of the following named U.S. prosecutors have been in a position to investigate Swisher's fraudulent claims and have failed to do so: AUSAs Nancy Cook, Thomas Bradley, Wendy Olsen, Michael Patrick Sullivan and Michael Taxay. All of these, as well as FBI Agent Long, have read or were present when Swisher provided grand jury testimony and knew of Swisher's claim that he was in the Korean War. All of them were aware that Swisher claimed that he had sustained a hand grenade injury at the end of the Korean War. All of them knew, or should have known, that Swisher would have been age 16 at the end of the Korean War. A person of average intelligence having done the math, would have seen that Swisher was a liar:

> A [Mr. Swisher]: I'm an old disabled veteran, and that was all caused by a hand grenade at the end of the Korean War.

(See Exhibit XX attached, Swisher grand jury testimony, April 16, 2002, pg. 4, ll. 21-23.)

A [Mr. Swisher]: … I guess that my lower spine from the grenade is pretty fouled up….

(See Exhibit XX attached, Swisher grand jury testimony, April 16, 2002, pg. 14, ll. 22-23.)

Oliver Wendell Holmes is credited with saying: 'It is more than passing strange that so many great minds overlook the obvious.' Our U.S. prosecutors certainly overlooked the obvious here, but it is not certain that such speaks to their mental capabilities.

Also of concern to the prosecutors should have been the fact that Swisher was a person who had a financial interest in the outcome of this prosecution. It was shown that Swisher was a part of a group who had taken over Mr. Hinkson's business in December 2003 with a *Temporary Restraining Order* obtained from a local Idaho Court based on false pretenses. That TRO was dismissed, but not until serious damage was done. The U.S. Attorney's Office was well aware that Swisher testified before the grand jury that he and Richard Bellon (Bellon) claimed that Mr. Hinkson had given an ownership interest in WaterOz to them.

A [Mr. Swisher]: "[H]is [Mr. Hinkson's] reason for giving **us** partnership, which we did discuss later was because he was in jail and he couldn't handle things…."

(See Exhibit WW, Swisher grand jury testimony of February 10, 2004, pg. 23, ll. 10-13.)

While Swisher and his gang of thieves including Bellon and Lonnie Birmingham had control of the WaterOz factory for eight days, from December 4-12, 2003, they raided it for confidential customer information, product, supplies and cash, basically anything that was not nailed down. Prior to that, in June, 2003, Swisher, in the waiting area of his attorney's office, in a fit of anger had publicly threatened that if Mr. Hinkson did not pay him $10,000 for the lease of a certain piece of equipment, Swisher would "go to Boise to testify" against him and Hinkson would spend the rest of his life in jail. (See trial testimony of Gregory W. Towerton, not yet transcribed.)

Before that, on January 3, 2003, Swisher, in an earlier extortion attempt, stated that if Mr. Hinkson would give him one-half of his business, Swisher, a tester of Hinkson's mineral water products, would refrain from reporting to authorities that he had found Cyanide in one of Hinkson's product samples. Swisher, who had invested much of his career in the field of hard rock mining, used Cyanide to extract gold from ore. Hinkson, a maker of dietary supplements, did not use Cyanide for any purpose. Thus, it was Swisher who put the Cyanide in the sample and sent it to an independent lab for testing. There was laboratory confirmation that Cyanide was indeed in the sample. However, Cyanide was never found in any products at Mr. Hinkson's business.

Since Mr. Hinkson did not pay the 'blood money' demanded for the equipment lease, nor did he bow to the request to sign over half of his business, Swisher in a retaliatory move, 'went to Boise and testified against Mr. Hinkson' to ensure that he would spend the rest of his life in jail. Considering the combined testimony of Swisher's associates, Bellon and Birmingham (both of whom testified for the prosecution in the Threats Case) regarding other Speech Crime atrocities which they attributed to Mr. Hinkson; i.e., how he wanted them to kill someone as 404(b) evidence.

The Swisher plan was that, once Mr. Hinkson paddled off to prison, together these conspirators would be able to steal his business, probably at an auction after government seizure.

Swisher was not the only member of this group that had promised to punish Mr. Hinkson for not handing over half of his business. In the summer of 2003, as Mr. Hinkson sat in jail based on the false hearsay statements of Mariana Raff (see paragraph _ below) Bellon repeatedly told him he would "go to Boise to testify" against him and that Mr. Hinkson would spend the rest of his life in jail if Mr. Hinkson did not write up a partnership agreement giving Bellon half of the Business. Mr. Hinkson was so intimidated by Bellon's threats that he instructed his attorney, Brit Groom to write a document that would give Bellon a one-half interest in a new business, called WaterOz Club, that would handle all sales of WaterOz. It is outrageous that a member of Mr. Hinkson's defense team was able to extort Mr. Hinkson to the extent that he would give him a half interest in anything.

Mr. Hinkson did not give Bellon half of WaterOz and TRO lawsuit ultimately decided that Bellon did not have any interest in WaterOz for a variety of reasons, including lack of consideration and no meeting of the minds. Since Bellon had been Mr. Hinkson's paralegal and worked for Mr. Hinkson's attorney, Mr. Hinkson was very intimidated and succumbed to Bellon's threats and that is why the partnership agreement was written. Mr. Hinkson felt that, without the support of Bellon he was lost. Thus, Bellon and Swisher each fulfilled their promises to go to Boise and testify, and they tried their best to put Mr. Hinkson in jail for the rest of his life. Bellon, Swisher and Birmingham became government witnesses against Mr. Hinkson so that, since they could not directly steal the business by a direct takeover with a TRO, they could steal it after Mr. Hinkson was sent to prison.

The conviction of Mr. Hinkson on the Swisher Counts means that under the applicable sentencing guidelines, Mr. Hinkson, age 48, could easily spend the rest of his life in jail.

The overall Governmental Misconduct in this case arises from the fact that during the past ten years various government agents from the IRS, FBI, FDA and US Attorney's Office have conspired together with the grossest form of outrageous conduct to deprive Mr. Hinkson of his life, liberty and property. Such action would constitute RICO violations resulting from a criminal enterprise if it was not for the fact that they are protected by government immunity. The government officials in these agencies have obtained much help from private individuals such as Swisher, Bellon and Birmingham who have been promoting criminal action against Mr. Hinkson.

The objective of the government agents, as shown in this Exhibit A, has been to destroy Mr. Hinkson by putting him in jail, taking his property and keep him incarcerated for the rest of his life.

There is one other private party, Annette Hasalone and her slick attorney Dennis Albers, who were not satisfied with the $95,000 judgment they collected from Mr. Hinkson in a wage dispute in September 2000. They were attempting to obtain a 20% interest in WaterOz, were unsuccessful and had to settle for payment of the $95,000 judgment, plus interest. Thereafter, they have dogged him continually with complaints to various government agencies demanding investigation after investigation on specious complaints and prosecution of Mr. Hinkson for events that were non-crimes. Ironically, their objective, according to the testimony of Steve Bernard (trial testimony not yet transcribed) has been to have Mr. Hinkson charged with murder-for-hire and put in jail for the rest of his life. With a common goal between these private parties and the

government, it is no wonder that this case has been carried to the extreme that Mr. Hinkson has been held in jail for two years and a conviction was obtained because of a fraud on the court. Albers and Hasalone have been relentless (see Exhibit DD attached, Albers letter to the U.S. Attorney for Idaho) in their pursuit of Hinkson, partly because, with Hinkson in prison and out of the way, Hasalone, who already has started a competing business, has the present ability to take over Hinkson's business and service his customers once he closes his doors.

The government's main objective in pursuing Mr. Hinkson over the past ten years, is that he has been a fairly effective "whistle-blower" most of his adult life, exposing much government corruption in the past. Mr. Hinkson's unabashed style of calling a 'spade a spade' on his talk radio show caught the attention and the ire of the government. Because of his Constitutional exercise of free speech on these radio shows and his political activity in opposing officials in their bids for reelection, certain elements in the government have determined that Mr. Hinkson is their political enemy; sort of an 'enemy of the state' distinction. Therefore, these government agents and others mentioned later in this Exhibit A, have all thirsted to make him a prisoner in their new political 'Gulag Archipelago' of Federal prisons. The Federal prison business is big business and it needs to be fueled by large numbers of people, especially people who have money. Any money which a political prisoner has, the government will seize and it is used to fund the increasingly voracious and infinitely corrupt Federal Informant system. (See Exhibit NN attached, expose' of the Federal informant system by former Congressman Robert Bauman, prepared in 1997.)

The prosecutors in the Federal system involved with this case, instead of seeking justice, are charged with the responsibility to convict as many people as possible, especially those who protest the Federal Income Tax, as Mr. Hinkson has done, and those who are political enemies of the state, as Mr. Hinkson has become. The prosecutors know how to manipulate loopholes in the Federal law, especially the loopholes used in this case. One very big loophole used by the prosecutors in this case, is the fact that no hard physical evidence is required to obtain a conviction for a Federal Speech Crime, the conviction can be supported by the hearsay of one slick government informant.

Mr. Hinkson should count himself lucky, the FBI chief in Boston, Mass. a few years ago was using his pool of informants to murder his political enemies.

Where a conviction can result in virtually a life sentence and that conviction is totally dependant upon the credibility of one witness, and that one witness conjures up some tale that the defendant has committed a Federal Speech Crime, then the hearsay introduced under the *Admission of a Party Opponent* loophole becomes a 'tool of tyranny.' In this case, that witness is government informant Swisher. All that was required of the jury in this case was to decide whether that witness is an accurate reporter of events he says occurred. Thus, the credibility of that witness is the paramount issue in defending the case.

Other rules are supposed to protect a defendant from abuse of this loophole by the government. For instance, Constitutional Fourth Amendment due process requires that defendant be notified of the nature and cause of the charges against him. Generally, that is interpreted to mean that a defendant is entitled to a preview of government evidence and to have advance notice of what the witnesses are going to say. Starting with the Crime Control Act of 1984, Congress has been diluting the Constitutional rights of the American People to due process and to a fair trial to such an extent that, a grand jury can indict a "ham sandwich" and an innocent person can be

convicted of a Federal Speech Crime (i.e., solicitation for murder) on the rankest form of hearsay and spend the rest of his life in prison. This can happen in America because the false statements of a despicable liar such as Swisher, whose only motive is to steal from the U.S. Government and the defendant.

Because the U.S. prosecutors who have been involved in this case have established a pattern of willfulness and have demonstrated that they have no intention of following the rules or obeying the law when prosecuting Mr. Hinkson, a person who has been targeted as a political enemy, they have demonstrated that they can manipulate the criminal justice system and orchestrate convictions of innocent people, such as they have done here to Mr. Hinkson.

Knowing that loopholes exist in the law and knowing how to manipulate the evidence and the Judges, who are supposed to be neutral in enforcing those rules, the government has developed a pattern for destroying its political enemies (such as Mr. Hinkson) all the while creating the appearance of 'the orderly administration of criminal justice.' Mr. Hinkson's case is just such a case where the prosecutors know that the Court will not hold them responsible for any misconduct on their part, so with impunity, they can 'prevaricate the innocent into prison.'

Because Swisher is known as a pathological liar in Idaho County, Idaho (the place of his residence) and known as a conman who takes money on false pretenses of investments in his gold mine or mining process then spends other peoples money on high living and has nothing to return to the investor when the mine or the gold mining process fails (which it always has) the prosecutors who are using Swisher, are simply hiding his evil deeds behind fallacious interpretations of the Rules of Evidence, but have been effective in blocking defendant from presenting the truth.

The manipulation of the Rules of Evidence and Discovery by the government (specifically Rule 608(b), disclosure rules and the standing Procedural Order) prevented Mr. Hinkson's defense team from knowing the nature and extent of the forgery and being able to inform the jury thereof. While that it was suspected that Swisher had never been in the Korean War or even in combat and that he had never been awarded any medal by the U.S. military, even though he claimed that he had been awarded some of the highest and most coveted medals available to a serviceman at the unlikely age of 18, in 1955. Discovering and proving that Swisher fraudulently claimed that he was the recipient of the Purple Heart, Silver Star and Navy and Marine Corps Combat medal was essential to the defense of defendant's case and is an insult to every honest serviceman who has served his country with integrity.

The forgery and the wearing of the Purple Heart and the presentation of the forged Replacement DD 214 are all crimes, for which Swisher seems to have avoided any consequences. Yet, these are all crimes of which the Court and the government has knowledge. The prosecutors had a duty to investigate and cannot hide behind ignorance, yet they so manipulated the evidence in this case as to keep secret the fact that Swisher was lying about those things when the information was available to them. The credibility of Swisher was of greatest importance to the jury. (See Exhibit VV, Affidavit of Ben S. Casey, juror, who maintains that if he had known of the forgery, he would not have voted to convict Mr. Hinkson on the Swisher Counts.) Without the tools for a proper rebuttal to the forged Replacement DD 214 and without knowledge of the fraud, the defendant was without the means to rebut the onslaught of Swisher's fallacious words regarding murder-for-hire based on his contrived military record.

To show that the government was actually manipulating this situation and that it was no accident and that the government had not provided it to defendant, as a part of the plan to avoid disclosure to aid in conviction rather than the administration of justice, consider the following statement by AUSA Michael Patrick Sullivan, chief prosecutor against Mr. Hinkson, Counterterrorism Unit of the U. S. Attorney's Office, based in Washington D.C., as he engaged in the Purple Heart colloquy with the trial Court and defense counsel regarding the presentation of Swisher's forged "Replacement DD 214," on January 14, 2005, as follows:

Mr. Nolan:[defense counsel] I am going to – apparently, counsel for the Government knew about the validity of the Purple Heart. He just said he has a copy of this.

THE COURT: Have you seen this document?

Mr. Sullivan: He [referring to Swisher] showed me this document this morning, about 9:00 o'clock.

THE COURT: Do you have a copy?

Mr. Sullivan: I have a copy of it.

Mr. Hoyt [defense counsel]: Why didn't you tell us?

Mr. Sullivan: **Why should I**?

(Excerpt of testimony of Elven Joe Swisher, January 14, 2005, pgs. 148-149, emphasis added.)

"Why should I?" Because justice, fairness, the rules of discovery and an Order of this Court all required it and so that defendant can prepare a defense, that's why. Asking the question "Why should I?" in this context is the very essence of willfulness. The question "Why should I?" asked by Mr. Sullivan who had the responsibility to make the disclosure to defense counsel, shows that he deliberately withheld it and refused to follow the rules and was trying to justify his disobedience; it is the clearest statement of misconduct to express direct defiance of the rules. In truth and fairness the only answer is that the government has been pursuing a plan of vindictive prosecution against Mr. Hinkson. The fact remains no disclosure of Swisher's military record was made to defendant before trial and Mr. Sullivan knew it and deliberately withheld it; Why should I? indeed.

Because defendant was prevented from obtaining Swisher's military record in advance of his testimony, defendant was unable to prepare effective cross-examination and unable to effectively impeach Swisher's testimony.

The government hid the information concerning Swisher behind a fallacious interpretation of the rules of pretrial discovery. When asked by defendant for discovery of information about its witnesses six months before trial, the government, in derogation of the Procedural Order, hid behind the Jencks Act (18 USC 3500) but, promised to provide such information one week before trial, which the Court Ordered. Thus, for the six months before trial when information about government witnesses was critical to Mr. Hinkson's preparation, relevant information such as Swisher's prior

grand jury testimony and his military service record were not produced. Even at 9:00 a.m. on the morning of Swisher's testimony, when AUSA Sullivan had a duty to disclose that record and had an opportunity to do so, he willfully failed to do so. It is as if by withholding the disclosure of Swisher's Replacement DD 214 from defendant, he was engaging in gamesmanship and reveled in the trap he had set in order to ambush the defense team to make them look bad before the jury. Such tactics are inconsistent with the fair and evenhanded administration of justice, but are consistent with a motive of vindictive prosecution.

Defendant had no understanding of what Swisher was going to say about the crimes alleged in the Swisher Counts of the Superseding indictment until six days before trial when Swisher's grand jury testimony was produced. Even then, the gravity of Swisher's hideous testimony was hidden from the defense. Defendant was aware that Swisher claimed to have been in the Korean War, but was unable to obtain Swisher's military service record before trial to understand the full nature of the grounds for impeachment. With the government relying upon Swisher's dramatic description of a torture-style murder to shock the jury and obtain a conviction of Mr. Hinkson, it was Swisher's portrayal of his service record that convinced the jurors that, although the criminal accusation was bizarre, he must be a credible witness because, after all, he is a decorated combat veteran, who really sounds sincere (i.e., read, slick conman).

The prosecution also wanted the jury to think that Swisher was a decorated combat hero who should be trusted, believed and revered, when the government knew, or should have known otherwise. Swisher the conman, did such a thorough job of convincing the jury, that one of their members, Claudia Haynes, in the middle of Swisher's testimony, sent a note to Judge Tallman, asking whether Mr. Hinkson had been evaluated for sanity. That note expressed the fact that juror Claudia Haynes had made up her mind Mr. Hinkson was guilty, at that moment, and that she was not likely to listen to any other evidence. The Court, sua sponte, should have declared a mistrial. In fact, in a post-trial interview of Ms. Haynes, counsel for defendant learned that this juror had indeed made up her mind at that moment because of the Swisher's testimony and nothing was going to change it - partly because she had had a prior experience where she felt threatened by a neighbor who had paranoid personality characteristics similar to Mr. Hinkson's diagnosis. Ms. Haynes did not disclose the fact that she had had a prior threatening experience when asked in the *voir dire* examination. This lack of candor in *voir dire* allowed her to serve on a jury when she already had a built in prejudice that she did not disclose.

Swisher appeared in court wearing a Purple Heart medal indicating that he was a combat veteran who was injured by enemy fire. Wearing the Purple Heart speaks volumes about genuine military service and conveys a silent message of credibility not generally subject to cross-examination. Similar silent testimony of badges worn during trial has been held to deprive the defendant of cross-examination and allowing the wearing of an item which generates a non-verbal message has been held reversible error. *Norris v. Risley*, 918 Fed 828, 833 (9th Cir 1990).

Although Swisher's direct testimony was carefully guided by the government's questions and confined itself to alleged communications with Mr. Hinkson that was aimed at his mindset regarding the selection of Swisher as a hitman, based on his alleged experience in killing humans in combat. All throughout his direct examination, Swisher wore the Purple Heart, silently conveying

the message of credibility and putting his military record in issue. On cross-examination, Swisher, was questioned about the Purple Heart on his lapel, was asked if he had the document that entitled him to wear the medal.

In response, Swisher pulled from his breast pocket a document he declared to be a Replacement DD 214 (Exhibit UU, Excerpt of Swisher testimony, pg. 148, ll. 1-5), "[I]t is certified. We had to go clear to Headquarters of the Marine Corps and all over to get it." Thus, Swisher put in issue, not only his military record, but also the question whether the Replacement DD 214 was authentic and was an authentic certification from the U.S. Marine Corps.

Based on evidence discovered after the trial, Swisher's Replacement DD 214 has been determined to be a forged document (see Exhibit RR, Affidavit of Chief Miller, pg. 8, ¶ 23) and his testimony that it was "certified" by the Headquarters of the U.S. Marine Corps is a bold faced lie (see Exhibit UU, Ibid.) the only certification on Swisher's Replacement DD 214 is from the Idaho County, Idaho, Recorder, showing that Swisher had recorded that document on February 4, 2004 and then asked that Recorder's office to make a copy and certify that copy, as a true and correct copy of the document recorded by Swisher. (See face of Exhibit YY, that shows the Idaho County Recorder's office Recorded Swisher's Replacement DD 214 and then see the certificate on page 2 thereof, showing that the Recorder was simply certifying the document recorded for Swisher.)

Given the position taken by the Commandant of the U.S. Marine Corps as stated in its determination letter of December 30, 2004 signed by Lt. Col. K. G. Dowling and the Affidavit of Chief Miller there is no basis to claim that the Headquarters of the Marine Corps had certified Swisher's Replacement DD 214. (See Exhibit TT, U.S. Marine Corps determination letter of 30 Dec 2004; and Exhibit RR, Chief Miller's Affidavit, pg. 8, ¶ 23.)

As shown by the Affidavits of Chief Miller and Col. Woodring, Swisher committed a fraud on the Court, which was condoned by the U.S. Prosecutor, who admitted that he had a copy of Swisher's proffered Replacement DD 214 which he admitted he received that morning, "AUSA Sullivan: He showed me this document this morning, about 9:00 o'clock." (Exhibit UU, trial transcript, Excerpt Swisher testimony, pg. 148, ll. 21-22.) Given the prosecutor's theory of the Swisher Counts being dependent upon Swisher's experiences in the military that allegedly qualified him as a hitman in the mind of Mr. Hinkson, it was incumbent upon the government to investigate the possibility that its key witness was lying; especially when that witness had provided contrary and inconsistent testimony in the grand jury proceeding eleven months before – Swisher had said then that he was injured in the Korean War, at the Hinkson trial Swisher testified that he was injured on a post-Korean War mission. Thus, the prosecutor was on notice that he should investigate Swisher's military record, because if he was in the Korean War, he would have been age 16 at the time of injury.

Neither Swisher's military record nor the U.S. Marine Corps determination letter was made available to defendant by the prosecution prior to Swisher's testimony. These were documents to which defendant did not have access because of privacy rules observed by the U.S. Marine Corps. defendant was unable to obtain a copy of the authentic DD 214 for Swisher until the National Personnel Records Center (NPRC) was served with a judge-signed subpoena.

Defendant had tried to obtain a certified copy of Swisher's authentic DD 214 by hiring a private investigator starting in November, 2004. In October, Defendant learned that Swisher was claiming to have been a veteran from the Korean War who received war wounds and was decorated, but Swisher birth date, January 15, 1937 showed that Swisher was in his mid-teenage years during the Korean conflict. Mr. Hinkson believed that this anomaly presented an area ripe for impeachment to the extent he relied upon his war record in testimony.

The defense objective was to obtain a certified copy of Swisher's authentic DD 214 to access the truth. Defendant did not learn of the subpoena requirement until January 14, 2004, the day Swisher testified and the Court did not act on it until January 19, 2004. Without the judge-signed subpoena, defendant could only obtain a brief written summary from NPRC and was unable to obtain the certified copy of the authentic DD 214.

Ultimately, Swisher's record was produced by NPRC on Friday, January 21, 2005 after a judge signed subpoena was sent to the NPRC on January 19, 2005, however, nothing in the file was certified and NPRC included a various written papers, submitted by Swisher seeking recognition of the medals to which he claimed entitlement under his forged Replacement DD 214 based on a Top Secret mission he claimed to have been involved in at age 18-1/2. The trial judge was undecided because the Replacement DD 214 appeared authentic and NPRC had not supplied a certified copy of the authentic version. Due to a misinterpretation of the law, the Court gave defendant a choice to recall Swisher, who already demonstrated that he was a very creative liar and could make up stories on the spur of the moment, if the facts were not solidly established, or call a military records expert. This ruling was based on a misinterpretation of Rule 608(b) and a finding that the military record issue was extrinsic evidence, so once the question was asked, the Court ruled that the defendant would have to live with the answer, and no further evidence, such as from a military records expert, would be allowed.

What defendant needed was the opportunity to call both; the military records expert to lay the foundation, to state what was true, that Swisher's Replacement DD 214 was a forgery, that Swisher was not in combat, did not participate in any classified missions nor was he awarded any medals.

By Affidavit, subsequent to the trial, Chief Warrant Officer, W. E. Miller (herein "Chief Miller") explained that Swisher's Replacement DD 214 was a forgery. (See Exhibit RR, attached.) Also, Colonel USMCRet. W. J. Woodring, Jr., (see Exhibit SS, attached) who was a Captain in the U.S. Marine Corps in 1957 when Swisher claims his Replacement DD 214 was allegedly signed. The Affidavit of Col. Woodring shows that he did not sign Swisher's Replacement DD 214 and that his signature, taken from some other source, was superimposed onto said document by some unknown means - agreeing with Chief Miller's conclusion that said Replacement DD 214 is a forgery. Col. Woodring also certified in his Affidavit (id.) that he did not sign a support letter addressed to Swisher of 16 Oct 1957 attributed to him, which he advised also bears what appears to be his signature, taken from another source and superimposed onto said letter, making that letter a forgery. One of the most telling facts that contradicts Swisher is that, according to the Affidavit of Chief Miller, the U.S. Marine Corp did not engage in any secret or classified missions after the Korean War. (See Exhibit RR, pg. 6, ¶ E.)

The Government Misconduct was the willful failure to provide defendant with Swisher's military record as a part of its Brady/Giglio obligation that should have given defendant the opportunity to prepare for Swisher's testimony. Protestations by the prosecutor that he could not have anticipated the defendant's need for Swisher's military record are without merit because the government's theory of prosecution on the Swisher Counts was based on Swisher's military record. The trial court attempted to absolve the government of its Brady/Giglio responsibility by a ruling that the government was not on notice that Swisher's Replacement DD 214 would be an issue, thus the government had no duty to investigate Swisher's military record or supply a copy to defendant.

However, there are two significant factors that show the government was on notice of that Swisher's military record would be an issue. The first is inconsistent testimony by Swisher as of April 16, 2002 (See Exhibit XX attached, Swisher grand jury testimony, April 16, 2002, pg. 14, ll. 22-23) when he testified that he received combat injuries in the Korean War, which was impossible, because of his age 16 at the time. Military enlistment age during the 1950's was not age 16. The second inconsistency is that Swisher, subsequent to the grand jury testimony, started asserting that he was injured in post-Korean War combat in a classified mission.

Because the government's theory of prosecution for Counts Seven, Eight and Nine is inextricable tied to Swisher's military record and because the government was on notice that it should investigate Swisher's military record resulting from an age discrepancy between serving in the Korean War and the fact that Swisher altered his testimony from his statement in his grand jury February 10, 2004 testimony, the government had, for at least six months before trial, a duty to investigate and disclose Swisher's military record to defendant. Before offering a witness, once on notice of the anomaly, the government had an obligation to determine if the witness was testifying truthfully. The government's failure to investigate is the same as turning a blind eye to the crimes Swisher committed on the witness stand on January 14, 2005.

When Swisher testified on cross-examination, he did so with stealth and deception as he presented to the Court a copy of his Replacement DD 214 claiming it had been "certified" by the U.S. Marine Corps. The presentation of a forged document to a court, by itself, is a sufficient basis to order a new trial. The act of presenting a forged document to a court is a criminal act and constitutes obstruction of justice. 18 USC §1621, Perjury, 18 USC §§1503(a) and 1505, Misleading a Court by submitting a forged document as defined in 18 USC §1515(a)(3)(C).

A prosecutor may be liable for suborning perjury 18 USC §1622 or participation in the presentation of a forged document under 18 USC §1503(a)(3). AUSA Sullivan said he had obtained a copy of Swisher's Replacement DD 214 since 9:00 a.m. the morning of his testimony. (Exhibit UU, Swisher's trial testimony, pg. 148, ll. 21-22.) In addition, if AUSA Sullivan had made inquiry he would have become award of the U.S. Marine Corps determination letter dated 30 Dec 2004 as it was made a part of Swisher's military record. (See Exhibit TT, attached.) The government had adequate time between December 30, 2004 and January 14, 2005, the date of Swisher's testimony, to have investigated, obtained a copy of the record and provided defendant with a copy of Swisher's military record, including a copy of the December 30, 2004 determination letter.

When considering that the charges for which defendant was convicted were devoid of any physical conduct or overt acts by Mr. Hinkson and there was no one else who claimed that they

overheard Mr. Hinkson and there was no tape recording of Mr. Hinkson making a threat or soliciting murder, it is absolutely clear that the Swisher Counts depended solely upon the credibility of Swisher and his military record.

According to the testimony of Gregory W. Towerton (trial transcript Hinkson Threats Case, not yet transcribed) Mr. Hinkson was out of the State of Idaho for the months of July and August, 2002 when Swisher claims a solicitation was made. Then, according to his testimony, Mr. Hinkson ceased all direct communications with Swisher as of January, 2003, because Swisher was trying to extort from him a one-half interest in defendant's business, in exchange for which Swisher agreed not to report his finding of Cyanide in a sample of one of Mr. Hinkson's mineral water products sent to Swisher for testing. Swisher claims that Mr. Hinkson was pleading with him in mid-January, 2003, to torture-murder the three federal officials at a time when Swisher and Mr. Hinkson were not speaking to each other.

The credibility of Swisher was at the center of the controversy and Swisher placed a Purple Heart medal on his lapel to silently testify to his credibility as a decorated war veteran injured by enemy fire. The government's willful failure to comply with its obligation to provide the military records under Brady/Giglio doctrine was at the center of the denial of a fair trial for Mr. Hinkson.

The government's failure to provide the military record to Mr. Hinkson in advance of trial or in advance of Swisher's testimony, is a clear indication that the government wanted to prevent defendant from discovering the forgery and thus the fraudulent statements by Swisher in order to prevent Mr. Hinkson from being prepared to cross-examine him. The Swisher Counts were formulated, perpetrated and advanced by the government as part of a larger, comprehensive plan which has been linked between various government agencies to silence, punish and harass Mr. Hinkson for speaking out against the corruption and abuses of the government. Consider that a the government spent substantial effort presenting to the jury the tape recording of defendant exercising his First Amendment right to freedom of speech on a talk radio show, where he excoriated government officials for acts which he considered to be corrupt. Frankly, how is the legitimate exercise of free speech relevant to a murder-for-hire case, unless it was the government's intention to punish him for exercising his First Amendment right, as an example to others.

The jury acquitted Mr. Hinkson on Counts Four, Five and Six for soliciting the murders of federal officials (18 U.S.C. § 373) which Counts had been based on the report of another government informant, J.C. Harding who pretended to have had a conversation with Mr. Hinkson in mid-March, 2003 wherein Harding claims to have been asked to murder three federal officials; Mr. Hinkson was acquitted on Counts Ten and Eleven which were for purportedly threatening to murder the "children" of federal officials (18 U.S.C § 115) which Counts were based on the testimony of J.C. Harding's sometime girl friend, Anne Bates, who overheard a part of a conversation by Mr. Hinkson speaking with another person whom she could not identify, neither could she identify the date or time that said conversation took place, but did remember that it was jovial. The jury was deadlocked on Counts One, Two and Three and thus there was a hung jury verdict for the solicitation of the murders of the same three federal officials (18 U.S.C. § 373) based on yet another incident involving J.C. Harding and Anne Bates, where they each described a different event involving some cash money that Mr. Hinkson was supposed to have offered (one said $10,000 the

other $6,000; one said it happened at night the other said in the morning; one said that the cash was in a wad in Mr. Hinkson's hand while the other said it was in a stack of bills set on the table). The differences between the accounts of the two eyewitness was so dramatic that the jury could not agree and thus deadlocked. The claims under a separate heading entitled "Sentencing Aggravators," for enhanced penalties under the *U.S. Sentencing Guidelines* were dropped because of the recent U.S. Supreme Court ruling in *U.S. v. Booker*, 543 U.S. _, 125 S. Ct. 785, 2005 WL 50108 (Jan. 12, 2005).

Statement of Facts: Government Misconduct Prior to Threats Trial

1. False accusations, some of which constitute acts of international or domestic terrorism, have been made against Mr. Hinkson by multiple government informants, each of whom has had a motive to fabricate such facts and actions. One accuser, Mariana Raff (hereinafter "Raff"), is a disgruntled former employee of Mr. Hinkson's who was motivated by greed, revenge and a desire to escape responsibility for several felony crimes against Mr. Hinkson, such as burglary and theft of large sums of money. In an FBI 302 statement attributed to her, it is said that she informed the government that Mr. Hinkson, while in Mexico, solicited her brothers to murder several federal officials (herein the "Raff Story").[4] (See attached Exhibit B, comprised of two FBI 302 Reports containing illogical, exaggerated and highly suspicious statements allegedly made by Raff, filed under seal with the Clerk of the Court; and see also attached Exhibit C, an FBI 302 statement of Mariana Raff's Mexican-national brothers, Juan Carlos Martinez-Piedras and Gustavo Martinez-Piedras, completely contradicting the Raff Story, herein the "Juan Carlos 302."[5])

[4] The two FBI 302 Reports prepared by FBI agents attributing certain statements to Mariana Raff allegedly made in early April, 2003, accused Hinkson of trying to hire Raff's brothers in Mexico to murder federal officials in Idaho. Also attributed to her were statements about Mr. Hinkson's intent to use his international business and banking connections to flee prosecution, and these became the foundation of the Magistrate's determination that Hinkson was a "flight risk." (See attached Exhibit B, FBI 302s for Mariana Raff, filed under seal.) Raff's credibility has now been completely destroyed by the FBI 302 statement given on September 15, 2004 by her brothers, who denied that Mr. Hinkson made any offers to hire them as paid assassins. Because Raff's credibility was impeached with regard to the contract murder claim, her false statements likewise destroyed the claim that Mr. Hinkson presents a flight risk. In spite of the government's abandonment of the Raff story as a basis for any claims, Mr. Hinkson did not receive any bond hearing or consideration whatsoever. The fact that the government was wrong on the Raff story and waited 17 months to investigate the same should have engendered an admission of fault and an attempt to ease the ongoing violation of Mr. Hinkson's Constitutional liberty right and fair treatment. Instead, the government became more adamant in their pursuit of Mr. Hinkson, actively recruiting new informants against him and conjuring up new crimes that he did not commit.

[5] On September 15, 2004, 17 months after Mariana Raff advised the FBI that her brothers in Mexico were solicited by Mr. Hinkson to kill U. S. federal officials in Idaho, FBI Agent William Long called Juan Carlos Martinez-Piedras and Gustavo Martinez-Piedras, in Puebla, Mexico (brothers of Mariana Raff) along with another agent who acted as a translator. The brothers of Mariana Raff, admitted they had been contacted by Mr. Hinkson regarding the purchase of real property in connection with Mr. Hinkson's WaterOz business. When asked, both Juan Carlos and Gustavo denied Mr. Hinkson tried to hire them to kill anyone, including federal officials in Idaho and stated they did not even discuss homicide. (See attached Exhibit B, FBI 302 for Juan Carlos.)

2. At the time of Mr. Hinkson's April 4, 2003 arrest, Ms. Raff was under investigation for stealing his credit card and $6,000.00 cash in a burglary of his home. Ms. Raff's photograph was taken by a security camera at the ATM facility where the stolen credit card was used by her to withdraw $600.00 in cash shortly after the burglary. Thereafter, Raff (who was not employed at the time) purchased her first home by paying the required a down payment of $6,600.00 (which loan had been arranged in part with the help of Mr. Hinkson.) Raff's motive in making false claims against Mr. Hinkson was therefore to escape the responsibility of repaying the stolen $6,600.00 by putting him in jail where he would be unable to pursue her. As additional motivation, Raff was able to help her family avoid repayment of an earnest money deposit in the amount of $100,000.00 which had been paid to them by Mr. Hinkson as a down payment on property they owned in Mexico, which deposit had been wrongfully retained by the sellers, who were members of Raff's extended family in Mexico, and who failed to close the transaction. By claiming that Mr. Hinkson had solicited her brothers to murder federal officials, Ms. Raff knew Hinkson would be incarcerated and that she and her family would not be required to repay the money they owed Mr. Hinkson, which has been the case so far.

3. The government recently disclosed that it had obtained the information by September 15, 2004 that Raff had fabricated her Story, but the government delayed releasing this information to defendant until December 6, 2004, a time passage of almost three months (see Exhibit C, the Juan Carlos 302).

4. Such delayed disclosure of the Raff Story is the operative reason for Mr. Hinkson's late filing of a motion to dismiss for prosecutorial misconduct. The government's delay was deliberately designed to eclipse defendant's pretrial motion date of November 8, 2004, which caused further prejudice to Mr. Hinkson and was a further basis for the Motion to Dismiss based on Governmental Misconduct. The Court ultimately denied the motion for late filling.

5. One of the clearest items of evidence of prosecutorial misconduct (i.e., the 'smoking gun' evidence) and the clearest evidence of vindictive prosecution is the admission by government officials that they knew that Mr. Hinkson was not involved the international terrorism scenario described in the Raff Story, which admission came on December 6, 2004, after the November 8, 2004 deadline had passed for his filing of pretrial motions; defendant filed for an extension of time based on the untimely disclosure by the government which was denied.

6. From the inception of defendant's April 4, 2003 arrest, the Assistant U.S. Attorneys knew the Raff Story was false or, if they did not know it was false, they knew that the facts thereof had not been corroborated or confirmed by investigation and thus, their presentation of the Story to the Court as if it were true was a fraud on the Court.

7. In March, 2004, the government was aware that the Raff Story lacked credibility when they were told the truth by former WaterOz employee Lonnie Birmingham (who had accompanied Hinkson and Raff to Mexico). Birmingham appeared for his grand jury testimony on March 9, 2004 and told government attorneys that Hinkson never discussed homicide and/or murder-for-hire of anyone with the Brothers while in Mexico. Birmingham stated that after telling government officials these facts, the officials prohibited him from testifying before the grand jury that there was no solicitation for murder in Mexico. (See Exhibit LL, Affidavit of Wesley W. Hoyt Regarding

Phone Call with Lonnie Birmingham of July 16, 2004.) This event constitutes further evidence of the government's collusion and subornation of perjury against Hinkson.

8. In March 2004, the Birmingham information exonerating Hinkson with regard to the allegations of international terrorism was taken seriously enough by the government that Ms. Raff was released as a prosecutorial witness and her allegations were dropped, but defendant remained in jail.

9. Government officials failed to investigate this highly suspicious story that implicated Raff's brothers as international terrorists (because as Mariana Raff said, "they had done this type of work before") which could have meant that they had killed federal judges, prosecutors and IRS agents before. (See attached Exhibit B the Mariana Raff 302.) If such was the case, and Raff's brothers had killed U.S. federal officials before, then FBI Special Agent William Long, upon learning of the Raff Story in early April, 2003, had a duty to immediately investigate to see if there was any truth or voracity in such a claim in order to determine whether either of the then-current, unsolved murders of two U.S. prosecutors (one in Seattle and one in Baltimore) had been committed by the Raff brothers. If his investigation showed that the brothers were not 'hit men' and had not previously caused the death of U.S. federal officials, then Mr. Hinkson would have likewise been proven innocent of any suspected wrongdoing and should have been released from jail.

10. In any event, it was with reckless disregard of the truth and with calloused indifference as to the suspicious nature of the Raff Story that Agent Long failed to investigate or to cause an investigation to occur. His failure to investigate means that besides leaving Mr. Hinkson in jail, he was responsible for leaving the federal officials of the United States unprotected for 17 months (from April 4, 2003 until September 15, 2004.) This was a case where the FBI was warned, but chose not to take action.

11. Mr. Hinkson has been incarcerated for twenty-three months primarily because Magistrate Willliams believed, or at least could make a *prima facie* showing that he was relying upon an informant who provided information to FBI Agent Long, who provided his rendition of the Raff Story in the April 9, 2003 detention hearing. (See Tax Case Dkt. #68).

12. On July 7, 2004, after having been indicted in the Threats Case on June 22, 2004, a detention hearing was held where the government again proffered the false Raff Story as the primary basis for Hinkson's further detention, approved by the Magistrate. (See Threats Case Dkt. #14). (Hinkson is now in Federal custody based both on the conviction in the Tax Case and the The Threats Case of January 27, 2005, *Id.*)

13. During the Tax Case, neither the Federal District Court nor the Ninth Circuit Court of Appeals would permit Mr. Hinkson to have an evidentiary hearing to challenge the statements of Raff, presented as hearsay in both detention hearings.

14. Had the government operated in good faith, it would have confessed defendant's motion for a simple *de novo* hearing and would have produced its witnesses who, under cross examination, would have established that there was no solicitation was made in Mexico by Mr. Hinkson, no money was paid or offered by him to anyone, and that he had no plan to flee

prosecution, all of which would have freed him from jail. (See Exhibits B and C attached.) Instead, the government made a conscious effort to suppress evidence and obstruct justice. (Because the other allegations against Mr. Hinkson by informants J.C. Harding and Anne Bates were contradictory and insufficient to meet the 'clear and convincing evidence' standard without the Raff Story, the other allegations would have been insufficient to hold Hinkson in detention pursuant to 18 USC 3142(f)(2)(B) as shown below.)

15. The government's purpose in arresting Mr. Hinkson on April 4, 2003 and their purpose at the detention hearing of April 9, 2003 was to punish him for verbalizing his unpopular political views against the government on nationally-broadcast talk radio since 1990 (specifically January 8, 2003) and to prevent his further verbalization of such views. (See attached Exhibit D, transcript of a radio talk-show which was heavily relied upon by the government as an exhibit in the trial of the Threats Case.)

16. According to Mr. Hinkson's testimony in the trial of the Tax Case, he worked as a volunteer paralegal and became interested in exposing government corruption in the late 1980s and early 1990s in Las Vegas, Nevada (Clark County) where he was domiciled. In one instance Mr. Hinkson printed and distributed 600,000 fliers in order to expose a corrupt scheme involving the collection of a 'turtle mitigation fee' which was simply a new property tax in disguise (herein "Turtle Tax") added to building permit fees. The Turtle Tax ($500.00 per acre) was assessed against existing property owners who commenced new construction. (I.e., a property owner wanted to build a new building on his property and he owned 100 acres, he would be obligated to pay a Turtle Tax of $50,000.00.)

17. Mr. Hinkson exposed the fact that proceeds of the Turtle Tax, which were ostensibly being used to purchase nesting lands for the endangered Desert Tortoise (which was not a listed endangered species) were actually being placed in a private account controlled by local politicians. The funds were being used to purchase property from unsuspecting private landowners at the sites of future exit and on-ramps for a new freeway because these politicians had access to inside information.

18. Mr. Hinkson recognized that these sites would become extremely valuable for commercial purposes once the highway was completed and the private property owners would be deprived of the value of the appreciation of their property while the politicians profited. The Desert Tortoises were so plentiful (not being a native specie but having been introduced to the Nevada desert a hundred years ago without natural predator) that the government had instructed the residents to bring any Desert Tortoises to a specially erected station, where they were euthanized instead of preserved, another Federal Fraud.

19. The Clark County Commissioners and officials at the Bureau of Land Management represented that the Turtle Tax was authorized under the Endangered Species Act when it was not. This fraudulent scheme financially benefited local and federal officials while subjecting Nevada property owners to huge and unlawful taxes and depriving them of the use of their land without due process of law. (See Exhibit E, Transcript of Tax Case generally and Volume 6, Testimony of David Roland Hinkson, pg. 1126-1254.)

20. As a result of Mr. Hinkson's exposé, four out of five Clark County commissioners were not re-elected. During the same time period, Mr. Hinkson helped ranchers and farmers avoid seizure of their lands by showing that the BLM was misquoting the law, when it claimed power to seize property it did not have. (*Id*.)

21. Testimony in the Tax Case also shows that Mr. Hinkson thoroughly researched the Internal Revenue Code and made his own determination in 1994 that, by law, since he was not a person required to file income taxes, he would cease filing. *Id*. At this point, he went to his employer, applied for an exemption with the IRS and was granted a withholding exemption for tax year 1994. (See Exhibit F, Hinkson's W-4 application for exemption and the letter from the IRS confirming said exemption.)

22. Hinkson, who had filed1040 income tax forms through tax year 1993, did not file additional income tax forms in later tax years, which caused him to be targeted for an intense and aggressive IRS investigation beginning in 1997. After building his WaterOz factory in Idaho and developing his business, he plowed all of his profits back into capital improvements because, according to the testimony at the trial of the Tax Case, he disagreed with the IRS rules concerning 30-year depreciation of improvements to real property and considered the entire amount he spent on improvements to be deductible in the year of the expense. The fact that defendant had made as much as $3 million in gross revenues, did not file income tax or employment tax returns and considered all capital investments as if they were deductible in the year of the expenditure, along with the Form 211 A*pplication for Reward* being filed by a disgruntled former employee (Mr. Phil Kofahl) caused the IRS to commence the aggressive investigation. (See Exhibit G, transcript of Tax Case, Volume 6, Testimony, pg.1280 and 1282 and Exhibit H, Kofahl Reward Application.)

23. On March 9, 2000, as a part of that investigation, the IRS, through Revenue Agent Gerald Vernon, advised Hinkson that he was the target of a civil action. (Id. and testimony of Agent Vernon in the Tax Case, Tr. Vol. 6 at p. 1271, ll 6-14.) Hinkson relied upon the false representations of Agent Vernon that he was proceeding civilly.

24. In actuality, as of February, 2000, Ms. Lori Campbell of Salt Lake City, Utah, an officer of the Criminal Investigation Division ("CID") was also investigating him. (See Exhibit I, Shawn McDonald Deposition of June 30, 2004, pp. 26-27, ll. 19-25.)

25. On March 15, 2000, believing the false representations made by Agent Vernon that the matter was civil, Mr. Hinkson faxed a notice to Agent Vernon that he intended to file a civil action to activate his *Seventh Amendment* Constitutional rights to impanel a common law jury pursuant to the Constitution to decide whether he was required to file income tax returns, since the amount in dispute was over $20.00, and to preserve his *Seventh Amendment* right to a common law jury trial. (See attached Exhibit G, Tax Case Tr at pg. 1272, ll. 5-7.)

26. On March 22, 2000, after receiving notice of Mr. Hinkson's intent to file a civil lawsuit, Agent Vernon immediately made an official referral of Hinkson's case to the IRS CID to avoid having a common law jury determine the question of Mr. Hinkson's duty to file income tax forms. (Exhibit G, Tax Case, Tr at 1275-1276.) Vernon testified in the Tax Case that his purpose in making the referral was based on alleged threats of harm made by Hinkson against third parties who

were totally unrelated to the question of Mr. Hinkson's obligation to file tax returns (e.g., former WaterOz employee Steve Bernard (*Ibid*. at 1281 and 1282).

27. Agent Vernon admitted in his testimony that his referral to CID would have been improper based on a citizen asserting his right to file a civil action. (*Ibid*. at 1277, ll 18-21.)

28. Agent Vernon perjured himself in collusion with the AUSA who suborned his false testimony that Steve Bernard told him (Agent Vernon) that he "feared reprisal from Mr. Hinkson" and that "he was afraid that Mr. Hinkson would have him shot" in a phone call of March 6, 2000 (Exhibit G, pp. 1280, ll. 5-11.). Contrary to these statements and after reading Agent Vernon's testimony in the Tax Case, Mr. Bernard stated under oath that:

> 19. …I was quoted as having previously reported to him [Vernon] on March 6, 2000 that Mr. Hinkson threatened to "shoot me." … In fact, I remember that conversation and I never said or implied that I believed Mr. Hinkson would harm me or that he was capable of harming me. Specifically, I didn't say Mr. Hinkson intended to "shoot me." I merely said that being an undercover federal agent in Idaho could get a person shot. In his testimony, Agent Vernon added something that I didn't say and apparently he forgot to mention or simply left out the important part of my statement that **I wasn't afraid of Mr. Hinkson and didn't consider him a threat**. (See attached Exhibit J, Affidavit of Steven Bernard, Paragraph 19, pp. 4-5, citation omitted; emphasis added.)

29. The false implication that Mr. Hinkson had threatened to have Mr. Bernard shot was never corrected and is further evidence of Governmental Misconduct. The government had knowledge of the fiction (scienter), and deliberately failed to correct the deceipt. As a result, the government (via its agents) perpetrated a fraud by deceit, causing harm, detriment and injury to Mr. Hinkson.

30. On February 17, 2003, prior to the criminal referral of Hinkson's case, Agent Vernon stated to an official of the Idaho Department of Labor (IDOL) that he was going to "get" Mr. Hinkson and "raid" his factory. (McDonald testimony, Exhibit I, pg. 27, Id. at ll. 1-24 and pg. 67, ll. 11-19.)

31. In addition, an Idaho Department of Labor interoffice memorandum of February 18, 2003 shows that Agent Vernon was spreading false and vicious rumors in Hinkson's home town of Grangeville, Idaho (population, 3700) that he was a "dangerous person," had "semi-automatic and automatic weapons" stored at his factory and was a "coward" with "followers" who would perform acts of violence for him. (See attached Exhibit I, with IDOL Memos of February 16 and 18, 2000 and marked in the McDonald deposition as 'Exhibits. B-10 and B-12.')

32. Also in February, 2000, IRS Agents Vernon and Hines perpetuated similar false and malicious rumors to the local officials in the Grangeville office of the IDOL (Paula Ewald and Bob Harris) that Mr. Hinkson was a "dangerous person." (See Exhibit K, Deposition of Paula Ewald, and Exhibit L, Deposition of Bob Harris, pp. 19, ll. 20-25.) Ms. Ewald embraced the information

she heard from Agents Vernon and Hines that Hinkson was somehow affiliated with a militia and disseminated it as the IRS agents had suggested. (See deposition of Paula Ewald, Ex. *_, p. 24, ll 7-13 and p. 25 ll 9-19).

33. Worse than these rumors, in terms of vindictiveness, was the promise by Agent Vernon that "[w[e're going to raid this place." [Meaning Mr. Hinkson's WaterOz factory]:

Q. All right. And do you remember what he [McDonald's supervisor] chastised you for specifically?
A. For bringing – for being so alarmist and overreacting about the danger of WaterOz.
Q. Well, wasn't that exactly what Jerry Morgan wanted you to do when he called you on the 17th of February and gave you that information?
A. Yeah. It was – he didn't instruct me to do that; but, you know, he wanted to – I got the impression that he wanted to share information from agency to agency and work collaboratively so that he could – he came right out and said, ***We're going to raid this place***.
Q. That's not in your memo.
A. That's not in my memo, but I remember it was in the conversation.
Q. And that was the conversation – to be clear, that was the conversation of February 17th?
A. Yeah.
Q. Okay
A. And—
Q. Did he say ***why*** he was going to raid this place?
A. Well, because the guy was out of compliance and they were dangerous people.

(See attached Exhibit I, McDonald deposition at pp. 67, ll. 11-19 and Deposition Exhibits B-10 & B-12, emphasis supplied.)

34. The slanderous rumors by IRS agents that Hinkson was 'a dangerous person,' 'a coward,' 'a member of two militias,' 'was storing machine guns at his factory' and 'had followers who would perform violent acts for him' caused the IDOL to abandon its normal collection and enforcement process of bringing employers (such as WaterOz) into compliance with the Idaho state unemployment tax law. (IDOL's administrative duty under the law requires that it obtain compliance from all employers as quickly as possible to be 'fair' to all employers in the state.) (See attached Exhibit L, Idaho State Tax Representative Procedure Manual paragraph 1501.)

35. Government officials created a 'domestic terrorist' image for Hinkson in order to manipulate public opinion against him so that at the time of the anticipated 'raid,' his community would have developed the opinion that "he got what he deserved" and there would be no public outcry against the injustices done to him.

36. The IDOL then put its jeopardy assessment procedures into effect, including but not limited to applying the highest unemployment tax rate possible, charging interest, assessing penalties and executing a *Writ of Seizure*, all without proper notice to Hinkson, thereby depriving him of his property without due process of law. (See attached Exhibit M, writ of Seizure.) Exhibit M, copy Confidential Settlement Agreement, filed under seal with the Clerk of the Court.)

37. IRS Agents Vernon and Hines continued their unlawful conduct, which was not based on an evidentiary investigation conducted by them or by the FBI or the BATF. (See attached Exhibit I, deposition exhibit B-6, a memo from Mr. McDonald to his supervisor showing that it was not until May 2000 that Agents Vernon and Hines went to see the WaterOz factory for the first time.)

38. In February, 2000, at the same time that they were spreading their false and vicious rumors about Hinkson, IDOL Senior Unemployment Insurance Tax Representative, Shawn McDonald advised his supervisors that he had visited the WaterOz factory and saw none of the unlawful, subversive or dangerous activity that Agents Vernon and Hines had described. What he saw was a manufacturing facility where employees were engaged in the process of bottling dietary supplement mineral water. He saw no machine guns, no militia activity, no bags of gun powder; in fact, MacDonald saw nothing to indicate that Hinkson was a dangerous person and saw no evidence of any violent acts or conduct.

39. It was Mr. McDonald's belief that if he had time (just as he had done with other Idaho employers who were non-compliant) he would have been able to bring Mr. Hinkson into compliance with IDOL rules and regulations. Mr. McDonald's voice of reason recommending that he and the IDOL spend the necessary time trying to work with WaterOz to bring them into compliance was not heard by his supervisors.

40. As a result of the political pressure brought to bear by the IRS, Hinkson's business was placed in a "no contact status" by IDOL and was ignored for compliance purposes. Mr. McDonald was taken off the case and reassigned to other duties. By January 2004, a seizure of WaterOz property occurred involving almost $100,000 of which $30,000 was penalty and interest, increasing prejudice for Mr. Hinkson. (See attached Exhibit M, IDOL Seizure Notice.)

41. In February, 2000 another false and slanderous rumor was circulated about Mr. Hinkson: that he had 'put crates of guns into the WaterOz warehouse,' which rumor was presented by Paula Ewald to Mr. McDonald as a part of her report that Mr. Hinkson was a dangerous person. (See Exhibit I, Deposition of Shawn McDonald, deposition Exhibit B-10, memorandum dated February 16, 2000.)

42. Ms. Ewald attributed the origin of that rumor to her friend, Mr. Dana Lohrey (see Ewald deposition Exhibit K, pp. 25, ll 20-25 and 26 ll 1-12 and 29 ll 9-15; see also, Exhibit O, Deposition of Dana Lohrey). This rumor and the other ones like it, were completely dispelled when Mr. Lohrey, Director of the Department of Pharmacy Student Services at Washington State University, testified that there were no 'crates of guns' at WaterOz. Concerning the rumor regarding the crates of guns, Mr. Lohrey testified: "No, sir. I cannot figure out where that is coming from. I never saw anything like that." (Ibid., p. 15, ll 3-4.) What Mr. Lohrey did see were four nicely dressed gentlemen whom he was told were from the NRA (National Rifle Association) who had come to the WaterOz facility to participate in a radio show (see Ibid. p. 15 ll 12-25, 16 ll 1-25 and 17 ll 1-19).

43. On February 16, 2000, disgruntled former WaterOz employee Phil Kofahl purportedly spoke with Agent Vernon stating that Mr. Hinkson was affiliated with the "Montana

Militia" or the "Mountain Man Militia", another false and slanderous rumor perpetuated by the government. (Exhibit P.)

44. When Agents Vernon and Hines spoke to Ms. Ewald of the IDOL on February 16, 2000 and Ms. Ewald reported to their supervisor, Shawn McDonald, that she had been warned that Mr. Hinkson was a "dangerous person" it became evident to Mr. Hinkson that the "militia rumor" was part of the package of rumors started, perpetuated or embellished by IRS employees. Given the rumor-mongering by Agents Vernon and Hines it is apparent that they are the ones who started the 'militia' rumor as well.

45. On February 17, 2000, Mr. Hinkson's reputation as a domestic terrorist was solidified by IRS Revenue Agent Jerry Morgan (alias Gerald Vernon) when he informed McDonald,

> Yesterday I received a phone call from Jerry Morgan (IRS Revenue Agent). He verified what Bob [Harris] and Paula [Ewald] concerns (sic) about the dangerous nature of dealing with Mr. Hinkson and his "followers". He mentioned a particularly dangerous companion of Mr. Hinkson – a man named Chad Ericson. He also listed weapons located at WaterOz that (sic) composed of automatic and semiautomatic rifles used by military and law enforcement. He described Mr. Hinkson as a coward that is surrounded by devoted followers that are prepared to defend Mr. Hinkson with violent force. (See McDonald Deposition, Exhibit I, and B-12.)

46. In his testimony McDonald stated that he was required to report what he had been told by Agent Vernon, whom he deemed a reliable source, even though McDonald's own observations were far different than Agent Vernon's. Mr. McDonald reported that Agent Morgan (alias Vernon) had estabished his own credibility, "Jerry Morgan is a retired Los Angeles County Sheriff. I believe he is qualified to describe who is a dangerous individual." (Agent Morgan's motive for asserting his previous experience as L.A. County Sheriff was obviously due to the fact that he felt it necessary to substantiate the gossip he had been disseminating.)

47. When McDonald testified, it seemed obvious that he was concerned about the trustworthiness of his report, because Morgan's evaluation completely contradicted his own personal observations of WaterOz and Hinkson. (Deposition Exhibit B-12 in to the McDonald deposition, Exhibit I.)

48. As reported in the McDonald memo (*Id*.) Agent Vernon described Mr. Hinkson as a "coward" and repeated the allegation that he was "cowardly" in the trial of the Tax Case (see Vernon Tax Case testimony, Exhibit G, Tr p. 1281, 12-14), which information Agent Vernon attributed to disgruntled former employee Phil Kofahl. According to McDonald, Kofahl started the rumor that Mr. Hinkson was "closely affiliated with the 'Militia of Montana and the Minutemen Militia,' and asserted that "[m]any of his [Hinkson's] … employees are also members of the Militia movement." (Ibid. at 1281, ll. 3-11.) Former WaterOz employee Steve Bernard explained that Kofahl had totally misconstrued a statement made by WaterOz customer Bill Rich, who had referred to the Oregon State Militia, a constitutionally-mandated public service organization to which Mr. Rich belonged. It was Mr. Rich who had caught and exposed Phil Kofahl for stealing

WaterOz property. (See Exhibit J, Bernard Affidavit, paragraph 12).

49. As further evidence of Governmental Misconduct, the government developed its case based on the above described "smear campaign", portraying Mr. Hinkson as a domestic terrorist based solely upon the unsubstantiated reports of government employees Agents Vernon and Hines. The government, either by neglect or design, did not investigate the slander, just as it had not investigated the facts of the Raff Story.

50. After March 2000, Agents Vernon and Hines pursued Hinkson using fraudulent administrative summonses to obtain his financial records without allowing him the time as required by law to answer the summons. As an example, Attorney Dennis Albers (who represented disgruntled former WaterOz employee Annette Hasalone) turned over Mr. Hinkson's financial records he had obtained in discovery in the Hasalone v. Hinkson case (see Para.55), immediately when presented with a summons without giving Mr. Hinkson time to object he testimony by Vernon was that Vernon faxed the summons to Albers and Albers immediately released the Hinkson financial records to Vernon. Hinkson had no chance to object.

51. In or around July 2001, the government commenced the taking of testimony before the grand jury in Coeur d' Alene, Idaho, regarding its investigation of Hinkson, but no indictment was forthcoming at that time.

52. By October 2001, Mr. Kofahl was suborned by AUSA Nancy Cook to testify before the grand jury that Hinkson's products were dangerous and had led to a death, when in fact there never was a complaint, report or showing that any person has every been made sick or died from taking WaterOz products. (See Exhibit R, Grand Jury Transcript of October 17, 2001, pg. 27, ll. 17-25 & 28; ll. 1-2 noting the questions by the Assistant U.S. Attorney encouraging the aberrant testimony; see transcript filed under seal with the Clerk of the Court.) The fact is that Hinkson's products were carefully investigated by the Food and Drug Administration (FDA), whose record reflects that WaterOz products have not caused injury or harm to anyone, and certainly not a death.

53. The grand jury transcript record reflects that the prosecutor suborned this egregious testimony by Mr. Kofahl, knowing that Kofahl was a vindictive and disgruntled former WaterOz employee, looking for an opportunity to settle an old score. Kofahl had previously conspired with others in a failed attempt to take over Mr. Hinkson's business in early 1998 and by late 1998 he and his wife Stacey moved back to Nevada after having been caught stealing WaterOz property. (See Exhibit R, Phil Kofahl Grand Jury Testimony generally filed under seal with the clerk of the Court.)

54. AUSA Cook actively secured and solidified Kofahl's willingness to slander Hinkson and solicited his perjured testimony before the grand jury in order to inflame the passions of the members of the grand jury to obtain an indictment against Hinkson. (Cook had previously failed in her efforts to secure an indictment against Hinkson.) The use of false and inflammatory testimony was just one of the elements of the criminal enterprise against Mr. Hinkson. (See Exhibit R, government elicited testimony from Kofahl concerning Hinkson "enslaving" people, etc., Id at 13, ll 7-25, transcript filed under seal with the clerk of the Court).

55. Annette Hasalone, another disgruntled former WaterOz employee, was represented by Grangeville attorney Dennis Albers and sued Mr. Hinkson in the Idaho County District Court

from 1999 to 2000 for a 20% interest in WaterOz or $600,000.00. While the jury did not award her a share of WaterOz because they found no evidence of an agreement between her and Hinkson as to ownership, they did award $95,000.00 for "back wages" based on an oral employment contract and missing WaterOz payroll records. (Hasalone later admitted to former WaterOz employee Kevin Hagen (a witness in the Hasalone case) that her mother-in-law, Bobbie Eve (former office manager of WaterOz) had taken Hasalone's payroll records and put them in 'safe keeping.' (See Exhibit *_, Affidavit of Kevin Hagen, of March 27, 2003, which demonstrates Hasalone arranged with her mother-in-law, Bobbie Eve (the office manager of WaterOz), to steal Hasalone's payroll records so they could not be used as evidence.)

56. Those records were reportedly in the hands of IRS Agent Steve Hines at the time of trial. In addition, the evidence at trial clearly showed that, had it not been for the compensation paid to her by WaterOz, Ms. Hasalone had no other means of support at the time, refuting her claim that she was unpaid by Mr. Hinkson. The most puzzling thing about the Hasalone's suit was that, by her own admission, Mr. Hinkson had saved Ms. Hasalone's life through his WaterOz products (see attached Exhibit U, Testimonial of Annette Hasalone, wherein, she claims that WaterOz products cured a fatal lung infection); Mr. Hinkson had also provided her with employment for over a year, (without regard to the fact that she was as a fugitive from justice from Yolo County California) and, in spite of her testimony to the contrary, paid her full wages and salary as agreed during her entire term at WaterOz. Mr. Hagen did not come forward for almost two and a half years after the judgment for $95,000 was entered against Mr. Hinkson to reveal that (a) Hasalone tried to pay him a reward for his testimony; (b) attorney Albers coached him to lie under oath [subornation of perjury]; and, (c) Hasalone's mother-in-law Bobbie Eve, who was the WaterOz office manager, secreted the payroll records that would have provided Mr. Hinkson with a complete defense from said charges. *Id*.) The government used these slanderous rumors as a further pretext in their relentless and vindictive prosecution, which was typified by outrageous government conduct and prosecutorial misconduct against Hinkson.

57. According to former WaterOz employee Steve Bernard, Hasalone actively recruited him to join in her quest to "bring Dave down" as she sought to 'get even' with him for wrongs she perceived had been done to her by Hinkson. The record shows that Hasalone and her cadre of co-conspirators made false reports against Hinkson claiming he had violated various rules and regulations of different governmental agencies, including but not limited to the Idaho Department of Environmental Quality, the Environmental Protection Agency, Idaho Health Department, Idaho Department of Labor and the Idaho Attorney General. All of these agencies investigated Hinkson and concluded that there was no basis for the claims Hasalone made. (See Exhibit J, Affidavit of Steve Barnard, paragraph 9.)

58. On August 21, 2001, Ms. Hasalone was encouraged by AUSA Nancy Cook to give false testimony before the grand jury; specifically, that Mr. Hinkson was responsible for the death of the son of late-night radio talk show host Art Bell. (See Exhibit S, Hasalone Grand Jury Transcript, pp. 10-11 and 35-36, filed under seal with the Clerk of the Court) even though there never was any police report or any evidence that the boy died. In fact, reports indicate that Art Bell's son, (i.e., Art Bell IV) is alive and well today and recently collected a six-figure settlement from the Pahrump, Nevada School District in March, 2004, as a result of his report that he was sexually assaulted by a substitute teacher at his Pahrump, Nevada school. (See Exhibit V, copies of March, 2004 newspaper articles regarding Art Bell IV's 2004 settlement.)

59. Causing Hinkson to appear responsible for the death of a child was an obvious attempt by the government to inflame the passions of the grand jury members against Hinkson. (See Exhibit S, pp. 10-11 and 35-36 generally and the comments of the Assistant U.S. Attorney.) (Such false allegations tainted the minds of the members grand jury, who rely upon the honesty of government officials to guide them in how they should proceed in their grand jury service, and brought them to the erroneous conclusion that Hinkson was a vicious and psychopathic criminal.)

60. Realizing that there was no basis for the IRS to seek a search warrant of defendant's property Agent Hines admits in his grand jury testimony that he contacted the FDA regarding Mr. Hinkson's WaterOz products in order to legitimize his planned raid of Mr. Hinkson's property.

61. Continuing with his aggressive investigation and as background to the involvement of the FDA, Elven Joe Swisher testified before the Grand Jury in 2001 that he was aware that he was responsible for testing WaterOz products and that the results of his analytical testing (done on a continuing basis) reflected correct PPM (parts per million) which meant that the products were in compliance with FDA labeling requirements. (See Exhibit Z, Swisher grand jury testimony of April 16 2002.) However, after IRS Agent Hines contacted the FDA, Mr. Hinkson was indicted on criminal charges of selling adulterated drugs in spite of the FDA knew he had hired an independent testing company (Swisher) to verify labeling compliance. It was vindictive of them to commence prosecution at that time rather than send notification of defective labeling according to FDA practice. (See Exhibit W, Prochnow Report.)

62. During the four months that the indictment was sealed (July 17, 2002 to November 18, 2002), the government breached its own indictment secrecy requirements (see Rule 6(e)(4), Fed.R.Crim.P.) when the U.S. Attorney Nancy Cook, who had responsibility and the government's representatives from the FDA disclosed to Hinkson's primary competitor, ENVIA Corporation, that an indictment had been issued against Hinkson. (See attached Exhibit AA, Affidavit of John Humphries, attached to Motion filed along with Dkt. # 259, Tax Case.)

63. On October 19, 2002 (one month before the secrecy order was lifted on the Tax Case indictment) ENIVA associate Art Morris, approached Mr. Hinkson at a health conference in Lansing Michigan and according to an eye witness,

> Mr. Morris began verbally attacking Mr. Hinkson in a loud voice, shaking the bag in his hand, gesturing toward Mr. Hinkson with the bag that appeared to have WaterOz product in it, interrupting him, and taking over the conversation by shouting the following:
>
> > "Your products are contaminated. You can't prove the purity or PPM content of your water. You've been indicted. You're gonna be arrested and you're goin' to jail." *Id*.

64. This ENIVA representative could not have known of the indictment a month before it was unsealed, unless the government had released that information. The effect of the release of

the information to ENIVA by the government was devastating to Mr. Hinkson. WaterOz disgruntled former employee, Annette Hasalone, who, worked for ENIVA in 2002, was allowed by Nancy Cook and the FDA to obtain an unfair competitive advantage over WaterOz. She took advantage of the opportunity to plagiarize, steal and carry away WaterOz marketing materials, including a cassette tape from a lecture given by Hinkson, entitled "Don't Mortgage Your Life for Your Health". Hasalone used that lecture to promote ENIVA products giving the tape the new name of "Who Put the Chalk in Your Cheerios" resulting in a dramatic increase in ENIVA sales to $1 million per month, as Hinkson sales declined. (See Exhibit W, Report of James Prochnow.)

65. In addition, Hinkson was selectively prosecuted for FDA labeling crimes, while ENIVA used all of his product information and descriptions, but were not prosecuted. *Id.*. The selective use by the FDA of its power to assist one business (ENIVA) to the disadvantage and detriment of another business (WaterOz) is a form of outrageous governmental conduct and vindictive prosecution compounded by the FDA's selective use of its police power to criminally prosecute WaterOz for conduct it openly allowed another company (ENIVA) to engage in with impunity.

66. When the indictment in the Tax Case was issued on July 17, 2002, it contained FDA counts, ostensibly to correct conduct that was a danger to public health and safety. It would be expected that a search warrant would have been served immediately in order to have prevented the ongoing threat to public health and safety. However, the indictment (which included the allegations of FDA law violations) was placed under seal (Tax Case Dkt. #s 1, 2, 3) the same day it was issued for the next four months, until November 18, 2002

67. If any threat to public health and safety existed, the government shirked its responsibility by burying the indictment for four months. (It became apparent that the FDA Counts were added to the Tax Case indictment by the government simply to justify the issuance of a search warrant (i.e., not for FDA purposes, but rather to enable the IRS to have access to Mr. Hinkson's property.)

68. The resultant search warrant (that prohibited a search of Mr. Hinkson's home) along with a warrant for the arrest of Mr. Hinkson, was finally executed on November 21, 2002 by a raiding party of approximately 50 persons: a 25 member "SWAT-team" of FBI agents who came from other nearby states, a few FDA agents (to make it appear legitimate) and IRS agents who dismantled computers, downloaded financial information and hauled away thousands of records in file boxes in a moving truck brought for the specific purpose of allowing the IRS to gather and collect additional financial records from Mr. Hinkson which it used to contact Mr. Hinkson's creditors and terminate his merchant bank accounts and credit lines in an effort to completely shut down his business (in November, 2002). (See attached Exhibit X, Testimony of Agent Long of December 7, 2004 and Exhibit Y, Affidavit of Geraldynne Gray.) While the IRS succeeded in terminating the WaterOz credit lines temporarily, Mr. Hinkson exerted a massive effort to obtain other lines of credit and restart his business after the raid. *Id.*

69. This SWAT team raid was an example of the government's unnecessarily and overy aggressive pursuit led by AUSA Cook whose objective was to punish Mr. Hinkson, malign his reputation, destroy his business, take his money and incarcerate him. Had the government had not made the decision to suborn perjury or accept false testimony, but instead acted in good faith using

fair dealing and investigated and discarded the spurious rumors spread by disgruntled former employees, the raid and destruction of property that went with it would not have occurred. Additionally, if the government had scrutinized the testimony of its own employees (e.g. Agent Long), there would not have been an indictment of David R. Hinkson.

70. Rather than picking up Mr. Hinkson on the street or simply inviting him to the Sheriff's office as they did on April 4, 2003, this raid was carried out to vindicate the malicious desires of Agents Vernon and Hines. Mr. Hinkson was readily available in the community, working daily at his WaterOz factory with his employees, and making frequent trips to the Town of Grangeville (12 miles away) to visit his children (who live with his ex-wife, their mother) and patronize the grocery store, bank and other establishments for the purpose of obtaining the necessities of life. (See psychological reports of Dr. Jerry Doke, attached as Exhibit BB and CC filed under seal and Testimony of Agent Long of December 7, 2004.)

71. From November 21, 2002 to April 4, 2003, the four-month period after the raid, while Hinkson was out of jail on pretrial release, Pretrial Services Officer Gaylor on several occasions stated to Hinkson, 'we have information that you have machine guns' or 'where are you hiding the machine guns?' It is clear that attorney Dennis Albers of Grangeville, (who had a grudge against defendant over a political matter) was providing slanderous and untrue information to the government in an attempt to assassinate the character of Mr. Hinkson in an effort to have him arrested on false pretenses and claims that there were bags of gun powder stored at the WaterOz factory. (See attached Exhibit DD, letter from Dennis Albers to Idaho's U.S. Attorney dated March 24, 2003.) The fact that Officer Gaylor knew that the agencies who had raided his factory had searched every inch and had found no contraband of any kind (including machine guns, sniper rifles, bags of gunpowder or explosives, etc.) Such continued unwarranted probes by government thus constituted harassment and another indication that the government had targeted Hinkson for vindictive prosecution.

72. In addition to the rumor campgain J.C. Harding and Anne L. Bates who were sent as informants to infiltrate Hinkson's residence and place of business while he was still free on pre-trial release and weregiven the specific task of gathering information and entrapping Hinkson, or, in the event he was not interested in their entrapment 'bait', their purpose was to falsify 'murder-for-hire' claims against Hinkson. (See attached Exhibits EE, FF, GG and HH, FBI 302s and copies of grand jury transcripts filed under seal with the Court.)

73. The government did not divulge that Harding was compensated by the government when such information was initially demanded of AUSA Wendy Olson by defendant in March, 2004 when she was asked for *Brady/Giglio* materials in the Tax Case. AUSA Sullivan later admitted in a letter of July 2004 that Harding had been paid and Harding admitted in his trial testimony that he was paid $1,800 by the government.

74. Evidence regarding Bates' purpose in coming to Mr. Hinkson's home was revealed as she surreptitiously downloaded information from Hinkson's computer for the purpose of providing it to the government (information obtained without a warrant.) This theft by Bates of Hinkson's personal property was solicited by the government. (See Exhibit II testimony of Robert Blenkinsop in the Tax Case, and at the grand jury, showing that he obtained personal e-mails of David Hinkson from his personal computer located at his home in the room in which Bates stayed

which were not available on the WaterOz computers and could only have been illegally obtained from his home.) However, in her trial testimony she denied knowing anything about a computer after numerous fellow workers at WaterOz saw her demonstrate great skill on company computers.

75. J. C. Harding engaged defendant in a lengthy discussion (which he recorded on a body wire) during which he repeatedly attempted to get Mr. Hinkson to admit to soliciting for the murder of federal officials, which he never did. The Court in both of its detention orders, and the government in its arguing of pretrial motions, assert that the March 27, 2003 body-wire recording Harding supports their case; contrarily, the tape *disproves* their claim that (a) Hinkson attempted to hire anyone for murder or (b) he's a "danger to the community." In fact, all statements made by Hinkson in the recorded conversation demonstrate that Hinkson was relying strictly on the legal system for redress of his grievances. When he was repeatedly asked by Harding during the recorded conversation if he wanted to kill federal officials, Hinkson's response was, "I'm going to sue them," and Hinkson declared that he would "beat them at their own system" and he said, "I'm just suing them."[6] Nowhere in the conversation did Hinkson state that he wanted to hire anyone to commit murder. (Hinkson has been held in jail for 20 months on such flimsy hearsay statements, many of which have now been shown to be lies. See generally attached Exhibit JJ transcript of the detention hearing of April 9, 2003.)

76. On April 4, 2003, at the time defendant was arrested in Kooskia, Idaho by FBI Agent William Long, Hinkson and denied his Constitutional right to have his attorney present during any questioning so as to avoid self incrimination. Agent Long committed perjury when he stated at the April 9, 2003 detention hearing that Hinkson had not asked for an attorney. After Agent Long was presented with a tape recording of Hinkson's request for an attorney, Agent Long admitted that he had "erroneously" testified. (See Exhibit X, Testimony of William Long, December 7, 2004.) Agent Long admitted perjury.

77. By this time, J.C. Harding, Anne Bates and Mariana Raff (having received some form of compensation from the government as informants) had each allegedly provided hearsay statements to FBI agents claiming that Hinkson had solicited them (or solicited people known to them) to murder federal officials, family members and others. (See Exhibits FF and GG, FBI 302 Reports and testimony of Harding and Bates filed under seal with the clerk of the Court.)

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[6]EXERPT OF March 27, 2002 body wire:

THE INFORMANT:	"So you're going to murder them. What are you going to do? What can you do?
MR. HINKSON:	I'm going to sue them.
THE INFORMANT:	Right.
MR. HINKSON:	That's what I have been doing. That's the frustrating part is (sic) the only thing we got is the court system which is so crooked." (Exhibit _, March 27, 2003, tape of body-wire p. 135, ll. 14-20.)
THE INFORMANT:	"Got you. Hum, so you think you can beat them at their own system?
MR. HINKSON:	Yeah." (Id. at p. 147, ll 12-14.)
THE INFORMANT:	"I want to know something for sure. This is dead serious what I'm asking you this. (sic) You talked to me about this on a couple of occasions. Do you want to do it? Do you not want to do it?
MR. HINKSON:	What?
THE INFORMANT:	Your problem with three wisemen.
MR. HINKSON:	I'm just suing them." (Id. at p. 149, ll 3-16.)

78. Based on the hearsay statements made by Raff which have now been proven to be false, Magistrate Williams ruled that there was no condition or set of conditions that would ensure the safety of the community or prevent Hinkson from taking flight to avoid prosecution. (See Exhibit C.) Defendant cannot understand the reason why he has not been released from jail since there has been no *evidence* presented to the Court that he is, in fact, a danger to the community or that he is a flight risk. Besides the false statements from Raff implicating him in these ways, the only other negative information against him considered by the Court came from an admitted perjurer, FBI Agent Long, who was caught in his perjury and admitted lying. (See Exhibit JJ, testimony of Agent Long April 9, 2003, and Exhibit X, testimony of William Long, December 7, 2004.)

79. The three things responsible for putting Mr. Hinkson in jail and keeping him there since April 9, 2003 are (a) Facts of the Raff Story, which falsely suggest that Mr. Hinkson was an international terrorist; (b) Facts in the Raff Story characterizing Mr. Hinkson's efforts in international business and banking as evidence of him being a flight risk; and (c) Agent Long's deliberate misinterpretation of the contents of March 27, 2004 body-wire recording which is exculpatory and shows Mr. Hinkson not to be a danger. (See Exhibit KK.) The Raff accusations were therefore used by the government for the purpose of characterizing Mr. Hinkson as an individual with a predisposition to hire someone to murder others because the government was anticipating a possible entrapment defense being asserted, (i.e., when being recorded by FBI Informant Harding on March 27, 2003 Hinkson was amazed that individuals like Harding continually came to him proposing or discussing murder-for-hire, even though Hinkson himself never made statements about killing anyone. Hinkson did not know he was being recorded and did not realize that Harding was attempting to entrap him into stating that it was his desire to kill the federal officials.) (See Exhibit KK, filed in the detention hearing of July 7, 2004, Transcript of the April 9, 2003 detention hearing containing facts of the Raff Story.) The Raff Story seems to have been a back-up in the event that the Harding recording proved to be invalid.

80. The criminal enterprise engaged in by government officials and agents was to continually manufacture criminal offenses of the same type (murder-for-hire) to keep Mr. Hinkson in jail. As recently, on December 22, 2004, defendant was advised that another informant (a "jail house snitch" named Chad Croner) has come forward (on the eve of Mr. Hinkson's January 10, 2005 jury trial) alleging that Mr. Hinkson, while in jail, admitted the allegations of all charges in this the Threats Case as well as admitting to (newly invented) crimes. (See below.)

81. The failure of the prosecution to notify the grand jury, the Court and defense counsel as required by law that it had discovered that the Raff Story was false and that strong evidence existed that FBI Agent Long knew that it was false and failed to investigate before he first testified about it on April 9, 2003 is an example of Governmental Misconduct. At the very least the prosecution should have notified the grand jury, the Court and defense counsel that Long had not verified the Raff Story, but instead, compounded the injury to Hinkson by using the fraudulent Raff Story as evidence, knowing of its falsity (scienter) before the government proceeded forward to secure detention and a true bill.

82. The government did not perform an adequate background check on Ms. Raff, who was, at the time, known to be a disgruntled former WaterOz employee who had been and still is continually involved in felony criminal activity. (Note: Ms. Raff went on a crime spree in the first

half of 2004 and virtually all of the criminal cases against her have been dismissed as a part of the federal government's 'leniency for informants' program; see Exhibit MM attached, certified copies of criminal case dismissals against Raff and Exhibit NN, Report by Congressman Robert Bauman regarding same.)

83. The government proffered the entire transcript of the detention hearing of April 9, 2003 (including the perjurious Raff Story) as Exhibit A into evidence at the detention hearing of July 7, 2004, asking the Court to consider the same as if it constituted proof that Hinkson was a danger to the community and a flight risk merely to keep him in custody when the government knew of (or because of the Birmingham statements at the March, 2004 grand jury, knew it did not know) the lack of truth of the Raff Story.

84. The government failed to disclose the military record of Swisher in advance of trial.

85. In summary, David R Hinkson has been denied due process and a fair trial in light of the extremes of prosecutorial misconduct, vindictive prosecution and outrageous governmental conduct by:

a. The denial by the Court of a bond and bail evidentiary hearing which would have allowed him the opportunity to face his accusers and uncover the lies being told by, *inter alia,* Mariana Raff;

b. Being misled by IRS Agent Vernon that his tax case was a civil matter (prompting statements not protected by Miranda warnings) when it was actually being investigated by the Criminal Division (see Exhibit G, pp. 1281);

c. The dissemination of the false, malicious, slanderous and vicious rumor started by IRS Agent Vernon that former WaterOz employee Bernard feared reprisal of being shot by Hinkson (see Exhibit J, Affidavit of Steve Bernard);

d. The dissemination of the false, malicious, slanderous and vicious rumors started by IRS Agents Vernon and Hines when they told representatives of the Idaho Department of Labor on February 17, 2000 that Hinkson was a "dangerous person" with "followers" and had "dangerous" companions who kept "automatic and semi-automatic rifles used by military" and law enforcement agencies at his factory and that Hinkson was a "coward" surrounded by "devoted followers" who were prepared to defend him with violent force; also, Vernon's accusation that Hinkson was a "coward" on May 3, 2004 when he said, "Kofahl emphasized that, although Hinkson is cowardly, he [Hinkson] could have one of his followers perform violent acts. (Exhibit G at p. 1281);

e. The dissemination of the false, malicious, slanderous and vicious rumors by Agent Vernon from a disgruntled former WaterOz employee Phil Kofahl that Hinkson was affiliated with illegal militia organization(s);

f. The use of improperly drawn administrative summonses by IRS Agents Vernon and Hines to unlawfully obtain Hinkson's records via fraud and deceit;

g. The government permitting Mr. Kofahl to present vicious and false rumors to the grand jury that Hinkson's WaterOz products had killed someone – in order to enflame the passions of the jurors;

h. The government permitting Annette Hasalone to present vicious and false rumors to the grand jury that Hinkson was responsible for the death of the son of talk-show-radio-host Art Bell -- in order to enflame the passions of the jurors;

i. The unwarranted sealing for four months and subsequent breach of secrecy of the indictment in the Tax Case in order for the government to gain a tactical advantage (to obtain a warrant and conduct a raid on Hinkson's property) and to give Hinkson's competitor, ENVIA an unfair business advantage;

j. The selective and vindictive prosecution of Hinkson by the FDA for labeling violations which the FDA did not enforce against his competitor(s) who were using the same labeling information which gave his competitors an unfair business advantage;

k. The procuring of a search warrant maliciously and without probable cause, for the purpose of allowing the IRS to "piggy-back" on the FDA search warrant, as a means to allow the IRS to obtain Mr. Hinkson's records (to which it had no right) in order to shut down Mr. Hinkson's credit;

l. The excessive use of force in executing a search warrant SWAT-Team raid on November 21, 2002 of Hinkson's home which terrorized him and destroyed his property;

m. Searching Mr. Hinkson's home without a warrant on November 21, 2002;

n. The harassment of Hinkson by the repeated attempts of government informants to entrap him into a charge of a solicitation-for-murder crime that never happened and did not exist;

o. The refusal of Assistant United States Attorney Wendy Olsen to provide *Brady-Giglio* materials concerning an alleged confession by Hinkson of April 4, 2003 along with information as to payment(s) made to Informant Harding. (Olson suggesting by her silence that no payment(s) had been made to Harding when, in fact, they had was a lie);

p. The denial of Mr. Hinkson's Constitutional right to consult his attorney and have that attorney present during government interrogation when he was lured to the Kooskia, Idaho Sheriff's office on a pretext and arrested by FBI Agent Long on April 4, 2003;

q. The false testimony of FBI Agent Long on April 9, 2003 that Mr. Hinkson had not requested an attorney at the time of his April 4, 2003 arrest (when Mr. Hinkson had a tape recording of him making such a request) and Agent Long's subsequent admission on December 7, 2004 that he had previously testified "erroneously," after he heard the tape recording (coupled with three other fabrications made by Long at the April 9, 2003 hearing that constituted perjury and resulted in the detention of Mr. Hinkson);

r. The false testimony offered by Agent Long on April 9, 2003 that Raff's brothers were solicited by Hinkson to kill federal officials and that they had "done that type of work before" when Agent Long demonstrated by his action (of not verifying or investigating) that he knew, as a member of the Anti-terrorism Task Force, that such accusations were groundless;

s. The refusal of the prosecution in March, 2004 to: (a) notify defendant that it had been discovered that the facts of the Raff Story were false, (b) allow Lonnie Birmingham to offer evidence they knew he possessed which disproved the Raff Story; and, (c) to immediately seek Mr. Hinkson's release when it knew of the falsity of the Raff Story on September 15, 2004;

t. The 17-month delay of the government's investigation of the "Raff Story" that presumably exposed the United States and its federal officials to a potential terrorist threat from two Mexican nationals and that has kept Mr. Hinkson incarcerated despite the fact that it was proven fraudulent;

u. The proffer of the Raff Story for detention purposes *a second time* on July 7, 2004 when the facts of same were known to be false to the government, showing scienter;

v. The repeated dismissal by the government of criminal charges against Hinkson's primary accuser, Mariana Raff, in exchange for her false statements made against him;

w. The release of Mariana Raff as a prosecution witness when the false nature of her story became clearly evident in March, 2004 and the failure to immediately disclose the fact that her Story had been impeached to Hinkson, since the disclosure would have impacted Hinkson's detention and given him the right to a *de novo* hearing;

y. The failure of this Court to dismiss this action, or acknowledge the foregoing widespread pattern of wrongdoing, illegal activities, conspiracy to violate constitutionally secured rights, perjury of oath of office, illegal use of government funds and property, misprision of various felonies, subornation of perjury, governmental solicitation of persons to commit criminal acts including robbery and theft;

z. The irregular grand jury proceedings throughout this case coupled with the refusal of the Court to order the United States Attorney's office to provide copies of same to Hinkson as required by the Procedural Order;

aa. The government's perpetuation of conduct constituting a felony by the solicitation of Bates, Harding, Raff, Croner, Hasalone, and others to commit theft and perjury related to Mr. Hinkson and the failure of the officials aware of the misconduct to report the same;

bb. The unwarranted high security classification and oppressive jail conditions that have been imposed upon Hinkson in light of his non-violent history and model behavior and the 'trumped-up' charges by jail officials at the U.S. Marshal's request related to Hinkson's possession of a yellow highlighter pen, paper clip and book, calling his attorney too much, limiting him to only one 15 minute call to his attorney (especially on the eve of trial) all fostered by the U.S. Marshal in Idaho.

cc. The introduction of statements from a non-credible witness, inmate Chad Croner, that Hinkson confessed to previous allegations and made new threats. (See attached Affidavits of Noah I. Clark (Exhibit OO), Richard Beck (Exhibit PP) and Frank Nicolai (Exhibit QQ).

dd. The failure of the government to disclose Swisher's military record in advance of his testimony (Exhibit YY).

86. Central to the issue of Governmental Misconduct is obstruction of justice by governmental officials and agents; defendant has enumerated herein specific acts of obstruction of justice which have occurred in the form of criminal acts of government officials and agents in this case as follows:

1. Solicitation of suborned perjury	1. Nancy Cook's solicitation of Raff to commit perjury before the grand jury that resulted in the indictment (no investigation of the Raff Story was conducted at that time in order to verify its veracity); Agent Long assisted in the solicitation of Raff, Harding, Swisher and Bates to commit perjury (not conducting an investigation until 17 months after Hinkson was arrested and jailed)
2. Subornation of perjury	2. When Cook supported Raff's perjury, Harding's perjury, Swisher's perjury and Bates' perjury (resulting in Hinkson's arrest and incarceration); Swisher testimony and forged Replacement DD 214

3. Presentation of known suborned perjury	3. When Nancy Cook used Raff's testimony for the indictment; When Nancy Cook used the false testimony of J.C. Harding, Ann Bates and Swisher for the indictment; When Agent Long made willful misrepresentations to the Magistrate regarding the content of the wire recording, knowing the Magistrate would rely on his testimony. (All resulting in Hinkson's arrest and incarceration.) Swisher's testimony that his Replacement DD 214 was a copy certified by the U.S. Marine Corps Headquarters
4. Solicitation of theft	4. When the government hired Bates to steal personal material from Hinkson's computer; the attorney/client privileged memo entitled "Roster" stolen from Hinkson's legal papers while he was in jail by FBI Agent Mary Martin.
5. Receipt of stolen property	5. When the government accepted Hinkson's stolen computer material obtained from Bates; specifically, trade secrets, promotional materials, Hinkson's audio tape. the attorney/client privileged memo entitled "Roster" stolen from Hinkson's legal papers while he was in jail by FBI Agent Mary Martin.
6. Use of stolen property as evidence to attack Hinkson	6. When the government used Hinkson's stolen computer material obtained from Bates
7. Solicitation of other criminal acts in furtherance of the criminal enterprise against Hinkson	7. This includes but is not limited to: The times when the government sent Agent Long and other government agents to intimidate and harass the inmates in Hinkson's cell who had volunteered to testify for Hinkson in rebuttal of Croner's testimony
8. Conspiracy to violate Constitutionally secured rights of Hinkson	8. When the government devised a scheme and artifice to defraud Hinkson of his property and his money, deprive him of his right to expect honest services under color of law, deprive him of his liberty

	–When they did not Mirandize Hinkson; When they did not allow him to speak with his attorney after he indicated that he wanted his attorney; The Constitutional rights they have violated are: First Amendment right to free speech; Fourth Amendment right to be safe in his home (when SWAT invaded) because the search warrant did not say they could go into his house (it was specified for the business and they executed it before business hours) and when the government allowed the IRS to piggyback; Sixth Amendment right to confront his accusers; Fourteenth Amendment rights.
9. Falsification of documents and testimony [violating 18 USC §1001 (a)(1)]	9. Instead of using the best evidence (the wire transcript), Agent Long testified before the Magistrate and willfully inserted statements he said were made by Hinkson; Long interjected his opinion of what he thought Hinkson meant. Swisher's Replacement DD 214.
10. Operation of scheme and artifice to defraud Hinkson of his tangible right to honest service [violating 18 USC §1346]	10. Mail Fraud and Wire Fraud were committed in furtherance of this conspiracy against Hinkson; Swisher's Replacement DD 214 and military record.
11. Mail Fraud [violating 18 USC §1341]	9. Whenever the government used the mails in furtherance of this scheme and artifice to defraud Hinkson (mailing to Hinkson's attorney their documents, papers, transcripts, etc.)
12. Wire Fraud [violating 18 USC §1343]	10. Whenever the government used the telephone or fax machine in furtherance of this scheme and artifice to defraud Hinkson; Swisher's forged military record.
13. Exceeding the authority of a search warrant [violating 18 USC §2234]	11. When SWAT entered Hinkson's home without authority, because the search warrant said specifically not to enter the house, but only the factory.
14. Malicious procurement of a search warrant	12. The entire conspiracy is malicious against

[violating 18 USC §2235]	Hinkson, including the procurement of the first search warrant, when the government would not allow IDOL to bring Hinkson's business into compliance, but instead sought to criminally pursue him.
15. Searches without a warrant [violating 18 USC §2236]	13. There was no warrant for Bates' theft of Hinkson's personal, private property (from his computer)
16. Misuse of governmental funds and property [violating 18 USC §641]	16. Any use of governmental property in furtherance of this scheme or artifice to defraud Hinkson and deny him his Constitutional rights is misuse
17. Keeping silent when the participants of the criminal enterprise had a duty to speak out about criminal acts they knew had occurred by other governmental officials or had committed themselves [violating 18 USC §4]	17. This is obstruction of justice and is Misprision of a Felony for each felony performed; including but not limited to, Mail Fraud, Wire Fraud, Suppression of Evidence, Perjury, Subornation of Perjury, Theft; Swisher's Replacement DD 214.
18. Committing Fraud on the Court	18. The entire criminal enterprise was perpetrated by officers of the court who submitted false testimony, documents, evidence; suppressed exculpatory evidence; proffered known perjured testimony before tribunals; perjured themselves on the witness stand; gave false information to the grand jury so as to obtain an indictment; did not release the certification of the first indictment; did not record the Minutes of the first indictment; did not make written record of the first indictment; presented a known defective indictment to the court for prosecution.
19. Use of governmental positions of public trust (secured by them when they took an oath of office to support and uphold the U.S. Constitution and the laws of the United States to prey upon those they are legally, Constitutionally and contractually bound to protect from those acts enumerated above. [violating *Constitution for the United States of America*]	19. The government with malice aforethought and willful intent pursued Hinkson in order to secure an indictment against him using suborned perjured testimony from numerous solicited witnesses who had personal vendettas against Hinkson, forming a criminal enterprise with the government in order to carry out their conspiracy to defraud and deprive Hinkson of his property, his Constitutional rights and his liberty

20. Perjury of their oaths of office	20. At any time when a government official or agent willfully misrepresents facts or manufactures inculpatory evidence with an intent to cause a citizen of the United States to lose his property, his freedom and cause him a harm, detriment or injury, this is perjury of their oath of office to protect.
21. Obstructing Justice: Misleading the Court and jury	21. 18 USC §§1503(a) and 1505, failing to conduct an investigation when government knew that Swisher would be asserting that his forged Replacement DD 214 was certified by Headquarters USMC
22. Fraud on the Court: Presenting a forged document	22. Id. failing to conduct an investigation into the authenticity of Swisher's Replacement DD 214 and allowing a prosecution witness to present a forged document to the Court.

Defendant David R. Hinkson submits that these acts of Governmental Misconduct subvert the entire judicial process and for this reason the superseding indictment in this matter should be dismissed.

Respectfully submitted this _____ day of March, 2005.

_____
Wesley W. Hoyt

CERTIFICATE OF SERVICE

I certify that on this ____ day of _____ 2005 I have served a true and correct copy of the foregoing EXHIBIT A STATEMENT OF FACTS TO ARGUMENT #3 MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ENTIRE CASE BASED ON SUPERSEDING INDICTMENT FOR PROSECUTORIAL MISCONDUCT, OUTRAGEOUS GOVERNMENTAL CONDUCT AND VINDICTIVE PROSECUTION upon the persons named below by the method so indicated:

Michael P. Sullivan Michael Taxay United States Department of Justice Washington, DC 20530	G United States mail, first-class postage paid G United States certified mail, postage paid G Federal Express G Hand delivery G Facsimile: (202) 514-8714
The Honorable Richard Tallman United States Courthouse 21st Floor 1200 6th Avenue Seattle, WA 98101	G United States mail, first-class postage paid G United States certified mail, postage paid G Federal Express G Hand delivery G Facsimile: (206) 553-6306