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August 5, 2007

U.S. Attorney Generals Office  
Civil Rights Division and/or  
Inspector General  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

To Whom this Concerns,

Enclosed please find an extensive complaint of misconduct which I believe your offices have the authority to investigate under various statutory authority.

I have tried my very best to resolve these matters in court proceedings, however it seems that these matters are never allowed to receive a fair hearing, and I believe this is because the matters involve misconduct by court staff which the courts themselves are trying to conceal. I realize this is a seemingly serious accusation; if the evidence was not so compelling I would not feel this way about it. I feel this matter was deliberately concealed by my initial court appointed defense counsel who refused to defend me on this matter, or even to make any reasonable inquiry to explain why CERTIFIED documents which were obviously invalid should not be challenged in my defense.

I pray you will give this matter fair review. I included a copy of my original APPEAL BRIEF from U.S. Court of Appeals Case NO. 06-1734 from the 6th Circuit because it is extensively devoted to this matter and the various ramifications and details.

Thank you very sincerely for your efforts and consideration.

Respectfully,

  
Norman David Somerville

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,  
Plaintiff

Case No: 1:03-CR-00239

v.

NORMAN DAVID SOMERVILLE,  
Defendant

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MEMORANDUM IN SUPPORT OF §2255 MOTION

Comes now, defendant Norman David Somerville,  
proceeding Pro Se, providing this Memorandum in Support of  
his 28 U.S.C. §2255 Motion.

1. On or about August 11, 2004 defendant entered a guilty  
plea to Possession Of Machine Gun in violation of Title 18  
U.S.C. §922(0)(1).

2. On or about August 24, 2004, the United States Attorney  
General's staff under Attorney General John Ashcroft,  
issued the Memorandum Opinion for the Attorney General:  
Whether the Second Amendment Secures An Individual Right.  
Available at the Attorney General's website.

3. On or about March 24, 2005, the District Court, in the person of Judge Gordon J. Quist, entertained a Motion to Dismiss the 18 U.S.C. §922(0)(1) conviction on the grounds that the statute was unconstitutional under the Second Amendment to the U.S. Constitution. Judge Quist acknowledged receipt of supporting evidence in the form of a substantial report written by Dr. Nelson Lund of the Virginia Institute for Public Policy which detailed the individual right versus "Collective Right Theory" interpretation of the rights protected by the Second Amendment. Judge Quist denied the Motion to Dismiss and expressly stipulated that the matter was preserved for appeal.

4. Mr. Somerville proceeded Pro Se, in Forma Pauperis in his direct Appeal to the U.S. 6th Circuit Court of Appeals in Case Number 05-1475. Mr. Somerville's Appeal Briefs specifically raised the issue of the Second Amendment challenge to the constitutionality of Title 18 U.S.C. §922(0)(1). Mr. Somerville specifically presented the Memorandum Opinion for the Attorney General noted in paragraph 2 as a matter for Judicial Notice for the Court of Appeals.

5. During the pendency of the Direct Appeal process, the U.S. Congress passed the Protection Of Lawful Commerce In Arms Act of 2005, which was APPROVED and signed into law by the President in October 2005. Somerville filed a Notice of this Act with the Court asking it to take notice.

6. On or about August 1, 2006, the U.S. Court of Appeals for the 6th Circuit, in a panel comprised of Judge Alice M. Batchelder, Judge Eric L. Clay and Judge John M. Rogers, issued an Order in the direct Appeal Case Number 05-1475. This Order refused to give De Novo Review to the constitutional Second Amendment challenge, claiming that such challenge lacked merit, citing prior 6th Circuit case U.S. v. Bournes 399 F. 3d 396 (6th Cir. 2003).

7. On or about August 22, 2006, the U.S. 6th Circuit Court of Appeals issued a Mandate in Case Number 05-1475. Somerville contends that this 28 U.S.C. §2255 Motion is timely filed within the one year statute of limitations.

8. On or about February, 2007, the U.S. Circuit Court of Appeals for the District of Columbia Circuit issued a significant ruling in the case of Parker v. District of Columbia 478 F. 3d 370 (2007).

9. In or about June of 2005, Somerville filed a Motion with the 6th Circuit Court of Appeals seeking assistance of counsel. The District Court had issued its Order that Somerville was in Forma Pauperis. The Court of Appeals never ruled on Somerville's request to appoint counsel and Somerville was thereby denied his constitutionally protected right to the assistance of counsel during his direct appeal.

10. Somerville asserts that the basis upon which the District Court and court of appeals denied his Second Amendment challenge to the constitutionality of 18 U.S.C. §922(0)(1) is undermined by the passage of new statutory law at Title 15 U.S.C. §7901 (a)(1) and (a)(2), and the direct rebuke of such basis by the U.S. Attorney General's Office in the Memorandum noted in paragraph 2 above. The new ruling of the D.C. Circuit noted in paragraph 8 above also rebukes and undermines the basis for denying Somerville's constitutional challenge to his conviction. All these matters have occurred subsequent to the 6th Circuit's ruling in U.S. v. Bournes which are cited to deny De Novo Review.

11. Somerville has never ceased contesting the validity of the Search Warrant issued in this matter. Somerville vehemently asserts that his court appointed Counsel, Mr. Joseph Doele, deliberately ignored Somerville's demands to challenge the search warrant due to its conspicuous invalidity for lack of a signature. ANY other attorney would see the obvious lack of validity in the "Certified as a True Copy" search warrant documents given him by the Assistant U.S. Attorney, Mr. Lloyd K. Meyer, on October 17, 2003, (as noted in court testimony on October 20, 2003), and pursue the matter either with a Motion to Suppress or to investigate in other ways. Mr. Doele was given "anything he wants" "open file" access to all the Search Warrant documents and evidence, so if the supposedly existing search warrant file of documents entered into the Public Record on April 26, 2006 in Case No. 1:03-mj-00371-JGS-ALL had actually existed on October 9, 2003, then Mr. Doele should have "found" them and that is what Mr. Meyer should have given Mr. Doele. The fact that search warrant documents in Docket #1, #3, and #4, in Case No. 1:03-mj-00371-JGS-ALL are all handwritten signed, versus the rubber-stamped "Certified" copies which this court has repeatedly sought to disacknowledge, is de-facto proof of Mr. Doele's egregious ineffectiveness which any other reasonable attorney would have challenged. The "Certified as a True Copy" search warrant documents are on file in this court as Exhibits A, B, D, and E in Somerville's MOTION TO STRIKE DOCKET FOR Case No. 1:03-mj-00371-JGS-ALL. Mr. Doele nor his replacement defense counsel, Mr. Richard Zambon, were EVER in possession of

the documents claimed to be valid which the government claims in their Reply Brief in 6th Circuit Case 06-1734 were only ENTERED into the Public Record on April 26, 2006. See copy of pages 13 & 14 of that Brief attached to this Memorandum. As such, these two defense counsels were conspicuously ineffective for failure to challenge the obviously invalid "Certified" search warrant documents in their possession; (see copies of first pages of those documents attached to this Memorandum). The government claims the "signed" search warrant documents were only entered into the Record after the Case No. 1:03-M-371 was unsealed, however this court has refused to address that it ORDERED the production of these documents, sealed or not, in June 2005 (Doc. #108, #109, Case No. 1:03-CR-00239), and it has ignored the obvious contempt of its orders by its own court staff and/or the government to produce these documents. This court has also refused to honestly address the very specific language in the "Motion to Seal" (Doc #3, Case No. 1:03-mj-00371-JGS-ALL) which clearly appeals to Local Court Rule 49.8(a) to seal only "the Search Warrant Application and Affidavit in the above entitled case", and thereby contributed to the fraud on the Public Record to claim that Case No. 1:03-M-371 was an entirely SEALED CASE entirely OFF the Public Record.

Mr. Somerville contends that Mr. Doele cunningly coerced Somerville to unknowingly waive his right to challenge these bogus "Certified" search warrant documents by taking a guilty plea. See U.S. v. Minker 350 U.S. 179, at 187. Somerville also contends that not having had a fair hearing on the validity of the Certified

search warrant documents prior to taking a guilty plea on August 11, 2004 to possession of a machine gun, leaves his acceptance of a guilty plea under suspicion. **Would Somerville have accepted a guilty plea if the evidence against him was inadmissible?** Until a fair and honest evidentiary hearing on the validity and admissibility of the search warrant documents is held, as it should have happened very early in the case, then this question can not be answered.

Somerville contends that the evidence in the search warrant matters resolves in only one of two possibilities: Either the "Certified" set of documents created and Certified by Magistrate Judge Scoville's Clerk/Secretary Margaret Hetherington on October 9, 2003 that were used by BATF Special Agent Mark Semear in violation of his own Agency Directive ATF O 3220.1 to conduct the search and seizure and which documents were subsequently presented by A.U.S.A. Lloyd K. Meyer on October 17, 2003 to Defense Counsel Doele as the ACTUAL and only documents existing or claimed to exist for 2 1/2 years in Meyer's "anything he wants" "open file" policy, ARE ADMITTED TO BE FABRICATED ACTS OF FRAUD perpetrated by these individuals, OR the newly "unsealed" documents in Case No. 1:03-mj-00371-JGS-ALL that were never honestly in a CASE that was sealed off the Record in violation of Local Court Rules 49.10 (and F.R.Cr.P. 55) for 2 1/2 years, whose contents were contemptuously withheld by court staff and/or the government from production to Somerville under court Orders in June 2005 if they actually existed, and whose absence from the Record subverted Somerville's



claims in his Direct Appeal in Case No. 05-1475 to the 6th Circuit, ARE ADMITTED TO BE FABRICATED ACTS OF FRAUD. Either way, this court and its staff and other judicial officers and/or government agents have a substantial amount of fraud and misconduct to answer for.

Somerville asserts that before the guilty plea is withdrawn for ineffective counsel in regards to the Search Warrant documents that an evidentiary and admissability hearing should be held.

Page 14 of the government's Brief, attached, falsely claims that Somerville requested that Case No. 1:03-M-371 be unsealed.

## DISCUSSION

The fundamental pretense underlying the 6th Circuit precedent in the Bournes case and its predecessors going back to U.S. v. Warin (6th Cir. 1976) 530 f.2d 103, is the interpretation of the Second Amendment as a Collective Right of the States which neither affords nor protects any individual rights of the People to Keep and Bear Arms as individuals. This is commonly known as "Collective Rights Theory", hereafter referred to as "CRT".

With the passage of the Protection Of Lawful Commerce In Arms Act in October 2005, both the Executive Branch (in the form of the President of the United States) and the Legislative Branch, firmly and directly rebuked CRT. The President gave his APPROVAL to the Act, and the findings of the U.S. Congress were enacted into law and codified at Title 15 U.S.C. §7901. These findings show that the Second Amendment protects an Individual Right of the People to Keep and Bear Arms, and is not dependent upon active duty as a member of a State organized militia or the National Guard. State militias and the National Guard each possess and use machine guns similar to those for which Somerville was prosecuted for possessing. The specific language utilized by the act at §7901 (a) (2) states that the Second

Amendment protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to Keep and Bear Arms. The Court should take note that the choice to use the word "Arms" was deliberate and has an entirely distinguished meaning, different from common sporting or hunting guns. The specific dedicated language to confirm that individuals who are not engaged in military service or training have the right (as distinct from a licensable privilege) to Keep and Bear Arms, fully negates all the premises of CRT. This language should provide an entirely sound basis for review of the 6th Circuit standing precedent under CRT. This is an affirmative change in the law; these findings directly undermine the logical and intellectual legitimacy of 18 U.S.C. §922(0)(1). This change in the law creates a conflict in the law.

The 6th Circuit's standing precedent under CRT was also firmly rebuked at length in an extensively researched and well documented Memorandum Opinion (cited in paragraph 2 above) issued just after Somerville entered his guilty plea in August of 2004. This Memorandum, a matter of great significance to Somerville's defense, went unnoticed by Somerville's court-appointed counsel, despite Mr. Somerville's well noted belief and colloquial understanding

that the Second Amendment protects the rights of individuals. This matter of ineffective assistance of counsel may have had a substantial impact upon the District Court's ruling on Somerville's Motion to Dismiss if the Court had been directed to take timely notice of this Memorandum from the Executive Branch. This Memorandum explores the history and original meaning of the Second Amendment and soundly proves there is no basis from which the Judiciary could interpret the Second Amendment as anything other than an individual right of the people to Keep and Bear Arms. The Memorandum even delves extensively into the meaning of the word "Arms" as used and understood by the framers of the Bill of Rights and the Constitution, and confirms the military nature of the word to include such things as the usual equipment of the soldier. (Refer to page 18 of the Memorandum footnote 68, and page 95 footnote 396).

Somerville contends that his Second Amendment challenge to his conviction is validated by the recent ruling in the D.C. Circuit Court of Appeals noted in paragraph 8 above. This sister Circuit joined the 5th Circuit in turning away from the error of CRT interpretation of the Second Amendment. The D.C. Circuit specifically embraced the Memorandum Opinion for the

Attorney General noted above. The D.C. Circuit fully embraced the individual rights understanding and HELD as such, and further stated that to interpret the Second Amendment as anything other than an individual right among all the other individual rights in the Bill of Rights would be an inexplicable aberration.

### CONCLUSION

The change in the law to recognize and codify the individual rights of the People secured and protected by the Second Amendment, and the new evidence presented in this \$2255 Motion, which were not considered in the previous challenge to the conviction, should be reviewed by this Court. The current ruling by the D.C. Circuit in Parker clearly shows this argument does have merit.

Wherefore, defendant prays this Court will give this matter fair review and reverse his conviction. Defendant further prays that this Court will consider that a standing precedent which is extensively and increasingly rebuked by all branches of government in its fundamental premise cannot stand as a matter maintaining public confidence in judicial proceedings; and that a standing precedent which

is so notably inconsistent with the U.S. Constitution, which this Court took an Oath to uphold, must be set aside in order to maintain the honor of the Court in the eyes of the People.

**"...there is the highest public interest in the due observance of all constitutional guarantees, including those that bear the most directly on private rights ..."**

Justice Brennan, U.S. v. Raines 362 U.S. 17, 4 L. Ed. 2d 524, 525 (1960).

In consideration of the provisions of Title 28 U.S.C. §1746, the undersigned certifies that the above statements are true and correct to the best of his information, knowledge, and belief, under penalty of perjury under the laws of the United States.

Executed on: \_\_\_\_\_, 2007

Respectfully submitted,

\_\_\_\_\_  
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