

IN THE UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION 2000 JUN 26 P 8 43

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UNITED STATES OF AMERICA,

VS.

PERRY MALONE,

Defendant.

* * * * *

FILED
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 NOVEMBER 19, 1999
 COURTROOM 2B
 U.S. FEDERAL COURTHOUSE
 MOBILE, ALABAMA

COPY

SENTENCING HEARING

BEFORE THE HON. RICHARD W. VOLLMER, JR.

UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE GOVERNMENT:

Deborah A. Griffin, Esquire
 Maria E. Murphy, Esquire
 Assistants to the U.S. Attorney
 U.S. Attorney's Office
 63 S. Royal Street, Suite 600
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FOR THE DEFENDANT:

Gary L. Armstrong, Esquire
 Messrs. Armstrong, Vaughn and
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 Attorneys at Law
 P. O. Box 2370
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COURT REPORTER:

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1 (November 19, 1999, 8:30 a.m.) (In open court.)

2 (Defendant present with Counsel.)

3 THE COURT: Y'all be seated. All right. In the case
4 of United States versus Perry Malone, Case Number 98-183.

5 Mr. Malone, I have a motion that has been filed by you on
6 October the 25th. I did not receive that as a result of
7 failure of communications between the Clerk's Office and the
8 Court until this past week. Do you have anyone here,
9 Mr. Malone, who represents you other than or in addition to
10 Mr. Armstrong?

11 DEFENDANT: Well, not at the moment, Your Honor, but
12 --

13 THE COURT: Well, I don't want you to talk about it
14 here. I'm going to, I'm going to recess this hearing for a
15 moment, and I'm going to have a hearing in-camera with
16 Mr. Malone, his attorney, and his attorney on the record
17 insofar as the allegations made in this motion to have
18 Mr. Armstrong removed.

19 I, of course, will hear from the Government on the issue at
20 a -- when we complete the in-camera hearing, but we are -- it
21 is my expectation that we will go forward with the sentencing
22 this morning. That, of course, will depend on the outcome of
23 the -- of this other hearing.

1 your attorney so that you can keep what you have to say outside
2 the general knowledge of the Government and the community. Is
3 that -- do you ask for that, or do you want to have an open
4 hearing on this?

5 DEFENDANT: Your Honor, I personally, I would prefer
6 just to have an open hearing.

7 THE COURT: All right. We will have an open hearing
8 on it. That is fine.

9 All right. Mr. Malone, you have filed a motion to have
10 appointed counsel, Gary Armstrong, removed, and your
11 allegations contain the following statements about
12 Mr. Armstrong, your attorney, Mr. Armstrong, for
13 misrepresentations on the Defendant's behalf.

14 Tell me exactly, Mr. Malone, what misrepresentations --

15 MS. GRIFFIN: Judge, we'd like to have him put under
16 oath before he responds to the Court.

17 THE COURT: All right. That's fine. I'll ask you to
18 come forward, Mr. Malone, and take the stand.

19 (The Defendant was placed under oath.)

20 THE COURT: All right. Let me see Counsel for both
21 sides, Mr. Armstrong, at sidebar just a moment.

22 (Sidebar conference, on the record, Defendant present:)

23 THE COURT: All right. My primary reason for the

1 to have this in-camera so that there will be no question about
2 Mr. Malone's rights being affected by the Court's questioning.
3 I don't know how to go about that. Mr. Armstrong, there are
4 allegations made about you.

5 MR. ARMSTRONG: Yes, sir.

6 THE COURT: I will tell you this in the presence of
7 Mr. Malone. I have complete confidence that you represented
8 Mr. Malone, in my opinion, very well and ably and did an
9 excellent job. However, Mr. Malone has made these allegations.
10 Now, I don't know whether you have any rights or not,
11 Mr. Armstrong. I'm going to ask the Government, though, the
12 problem I have is in the Court's questioning of the Defendant,
13 Mr. Armstrong, I don't want to become a prosecutor in this
14 case. I'm not trying to prosecute. I'm trying to find out
15 what allegations are made. I don't know how to do it other
16 than as I suggested originally, Mr. Malone declined to have it
17 in-camera, to be sure that he is protected from any questions
18 that I may ask.

19 Now, let me hear from the Government on your opinion on
20 that.

21 MS. GRIFFIN: Judge, I think the first thing is that
22 allegations about problems with his attorney which are
23 privileged should be just the Court, Mr. Malone, Mr. Malone's

1 which, of course, waives the privilege.

2 I don't know that the Court should question him, but my
3 belief based on the filing of his motion has to do with an
4 ongoing investigation and not a matter that Mr. Armstrong is
5 appointed on. Mr. Armstrong is appointed on two cases that
6 were tried, one before Your Honor and one before Judge Butler.

7 His claims appear to relate to an ongoing investigation
8 that as yet as to Mr. Malone is uncharged for which he is not
9 -- Mr. Armstrong is not appointed. So, I don't think it has
10 any bearing as to the Court's proceedings here tomorrow. In
11 fact, I don't think there's any duty or jurisdiction to go into
12 it. He's uncharged as to another matter. There's only one
13 matter before Your Honor, and that's the trial that Your Honor
14 tried. And I think until he makes a showing that what he's
15 complaining of had to do directly with the trial before Your
16 Honor, then there's nothing to be -- nothing to hear.

17 THE COURT: I understand that. That's what I'm going
18 to do is to find out what his complaint is. And what I'm
19 saying is that I'm not prosecuting Mr. Malone. I'm simply
20 trying to find out from Mr. Malone, as you suggest, Mr. Malone,
21 you will waive your privilege for your attorney not to testify
22 in connection with this before the Government if you do this in
23 open court. And I'm not trying to dissuade you from doing it

1 THE COURT: You have not -- you don't have anyone, as
2 I understand it, to represent you here other than Mr. Armstrong
3 who has represented you in the past. My understanding, and you
4 can correct me on this if I'm wrong, is that Mr. Armstrong
5 wrote me a letter. I sent him a copy of your motion. He
6 advised that he tried to go down and speak to you and that you
7 refused to talk to him in -- at the jail; is that correct?

8 DEFENDANT: It was sort of a misunderstanding. The
9 warden gave me an option to either have a visit with my aunt or
10 see my attorney, and I chose to see my aunt.

11 THE COURT: Well, Mr. Malone, let me tell you -- the
12 problem I have is I'm also aware of what Mr. Armstrong has told
13 me about what, that the -- whoever is in charge at the jail
14 down there will be willing to testify this morning.

15 MS. GRIFFIN: Judge, if I might, I think it benefits
16 the parties for the Court to have it ex parte, that's with
17 Malone and his attorney, because I think it protects his
18 rights. If he wants to give up those rights, that's his
19 business, but I think the Court is wise on warning him that
20 this type hearing to protect him should be with the Court, the
21 Court Reporter, and Mr. Armstrong and Mr. Malone, because it
22 could be that various decisions are made based on whatever that
23 hearing is, and that those matters should remain sealed to

1 you so you'll know, I have a duty to make an investigation to
2 determine whether or not the allegations that you make in that
3 are adequate to require me to remove Mr. Armstrong. Now, to do
4 that, I'm going to have to ask you certain questions. If I do
5 this in open court, it may place you in a position of having
6 additional charges made against you as to what you testify to.
7 It may cause the Government to file another charge against you.
8 I'm not involved in any of that, but I do have the duty to make
9 this investigation, and I'm going to make this investigation.

10 As I suggested to you, I would rather do it in chambers
11 with only the Court Reporter, your attorney, you, and to find
12 out exactly what your allegations are. That is for your
13 protection. Now, you have waived that, but I want to be sure
14 that you waive it again under full knowledge as to what is
15 going to occur.

16 Now, you will have all of these issues on appeal. No
17 matter what this Court does, you will have a right to appeal
18 this to another court.

19 DEFENDANT: Right.

20 THE COURT: You are in an area that I'm not real
21 familiar with. Insofar as your rights are concerned, I'll try
22 to give you every right that you have. Mr. Malone, this Court,
23 I've always tried to give every defendant every opportunity to

1 question you concerning these allegations made against you. If
2 as a result of what you say there are other charges made
3 against you, that is a possibility. So, I'm telling you that
4 as well.

5 Now, if it's in chambers, this will all be sealed. No one
6 will have a right to this except you, your attorney, and the
7 Government under certain circumstances where the Court opens
8 the record for the Government on appeal.

9 MS. GRIFFIN: And Mr. Malone's appeal counsel would
10 have the opportunity.

11 THE COURT: Well, Mr. Malone's counsel would always
12 have the opportunity to review it.

13 DEFENDANT: Uh-huh.

14 THE COURT: Now, I'm going to ask you once more so
15 that you'll be sure that you understand. Under all of those
16 circumstances, are you satisfied to waive those rights and go
17 forward with this hearing in open court?

18 DEFENDANT: Yes, sir. All I want to do is tell the
19 truth. That's all. If I'm going to get charged with telling
20 the truth --

21 THE COURT: Well, I understand what your position is
22 going to be, but I am saying to you do you want to do it in
23 open court or do you want to have this in chambers?

1 Okay.

2 MR. ARMSTRONG: Your Honor, I would go on the record
3 that still being Mr. Malone's counsel, I'd advise him against
4 that. I would advise him that he should do it in chambers.

5 MS. GRIFFIN: And I think the Court can make the
6 decision that the Court thinks it's in his best interest where
7 the Court thinks it's an attorney-client conflict to allow the
8 Government to be privy to attorney-client communications. I
9 think the Court should make its own ruling that it should be a
10 closed hearing.

11 DEFENDANT: I don't understand it. How can you just
12 -- the Judge just say that it's my privilege, and how can the
13 U.S. Attorney say it's not my privilege, it's your privilege?
14 Pretty much, that's what she just said.

15 THE COURT: Well, I'm going to grant the privilege to
16 you, Mr. Malone.

17 DEFENDANT: I sure appreciate it, Your Honor.

18 THE COURT: You're going to do it. But I am going to
19 tell -- Mr. Armstrong has represented you, in my opinion, to
20 the highest standard of an attorney.

21 DEFENDANT: And I --

22 THE COURT: And I want to tell you this: You need to
23 listen to him. You need to make your own decision, but what

1 against it for your own protection. You don't have to because
2 I am going to allow it to be in open court, and I am going to
3 make a full investigation into it in open court. I'm going to
4 ask you questions for which you may have some legal
5 responsibility, and you may be charged as a result of your
6 testimony. I'm not suggesting that you will be. I'm simply
7 talking about your rights.

8 DEFENDANT: Okay. I appreciate that, Your Honor.

9 THE COURT: All right. Now, do you want to talk to
10 Mr. Armstrong or do you want to go forward with this hearing?

11 DEFENDANT: I want to go forward with it.

12 THE COURT: All right. Very good.

13 DEFENDANT: Thank you.

14 (In open court.)

15 THE COURT: All right. For the record, the Court
16 would note that a motion has been filed by this Defendant
17 contending that his attorney did not properly represent him in
18 the case and asking for a different attorney. This Court has a
19 duty to make an investigation into these allegations.

20 I would caution all of those who are in court and
21 especially the newspaper reporter who is in court to understand
22 that these are only allegations by the Defendant. There is no
23 factual support of this at this time. The only information

1 I am not suggesting to the media that they not publish
2 whatever they choose to publish, but I am cautioning everyone
3 here that the fact that these allegations are published -- and
4 I don't give legal advice, but you need to find from your own
5 attorney what the effect might be of reporting something about
6 someone under simply an allegation by one who has an interest
7 in the matter.

8 All right. Without going further, I'm going to go back,
9 Mr. Malone, and note for the record that we had a sidebar
10 conference, it is on the record, at which time your attorney
11 and the Court recommended that you have this hearing in-camera
12 outside the general public because this is a matter relating to
13 you and your attorney; that by having this in open court you
14 waived your privilege, and you do have a privilege that your
15 attorney cannot testify in connection with what has occurred in
16 the conversations with you unless you waive that privilege.

17 By having this hearing in open court, that is a waiver.
18 Mr. Armstrong will be questioned concerning the statements that
19 you make, and he will be required to answer those questions as
20 a result of the waiver that you have given by having this
21 matter in open court.

22 You have been made aware of that, and you have stated that
23 you desire to have this hearing in open court; is that correct?

1 against your attorney in your motion to have him removed is
2 that Mr. Gary Armstrong, for misrepresentation on Defendant's
3 behalf, Mr. Armstrong has intentionally lied to the Defendant,
4 Perry Malone, on numerous occasions to help the Government in
5 preventing Defendant to produce documented evidence and
6 witnesses that would have been pivotal in the outcome of both
7 the Defendant's trials.

8 All right. I will hear from you, Mr. Malone, as to each
9 and every document, witness, and individual who will testify to
10 confirm your statement that your attorney intentionally lied to
11 you and each occasion on which he did lie to you and what those
12 particular lies were.

13 All right, sir. You may speak. Be sure you speak -- if
14 you will sit forward and speak into that microphone so we can
15 all hear you.

16 DEFENDANT: Yes, sir. Well, first of all, he lied
17 about the deal with the Government conspiring to violate my
18 rights.

19 THE COURT: I'm sorry, lied to you about?

20 DEFENDANT: Well, he lied to me about --

21 THE COURT: What did he say?

22 DEFENDANT: He said that -- it's dealing with -- could
23 I explain to you in a way that I can explain it best, sir?

1 that your lawyer made to you which you have stated in here in
2 preventing you to produce documented evidence and witnesses
3 that would have been pivotal in the outcome of both the trials.
4 Now, what did he tell you? Did you tell him that you had
5 documented evidence? Did you tell Mr. Armstrong that you had
6 documented evidence that would prove you were not guilty of the
7 crimes charged against you?

8 DEFENDANT: Yes, sir, I did.

9 THE COURT: All right. Tell me what you told him,
10 what documented evidence you told him you had. Give me the
11 names of every document that you told him about.

12 DEFENDANT: My Kastigar transcripts, they were altered
13 to --

14 THE COURT: All right. You told him that your
15 Kastigar transcript was altered?

16 DEFENDANT: Right.

17 THE COURT: And was there not a hearing on that before
18 Judge Butler?

19 DEFENDANT: No, sir. We -- it wasn't a hearing on
20 that. I brought that issue up, and Judge Butler, he neglected
21 to respond to that issue for at least about four months. And
22 in my opinion, that reason is because --

23 THE COURT: I'm not interested in your opinion at this

1 Kastigar hearing.

2 DEFENDANT: First of all, he told the Court that -- he
3 told me that he told the Court that I told him exactly what was
4 taken out of my transcripts and what was added to my
5 transcripts, and I didn't tell him nothing like that. I told
6 him no more than what I told the Court. One issue was about,
7 one issue was about U.S. Attorney Kenyen Brown perjured himself
8 on the stand. That's what I told him. But it's like eight or
9 nine issues on my Kastigar transcripts --

10 THE COURT: All right. Tell me every issue. You told
11 him that the Kastigar hearing that was -- the trial transcript
12 was --

13 DEFENDANT: Altered.

14 THE COURT: -- was changed.

15 DEFENDANT: In the Kastigar hearing, yes, sir.

16 THE COURT: In the Kastigar hearing. You told him
17 that the United States Attorney, Kenyen Brown, lied.

18 DEFENDANT: That's right.

19 THE COURT: What did Mr. Kenyen Brown lie about?

20 DEFENDANT: He lied about he didn't have no
21 conversation or receive no letter from U.S. -- from my attorney
22 regarding --

23 THE COURT: Your attorney being whom?

1 DEFENDANT: Yeah. And about me and a situation
2 dealing with my mother-in-law. Okay. And what happened was --

3 THE COURT: Well, what else did he lie about, anything
4 else?

5 DEFENDANT: Yes. He lied about --

6 THE COURT: Now, we're talking about the United States
7 -- Assistant United States Attorney --

8 DEFENDANT: Kenyen Brown?

9 THE COURT: -- Kenyen Brown.

10 DEFENDANT: Right. Let me see. Well, it wasn't just
11 Kenyen Brown. It was U.S. Attorney Maria Murphy as well.

12 THE COURT: Maria Murphy, Attorney -- United States
13 Attorney Maria Murphy lied about what?

14 DEFENDANT: I didn't say she lied. I'm telling you
15 what my attorney lied about. It was regarding those two
16 attorneys and --

17 THE COURT: And what did your attorney say to you that
18 you considered to be a lie?

19 DEFENDANT: Well, he told me that I told him exactly
20 what was taken from my transcripts and exactly what was added
21 to my transcripts. I didn't tell him that. I didn't discuss
22 it with him because --

23 THE COURT: Well, Mr. Arm -- I mean, Mr. Malone, what

1 hearing on the Kastigar, that all of these matters were brought
2 up. Is that incorrect?

3 DEFENDANT: No, sir, not the matter I'm talking about.
4 I filed a motion about -- at one time about the altering of my
5 transcripts which could have cleared me from these charges.

6 THE COURT: Was there a hearing on that motion?

7 DEFENDANT: No, sir, there wasn't. There was not a
8 hearing. And the Court has been intentionally trying to
9 seclude this information.

10 THE COURT: All right. Let me stop you just a minute.
11 I would ask both Counsel for the Government and Counsel -- and
12 Mr. Armstrong, if you would, to make notes on this. I was not
13 involved in the Kastigar hearing, as you know. As a result, I
14 don't know what was done.

15 Now, tell me this, Mr. Malone. In connection with the
16 Kastigar hearing, that was prior to the trial in this -- before
17 this Court in the case of 98-183. That Kastigar hearing was
18 prior to that. The Court has knowledge of that because I was
19 aware that there was a Kastigar hearing and that Judge Butler
20 had ruled on that matter.

21 Now, did you bring that matter -- did you bring that to
22 this Court's attention before trial of this case?

23 DEFENDANT: Yes, sir, I did.

1 THE COURT: All right. And your position was that, as
2 I recall, that you disagreed with the judge's ruling in that
3 matter?

4 DEFENDANT: Absolutely.

5 THE COURT: All right. Well, that's what I'm asking.
6 Now, at that time, was there any discussion about
7 Mr. Armstrong's activity in connection with that Kastigar
8 hearing?

9 DEFENDANT: (No audible response.)

10 THE COURT: My recollection is that you were satisfied
11 with Mr. Armstrong in representing you.

12 DEFENDANT: No, sir.

13 THE COURT: That's not correct. I'm not suggesting
14 that I am --

15 DEFENDANT: Okay.

16 THE COURT: Was that all on the record? Was that all
17 taken on the record?

18 DEFENDANT: Yes, sir.

19 THE COURT: It was. The court reporter was here, so
20 we have all of that information.

21 DEFENDANT: Yes, sir. I said that I was satisfied
22 with him on most of the issues other than --

23 THE COURT: The Kastigar?

1 THE COURT: All right. That's my recollection as
2 well.

3 DEFENDANT: Uh-huh.

4 THE COURT: All right. Now, so that at the time --
5 what are you complaining about Mr. Armstrong that he did or
6 failed to do other than in the Kastigar hearing in connection
7 with his activities as you have here that he failed to provide
8 or produce documented evidence and witnesses that would have
9 been effective in having a different result in the case tried
10 before this Court, Case Number 98-183?

11 DEFENDANT: Well, that's a different issue itself
12 other than the Kastigar hearing.

13 THE COURT: Yes, sir. That's after the Kastigar
14 hearing.

15 DEFENDANT: Okay. So, we're finished with the
16 Kastigar hearings now?

17 THE COURT: Yes, sir.

18 DEFENDANT: Okay.

19 THE COURT: What documents did you give Mr. Armstrong,
20 make him aware of that he did not produce at trial? What
21 witnesses did you give Mr. Armstrong or note Mr. Armstrong that
22 you wanted to call that he did not call for trial?

23 DEFENDANT: Okay. One of the documents was a letter

1 allegations that she had no knowledge to. And he told me that
2 -- well, I told him that my wife had the letter. He told me
3 that he never saw a letter, he asked my wife about the letter,
4 but she says she didn't have a letter.

5 Now, my aunt told me that she notified Mr. Armstrong about
6 this letter and that he -- that she had the letter, but --

7 THE COURT: Did you tell Mr. Armstrong to call that
8 witness to testify?

9 DEFENDANT: No, sir. I told Mr. Armstrong to produce
10 that letter before the Grand Jury to let them hear that letter,
11 and he failed to do that. And that would have --

12 THE COURT: Counsel, the Grand Jury -- Mr. Armstrong
13 has no rights before the Grand Jury as far as I know to present
14 evidence; is that correct?

15 MS. GRIFFIN: That's correct, Your Honor.

16 THE COURT: All right.

17 DEFENDANT: Even if I ask him to?

18 THE COURT: Even if you ask him to. The Government
19 presents the evidence to the Grand Jury. Let's talk about --

20 DEFENDANT: Well, we had presented evidence on my
21 behalf. We produced witnesses on my behalf. And he was
22 willing to --

23 THE COURT: At the Grand Jury?

1 DEFENDANT: That's what I was talking about, the
2 trial.

3 THE COURT: So, you're saying that at the trial of
4 this case, you told him to get the letter?

5 DEFENDANT: That's right.

6 THE COURT: And did he say he couldn't find the
7 letter, he didn't get the letter? Did he just tell you that
8 your wife said she didn't have the letter?

9 DEFENDANT: Yeah. He said my wife said she didn't
10 have the letter. And so, but my aunt told --

11 THE COURT: Well, what your wife said, did you talk to
12 your wife? Did she tell you she did have the letter?

13 DEFENDANT: Yes, yes, sir.

14 THE COURT: And did she bring the letter to court to
15 testify?

16 DEFENDANT: Yes. She brought the letter to my aunt,
17 and she -- yes, sir. And she was going to testify --

18 THE COURT: Did she come to court and testify?

19 DEFENDANT: Well, she didn't testify, but she was
20 here.

21 THE COURT: She did not testify?

22 DEFENDANT: She was here. She would have.

23 THE COURT: What are you saying, that you told your

1 THE COURT: Well, what are you saying?

2 DEFENDANT: I am saying that I wanted the letter to be
3 read to the Grand Jury to show that this witness that was
4 testifying against me, her testimony was not credible because
5 --

6 THE COURT: All right, sir. Understand, we're talking
7 about the trial of this case. We are not talking about the
8 Grand Jury. Grand Jury is another matter.

9 DEFENDANT: I'm talking about the trial.

10 THE COURT: You're talking about the trial of this
11 case. You wanted the letter read. Whether or not the letter
12 is read is an issue of evidence. The question is did -- was
13 that witness offered at trial?

14 (No audible response.)

15 THE COURT: Did this witness testify against you at
16 trial?

17 DEFENDANT: Yeah.

18 THE COURT: The aunt?

19 DEFENDANT: Yeah. The witness testified against me at
20 trial, the same one that wrote the letter.

21 MS. GRIFFIN: Judge, when he says my mother-in-law, I
22 gather he's talking about Mamie Floyd. If he is talking about
23 Mamie Floyd, she did not testify before Your Honor in the trial

1 THE COURT: All right. We can only talk about the
2 case I'm aware of, Mr. Armstrong. I'm not aware of cases that
3 are tried in another court. You can bring that up before Judge
4 Butler in a little while. The question I have right now is,
5 are you talking about Mamie Butler, is that who you're talking
6 about?

7 DEFENDANT: Mamie Floyd.

8 THE COURT: Mamie Floyd?

9 DEFENDANT: Uh-huh.

10 THE COURT: All right. And did she testify in this
11 case, in the case in this Court?

12 DEFENDANT: No. She testified in the other one.

13 THE COURT: All right. Did you ask your attorney to
14 have her testify in this case?

15 DEFENDANT: No, sir.

16 THE COURT: All right. So, Ms. Floyd did not testify
17 in this case?

18 DEFENDANT: No, sir.

19 THE COURT: And that is not an issue in this case?

20 DEFENDANT: Well, I was under the impression that this
21 was the only hearing that we was going to have regarding this
22 matter, so --

23 THE COURT: Well, this is the only hearing I'm going

1 in another case, that's Case Number 184, and you will have to
2 bring up anything that you did before him, before Judge Butler
3 because I'm not aware of that. I'm asking you to specifically
4 limit your testimony as to what your attorney did or failed to
5 do in this case.

6 Now, going back to documents, what document did he not
7 present in this case that you told him to present?

8 DEFENDANT: In this case.

9 THE COURT: In this case.

10 DEFENDANT: Let me see. Well, in this particular case

11 --

12 THE COURT: Can you refer to any specific document?

13 DEFENDANT: Well, in this particular case, it was --
14 there were witnesses that he didn't -- he didn't produce.

15 THE COURT: All right. We'll get to witnesses
16 momentarily. We're talking about documents now.

17 DEFENDANT: Documents. I can't recall of any
18 documents regarding this case.

19 THE COURT: All right. Then let's go to witnesses.
20 What witnesses did you -- would have testified on your behalf?
21 Give me the names of those witnesses and what their testimony
22 -- what you told your attorney their testimony would be, the
23 names of every witness that you testify that you told your

1 DEFENDANT: Well, there was a Correction Officer King,
2 A. King. He had --

3 THE COURT: A as in -- initial A. King, K-i-n-g?

4 DEFENDANT: Uh-huh. I don't know his first name. It
5 begins with "A."

6 THE COURT: All right. You asked him to call
7 Probation Officer A. King?

8 DEFENDANT: No. He's a correction officer.

9 THE COURT: Sorry. Correction Officer A. King?

10 DEFENDANT: Uh-huh. And he came here to testify. Now
11 --

12 THE COURT: Was he subpoenaed by your attorney?

13 DEFENDANT: Yes, sir. He was subpoenaed.

14 THE COURT: And he came to court. He was at court?

15 DEFENDANT: Well, he was outside -- well, I didn't see
16 him because he didn't come inside the courtroom, but he --
17 Mr. Armstrong said he spoke with him outside the Court. And
18 Mr. Armstrong told me that, that his testimony --

19 THE COURT: Mr. King's testimony?

20 DEFENDANT: Uh-huh. -- was the same testimony as the
21 witness that he was supposed to be testifying against. And
22 that was not his testimony.

23 THE COURT: Well, did you talk to Mr. King?

1 DEFENDANT: Before trial.

2 THE COURT: Where did you talk to Mr. King?

3 DEFENDANT: At the Metro Jail.

4 THE COURT: He came down to talk to you at the Metro
5 Jail?

6 DEFENDANT: Yes, sir. When I was -- I was --

7 THE COURT: Wait one second. Yes, sir.

8 MR. ARMSTRONG: Your Honor, this Correction Officer
9 King is one of the witnesses that Your Honor would not allow me
10 to call as a witness.

11 THE COURT: All right. Then we'll move on to another
12 point.

13 DEFENDANT: I don't remember him not being --

14 THE COURT: Well, this will be in the record. If
15 that's incorrect, you will have that on appeal. Tell me the
16 name of another witness that you say that you told your
17 attorney to call that was not called.

18 DEFENDANT: Bert Noojin, an attorney here in Mobile.

19 THE COURT: Bert Noojin. Was Mr. Noojin subpoenaed
20 for trial?

21 DEFENDANT: He was supposed to have been, but I don't
22 think he was.

23 THE COURT: All right. Did you talk to Mr. Noojin?

1 Mr. Noojin was going to say?

2 DEFENDANT: Yes, sir.

3 THE COURT: How did you know what Mr. Noojin was going
4 to say?

5 DEFENDANT: Mr. Armstrong told me.

6 THE COURT: Mr. Armstrong told you what Mr. Noojin
7 would say?

8 DEFENDANT: Uh-huh.

9 THE COURT: All right. And what did Mr. Armstrong
10 tell you Mr. Noojin would say?

11 DEFENDANT: That -- he said in so many words, no, I
12 don't believe Mr. Malone was a big-time drug dealer like the
13 U.S. Attorney is making him out to be. And he said that -- the
14 only thing he said that was not in my favor was back in '92 or
15 '93, I drove an old model purple Mercedes which only costed a
16 couple thousand dollars. And he said other than that there, he
17 didn't have -- I didn't have any money because he was looking
18 for me --

19 THE COURT: Is that what he said?

20 DEFENDANT: Yes.

21 THE COURT: He told Mr. Armstrong this, that you
22 didn't have any money?

23 DEFENDANT: No. He said he didn't believe that I was

1 testify? What else would he have testified to?

2 DEFENDANT: Well, that's pretty much it.

3 THE COURT: All right. All right. Who else?

4 (No audible response.)

5 THE COURT: What other witness that you told

6 Mr. Armstrong to call that he did not call?

7 DEFENDANT: Okay. Patrick Lilly.

8 THE COURT: Patrick?

9 DEFENDANT: Lilly.

10 THE COURT: Lilly, L-i-l-l-y?

11 DEFENDANT: Uh-huh. Now, this particular witness --

12 THE COURT: Did you tell him to call Mr. Lilly?

13 DEFENDANT: Yes, sir.

14 THE COURT: And did you tell Mr. Armstrong what

15 Mr. Lilly would testify to?

16 DEFENDANT: Yes, sir.

17 THE COURT: All right. And what do you say Mr. Lilly

18 would testify to?

19 DEFENDANT: That Government agents --

20 THE COURT: Government agent being whom?

21 DEFENDANT: Don Walton and Alan Ducote, they were
22 trying to intimidate him to lie on me. They were pretty much
23 asking him to tell lies on me about drug dealings.

1 DEFENDANT: Well, he didn't say --

2 THE COURT: Are you saying that he told you, Patrick
3 Lilly told you that these two officers attempted to induce him
4 to perjure himself?

5 DEFENDANT: Yeah. He told --

6 THE COURT: Is that what he told you?

7 DEFENDANT: No. That's what he told my aunt. And --

8 THE COURT: That's what he told your aunt?

9 DEFENDANT: Uh-huh.

10 THE COURT: All right. Do you have any knowledge of
11 what he said, you personally?

12 DEFENDANT: No, sir. But I feel like my --

13 THE COURT: Well, I know what you feel like. Did you
14 -- did Mr. Armstrong talk to your aunt?

15 DEFENDANT: Not about him. And neither did he talk to
16 Patrick Lilly. And I thought he should have been obligated to
17 at least question the, you know, the witness in my behalf.

18 THE COURT: All right. And who else now?

19 DEFENDANT: Okay. Well, there's another U.S.
20 Attorney, Donald Partridge, which was a partner of the lawfirm
21 of Hess and Atchison.

22 THE COURT: You're going to have to -- I'm sorry, I'm
23 not following you. You say Donna?

1 DEFENDANT: Donald Partridge.

2 THE COURT: Donald Partridge. He is an attorney?

3 DEFENDANT: Uh-huh.

4 THE COURT: Did you say he was a United States

5 Attorney?

6 DEFENDANT: No. He's, he's got his private practice.

7 THE COURT: All right. And Mr. Partridge, what

8 knowledge does he have of the crime charged in Case Number 183?

9 DEFENDANT: That's the next case.

10 THE COURT: I'm sorry?

11 DEFENDANT: That's the next case. I'm sorry.

12 THE COURT: That's in the 184?

13 DEFENDANT: Uh-huh.

14 THE COURT: All right. Limit it to 183.

15 DEFENDANT: Okay.

16 THE COURT: And this case, 183, was tried in this

17 Court before Judge Butler tried Case Number 184; is that not

18 correct?

19 DEFENDANT: Yes, sir, that's correct.

20 THE COURT: All right.

21 (Brief pause.)

22 DEFENDANT: And let me see. Debbie Carney.

23 THE COURT: Debbie?

1 DEFENDANT: I think it's C-a-r-n-i-e (sic).

2 THE COURT: Debbie Carney. And who is she?

3 DEFENDANT: She's the general manager at the -- at
4 Regions Bank where my account was, the business account.

5 THE COURT: All right. What did she know about this
6 crime, Case Number 183?

7 MR. ARMSTRONG: Your Honor, Debbie Carney was called
8 in this case. She testified.

9 THE COURT: All right. She testified.

10 DEFENDANT: Yes, sir. She did testify -- she
11 testified -- no, she testified in this case. She didn't
12 testify in the other case.

13 THE COURT: All right.

14 DEFENDANT: But I -- but she was a witness, she was
15 supposed to have been a witness in both cases, and her
16 testimony should have related to both cases.

17 THE COURT: All right. But this -- I'll let you raise
18 that in the other case. Mr. Malone, I can only handle matters
19 that came up in this case. So, if she testified in this case,
20 let's move on to -- well, let's move on to what other witness
21 may have testified or did or did not testify.

22 DEFENDANT: Okay. Then there's a -- there's a Stefan
23 Smith, Steven Smith, Stefan Smith, I believe, is how he

1 DEFENDANT: Uh-huh.

2 THE COURT: And what did Mr. or Ms. Smith have -- know
3 about the case 183?

4 DEFENDANT: Well, his testimony would have also --

5 THE COURT: What did he know about this case?

6 DEFENDANT: Well, he was supposed to have been called
7 for this case, but his -- it wasn't direct information towards
8 this case. It was information towards an agent that was on
9 this case.

10 THE COURT: All right. Who was the agent?

11 DEFENDANT: Don Walton.

12 THE COURT: All right. And this witness would testify
13 to what about Don Walton?

14 DEFENDANT: His conduct, how he tends to intimidate
15 people and violate their rights.

16 MS. GRIFFIN: Your Honor, Mr. Walton did not testify
17 in 183.

18 THE COURT: All right. I understand that.

19 MR. ARMSTRONG: Also, Your Honor, he was -- a petition
20 was filed, and the Court would not allow us to use him also.

21 THE COURT: That's my recollection, Mr. Armstrong and
22 Mr. Malone. I believe that all of these matters, were they not
23 taken care of at the pretrial conference that we had in

1 DEFENDANT: Well, the Court limited a lot of
2 witnesses, but it's a couple of witnesses that I can recall
3 that was not limited. And I believe he was one of them, and CO
4 King was one of them. And my attorney didn't say that he
5 couldn't testify. My attorney -- he came here to testify, CO
6 King, and my attorney said that he didn't let him testify
7 because it wasn't very helpful to us. That was -- those were
8 his exact words. It wasn't that the Court wouldn't allow him
9 to testify.

10 THE COURT: Mr. Armstrong, did I rule that he would
11 not be allowed to testify?

12 MR. ARMSTRONG: To the best of my memory, Your Honor,
13 that's correct. What Mr. Malone said about me saying Mr. King
14 is absolutely, completely, and totally false. I was prepared
15 to call him. The one witness on this list that the Court did
16 not exclude was Bert Noojin, but I'll talk about Bert Noojin
17 when Your Honor will want to.

18 THE COURT: All right. All right. Going back to the
19 witness before that you said that Mr. Armstrong did not call in
20 184, who was that? What was that woman's name again?

21 DEFENDANT: Debbie Carney?

22 THE COURT: I don't remember. Debbie Carney, is that
23 the one?

1 to have Debbie Carney testify? Was that before this case was
2 tried?

3 DEFENDANT: Both cases, she didn't -- he said she
4 didn't come on the second one because of -- she was out of
5 town, but I didn't have a problem with that. The point is the
6 Court allowed --

7 THE COURT: All right. Well, if you didn't have a
8 problem with it, then let's not go into that on the other case.

9 DEFENDANT: But I did have a problem with this
10 particular witness, her testimony. It was -- the Court allowed
11 Mr. Armstrong to read -- to say what she would have said, and
12 it wasn't a big issue --

13 THE COURT: This is in Case Number 184?

14 DEFENDANT: Yes, sir.

15 THE COURT: And that occurred after this case was
16 tried, our case was tried?

17 DEFENDANT: Yes, sir. But it reflects on the first
18 case.

19 THE COURT: All right. Well, I agree with that. And
20 what did Mr. Armstrong do in that case? You say he testified
21 as to what she would say?

22 DEFENDANT: What she said in the prior trial.

23 THE COURT: What she said in this trial?

1 Mr. Malone had had at least 15 to 20 -- no, she spoken to me at
2 least 15 or 20 times about my financial situation and my NSF
3 checks, my checks being returned to the bank, and I need to
4 quit writing checks when I don't have the money to pay for
5 them.

6 Now, Mr. Armstrong said that in the second case that she
7 said I had that problem, she's spoken to me a couple of times
8 or a few times, you know, regarding that issue. And I think
9 that's -- 15 to 20 times is a big difference from a few times.
10 That's my point. And I told him before he --

11 THE COURT: All right. I'll note that for the record.
12 All right.

13 MR. ARMSTRONG: Your Honor, briefly, dealing with
14 Ms. Carney, she was subpoenaed for the second trial. I believe
15 it was Tuesday we found out that she was going to be out of
16 town until Thursday. I spoke with Ms. Griffin. We tried to
17 get Your Honor's Court Reporter sitting in court today to see
18 if I could contact her to transcribe Ms. Carney's testimony to
19 read. We were not able to make contact until roughly mid
20 Wednesday afternoon after the trial was concluded.

21 In lieu of having to delay the trial for two days, it was
22 proposed that we could offer a proffer as to what this witness
23 would testify to. Ms. Griffin agreed. Mr. Malone agreed. We

1 the trial couldn't be delayed, and we tried to get a transcript
2 of what she said, but he agreed to a proffer and it was read to
3 the jury.

4 THE COURT: All right. The Court will note that for
5 the record. All right.

6 DEFENDANT: Well, he should have read --

7 THE COURT: Well, this is -- this will be on the
8 record, Mr. Malone, and you can have all of this on appeal.

9 Now, tell me what other witnesses that he failed to call or
10 refused to call.

11 DEFENDANT: Well, let me see. That may be the only
12 witness other than Pam McCarty, which was a Government witness.
13 And I believe that -- well, she testified in both trials for
14 the Government. And she, and she lied in the first trial. She
15 denied something in the first trial, but in the second trial,
16 she admitted it.

17 THE COURT: All right. Counsel -- I mean, Mr. Malone,
18 that's on the record. That will be on the record. You'll have
19 that on the record.

20 DEFENDANT: Okay.

21 THE COURT: But your -- she was called at the trial?

22 DEFENDANT: Yeah, on the Government's behalf. But my
23 counsel, the counsel -- my attorney should have asked her or

1 THE COURT: All right. That will all be on the
2 record. All right. Now, the next -- any other witnesses?
3 Does that take care of the witnesses?

4 DEFENDANT: Yes, sir, I believe that does.

5 THE COURT: All right. Now, the next complaint that
6 you make is that your attorney intentionally deceived you by
7 telling you that he was going to refile his pro se motion which
8 was filed in April of this year to have Judge Butler recused
9 for demonstrative bias. I know you're not familiar with all of
10 the terms, but when you say his pro se motion, did you file a
11 motion, a personal motion in the other case --

12 DEFENDANT: I thought I said my pro se motion.

13 THE COURT: I'm sorry?

14 DEFENDANT: I thought I had wrote my pro se motion.

15 THE COURT: You had filed a motion in the other case
16 to have Judge Butler recuse himself?

17 DEFENDANT: Yes, sir.

18 THE COURT: Was that ruled on by Judge Butler?

19 DEFENDANT: No, sir.

20 THE COURT: It was never ruled on by Judge Butler?

21 DEFENDANT: No, sir. Judge Butler had stricken all of
22 my motions from the Court records because of appointed attorney
23 Gary Armstrong.

1 THE COURT: All right. So, he appointed you an
2 attorney and struck your pro se motions. Did you ask
3 Mr. Armstrong to file a motion to have Judge Butler recuse
4 himself?

5 DEFENDANT: Yes, sir. I asked him to refile my
6 motion.

7 THE COURT: All right. Did he refile your motion?

8 DEFENDANT: No, sir. He filed a motion to have him
9 recused, but not for those -- not on those grounds.

10 THE COURT: What was the grounds that you wanted him
11 to recuse himself? Why did you ask Judge Butler to recuse
12 himself?

13 DEFENDANT: Because --

14 THE COURT: What grounds did you tell him that you
15 wanted alleged?

16 DEFENDANT: (No audible response.)

17 THE COURT: Did you tell Mr. Armstrong to use?

18 DEFENDANT: The same grounds, the grounds that I filed
19 in that motion, which were -- let me see how to say this. I
20 was -- I was literally --

21 THE COURT: Well, I know what you were. The question
22 is what did you tell Mr. Armstrong to set out against Judge
23 Butler that he should not try your case?

1 THE COURT: All right. Anything else?

2 DEFENDANT: (No audible response.)

3 THE COURT: Any other grounds that you told or that
4 you used in your motion to have --

5 DEFENDANT: No, sir. It was basically issues relative
6 to the Kastigar hearing, both Kastigar hearings.

7 THE COURT: Because of his ruling in Kastigar?

8 DEFENDANT: No, it wasn't just because of his ruling.
9 It was because of the activities that went on in the Kastigar
10 hearing that he overlooked. Well, he saw it and -- but he
11 didn't see it. He intentionally looked over it.

12 THE COURT: All right. What did your lawyer do? He
13 did not raise what issues?

14 DEFENDANT: He didn't refile that -- my pro se motion.

15 THE COURT: All right. He did not refile your pro se
16 motion to --

17 DEFENDANT: He told me he was going to -- we agreed
18 that he would do that, but when he did it, he filed one of his
19 own instead of mine. And it was totally irrelevant.

20 THE COURT: Inadequate?

21 DEFENDANT: Yeah, inadequate.

22 THE COURT: All right. What else did he do? Let's
23 see what you've alleged. All right. You say Mr. Armstrong was

1 hearings in an attempt to cover up the fact that this
2 conspiracy to take away your freedom had begun before the
3 Defendant was arrested. And Mr. Armstrong also had information
4 that the Government had been conspiring with other inmates to
5 frame the Defendant for a murder of a Government witness.
6 Mr. Armstrong has reiterated to the Defendant after
7 interviewing several inmates that had given him statements that
8 confirmed the existence of this conspiracy that he believed it
9 and that it didn't surprise him.

10 All right. Let's stop there for a moment. Now, tell me
11 what Mr. -- what Mr. Armstrong told you about his knowledge of
12 any conspiracy to violate your rights, any alteration of
13 transcripts that he had knowledge of, any witnesses that he had
14 interviewed that said that the Government had conspired with
15 inmates to frame you for a murder of a Government witness.

16 MR. ARMSTRONG: Your Honor, before Mr. Malone answers
17 that, the first part of that Kastigar does deal with this case.
18 The second part are those same three witnesses that Mr. Malone
19 approached the Court about at sidebar. This is a case that has
20 not been charged.

21 And I would advise Mr. Malone as his counsel that I don't
22 think he needs to get into that on the record in a case that's
23 not charged. There has been numerous other things that have

1 about an issue of a case that he may potentially be charged
2 with.

3 THE COURT: You're advising him not to testify?

4 MR. ARMSTRONG: About that particular point. And
5 Kastigar, whatever he wants to do is fine, but about these
6 other Government witnesses, I would say that that needs to be
7 under seal.

8 THE COURT: All right. Mr. Malone, you've heard your
9 -- the recommendation of your counsel concerning these other
10 matters and that how it may affect you in a later trial if
11 there is a trial, a murder trial, if there is such a trial. Do
12 you agree that this should be off the record insofar as that,
13 or do you want to go forward and put it all on the record?

14 DEFENDANT: (No audible response.)

15 THE COURT: You've heard him say it may be against
16 your best interest, Mr. Malone.

17 DEFENDANT: Well, Your Honor, I believe I know what
18 he's referring to. One of the witnesses that he interviewed on
19 my behalf, the Government interviewed him a few days later and
20 --

21 MR. ARMSTRONG: Your Honor, again, I'd ask the Court
22 to get a decision from Mr. Malone before he starts talking
23 about this because I think this could be adverse to Mr. Malone

1 And don't tell us anything about it until you make your
2 decision as to whether you want this on the record where if it
3 is on the record so you know your Fifth Amendment rights, that
4 if you testify here today, all of this testimony will be
5 available for use in any other trial at any time in the future
6 as to any charges that may be made against you. So, if you
7 testify here, not only will it be subject to being used, but it
8 is also sworn testimony and you will be bound by the testimony
9 insofar as your being under oath here today.

10 DEFENDANT: I really don't know what my attorney is
11 referring to. Do you think maybe I could speak with him on the
12 side so I could make that decision, because I don't --

13 THE COURT: All right. You can go in the back of the
14 Court into the Jury Assembly -- I mean, the juryroom and
15 discuss it with Mr. Armstrong. And we're going to have a
16 15-minute recess while you and Mr. Armstrong discuss it back
17 there. There are restrooms back there, Mr. Armstrong, that you
18 can both use. We will be in recess for 15 minutes. Would you
19 take the Defendant into this juryroom, please, with
20 Mr. Armstrong.

21 All right. We're going to be in recess 15 minutes.

22 (Recess from 9:40 to 9:50 a.m.)

23 (Hearing resumed.)

1 All right. Mr. Malone, you have talked to your attorney
2 who was advising you in connection with any statements that you
3 might make concerning matters as it relates to another possible
4 charge. Have you decided what you would like to do on that,
5 Mr. Malone?

6 DEFENDANT: Yes, sir.

7 THE COURT: And what is your decision?

8 DEFENDANT: I would like to testify.

9 THE COURT: You do want to testify. Very good. All
10 right. Now, if we will, I'm going to go back and ask you the
11 same question that I asked you earlier. You were -- you allege
12 here that Mr. Armstrong was aware that the Government had
13 conspired to violate your rights by altering the transcript in
14 both Kastigar hearings in an attempt to cover up the fact that
15 this conspiracy to take away your freedom had begun before you
16 were arrested. Now, that is in connection with your earlier
17 statement that there were changes made in that record; is that
18 right?

19 DEFENDANT: Yes, sir.

20 THE COURT: All right. And you say that Mr. Armstrong
21 told you that he was aware that -- of these changes in the
22 record?

23 DEFENDANT: He said --

1 your rights and take away your freedom is concerned? What are
2 you saying that he knew?

3 DEFENDANT: Well, after reading the transcripts, he
4 believed that -- he said to me that something is not right
5 about these transcripts, something just didn't make sense. But
6 I knew exactly what wasn't right. I was at the hearing.

7 THE COURT: All right. Well, you may have known, but
8 he told you he knew there was something that was not right?

9 DEFENDANT: Yes, sir.

10 THE COURT: About that -- about what was set out in
11 that hearing?

12 DEFENDANT: Yes, sir.

13 THE COURT: And he did not then -- what did he fail to
14 do in that regard? Did he question the Kastigar hearing? Did
15 he object to it?

16 DEFENDANT: Yes, sir. He -- at my request, he brought
17 the issue up before the judge on numerous occasions, orally and
18 written motions, but it took some months before he actually got
19 a response.

20 THE COURT: Well, Counsel, you -- I'm sorry,
21 Mr. Malone, you know, the Judge, you may have a complaint about
22 the Judge's ruling, but you have no complaint about
23 Mr. Armstrong bringing this matter up; is that correct?

1 that he knew exactly what parts of the transcripts were
2 altered.

3 THE COURT: Mr. Armstrong testified or stated in open
4 court that he knew what part of the Kastigar transcripts were
5 incorrect?

6 DEFENDANT: Yes, sir. And I thought he said that
7 because he was going to come and talk with me and for me to
8 give him all the information. But I gave him no more than what
9 I gave Your Honor in open court. I told him one particular
10 issue. But I told you there are many issues that have been
11 altered in my transcripts to cover up this conspiracy that I'm
12 talking about.

13 THE COURT: All right.

14 MR. ARMSTRONG: Your Honor, I think a brief summary
15 that I think Mr. Malone will agree with. In reading the
16 Kastigar hearing, there were a series of questions that didn't
17 make sense to me as to why there were not followup questions
18 asked by counsel at that time. That's what Mr. Malone's
19 referring to where he said I knew of other things. It just
20 didn't make sense to me that certain followup questions would
21 not have been asked.

22 We filed for the transcript. After we filed for -- to
23 allow Mr. Malone to hear the tape along with the transcript,

1 directed us to refile and to point out the portions that
2 Mr. Malone thought were altered. Mr. Malone told me portions
3 that he thought were altered. That was pointed out.

4 Judge Butler allowed me to hear those portions, of which
5 the part that I thought should have been followup questions was
6 what I listened to. And it said, virtually, the tape what the
7 transcript said. There were a few ahs and uhs and things such
8 as that that were not there.

9 What Mr. Malone is now referring to, I think, is there are
10 other areas of the Kastigar that he hasn't told me about that
11 he thinks are altered. And that's the same thing that he told
12 Your Honor in chambers during trial that Your Honor said, how
13 can I bring those up if I don't know what they are, and
14 Mr. Malone said, well, I haven't told him what those are. And
15 I think that's still what he's talking about.

16 THE COURT: All right. Is that correct?

17 DEFENDANT: Partly correct. It's not all --

18 THE COURT: All right. Well, you correct it as you
19 see it.

20 DEFENDANT: Okay. Okay. Judge Milling didn't suggest
21 that we -- I tell him what parts of the transcript were
22 altered. Judge Butler suggested that. And in open court at
23 that hearing, Ms. Griffin said that that's what Judge Butler

1 understand what I'm asking you. Those are all on the record.
2 All of that will be on the record. You will have all of those
3 issues on appeal.

4 What is your complaint about Mr. Armstrong concerning the
5 fact that he was aware that the Government conspired by
6 altering transcripts in an attempt to over -- to cover up the
7 fact that this conspiracy began before you were arrested? What
8 did he know about any conspiracy? What do you allege that he
9 told you that he knew about any conspiracy?

10 DEFENDANT: Well, he said that he believed -- in so
11 many words, he believed that something is not right about the
12 transcript, something, from reading it.

13 THE COURT: All right. Well, he just testified what
14 he said. Is that what he told you, or are you saying that he
15 said something else?

16 DEFENDANT: Yeah, he said something else. He said
17 that --

18 THE COURT: What else did he say?

19 DEFENDANT: He said that I told him the issues on the
20 transcript that were altered. I did not tell him that. I told
21 him one particular issue. There were many that were altered.
22 I told him the only one I told him was the one that I told
23 Judge Butler in open court, but there are a lot of places.

1 that hearing? And you will have all of that on the record.

2 All right. Let's move on to the next issue, that
3 Mr. Armstrong also had information that the Government had been
4 conspiring with other inmates to frame you, the Defendant, for
5 the murder of a Government witness; that Mr. Armstrong has
6 reiterated to the Defendant after interviewing several inmates
7 that had given him statements that confirm the existence of
8 this conspiracy, and that he believed it and it didn't surprise
9 him.

10 Now, this is what your attorney suggested you not testify
11 to and asked you to be -- to protect your rights in this
12 regard. You stated as you came out that you talked to your
13 attorney, you heard his recommendation, but that you wanted to
14 testify on this issue; is that correct?

15 DEFENDANT: Yes, sir, it is.

16 THE COURT: All right. Then you may answer the
17 question.

18 MS. GRIFFIN: Your Honor, Mr. Armstrong -- first,
19 Mr. Malone is not currently charged with anything other than
20 the two cases that he has been convicted on. Second,
21 Mr. Armstrong was appointed under the CJA as to those two
22 cases. It is our contention that this matter is not properly
23 before the Court, nor is it a proper matter for Mr. Armstrong

1 innocence on the trial of 183 which occurred before Your Honor.

2 THE COURT: Counsel, I have no -- I have no question
3 about what you have just said, but the objection made by the
4 Defendant in this case is that he wants the counsel replaced
5 because he has not properly represented him throughout the
6 trial, and not only this trial but another trial. And under
7 those circumstances, I'm going to let him bring out everything
8 on every trial as to -- up to this point so that I can
9 determine whether or not Mr. Armstrong, in the Court's
10 judgment, is competent and is properly representing this
11 Defendant throughout all of these matters. And I'm going to
12 let him testify to it, and I'll overrule your objection.

13 Go ahead.

14 DEFENDANT: Well, he -- after interviewing these three
15 witnesses --

16 THE COURT: What witnesses did he interview? Did he
17 tell you what witnesses he interviewed?

18 DEFENDANT: Uh-huh.

19 THE COURT: Tell me the names of the witnesses he told
20 you he interviewed.

21 THE WITNESS: I believe one of them was Devon Hill.

22 THE COURT: Devon Hill, H-i-l-l?

23 DEFENDANT: Uh-huh.

1 THE COURT: Terrence Moseley.

2 DEFENDANT: The other one was -- here is my paper, but
3 my attorney probably got the name on top of his head.

4 MR. ARMSTRONG: If he's asking me to repeat that name,
5 I will. Is that what you're asking me to do? Gerald --

6 THE COURT: Do you say you have a paper? Do you have
7 a paper here?

8 DEFENDANT: Yes, sir.

9 THE COURT: With the name on it?

10 DEFENDANT: Yes, sir, but I don't have to. I know it
11 now. He's told me the first name. I know it.

12 THE COURT: All right. Go ahead.

13 DEFENDANT: Gerald Watkins.

14 THE COURT: Gerald Watkins.

15 DEFENDANT: Watkins.

16 THE COURT: All right. And he said that he
17 interviewed these individuals, and that they had given him
18 statements?

19 DEFENDANT: Uh-huh.

20 THE COURT: And that that confirmed the existence of
21 the conspiracy, that he believed it, and that it didn't
22 surprise him?

23 DEFENDANT: Yes, sir. That's -- those were the exact

1 know, try to frame me for this murder? And he said, well, it
2 doesn't surprise me. I've seen stranger things. Those were
3 his exact words.

4 THE COURT: All right. Now, what -- doesn't that
5 indicate to you that he was properly representing you?

6 DEFENDANT: No, sir.

7 THE COURT: What complaint do you have about that?

8 DEFENDANT: Okay. Okay. The problem I have about
9 that is that you, after you -- after he related this
10 information to you at my request --

11 THE COURT: Wait a minute. Mr. Malone, he did not
12 give me the names of anything. All we had at sidebar was some
13 sidebar conference concerning whether he had done some work on
14 this other case, and I said that he did not represent you in
15 that case and that that was not a matter that would come up at
16 the trial of the case that we had, 183; isn't that correct?

17 DEFENDANT: Partly. You also said that if he feels
18 that any of this information is true, then he should refer it
19 to the U.S. Attorney, Janet Reno.

20 THE COURT: That's right. And what I said was that if
21 he had -- if he believed from his investigation that this
22 United States Attorney's Office was violating your rights or
23 anyone's rights, that he should make that report to the

1 DEFENDANT: Yes, sir.

2 THE COURT: All right. Now, that, that I remember.
3 Now -- and you are complaining that he did not do that? Is
4 that what your complaint is, that he did not make that report
5 of the conspiracy of the Government, the local Attorney's
6 Office to the Attorney General of the United States?

7 DEFENDANT: Well, for some time he didn't, until after
8 I filed the motion is when I found out that he -- he came and
9 visited me after he received my motion to have -- to request
10 the Court to have him removed. He came to me with a letter
11 that was dated prior to my motion. Now, the letter didn't --
12 it didn't state the Government's main objective to frame me.
13 All he was saying is that they were supposed to have been
14 paying someone. But now he told you that it was a made up
15 story. He didn't put that information on Janet Reno's letter.

16 THE COURT: Mr. Malone, I do not remember him saying
17 anything about any made up story.

18 DEFENDANT: Yes, sir.

19 THE COURT: I'm saying that there's a record of this,
20 and it will all be on the record, and that's what we will go
21 by. All right. Mr. Armstrong.

22 MR. ARMSTRONG: Your Honor, a key phrase that you just
23 mentioned is if I feel they're violating the Defendant's rights

1 MR. ARMSTRONG: A key phrase is what Your Honor and
2 Mr. Malone have just said, if I felt his rights were being
3 violated. Your Honor, I don't know if Mr. Malone's rights have
4 been violated or not. I do feel that there is something very
5 unusual or fishy going on. I heard what Your Honor said. I
6 talked to Deborah Griffin. She was kind enough to fax me
7 debriefing notes of one of the witnesses that I spoke with
8 about three days after I spoke with them that told the exact
9 opposite of what that witness had told me.

10 Thinking about it for several days and informing Mr. Malone
11 of this, I still was very confused as to exactly what I should
12 do. So, what I did was to write a five-page letter to the
13 General Counsel of the Disciplinary Commission of the Alabama
14 State Bar explaining the situation and asking for some
15 assistance. They responded. Mr. Malone has a copy of that
16 letter. They responded, within a matter of three to four days
17 received back to me, gave me some directions and indicated that
18 they did not feel there would be any ethical impropriety to
19 writing to Janet Reno as long as it was done under certain
20 conditions. A copy of that letter was also given to
21 Mr. Malone.

22 I then drafted a letter to Janet Reno, revised it several
23 times, and mailed it out on October 21st prior -- after -- I

1 I reviewed this letter with Mr. Malone. I found out about
2 this motion that he filed on November 2nd when I was trying to
3 find this recusal motion that is not in the court file that he
4 referred to earlier. I was just going to the Courthouse trying
5 to find that motion on the way to see Mr. Malone.

6 I went to Mr. Malone. We reviewed this letter. Mr. Malone
7 felt that I did not give my opinion strong enough in that
8 letter. Also, there was an error in a phrasing of one of the
9 sentences that I made that Mr. Malone pointed out to me. He
10 asked me if I would write and reiterate to Janet Reno that I
11 felt that there's something that needed to be investigated. I
12 indicated to him I would, and I did. And Mr. Malone also has a
13 copy of that.

14 Ms. Griffin is not aware of virtually any of that that I
15 have just indicated to the Court because it was something that
16 I did through the General Counsel, and I believe I followed the
17 proper procedures.

18 THE COURT: All right, sir. I don't question that.
19 All right. Do you dispute what your attorney has said?

20 DEFENDANT: Yes, I do.

21 THE COURT: All right. Tell me specifically what you
22 disagree with.

23 DEFENDANT: The fact that he failed to express what he

1 interviewed said that it was a made up story, that the
2 Government is trying to get these witnesses to testify.

3 THE COURT: Well, he did report it as you have
4 complained of in this, prior to this motion. You're not
5 satisfied with the way he did it, but he did do it?

6 DEFENDANT: Yeah. He didn't do it the way he said he
7 would, the way we agreed upon. And he also failed to mail my
8 testimony as well.

9 THE COURT: Well, did you mail your testimony?

10 DEFENDANT: (No audible response.)

11 THE COURT: Did you attempt to mail your testimony?

12 DEFENDANT: No, sir.

13 THE COURT: Did you make any complaint to the United
14 States Attorney?

15 DEFENDANT: No, sir, but I --

16 THE COURT: Or Attorney General, I'm sorry.

17 DEFENDANT: No, sir. I spoke with my aunt and asked
18 her to do it for me, but she didn't have my, you know, my
19 letter that I gave to Mr. Armstrong. He said that he would
20 file it.

21 THE COURT: All right. So, your complaint against
22 Mr. Armstrong in that regard is that he did not write the
23 letter in the same form that he talked to you about what he --

1 letter on what happened with me and the agents regarding this
2 investigation the night of the -- well, not of the murder but
3 the night of --

4 THE COURT: All right. Do you want this letter to be
5 introduced in evidence that he wrote?

6 DEFENDANT: That I wrote?

7 THE COURT: That he wrote to the U.S. -- to the
8 Attorney General.

9 DEFENDANT: Yes, sir. I would like for that letter to
10 be introduced and my letter as well that I gave him to send to
11 the U.S. Attorney General.

12 THE COURT: And do you have your letter? Does he have
13 your letter?

14 DEFENDANT: He should have it, yes, sir.

15 THE COURT: Both those letters?

16 DEFENDANT: Yes, sir.

17 THE COURT: And are you offering those in evidence
18 that you want the Court to consider?

19 DEFENDANT: (No audible response.)

20 THE COURT: You don't have to. I'm not trying to get
21 you to put them in. I'm asking you if you want to. If there's
22 any question in your mind, then you need the advice of counsel.

23 DEFENDANT: Well, the letter he wrote, it's not that

1 determine whether it's beneficial to you or not without having
2 the letter before it to see it. Mr. Armstrong --

3 DEFENDANT: Yes, yes, sir.

4 THE COURT: -- has testified exactly what he has said,
5 you have testified generally to the same thing, that he has
6 testified -- that he has stated that he has written that
7 letter, that it may not contain exactly how you asked it to be
8 written, but he wrote it in the form after a discussion with
9 the -- with the Alabama Bar Association Ethics Committee. And
10 he is a lawyer, and he's required to provide and follow certain
11 rules of ethics, Mr. Malone.

12 DEFENDANT: Well, it wasn't how I asked it to be
13 written. It was how he explained it to you. That's how I
14 wanted him to explain it on the letter.

15 THE COURT: Well --

16 DEFENDANT: He just left out certain parts that I felt
17 were --

18 THE COURT: All right. Tell me what he left out that
19 you think were important that he should have included.

20 DEFENDANT: The part about --

21 THE COURT: Well, you say the part. There is no part,
22 is there? It's not in.

23 DEFENDANT: Right.

1 Government to get certain inmates to -- to coerce certain
2 inmates on this information to where they would be reliable
3 witnesses or appear to be reliable witnesses to testify against
4 me on that -- on the investigation that's ongoing right now.

5 THE COURT: All right. And he didn't say that?

6 DEFENDANT: No, sir.

7 THE COURT: All right. All right. Let's go on. All
8 right. The next complaint is Mr. Armstrong was instructed by
9 Judge Vollmer, who has also shown demonstrative bias on the
10 Defendant's behalf. However, during jury deliberations, after
11 hearing some of the inmates' statements from Mr. Armstrong,
12 instructed him to relay the information to the Attorney
13 General, Janet Reno. This is the same --

14 DEFENDANT: It's the same.

15 THE COURT: -- issue, right? All right. All right.
16 Since then, Mr. Armstrong has been ignoring his duty as an
17 officer of the Court by making up excuses and telling the
18 Defendant he did not know the proper procedure or the proper
19 authorities which to rely -- excuse me, relay this information.

20 And now we have had him testify, and you do not dispute
21 that he did send this on to the Attorney General before you
22 filed this motion. You were not aware of it at that time.

23 DEFENDANT: I wasn't aware of it, yeah.

1 THE COURT: And for these reasons, you ask the Court's
2 motion to be granted -- your motion to be granted. All right.
3 Do you have anything else to complain about Mr. Armstrong other
4 than what you have said?

5 DEFENDANT: Well, back to the issue about the tape, I
6 --

7 THE COURT: The tape is the Kastigar tape?

8 DEFENDANT: Uh-huh.

9 THE COURT: Well, haven't we gone over that already?

10 DEFENDANT: Yes, sir. You know, there's something
11 else I thought about.

12 THE COURT: All right. All right. Thank you,
13 Mr. Malone. You may come down.

14 DEFENDANT: Sure.

15 THE COURT: All right. Mr. Armstrong, I have certain
16 questions for you. Mr. Armstrong, there is no -- you may come
17 down, Mr. Malone. Mr. Armstrong, so you understand, you are an
18 officer of this Court. I do not generally put officers of the
19 Court under oath. I do not question your testimony in any way.
20 However, since Mr. Malone is making these complaints, since he
21 has been put under oath, I expect that it is proper to put you
22 under oath as well. I want you to understand that is the
23 reason that it is done.

1 raise your right hand, the court clerk will put you under oath.

2 (Mr. Armstrong was placed under oath.)

3 THE COURT: All right. Why don't you come up here, if
4 you will.

5 (Brief pause.)

6 THE COURT: All right. You did not bring anything
7 with you, apparently. Do you have a copy of his motion?

8 MR. ARMSTRONG: Yes, sir.

9 THE COURT: Would you like to get it so we -- I'm
10 going to ask you if you have any, anything that you would like
11 to remark on in connection with his allegations made against
12 you that you have not already remarked on.

13 (Brief pause.)

14 MR. ARMSTRONG: Your Honor, the first thing dealing
15 with the Kastigar, I think we've gone over that in great
16 detail. And if Mr. Malone indicates to me that he did not
17 point out issues or areas that he felt were not correct, how in
18 the world could I put them in the motion? Because he put, he
19 put -- he gave me areas, and I put them in the motion. How
20 could I put them in the motion if I wasn't even present in the
21 Kastigar hearing?

22 THE COURT: All right, sir. The question I have to
23 you in that regard is he testified on the stand here that he

1 that you went in -- that you went into was given to you by him?

2 MR. ARMSTRONG: Yes, sir, because I wasn't present at
3 the Kastigar hearing.

4 THE COURT: All right.

5 MR. ARMSTRONG: But there are other points that
6 Mr. Malone has said previously that he has not indicated to me
7 that I have not raised because I don't know what they are.

8 THE COURT: And he still has not told you?

9 MR. ARMSTRONG: He still hasn't told me.

10 THE COURT: All right. Go on. What else?

11 MR. ARMSTRONG: Dealing with Bert Noojin, Your Honor,
12 I did have a very long discussion with Mr. Noojin. I discussed
13 what his potential testimony would be with Mr. Malone. That's
14 how he was able to tell the Court part of what he told you
15 about Mr. Noojin's testimony.

16 Mr. Noojin indicated to me -- I do not have his notes in
17 front of me from my conversations with him, but it was
18 determined that Mr. Noojin could testify, I felt, on issues
19 that could substantially hurt Mr. Malone. I cannot give you
20 any of the exact details. I just don't have those notes. But
21 this was discussed with Mr. Malone, and it was jointly decided
22 not to call Mr. Noojin as a witness.

23 THE COURT: All right, sir.

1 case.

2 This letter of Mamie Floyd, to this day I haven't seen that
3 letter. I have been told that that letter exists. I've been
4 told it was sent to his wife. His wife was subpoenaed. His
5 wife was here. I asked her about the letter. She indicated to
6 me that it did not say anything whatsoever that would help
7 Perry Malone at trial.

8 Apparently, the letter has now been given to one of
9 Mr. Malone's aunts, and I still haven't seen the letter. It
10 possibly could have been used in cross examination of Mamie
11 Floyd, but in my opinion during the trial of Mamie Floyd or the
12 testimony of Mamie Floyd, it was the cross examination, I think
13 Mamie Floyd was more of a benefit to Mr. Malone than she was to
14 the Government. But I still haven't seen that letter.

15 Dealing with Judge Butler's motion to recuse, as I said, I
16 still cannot find a copy of that, but there were items
17 contained that Mr. Malone had indicated that, Your Honor, I
18 would not put my name to. I do not believe that Judge Butler
19 was guilty of the allegations that were made by Mr. Malone.

20 In dealing with that, this was still at the very beginning
21 of my appointment here, I was still reviewing the records, and
22 I indicated that to Mr. Malone. The more I started to review
23 the records, this was still prior to the Court granting

1 investigation that I made to continue with Judge Butler because
2 I felt there was a much stronger chance of Judge Butler
3 granting his motion to be allowed to withdraw his plea than if
4 it would have been in front of Your Honor, because I felt after
5 reviewing the record that Judge Butler didn't realize what he
6 had done on the record, and I felt personally that Judge Butler
7 would correct himself much stronger, with all due respect to
8 Your Honor, than you would have overruled a judge sitting here
9 in the same courtroom.

10 That was discussed with Mr. Malone. It was determined not
11 to refile. We had the hearing. That's exactly what Judge
12 Butler did. But after that hearing, in my opinion then, when
13 Judge Butler allowed Mr. Malone to withdraw his plea, Judge
14 Butler then knew more about the case than an average judge
15 sitting on a trial would know. I then filed a motion for Judge
16 Butler to recuse himself on those grounds, which was denied.

17 Then what Judge Butler did -- I advised Mr. Malone many,
18 many times there's an old saying of the law, be careful what
19 you ask for sometimes, you might get it. And I advised him
20 that I thought he'd be better off trying that case with Judge
21 Butler instead of Your Honor because I felt that Judge Butler
22 would have allowed certain evidence in that I felt that Your
23 Honor would not. Mr. Malone disagreed. We filed that motion.

1 or transferred the case to Your Honor, and Your Honor did not
2 allow the exact testimony that I was afraid that Your Honor
3 would not allow that I felt Judge Butler would.

4 THE COURT: All right, sir. Well, whether the Court
5 is right or wrong will be decided by the Court of Appeals.

6 MR. ARMSTRONG: Yes, sir.

7 THE COURT: All right. Anything else you'd like to
8 add to that?

9 MR. ARMSTRONG: Your Honor, just a general statement.
10 Just because Mr. Malone, and just because I have talked with
11 these three people, because it was indicated that they may have
12 something to do with the drug conspiracy, Your Honor, whether
13 or not those three people are making up a conspiracy or the
14 Government is making up a conspiracy or anyone is making up a
15 conspiracy is not for me to determine. I don't know.

16 If his rights are being violated, it's another thing. To
17 this day, I don't know if his rights are being violated. And I
18 did what I thought was proper in going to the Attorney -- to
19 the General Counsel explaining this, and that's exactly what
20 was done.

21 Your Honor, I don't have any other comments, I don't
22 believe.

23 THE COURT: All right. Mr. Armstrong, let me ask you

1 It is my intention to go forward with that sentencing hearing
2 unless you believe that you are unable or unwilling to go
3 forward with that hearing and that you tell me that you cannot
4 represent Mr. Armstrong -- Mr. Malone in this hearing.

5 MR. ARMSTRONG: Your Honor, I have already prepared,
6 and it's sitting in my notebook right here, a motion to
7 withdraw as Mr. Malone's attorney after sentencing is
8 completed. I think as an officer of the Court, knowing as much
9 as I do about this case, filing all necessary objections that I
10 think have already been filed, I don't see any reason why the
11 sentencing cannot go forward. If Mr. Malone does not want it
12 to go forward, I would be more than happy to amend my motion to
13 withdraw and file it right now prior to sentencing.

14 THE COURT: No, sir. The Court is not going to allow
15 any defendant not to have his matter go forward by making
16 allegations in this Court. The Court's opinion is that you
17 have represented Mr. Armstrong -- excuse me, Mr. Malone fully
18 and completely in this case. I have had a great deal of time
19 put in with Mr. Malone. I do not mind that. That is my
20 obligation to Mr. Malone. I believe I have given him every
21 opportunity. I intend to continue to give him every
22 opportunity. He will have every opportunity on appeal on all
23 his other motions, but this matter is going forward this

1 this time.

2 Thank you, sir. You may be seated.

3 MR. ARMSTRONG: Your Honor, there is one point after
4 sentencing that we would like to approach for a sidebar after
5 sentencing.

6 THE COURT: All right. Do you want to do that now or
7 later?

8 MR. ARMSTRONG: It could wait after.

9 THE COURT: Let's wait until after the sentencing.

10 (Brief pause.)

11 THE COURT: All right. Does either side know of any
12 reason why sentencing should not be pronounced at this time,
13 for the Government?

14 MS. GRIFFIN: No, sir.

15 THE COURT: For the Defendant?

16 MR. ARMSTRONG: No, sir.

17 THE COURT: All right. There are certain objections
18 that have been filed on Mr. Malone's behalf. Do you have a
19 copy of the Court's rulings on the tentative findings in
20 response, Mr. Armstrong?

21 MR. ARMSTRONG: No, sir, I do not.

22 THE COURT: Well --

23 MR. ARMSTRONG: I have Probation's addendum to it, but

1 Mr. Armstrong? Do you have a copy? Would you give

2 Mr. Armstrong a copy of those?

3 THE CLERK: This is the original.

4 THE COURT: Mr. Armstrong, if you will come forward,
5 she'll give you a copy of these. And we'll get them back,
6 Mary.

7 THE CLERK: Yes, sir. This is the original.

8 THE COURT: All right. I am sorry, Mr. Armstrong,
9 that you don't have a copy of this.

10 MR. ARMSTRONG: That's okay.

11 THE COURT: If you will look at them with Mr. Malone,
12 and we will go forward momentarily. Do you have a copy,
13 Ms. Griffin?

14 MS. GRIFFIN: No, sir, Your Honor. And when
15 Mr. Armstrong finishes reviewing it, I'll review it.

16 THE COURT: Well, here, you can look at mine. Mary,
17 we need to get these out to all parties. I don't know what
18 happened. I

19 (Off the record discussion.)

20 MR. ARMSTRONG: Your Honor, there's always a problem
21 with getting those rulings out. And very rarely does an
22 attorney have --

23 THE COURT: Well, we're going to try to do something

1 THE COURT: I am advising you that in the future, as
2 soon as we get -- let me advise it for Probation's and for all
3 parties. The Defendants, as you know, Mr. Armstrong, have to
4 file objections at least 10 days before the sentencing hearing.
5 That makes it very -- a very close question.

6 I am of the opinion that I am going to amend my ruling. I
7 know that the requirements are that you file it 10 days, but I
8 am going to advise Probation that in the future, I am going to
9 request that we have these hearings delayed so that the
10 Defendants can get these objections in at least 20 days before
11 the sentencing hearing and file objections at least 15 days
12 before the sentencing hearing. Now, that will not be required
13 under the Federal law, but it will be required by this Court's
14 rule.

15 All right. Mr. Armstrong, have you had an opportunity to
16 review those as yet?

17 MR. ARMSTRONG: Yes, sir.

18 THE COURT: And these are objections that you have
19 made, so that you are aware of what the objections are. We'll
20 go through them, but I do not plan to spend a great deal of
21 time on them. This is the Position of the Parties with Respect
22 to the Defendant, Sentencing Factors for the Defendant, and
23 these are objections filed by you, Counsel, on behalf of

1 objections two, paragraphs 10, 14, 15, 21, 23, and 31, the
2 Court will advise you that the Court has a copy of the Court's
3 notes on this in this case, and will rely upon that trial
4 testimony. The testimony that the Court is aware of is
5 adequate to allow the Court to conclude that the Defendant is
6 responsible for more than 1.5 kilos of crack cocaine in the
7 offense and did give untruthful testimony at trial.

8 I have got a copy of the transcript of Mr. Malone's
9 testimony at trial. There are numerous instances where this
10 Court concludes that Mr. Malone was not truthful in his
11 testimony. If the Defendant desires, Mr. Armstrong, the Court
12 will require the Government if the Government is in a position
13 to provide the information on the untruthful testimony.

14 I have noted here the areas of what I consider to be
15 untruthful testimony of the Defendant. It generally relates to
16 the fact that he testified contrary to most of the witnesses in
17 the trial of this case as to the facts involved.

18 All right. Insofar as objection number two, the Court has
19 simply noted that he objects to the probation officer having
20 reported that the Defendant required the Government to try the
21 case before the jury. The Court simply notes that. It has no
22 effect on the Court's final decision in the case.

23 In connection with objection to paragraph 25, not receiving

1 trial, he denies his involvement in this and has not, as far as
2 I know, ever accepted responsibility in the case. And the
3 Court will overrule that objection.

4 In connection with your objections to paragraphs 34 and 36
5 of the Presentence Investigation Report, and the Court speaks
6 only as it relates to Case Number 98-183, the calculations are
7 correct on this case facts. I have reviewed those. I am
8 satisfied that they are correct. I will, however, hear from
9 you, Mr. Armstrong, if you desire in connection with paragraphs
10 34 and 36 as to how you say they are incorrect.

11 All right. On issue -- on paragraphs 83 and 85, we will
12 have a hearing on that aspect.

13 On paragraph 84, the Court makes no ruling in this case, as
14 that relates to Case Number 98-184.

15 Insofar as your objection to paragraph 64, it is an
16 objection to the Defendant being addicted to crack cocaine.
17 The Court notes that, and the Court will not sentence this
18 Defendant in connection with any addiction and will not require
19 the Defendant at sentencing to undergo treatment for -- a
20 comprehensive drug treatment. In connection with paragraph --
21 it will not otherwise affect the sentence.

22 In connection with paragraphs 65 and 76, the Defendant
23 objects to being a current user of marijuana and states that he

1 effect on this sentence.

2 In connection with the last objection, paragraph 77, the
3 Defendant denies failure to report ownership of vehicles
4 registered to him. The Court will note that denial, and will
5 further note that this will not have any effect on the
6 sentencing.

7 All right. Mr. Armstrong, I will hear from you on the
8 issues raised in paragraphs 83 and 85 and also any objections
9 that I have ruled on that you would care to speak to
10 specifically that is not completely ruled on to your
11 satisfaction or to the Defendant's satisfaction.

12 MR. ARMSTRONG: Your Honor, specifically in relation
13 to paragraphs 83 and 85, those are statutory calculations.
14 This Defendant submits that he is not guilty of any of these
15 charges, and he should not be sentenced at all. Those are the
16 statutory comments, and they are correct. He just denies that
17 he should be sentenced at all.

18 THE COURT: All right. Very good. The Court will
19 note that and overrule those objections. Now, I believe I also
20 related that you could, you could provide any other objections
21 specifically. Although the Court has indicated its ruling on
22 this, I will hear from you if you have a specific objection
23 that you do not think that the Court has satisfactorily

1 that he disagrees with the Court and would like to know where
2 he is accused of testifying untruthfully in relation to your
3 tentative ruling number one, dealing with paragraphs 10, 14,
4 15, 21, 23, and 31.

5 THE COURT: All right. That is an issue that this
6 Court took up personally. The Court, as you know, has a right
7 where the Court is of the opinion that the Defendant has
8 testified untruthfully to add two points to the sentence.

9 In this case, it will have no effect whatsoever on the
10 final sentence, Mr. Malone, but the Court still is of the
11 opinion that you were untruthful in your testimony. And when I
12 say that, I have noted, I have some yellow stickers on all of
13 the areas that I will make a part of this record so you may
14 have it if you choose for the -- for your appeal. The Court is
15 of the opinion, as I stated earlier, that you testified
16 untruthfully in connection with the testimony that you gave
17 contrary to all of the witnesses who testified in the case.

18 Let me hear from the Government on that position. If the
19 Government is of the opinion that this is not correct, then I
20 will not insist that the Government defend the Court's opinion.

21 MS. GRIFFIN: Your Honor, we agree wholeheartedly with
22 the Court that he perjured himself numerous times in his own
23 defense when he took the stand. We ordered the transcript of

1 second trial, Criminal Number 184, before Judge Butler.

2 Mr. Malone did not take the stand in the second trial, so that
3 that testimony was not used to impeach him during that trial.

4 He perjured himself numerous times as to his drug dealings
5 with the witnesses that have testified as to his participation
6 in the drug activity. We think the Court has correctly
7 reviewed the transcript and determined on numerous occasions.
8 We would ask that the Court document the pages that the Court
9 has made a finding so that that will be perfected for the
10 record.

11 And further, we agree with the Court that that ruling has
12 no impact on the sentence. He is being sentenced because of
13 his statutory requirements and his prior criminal history. And
14 that would be the same if he had more than two ounces of crack
15 cocaine and had no finding of obstruction of justice through
16 the commission of perjury during the trial.

17 So, the Court's finding that he committed perjury, although
18 it gives him two guidelines points, has no bearing on his
19 statutory sentencing.

20 THE COURT: All right. Mr. Armstrong, do you have
21 anything to comment?

22 MR. ARMSTRONG: No, sir.

23 THE COURT: All right. Bring the Defendant forward,

1 THE COURT: I believe, Mr. Malone, that the Court
2 failed to make a ruling on your motion. The Court denies your
3 motion to have your attorney withdraw, as you know, from the
4 fact that I have gone forward. I will have that put in the
5 record so that there is no question that I have denied that and
6 we have had this hearing with Mr. Armstrong representing you.

7 All right. The Court would find that under the trial of
8 this case and the evidence presented, and the fact that the
9 Defendant was made aware of the fact that he had prior
10 sentences for drug dealing on at least two occasions and that
11 this requires a statutory -- allows for a statutory sentence
12 relating to the fact that this is the third offense, the Court
13 finds that the Total Offense Level in this case is a 40,
14 Criminal History Category of VI, which provides under Count One
15 on which the Defendant was found guilty to life imprisonment.

16 (Brief pause.)

17 THE COURT: Mary, can you find the portion of the
18 record which provides a notice to this Defendant of the prior
19 convictions? Do you have that on your --

20 THE CLERK: Sarah Jane might be more familiar with it.

21 (Off the record discussion.)

22 THE COURT: All right. The Court also finds that the
23 Government has properly notified the Defendant of the

1 Government pleads the statute, 21, United States Code, Section
2 851(a), which sets forth facts concerning two previous
3 convictions of the Defendant each for felony drug offenses,
4 which previous convictions expose the Defendant to increased
5 punishment if convicted of any drug felony count in the
6 superseding indictment herein. It sets forth the two prior
7 convictions, one on December the 13th, 1995, possession of
8 cocaine, sentenced in the Circuit Court of Mobile County,
9 Alabama, and convicted in Case Number 94-3177, in which the
10 Defendant was represented by counsel, and the Defendant has
11 been provided with a judgment in that case and is aware of this
12 conviction; and on a conviction of June 25th, 1991, the
13 Defendant pled guilty to conspiracy to distribute cocaine and
14 was sentenced in Mobile County Circuit Court, Mobile, Alabama,
15 convicted of the charge, Case Number 90-1262, was represented
16 by counsel, Defendant was provided with a copy of this judgment
17 and was aware of the conviction; that the convictions are final
18 within the meaning of 21, United States Code, Sections 841(b)
19 and 962(b). These two prior felony drug convictions would
20 result in the Defendant being sentenced to a mandatory term of
21 life imprisonment without release under 21, United States Code,
22 Section 841(b)(1)(A).

23 The Court previously filed this enhancement on November the

1 imposed.

2 Before sentence is imposed, Mr. Malone, do you have
3 anything to say or to add?

4 DEFENDANT: None other than I, I'm not -- I'm
5 certainly not asking the Court to have mercy on me because, I
6 mean, after going through the procedures here in this Court, I
7 can't see where there's mercy in this court system period, you
8 know. And I just, I just -- I know that everything is in God's
9 hands, and I know that things really need to change here in
10 this court system because the Government is constantly
11 violating people's rights here, and the Court is taking part of
12 it, and I'm a witness of that. And I'm just believing that God
13 is going to do that.

14 THE COURT: Well, Mr. Malone, this Court hears a lot
15 of complaints. I have dedicated my life to justice, and I want
16 you to know that. You apparently don't believe it. I don't
17 know whether you don't believe it or you don't want to accept
18 it, you don't want to accept your guilt.

19 The Court is of the opinion that Mr. Armstrong did a superb
20 job in this case throughout the trial. This Court feels that
21 you were given every opportunity throughout this trial to get a
22 fair trial. The Court rules as it's required to rule. The
23 Court is not surprised at your attitude because your attitude

1 about your rights being given to you will try to review this
2 record and review all of the matters that have come before this
3 Court and make a determination for themselves as to whether or
4 not you were given a fair trial.

5 DEFENDANT: Yes, sir.

6 THE COURT: And not rely on either you or me.

7 DEFENDANT: Amen.

8 THE COURT: All right. Pursuant to the Sentencing
9 Reform Act of 1984, it is the judgment of the Court that the
10 Defendant, Perry Malone, is hereby committed to the custody of
11 the United States Bureau of Prisons to be imprisoned for a term
12 of life. This term consists of a sentence of life imprisonment
13 on Count One in Case Number CR-98-183, and 240 months as to
14 Count Two in Case Number 98-183, those two sentences to run
15 concurrently, one with the other.

16 If the Defendant is released from imprisonment, the
17 Defendant shall be placed on supervised release for a term of
18 10 years. This term consists of 10 years as to Count One of
19 Case Number 98-183 and three years as to Count Two in Case
20 Number 98-183, said supervised release terms to run
21 concurrently, one with the other.

22 Within 72 hours of release from custody of the Bureau of
23 Prisons, the Defendant shall report in person to the probation

1 state, or local crimes, he shall be prohibited from possessing
2 a firearm or other dangerous device, and shall not possess a
3 controlled substance. In addition, he shall comply with the
4 standard conditions of supervised release as recommended by the
5 United States Sentencing Commission and on record with this
6 Court.

7 The Court orders the Defendant also comply with the
8 following special conditions of supervised release: He shall
9 participate in a program of testing and treatment for drug
10 and/or alcohol abuse as directed by the Probation Office.

11 The Court sentences the Defendant to life as this is the
12 only sentence available. The sentence imposed addresses the
13 seriousness of the offense, the sentencing objectives of
14 punishment, deterrence, and incapacitation.

15 The Court finds the Defendant does not have the ability to
16 pay a fine; therefore, no fine is imposed.

17 It is ordered that the Defendant pay a special assessment
18 in the amount of \$100 on each count of conviction, 98-183, and
19 Count One of 98-183 and Count Two of the same case number, for
20 a total assessment of \$200, which shall be due immediately.

21 Mr. Malone, you have a right to appeal the sentence I have
22 just imposed. If you desire to appeal, you must notify this
23 Court within 10 days of today's date in writing of your intent

1 an attorney, an attorney will be appointed for you and the cost
2 of the appeal will be paid for by the Government.

3 If you have any objections to the sentence imposed or the
4 findings of fact or conclusions of law made by the Court, you
5 should make those objections at this time or run the risk of
6 waiving them on appeal. You will be given all objections that
7 your counsel has already filed in the case, but if you have any
8 in addition to that, you may file those at this time.

9 MR. ARMSTRONG: Your Honor, the only thing we would
10 add is that we would respectfully submit to the Court that the
11 enhancement provisions for the purpose of appeal are
12 unconstitutional to preserve Mr. Malone's right to appeal that
13 to a higher court.

14 THE COURT: All right. Anything further, Mr. Malone?

15 MR. ARMSTRONG: Your Honor, there's one point at
16 sidebar that we'd like to address.

17 THE COURT: All right. And I will at this time, I
18 understand you are filing a motion to be relieved of
19 representing the Defendant from this time; is that correct?

20 MR. ARMSTRONG: Yes, sir, Your Honor. It was my
21 intention to request that Mr. Malone file notice of appeal and
22 also a motion to withdraw.

23 THE COURT: What the Court will do is this: I will

1 having his right to appeal. And after that time, I will grant
2 your motion to be relieved of representation, and I will send
3 this file to the magistrate judge for the appointment of
4 another attorney unless Mr. Malone has an attorney that he's
5 going to employ. Do you have an attorney you're going to
6 employ?

7 DEFENDANT: I am, Your Honor. I don't --

8 THE COURT: All right. Well, if you'll employ your
9 attorney, have him file an appearance, and we will have that
10 attorney appointed. Before we close, I'm going to give this to
11 the clerk, excerpts of the trial proceedings, my notes as to
12 the testimony that I relied upon among other portions that I
13 feel that the Defendant is required to get a two-point increase
14 for being untruthful on the stand. It will be made part of the
15 record for your appeal, Mr. Malone.

16 All right. I'll see you at sidebar on any issues that you
17 have. Mary Frances, I'll need you.

18 (Sidebar conference, on the record, Defendant present,
19 Counsel present, and case agents.)

20 THE COURT: Okay. Mr. Armstrong, before we go any
21 further, I do want to thank you very much for your activity in
22 this case. I think you have handled it as an attorney at the
23 highest degree of competence and the highest degree of acting

1 job for him, And I thank you.

2 MR. ARMSTRONG: Thank you, Your Honor.

3 THE COURT: All right. I'll hear from you.

4 MR. ARMSTRONG: Your Honor, I'm not exactly positive
5 how to handle this, but Mr. Malone has previously testified
6 against other individuals, and we'd request the Court to
7 somehow instruct the Bureau of Prisons that Mr. Malone not be
8 housed with these individuals. I do know some people's names.
9 I don't know some people's names. The people's name I know is
10 an individual by the name of Bello, B-e-l-l-o, Garcia,
11 G-a-r-c-i-a, that is also known as Cuban Man; an individual by
12 the name of Steve Warren, an individual by the name of Carl
13 Morrisette, an individual by the name of Arthur Patterson.

14 There are a couple individuals by the name of Chris, last
15 name unknown, but also known as Block, B-l-o-c-k, and an
16 individual by the name of Jim, last name unknown, who is a
17 partner of Chris', that Mr. Malone has informed me of other
18 officers who could give me those people's names. We have
19 attempted to communicate with them and have them call me back.

20 Mr. Malone tells me today that he believes that Agent Don
21 Walton knows the name -- the last name of this Chris, also
22 known as Block, and Jim, and we would ask the Court to somehow
23 make arrangements that Mr. Malone not be housed with these

1 MS. GRIFFIN: Judge, we intend to file a request with
2 the Bureau of Prisons with a list of separatees. Mr. Malone
3 did not testify against Steve Warren. I prosecuted that case.
4 Steve Warren entered a guilty plea.

5 Mr. Garcia --

6 THE COURT: Well, let me stop you. Did he know that
7 he was going to testify against him?

8 MS. GRIFFIN: I do not know. However, I only know of
9 one trial that he testified in Federally, and we provided that
10 transcript to Mr. Armstrong in discovery in this case. We will
11 file a separatee as to that case. I don't mind filing it as to
12 Steve Warren or Mr. Garcia, although he did not testify against
13 either of them. I don't have any idea who Chris or Jim could
14 possibly be. Christopher Murray, and he did not testify --
15 Christopher Murray pleaded guilty.

16 THE COURT: All right. Counsel, so you understand,
17 the Defendant in this case has every right of any other
18 Defendant who has -- you know that, I know that, we all know
19 that. Mr. Malone should know it, even though he doesn't
20 necessarily agree.

21 What I'm telling you is this: If he was put -- if these
22 individuals, if he was going to testify against them, even
23 though they pled guilty, I would expect the Government to not

1 could have been aware of the fact that Mr. Malone would or
2 might testify against him.

3 MS. GRIFFIN: Judge, as to any person that we gave any
4 statement or any indication to that Mr. Malone might, we will
5 confer with the agents.

6 THE COURT: That's all I ask.

7 MS. GRIFFIN: And Mr. Malone can provide those names.
8 I am not aware that that was done in many of these. If
9 Mr. Malone feels otherwise, he can give that list right now to
10 Mr. Armstrong and we will check them out. We'll also file
11 under seal with this Court the request to Bureau of Prisons for
12 separatees, and we will provide Mr. Armstrong a copy if he sees
13 fit and he can provide it to his attorney -- I mean, to his
14 client.

15 THE COURT: All right. That's all I can ask.

16 MR. ARMSTRONG: Do they know the last name of this
17 Jim, partner of Chris'?

18 DET. PAUL BURCH: He was never caught.

19 MR. ARMSTRONG: One more question. This aka Batman,
20 that was the nickname of Steve Warren or somebody else?

21 DET. PAUL BURCH: Darryl something.

22 MS. GRIFFIN: Darryl Thomas.

23 MR. ARMSTRONG: Darryl Thomas would be another name we

1 MS. GRIFFIN: All right. Judge, I want to make sure I
2 have Darryl Thomas, Steve Warren, Bello Garcia, also known as
3 Cuban Man, Carl Morrisette, Arthur Patterson, Christopher
4 Murray. And I'm taking the name Jim, last name unknown, off
5 based on Mr. -- Off. Burch's representation that someone named
6 Jim connected with --

7 THE COURT: Never been.

8 MS. GRIFFIN: -- was not arrested. Also, I'm going to
9 add on that list every male who testified that is in custody
10 against him in the trial before Your Honor and in the trial
11 before Judge Butler. Of course, he's going to be separated
12 from the females, so there's no need to put that list.

13 THE COURT: All right. If you know of anyone else,
14 you let them know and they will protect you. All right. You
15 may not believe that, Mr. Malone, you don't believe anything,
16 but that's what the Government is supposed to do.

17 DEFENDANT: I believe some things.

18 THE COURT: All right. Nothing further, we will be
19 adjourned.

20

21 (Proceedings concluded at 10:55 a.m. this date.)

22

23


CERTIFICATE

STATE OF ALABAMA)

COUNTY OF MOBILE)

I do hereby certify that the above and foregoing transcript of proceedings in the matter aforementioned was taken down by me in machine shorthand, and the questions and answers thereto were reduced to writing under my personal supervision, and that the foregoing represents a true and correct transcript of the proceedings upon said hearing.

I further certify that I am neither of counsel nor related to the parties to the action, nor am I in anywise interested in the result of said cause.


Mary Frances Giattina, RDR, CRR
Official Court Reporter
U.S. District Court, SDAL
P.O. Box 3021