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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:08CV438-1 3:06CR74

HOWELL W. WOLTZ,)	
Petitioner,)	
v.)	<u>ORDER</u>
UNITED STATES OF AMERICA,)	
Respondent.)	
)	

THIS MATTER comes before the Court upon the Petitioner's Motion Challenging Order (Doc. No. 13), filed December 4, 2008.

Petitioner contends in his present motion that this Court erroneously denied his Motion to Remove Government Attorneys. More specifically, Petitioner asserts that contrary to this Court's Order denying his motion, the same United States Attorney, Gretchen Shappert, prosecuted his criminal case is representing the Government in this § 2255 proceeding. While the United States Attorney is the same person, the individual Assistant United States Attorney who is actually handling this case is different. It is not this Court's function to direct who may represent the Government. Mere allegation of prosecutorial misconduct is wholly insufficient to warrant the removal of the prosecutors.

In closing, the Court notes that Petitioner continues to assert that the United States

District Court for the Southern District of West Virginia found his allegations of prosecutorial misconduct to be meritorious. As set forth in this Court's earlier Order, this Court disagrees.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion Challenging

Order (Doc. No. 13) is **DENIED**.

This 27 February 2009.

W. Earl Britt

Senior U.S. District Judge