

Anthony Viola
2820 Mayfield Road - # 205
Cleveland Heights, Ohio 44118
MrTonyViola@ICloud.com (330) 998-3290

August 29, 2022

Mr. Matthew Kanai
Assistant Disciplinary Counsel
65 E. State Street -- #1510
Columbus, OH 43215
Matthew.Kanai@Sc.ohio.gov

RE: Discipline Counsel v. Mark S. Bennett; Case Number 22-034;
Mark Bennett Bar No. 0069823

Dear Mr. Kanai,

The United States Department of Justice's Inspector General found that Mark Bennett "lacked candor" during their investigation of his misconduct. But Bennett's lack of candor extended to his prosecution of criminal matters, including my case where a subsequent exoneration utilizing evidence Bennett failed to produce before the first trial occurred. I am writing to ask your office to amend charges against Mark Bennett to include serious misconduct Bennett committed during my criminal prosecution, all of which are established by Bennett's own admissions and his own statements:

1. KNOWING USE OF PERJURED TESTIMONY – Mr. Bennett presented the trial testimony of government witness Kathryn Clover even though he was aware her testimony was false. Mr. Bennett stated in writing that Clover "provided false testimony during the trial" yet failed to withdraw that testimony, USA v. Clover, 10-cr-75, N.D. Ohio, Docket No 46. Bennett's actions were contrary to his duty of Candor to a Tribunal under Rule 3.3; also see Napue v. Illinois, 360 U.S. 264 (1959).
2. MATERIALLY FALSE STATEMENTS ABOUT THE EXISTENCE OF A CONFLICT WAIVER – Mr. Bennett was aware that defense counsel in my case engaged in joint defense with all criminal defendants who proceeded to trial **AND ALSO** represented, simultaneously, government witnesses Kathryn Cover and informant Matthew Fairfield. According to Mr. Bennett, the "conflict of interest" marred the proceedings, USA v. Viola, 08-cr-506, N.D. Ohio, Docket No. 201, page 18. Mr. Bennett's own attorney, Richard Koblentz, represented me and also concluded that an actual conflict of interest took place and caused a denial of the Sixth Amendment right to counsel. However, when the

undersigned raised this issue in post-conviction filings, Bennett falsely informed the judiciary that conflict waivers were executed and that a conflict of interest inquiry was held. Even after the Clerk of Court confirmed his statements were false, Bennett still refused to withdraw his false statements, contrary to his duty of Candor to a Tribunal under Rule 3.3.

3. COVERING UP A SEXUAL RELATIONSHIP BETWEEN KATHRYN CLOVER AND SENIOR ASSISTANT OHIO ATTORNEY GENERAL DANIEL KASARIS – The Cuyahoga County Prosecutor’s Office recently released over 600 pages of emails between Mark Bennett, Kathryn Clover and the state prosecutor, Daniel Kasaris. These emails, along with sworn statements of multiple witnesses, all confirm that Kasaris had a romantic relationship with Clover that lasted many years. Bennett and Kasaris portrayed Clover as a “fact witness” in criminal proceedings but failed to disclose to jurors that Clover committed perjury, that she was actually serving as a paralegal inside the prosecutor’s office and that she was sexually involved with Mr. Kasaris, contrary to the Ohio Rules of Professional Conduct, which prohibit lawyers from engaging in conduct involving moral turpitude, fraud, deceit, dishonesty or misrepresentation and from engaging in other action that could improperly prejudice the outcome of a case or legal matter.

4. INTRUSION INTO THE SIXTH AMENDMENT RIGHT TO COUNSEL – Prosecutor Bennett alleged the undersigned owned and controlled “Family Title” and “Transcontinental Lending” but such was not the case. Rather than dismiss the case, Bennett took extraordinary steps to obtain confidential defense trial strategy information. Bennett and Kasaris ordered their Office Manager, Dawn Pasela, to pretend to be a graduate student studying criminal justice and working with defense attorneys. Pasela was directed to strike up a friendship with Viola, then offered to assist Viola, but she was actually recording defense trial preparation sessions and reporting back to Bennett and Kasaris. FBI agent Jeffrey Kassouf confirmed he listened to these voice recordings. After the first trial, Pasela came forward and claimed Bennett and others were signing her name on evidence logs, suppressing exculpatory evidence and using Kathryn Clover’s false testimony at criminal trials. Pasela was also aware of the Clover-Kasaris affair and offered to testify at Viola’s second trial. But when prosecutors discovered Pasela was assisting the defense, they threatened her with “federal prison.” Ms. Pasela was found dead in her apartment under suspicious circumstances, and her parents blame Bennett and Kasaris for her death.

OVERVIEW OF THE CRIMINAL PROSECUTION OF ANTHONY VIOLA

Mark Bennett led the prosecution of Anthony L. Viola, who was simultaneously prosecuted in both federal and state court, on identical charges, by the same prosecution

team, through a multi-jurisdictional Mortgage Fraud Task Force, which alleged the undersigned devised the “Nation’s largest mortgage fraud scheme” by duping lenders including JP Morgan Chase and Citigroup into making ‘no money down’ mortgage loans that did not meet the banks’ underwriting guidelines. Bennett also led a media campaign, speaking at press conferences, frequently interacting with journalists and even receiving an award for prosecuting Viola. However, following a federal conviction, Task Force Office Manager Dawn Pasela provided Viola with evidence (including FBI 302s and Bates Stamped Federal Evidence) that Bennett stated in writing did not exist, and which was not produced before the first trial. When substantially different evidence that Ms. Pasela provided was introduced at the second trial, an acquittal on the same charges resulted, kindly compare USA v. Viola, 08-cr-506, N.D. Ohio, guilty verdict and 150 month prison sentence, with the subsequent acquittal on the exact same charges, Ohio v. Viola, 10-cr-543886 and 10-cr-536877, Cuyahoga County Common Pleas Court. After nearly a decade of imprisonment, both the Justice Department and the FBI admitted making materially false statements about evidence, and blamed Mr. Bennett in sworn declarations, stating that he did not adequately search for or produce the evidence in question, Viola v. Department of Justice, Case: 18-2573, Third Circuit, Document 99 Page: 2, and Viola v. Department of Justice, 15-cv-242, W.D. Pa. Assistant U.S. Attorney Michael Colville informed the federal judiciary that the Justice Department “regrets those inaccuracies and the resulting inconvenience,” Both the District Court and Court of Appeals found that Viola was entitled to the assistance of counsel in these proceedings. Please see **Exhibit A**, Bennett media appearances and government admissions of making false statements about evidence.

DOCUMENTS IN SUPPORT OF CLAIMS THAT MARK BENNETT VIOLATED THE RULES OF PROFESSIONAL CONDUCT

I. Mark Bennett Knowingly utilized perjured testimony to win convictions:

Federal Prosecutor Mark Bennett stated in writing that government witness Kathryn Clover “provided false testimony” at criminal trials, yet failed to withdraw that false testimony, USA v. Clover, 10-cr-75, Docket # 46, **Exhibit B**. Instead, Bennett stated that her false testimony “was in the interests of justice” and that withdrawing her false statements “jeopardized the outcome of the case” **Exhibit C**. In Ohio v. Viola, 10-cr-536877, Clover admitted her plea agreement was false, and that she did not conspire with Viola to commit fraud, saying “I told Bennett that was wrong,” and claimed Mark Bennett knew she was lying in court, **Exhibit D**.

II. Mark Bennett Made False Statements about the existence of a “Conflict of Interest Waiver”

Mark Bennett stated that joint defense between all defendants who proceeded to trial despite timely objection – with those same attorneys also representing government witnesses at the same time – created an actual “conflict of interest,” USA v. Viola, 08-cr-

506, N.D. Ohio, Docket # 201, page 18. However, when the undersigned raised the issue of conflicts in post-conviction filings, Bennett falsely informed the federal judiciary that conflict waivers were obtained following a conflict of interest hearing. In fact, no such inquiry or hearing ever took place, and no such conflict of interest waivers were ever executed, a fact confirmed by the Clerk of Court, **Exhibit E**.

Mr. Bennett's own counsel, Richard Koblentz, reviewed the entire record in my criminal case and found that an actual conflict of interest took place, **Exhibit F**.

III. Mark Bennett has been aware of – and covered up – a romantic relationship between Senior Assistant Ohio Attorney General Daniel Kasaris and Government Witness Kathryn Clover

As the attached documents make clear, there is overwhelming proof of an affair between Kasaris and Clover, **Exhibit G**. In addition, Bennett himself wrote or received numerous emails from Clover and Kasaris and has told multiple attorneys he was aware that Kasaris was having a romantic relationship with Kathryn Clover, **Exhibit H**.

IV. Intrusion into the Sixth Amendment Right To Counsel

Dawn Pasela graduated from both Cleveland State and Cuyahoga County Community College, where she was President and founder of Phi Theta Kapa and a member of the National Honor Society's Dean's List. Detective Arvin Clar, one of Dawn's professors at Tri-C, suggested she apply for an open position in the Ohio Attorney General's Office, **Exhibit I**.

Even though Ms. Pasela was not trained as an undercover officer, she was told to meet Viola at a legal defense fundraiser at AJ Rocco's in downtown Cleveland, claiming she was a paralegal assisting defense counsel with similar cases. She offered to share information, support his defense and met with Viola on several occasions – one discussion took place with Viola's attorney while another meeting was at Viola's real estate office – but the real purpose of these conversations was for prosecutors to obtain confidential defense trial strategy information. In addition to these recordings, Kasaris gave Ms. Pasela cash and directed her to donate those funds towards Viola's legal fees, **Exhibit J**.

Affidavits from the parents of the late Dawn Pasela detail a botched undercover spying operation that led to the death of their daughter, **Exhibit K**. FBI Agent Jeff Kassouf admitted that prosecutors listened to the voice recordings made by Pasela, but – to this day – the government has never produced these recordings, **Exhibit L**. Mark Bennett has personal knowledge of the intrusion into the Sixth Amendment right to counsel and has made multiple court filings concerning Ms. Pasela, **Exhibit M**.

Kindly note that the Cold Case unit of the Ohio Bureau of Criminal Investigation is aware of Mr. Bennett's involvement in the undercover operation to gain defense trial strategy information. That office, along with the Parma Police Department, has been provided with Bennett's court filings, while the Cuyahoga County Medical Examiner has

informed the Pasela family they are likely to change the cause of Ms. Pasela's death to "undetermined," **Exhibit N**.

CONCLUSION

Thanks to the superb investigative skills of former FBI Agent Robert Friedrich (Resume attached as **Exhibit O**), the FreeTonyViola.com web site that solicits investigative leads, a Change.org petition to hold Mark Bennett accountable for his misconduct and the relentless pursuit of justice, we have amassed overwhelming evidentiary proof of significant misconduct committed by Mark Bennett. Kindly note two important points: First, the allegations set forth herein mirror the same issue that the Inspector General identified – Mark Bennett simply does not tell the truth. Secondly, Bennett's actions were not the result of a temporary lapse in judgment or some mistake. No, Bennett's actions here – just as the allegations set forth in your complaint – took place over many years. Bennett certainly knew what he was doing was wrong – he used false testimony to "win" cases, misled the judiciary about key facts, employed improper litigation tactics and failed to adhere to fundamental principles of due process of law. But since Bennett's actions also violated the Ohio Rules of Professional Conduct, and since those violations are exceptionally well documented, I trust your office will now take appropriate action by amending the charges against Bennett to include this additional misconduct. In order to assist your investigation, I would be pleased to meet at any time convenient for you to further discuss this matter and to provide your office with any additional information or documents that may be relevant to this matter. Mr. Friedrich will also make himself available to you at any time.

Thank you very much for reviewing this submission and all of its supporting documents. I hope to hear from you soon!

Very Truly Yours,



Tony Viola

cc: Mr. Richard Koblentz, Esq. – Counsel for Mark Bennett

Exhibit A

THE UNITED STATES ATTORNEY'S OFFICE
NORTHERN DISTRICT *of* OHIO

[U.S. Attorneys](#) » [Northern District of Ohio](#) » [News](#)

Department of Justice

U.S. Attorney's Office

Northern District of Ohio

FOR IMMEDIATE RELEASE

Thursday, April 23, 2015

AUSA Mark Bennett honored for prosecuting mortgage-fraud cases

Assistant U.S. Attorney Mark S. Bennett was honored this week for his work prosecuting mortgage-fraud cases by the United States Department of Housing and Urban Development – Office of Inspector General.

Bennett has prosecuted nearly 100 defendants involved in mortgage fraud. Northeast Ohio is recognized as one of the areas hardest hit by the mortgage-fraud crisis that swept the country in the early 2000s.

"Your efforts have truly made a difference to the public," Nicholas Padilla, Jr., the deputy assistant Inspector General for HUD, said in presenting the award.

"Mark has been tenacious in seeking justice for the victims of mortgage fraud, and those who caused so much hardship in our city," said U.S. Attorney Steven M. Dettelbach.

Among the cases Bennett has prosecuted:

United States v. Thomas France: France, of Strongsville, was sentenced to more than 10 years in prison and ordered to pay more than \$3 million in restitution for fraud involving six properties in Medina. France was part of a group that sold the homes at fraudulently inflated purchase prices. All the homes eventually went into foreclosure, resulting in a loss of approximately \$3.3 million.

United States v. Anthony Viola and Uri Gofman: Viola, a real estate company owner from Cleveland Heights, was sentenced to more than 12 years in prison and real estate owner Uri Gofman, of Beachwood, was sentenced to more than eight years in prison. A jury convicted Viola and Gofman of multiple counts related to the fraudulent sale of 34 homes, resulting in a loss of more than \$3 million.

United States v. Romero Minor, et. al: Minor, of Macon, Georgia, was sentenced to nearly six years in prison for fraud involving \$7.5 million and 48 properties in Mahoning and Trumbull Counties. Minor recruited straw buyers to "purchase" properties in their names. Minor represented to the straw buyers that he needed individuals like them with good credit to apply for mortgage loans on properties in their names as a way of helping other individuals in the community with bad credit who could not purchase homes in their own names. He then conspired with others to prepare and submit fraudulent mortgage loan applications to various mortgage lenders knowing that they contained false information. Minor received thousands of dollars at closing from the mortgage proceeds with the assistance of the title agents. Overall, nine people were convicted of crimes for their roles in the scheme.

Bennett, 45, joined the U.S. Attorney's Office in 2007. He previously worked for the Ohio Attorney General. He is a graduate of Baldwin Wallace College and the Cleveland-Marshall College of Law and serves on the Legal Aid Society's board.

Ohio County Mortgage Fraud Task Force Announces Largest Mortgage Fraud Case

Mark Bennett

Assistant United States Attorney

▶ 4:49 / 5:48





**For Immediate Release
August 26, 2009**

**Cuyahoga County Mortgage Fraud Task Force Announces
One of Nation's Largest Mortgage Fraud Cases**

**500 Real Estate Transactions for \$50 Million,
453 Houses Purchased with \$44 Million in Fraudulent Loans,
45 Defendants, and \$31 Million in Profit**

CLEVELAND- County Prosecutor Bill Mason and the Cuyahoga County Mortgage Fraud Task Force operating under authorization of Ohio Attorney General Richard Cordray's Organized Crime Investigations Commission announced a 377-count indictment involving 45 defendants who engaged in over 500 real estate transactions to purchase 453 houses in Cuyahoga County for \$50 million. These houses were purchased with fraudulent loans totaling \$44 million. Gofman and others siphoned off more than \$31 million in profits from their criminal enterprise.

These charges resulted from an 18-month investigation by the Task Force. Task Force members County Prosecutor's Office, FBI, and Ohio Bureau of Criminal Identification and Investigation (BCII) were three of many partners in the investigation. Cuyahoga County Sheriff Bob Reid's deputies also provided assistance. With funding from the Ohio Attorney General's Office and the Organized Crime Investigations Commission, the Task Force was formed in December 2007. 289 defendants have been indicted for approximately \$111 million in fraudulent loans for 812 houses, located in 28 communities in Cuyahoga County, as well as 6 communities located outside Cuyahoga County. 616 of the 812 houses fell into foreclosure.

Uri Gofman orchestrated one of the nation's largest mortgage fraud cases by enlisting family, friends and others to invest in his real estate company, Real Asset Fund, with promise of profit. Gofman's enterprise began with seed money from an investor who transferred funds from an Eastern European bank account in Latvia. Gofman's typical scheme involved setting up straw buyers to purchase homes; falsely claiming home improvements were performed on houses in order to refinance them; and then selling

houses to unqualified buyers with assistance of real estate agents, mortgage brokers, and title companies. Gofman and others defrauded lenders through loan application fraud, down payment fraud, and loan distribution fraud. 358 of the 453 houses fell into foreclosure.

The following 11 defendants were indicted on mortgage fraud-related offenses including engaging in a pattern of corrupt activity, a first degree felony: Uri Gofman, Tony Viola, Igor Gofman, Kevin Landrum, Dave Pirichy, Dale Adams, Steve Greenwald, George Gardner, James Leoni, along with Real Asset Fund owned by Uri Gofman and Karka Inc., which is owned by Uri Gofman. The other 34 defendants were indicted on mortgage fraud-related offenses.

Five defendants involved in this case were charged in December 2008, with mortgage fraud-related offenses in federal court: Uri Gofman, Paul Lesniak, Grennadiy Simkhovich, David Pirichy, and Howard Siefert, Jr.

The Task Force is continuing to investigate this mortgage fraud case and possible new charges are forthcoming.

The Cuyahoga County Mortgage Fraud Task Force operates under authorization of Ohio Attorney General Richard Cordray's Organized Crime Investigations Commission. The Task Force is comprised of federal, state, and local enforcement agencies.

Task Force members include: Ohio Organized Crime Investigations Commission, Cuyahoga County Prosecutor's Office, Ohio Bureau of Criminal Identification and Investigation, Cuyahoga County Sheriff's Office, Cleveland Heights Police Department, Solon Police Department, Beachwood Police Department, Pepper Pike Police Department, HUD Inspector General's Office, Cuyahoga County Recorder, Cuyahoga County Auditor, Cuyahoga County Treasurer, Department of Commerce-Division of Financial Institutions, F.B.I., U.S. Attorney's Office, and U.S. Postal Inspector.

Contact: Ryan Miday, Public Information Officer, (216) 698-2819, cell (216) 299-9326 or p4rm1@cuyahogacounty.us
<http://prosecutor.cuyahogacounty.us>.



Cleveland Division

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Three Charged in Mortgage Fraud Scheme

U.S. Attorney's Office
February 23, 2010

Northern District of Ohio
(216) 622-3600

Steven M. Dettelbach, United States Attorney for the Northern District of Ohio, announced that an information has been filed charging Anthony Capuozzo, Nicholas Myles, and Kathryn Clover with two counts of conspiracy. According to court records, Anthony Capuozzo, age 39, currently resides in Concord, Ohio; Nicholas Myles, age 38, currently resides in Mayfield, Ohio; and Kathryn Clover, age 30, currently resides in Olmsted Falls, Ohio.

The information alleges that during the period from about June 2005 through April 2006, Capuozzo, Myles, and Clover conspired with previously indicted defendants Uri Gofman, Anthony Viola, Gennadiy Simkhovich, Dave Pirichy, Howard Siefert, Jr., Noah Bloch, and Paul A. Lesniak to purchase 34 properties in the Cleveland area for over \$2 million, of which 15 properties were purchased in Clover's name and 19 properties were purchased in Lesniak's name. The information further alleges that as part of their conspiracy, Clover and Lesniak completed and submitted false and fraudulent loan applications with the assistance of Myles and Pirichy, mortgage brokers for Central National Mortgage, LLC. The applications falsified employment, overstated income, overstated assets, falsified intent to occupy the property and concealed the source of the down-payment funds, which were in fact provided by Uri Gofman and Gennadiy Simkhovich through their company, Real Asset Fund, LLC, in order to obtain the financing to purchase the properties. The information alleges that Capuozzo, a licensed title agent through the State of Ohio and an owner of Family Title Service, Inc. and Howard Siefert, Jr., an employee of Family Title, served as the title agency on the properties and conspired with defendants Uri Gofman, Anthony Viola and Gennadiy Simkhovich to allow the mortgage loan proceeds to be fraudulently and improperly distributed. The information alleges that the defendants did all of this in order to deceive and defraud Long Beach Mortgage Company, Argent Mortgage Company, LLC, and Mortgage IT, Inc. into funding the mortgage loans.

The defendants' sentences will be determined by the court after review of factors unique to this case, including the defendants' prior criminal records, if any, each defendant's role in the offense, and the characteristics of the violation. In all cases the sentences will not exceed the statutory maximum and in most cases it will be less than the maximum.

This case is being prosecuted by Assistant United States Attorney Mark S. Bennett, following an investigation by the Cleveland Divisions of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Federal Bureau of Investigation (FBI), and in conjunction with the Cuyahoga County Mortgage Fraud Task Force.

United States Attorney Steven M. Dettelbach stated that "Mortgage fraud has had a devastatingly negative impact on our community and, unfortunately, is continuing to happen. Our office has committed that one of our top priorities, along with our law enforcement partners, is to find and prosecute the perpetrators of mortgage fraud in order to eliminate it."

An information is only a charge and is not evidence of guilt. Defendants are entitled to a fair trial in which it will be the government's burden to prove guilt beyond a reasonable doubt.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ANTHONY L. VIOLA,

Plaintiff-Appellant,

v.

U.S. DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF INVESTIGATION; U.S. DEPART-
MENT OF JUSTICE, EXECUTIVE OFFICE FOR
U.S. ATTORNEYS; CUYAHOGA COUNTY
MORTGAGE FRAUD TASK FORCE; and
KATHRYN CLOVER,

Defendants-Appellees.

No. 18-2573

**FEDERAL DEFENDANTS' MOTION TO EXPAND THE SCOPE OF
THE PARTIAL REMAND**

In this Freedom of Information Act (FOIA) action, plaintiff Anthony L. Viola seeks records from the Federal Bureau of Investigation (FBI), the Executive Office for U.S. Attorneys (EOUSA), and the Cuyahoga County Mortgage Fraud Task Force. In October 2019, counsel for the federal defendants discovered that the *Vaughn* index submitted to the district court in support of EOUSA's withholdings contained inaccuracies. The federal defendants therefore requested a partial remand to allow EOUSA to reprocess responsive records and submit a new *Vaughn* index and declaration to the district court. The other parties to this appeal did not oppose the motion, and this Court granted it on October 31, 2019.

When EOUSA reprocessed the responsive records on remand from this Court, it referred to the FBI a number of records for which the FBI was the custodian. When the FBI received those records, it discovered that they had not been processed during the initial phase of district court litigation. The FBI investigated why the records were not initially processed and found that, when it had initially searched for and gathered records, it had inadvertently failed to obtain all portions of the responsive records. The FBI thus determined that, in addition to the records referred from EOUSA, it must now process the previously unprocessed responsive records within its own investigative files. The FBI intends to process the additional records expeditiously and then to provide the district court with a supplemental declaration and *Vaughn* index.

Because the federal defendants' motion for a partial remand asked for a remand only as to EOUSA, not the FBI—and because this Court granted the motion without saying anything further about the scope of the remand—it appears that the district court may currently lack jurisdiction to consider a supplemental declaration and *Vaughn* index, and adjudicate any resulting disputes, as to the FBI. The federal defendants accordingly request that the partial remand be expanded to include the FBI.

The Cuyahoga County Mortgage Fraud Task Force does not oppose this request. Viola intends to file a response.

CONCLUSION

The Court should vacate the district court's judgment with respect to the FBI and remand with instructions that the FBI be permitted to produce a supplemental

declaration and *Vaughn* index after it processes additional records. This appeal should continue to be held in abeyance until the district court has completed proceedings on remand as to the FBI and EOUSA.

Respectfully submitted,

SHARON SWINGLE

/s/ Daniel Winik

DANIEL WINIK

D.C. Bar No. 1015470

Attorneys, Appellate Staff

Civil Division, Room 7245

U.S. Department of Justice

950 Pennsylvania Avenue NW

Washington, DC 20530

(202) 305-8849

June 29, 2020



U.S. Department of Justice

*United States Attorney
Western District of Pennsylvania*

*Joseph F. Weis Jr. U.S. Courthouse
700 Grant Street
Suite 4000
Pittsburgh, Pennsylvania 15219*

412/644-3500

September 27, 2019

The Honorable Susan Paradise Baxter
United States District Judge
U.S. Courthouse
17 South Park Row, Room A-240
Erie, PA 16501

RE: Anthony L. Viola v. USDOJ FBI, et al.
Civil Action No. 15-242E

Dear Judge Baxter:

In June 2018, the Court granted summary judgment to the federal defendants in this Freedom of Information Act case, the Federal Bureau of Investigation (FBI) and Executive Office for U.S. Attorneys (EOUSA). The plaintiff, Anthony L. Viola, appealed that ruling to the U.S. Court of Appeals for the Third Circuit, where the appeal remains pending.

In the course of preparing the government's brief on appeal, government counsel discovered that the *Vaughn* index that EOUSA prepared and the government filed with this Court incorrectly described some of the documents at issue. The government has now moved in the Third Circuit to vacate this Court's judgment in favor of EOUSA and remand for further proceedings—in which EOUSA will reprocess the documents at issue and submit a new *Vaughn* index and declaration—once the Third Circuit has resolved the remaining issues in the appeal.

September 27, 2019

Page 2

Because the Third Circuit appeal remains pending, this Court presently lacks jurisdiction, and the government does not ask that the Court take any action at this time. The government is filing this letter simply to avoid any delay in notifying the Court of the inaccuracies in EOUSA's prior submission. The government regrets those inaccuracies and the resulting inconvenience to the Court.

Respectfully submitted,

SCOTT W. BRADY
United States Attorney

/s/ Michael C. Colville
MICHAEL C. COLVILLE
Assistant U.S. Attorney
(412) 894-7337

From: Bennett, Mark (USAOHN) (USAOHN) <Mark.Bennett2@usdoj.gov>
To: tonytopaz <tonytopaz@aol.com>
Cc: Daniel Kasaris (p4dxk@cuyahogacounty.us) <p4dxk@cuyahogacounty.us>
Subject: RE: Newcomb 302 request from Tony Viola
Date: Sun, Apr 8, 2012 8:45 pm

I have checked the system and do not have a 302 for Mr. Newcombe. I have inquired with the agents and other AUSAs on the case to see if one was created and they can provide. I will not be in the office next week. But they can respond directly to Mr. Kasaris.

Mark S. Bennett
Assistant United States Attorney
801 W. Superior Ave., Suite 400
Cleveland, Ohio 44113
216.622.3878 (direct)
216.522.2403 (fax)
mark.bennett2@usdoj.gov

From: tonytopaz@aol.com [mailto:tonytopaz@aol.com]
Sent: Sunday, April 08, 2012 6:20 PM
To: Bennett, Mark (USAOHN)
Subject: Re: Newcomb 302 request from Tony Viola

Mr. Kasaris says he does not have Mr. Newcomb's 302, if possible, kindly reforward that, thank you.

Tony

-----Original Message-----

From: Bennett, Mark (USAOHN) (USAOHN) <Mark.Bennett2@usdoj.gov>
To: 'tonytopaz@aol.com' <tonytopaz@aol.com>; 'dkasaris@cuyahogacounty.us' <dkasaris@cuyahogacounty.us>
Sent: Sun, Apr 8, 2012 10:31 am
Subject: Re: Newcomb 302 request from Tony Viola

Mr. Viola,

I have provided those to Mr. Kasaris. I am sure he will provide pursuant to local rule and the Court's trial order.

Mark Bennett

From: tonytopaz@aol.com [mailto:tonytopaz@aol.com]
Sent: Saturday, April 07, 2012 03:47 PM
To: Bennett, Mark (USAOHN); dkasaris@cuyahogacounty.us <dkasaris@cuyahogacounty.us>
Subject: Newcomb 302 request from Tony Viola

Mr Bennett - I am respectfully requesting that you e mail me a copy of the Argent witness, Mr. Steve Newcomb, his 302 statement summary. He testified on direct exam on Friday and will resume this coming week. Thank you.

Tony Viola

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 02/22/2011

On February 18, 2011, SCOTT NEWCOMBE, was telephonically interviewed, by Forensic Accountant Ron Saunders, Special Agent Jeffrey Kassouf and Special Assistant United States Attorney Micah Ault, after being advised of the nature of the interview and the identity of the interviewing personnel, NEWCOMBE provided the following information:

NEWCOMBE worked at ARGENT MORTGAGE, and transferred over to Citigroup Global once Argent was sold to Citigroup. NEWCOMBE is involved in ACC Capital as they wind down Argent.

Argent was a loan originator.

During the years 2005-2006 Argent processed a significant number of loans.

Argent required the borrower provide a down payment, which was generally provided through a cashiers check.

Argent had a stated loan program. These loans were typically higher risk, so they carried a higher interest rate on the loan. In the stated income loan program, the borrower states their income on the loan application, also known as a 1003. Argent required the borrower to sign a certification or letter as to their income.

Argent originated their loans through mortgage brokers. The mortgage brokers were required to go through an approval process before Argent would accept any loans.

The loans were assigned to the underwriting department if the loan met the underwriting guidelines a conditional loan approval with various terms was issued.

Final approval on the loan would be issued after the loan conditions were met.

Argent would send various loan documents to the title company to be signed at closing. Once the title company closed the loan and completed the documents, they would send the completed

Investigation on 02/18/2011 at Cleveland, Oh

File # 329A-CV-71645

Date dictated _____

by SA Jeffrey P. Kassouf

1 I don't care whether you had it or
2 not, you're not on trial, he is. It's my job
3 to make sure that he gets discovery.

4 MR. KASARIS: I agree with
5 that.

6 THE COURT: FBI agents
7 generate a 302, they are required to keep a
8 copy of it. They are required to keep an
9 electronic version of it. They are required
10 to keep an original version of it. They are
11 required.

12 MR. KASARIS: I agree.

13 THE COURT: But we can't
14 bring that FBI agent in here, because they're
15 invoking sovereign immunity.

16 I'm going to ask the appropriate
17 questions of this witness about that.

18 Here is the other thing: I reviewed
19 30(b)(5), and listen to what it does say: "A
20 party, in the party's notice, may name as the
21 deponent a public or private corporation --
22 here is the relevant part under 30(b)(5),
23 these are the civil rules, but I'm going to
24 apply them as they correlate to criminal
25 rules: "The organization so named shall

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 1:10 CR 75
)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
KATHRYN CLOVER,	)	GOVERNMENT'S RESPONSE IN
	)	OPPOSITION TO CLOVER'S
	)	MOTION FOR EARLY
Defendant.	)	TERMINATION OF PROBATION

Now comes the United States of America, by and through its counsel, Steven M. Dettelbach, United States Attorney, and Mark S. Bennett, Assistant United States Attorneys, and hereby respectfully moves this Honorable Court to issue an order denying Defendant Kathryn Clover's Motion for Early Termination of Probation for the following reasons:

- (1) This Court sentenced Clover on September 28, 2011 4 years probation with 10 months of house arrest. Clover has only served 1 year and 4 months - not even half of her sentence;

-2-

- (2) The issue of restitution still needs to be determined. However, the parties agreed in the written plea agreement that the loss caused to the lenders by Clover's fraudulent conduct exceeded \$1 million. Accordingly, Clover will have a substantial restitution amount to pay, and her probation should be continued to allow the Court to oversee her restitution;
- (3) As this Court knows, Clover provided false testimony during the trial of this matter. Because of her false testimony, the government did not move for the full amount of 5K1.1 contemplated by the plea agreement and, as such, Clover's sentencing guideline range 15 to 21 months in Zone D, based on an offense level of 14 with a criminal history category of I. Accordingly, Clover should have been sentenced to a term of imprisonment. However, the Court granted defense's request for a further reduction of levels pursuant to 5K1.1 and placed Clover in a range and zone allowing for a sentence of probation. Clover has already been given an extremely favorable sentence and this Court should not give her the additional benefit of the early termination of her probation;
- (4) As part of her plea agreement, Clover was not prosecuted for her role in other mortgage fraud schemes, nor did the government request that this Court take into consideration at the time of sentencing her involvement in other mortgage fraud schemes as "other relevant" conduct, which would have greatly increased her guideline sentencing range. Clover has already

-3-

been given an extremely favorable sentence and this Court should not give her the additional benefit of the early termination of her probation;

- (5) The federal government did not prosecute Clover for bankruptcy fraud, nor did the Cuyahoga County Prosecutor's office prosecute Clover for filing a false police report based on her false statements regarding the loss of her diamond ring. Clover has already been given an extremely favorable sentence and this Court should not give her the additional benefit of the early termination of her probation; and,
- (6) The Cuyahoga County Prosecutor's office did not prosecute Clover for her involvement in the companion state prosecution of this mortgage fraud scheme, or for her involvement in various other mortgage fraud schemes. Clover has already been given an extremely favorable sentence and this Court should not give her the additional benefit of the early termination of her probation.

-4-

For the foregoing reasons, the United States respectfully moves this Honorable Court to issue an order denying Defendant Kathryn Clover's Motion for Early Termination of Probation.

Respectfully submitted,

STEVEN M. DETTELBACH
United States Attorney

By: *s/Mark S. Bennett*
Mark S. Bennett (0069823)
Assistant U.S. Attorney
801 West Superior Avenue
Cleveland, Ohio 44113
(216) 622-3878; (216) 522-8355 (fax)
mark.bennett2@usdoj.gov

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

s/Mark S. Bennett

Mark S. Bennett (0069823)

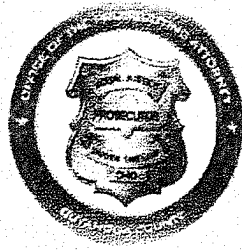
Assistant U.S. Attorney

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Bill Mason
CUYAHOGA COUNTY PROSECUTOR

Jaye M. Schlachet, Esq.
The Law Office of Jaye M. Schlachet
55 Public Square, Suite 1600
Cleveland, Ohio 44113

September 16, 2011

Re: U.S. Government v. Kathryn Clover

Dear Attorney Schlachet:

I have been informed that Kathryn Clover's sentencing date in the United States District Court for the Northern District of Ohio has been scheduled by the Honorable Judge Don Nugent for September 28, 2011. I am writing you concerning the sentencing date.

As you know you're at the present time is heavily involved in assisting the State of Ohio in several "Mortgage Fraud" investigations and pending cases. She is scheduled to testify on or about October 17, 2011 in the State of Ohio v. Turner Nash in the Courtroom of Daniel Gaul. In addition at the present time she is assisting the State Government in the investigation of top Argent executives who may have been responsible for committing fraud in the selling of mortgage backed securities to investors, and others who may have participated in the tampering with internal Argent loan documents. Her work as already lead to the indictment of several former Argent employees for tampering with these internal loan documents, thereby allowing at least 100 loans to be approved when the approval was contrary to Argent's stated guidelines. She has already testified before a State Grand Jury in that matter and more Grand jury testimony is expected. Moreover, she is also working with State Government Prosecutors in investigating two mortgage brokers and a title company of dubious repute who it appears was closing deals with two huds (and I am not referring to Family Title).

Given the above and on behalf of the State of Ohio and at your request the State Government is requesting that her sentencing be continued until at least the middle of November so that the above matters may be concluded.

OFFICE OF THE PROSECUTING ATTORNEY

The Justice Center • Courts Tower • 1200 Ontario Street • Cleveland, Ohio 44113
(216) 443-7800 • Fax (216) 443-7601 • Email: prosecutor@cuylahogacounty.us
www.prosecutormason.com

Sincerely

A handwritten signature in black ink, appearing to read 'DK' followed by a flourish, enclosed in a large, hand-drawn oval.

Daniel J. Kasaris
Assistant County Prosecutor
Supervisor Mortgage Fraud Unit
Cuyahoga County, Ohio
1200 Ontario ST. 9th Floor
216-443-7863
216-698-2270 (fax)

Exhibit C

Kaplan Consulting & Counseling, Inc.

□ 3401 Enterprise Parkway
Suite 340
Beachwood, Ohio 44122-7340

Phone: (216) 766-5743
Fax: (216) 937-0187
Email: RKaplan@KaplanCC.com
www.KaplanCC.com

□ 14650 Detroit Avenue
Suite 118
Lakewood, Ohio 44107-4210

Psychological Report

Name: Kathryn Clover

Social Security No.: xxx-xx-7297

Docket No.: 1:10CR00075-003

Date of Birth: 10/15/79

Date of Examination: 5/16/11

Date of Report: 6/1/11

Examiner: Robert G. Kaplan, Ph.D., B.C.F.E., D.A.B.P.S.

Diagnostic Procedures: Personality Assessment Inventory
Millon Clinical Multiaxial Inventory-III
Substance Abuse Subtle Screening Inventory-3
Trauma Symptom Inventory-2
Detailed Assessment of Posttraumatic Stress
Three-Hour Structured Diagnostic Clinical Interview

Records Reviewed:

- Presentence Investigation Report of Valencia Small, dated 4/09/10
- Proffer Agreement of Kathryn Fairfield, a.k.a. Kathryn Clover, dated 3/09/09
- Plea Agreement, undated
- Waiver of an Indictment, undated
- Pretrial Release Reporting Instructions, dated 3/09/10
- Order for Presentence Investigation Report, dated 3/11/10
- Sentencing Table of the 2008 Federal Sentencing Guidelines Manual
- Chapter 5 - Part B - Probation of the 2008 Federal Sentencing Guidelines Manual
- Charge Information of William J. Edwards, undated

RE: Kathryn Clover
Docket No.: 1:10CR00075-003

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Reason for Referral

Ms. Kathryn Clover was referred for a psychological evaluation in order to determine if any mental disorder affected her behavior regarding criminal charges and subsequent testimony that arose in relation to those charges.

Clinical Analysis & Basis for Opinion

According to the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, of the American Psychiatric Association (DSM-IV-TR), the reference which contains the diagnostic criteria utilized by most mental health professionals to diagnose mental disorders, Ms. Kathryn Clover has psychological symptoms which match the criteria for the following diagnoses:

- Axis I:** Posttraumatic Stress Disorder, Chronic
Major Depressive Disorder, Recurrent, Moderate Severity
Generalized Anxiety Disorder
Alcohol Dependence in Early Full Remission
Rule Out: Bipolar II Disorder
Alcohol Abuse
- Axis II:** Borderline Personality Disorder with Dependent and Histrionic Traits
- Axis III:** Deferred to Medical Evaluation
- Axis IV:** **Psychosocial Stressors:** Severe physical and sexual abuse by husband
Childhood sexual abuse
Multiple rapes
Criminal litigation
Financial problems
- Axis V:** **Current Global Assessment of Functioning Rating:** 60 (Moderate Impairment)

The psychological testing indicates that it is more likely than not that Ms. Clover is accurately reporting her psychological symptoms. Screening questions for malingering did not indicate that she was attempting to malingering psychological symptoms. The collateral interview of her brother by the pre-sentence investigator indicated that her statements to the investigator were consistent with his reporting of her history. Therefore, no other collateral interview was found to be necessary for the instant evaluation. Screening questions for Factitious Disorder indicated that she does have unconscious desires to be in a patient role in order to have others to care for her. This would be consistent with the psychological test results, which indicate strong needs for care and concern. Such attention from medical professionals provides her with safe support and attention that she cannot have from other sources, due to long-standing difficulties trusting

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Docket No.: 1:10CR00075-003

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others, which arise from her history of being neglected as a child and physically, sexually, and emotionally abused many times in her life. There were some mild discrepancies between her reporting of her history during the instant examination and the presentence investigation report, which suggest that she may not have been as candid in describing to the pre-sentence investigator the full extent of the abuse and humiliation she suffered. The psychological testing indicates that she is reluctant to talk about the traumatic abuse that she has experienced and that she is likely to minimize her difficulties in order to appear competent to others. Additionally, at the time that she was having the pre-sentence investigation, the outcome of her husband's criminal adjudication was uncertain and she was reluctant to share all that he had done to her out of fear that he would kill her if she did. Therefore, it appears that she told the presentence investigator that she was raped only three times by her husband instead of more often. In any event, even being raped once would be sufficient to cause her to develop symptoms of Posttraumatic Stress Disorder. Overall, Ms. Clover's reporting of her psychological symptoms and history appeared sufficiently accurate to develop diagnoses and determine their effects on her functioning with reasonable psychological certainty.

Mr. Clover's history indicates that she was raised by highly dysfunctional adoptive parents, who were neglectful. Her father was reportedly a covertly gay and physically abusive alcoholic, who was caught soliciting men at a public restroom. The event caused her and her brother great shame since they both attended the high school, where he worked as a guidance counselor. Her father was also reported to be physically and emotionally abusive. He called her fat and said that others didn't like her due to her personality. Hearing such things as an adolescent, particularly from her father, damaged her sense of femininity. She and her adopted brother bonded since her parents were not home often, and they were raised by babysitters, who were occupied with many other children under their care. She was also physically abused by a babysitter. Consequently, she did not have much nurturance from anyone as a child. Her father prepared odd meals for them while he was drunk, such as spaghetti with tuna fish. Her mother supported her involvement with a 30 year old teacher, when she was 17 years old, who also was emotionally abusive to her. Ms. Clover was also molested at age 4 and raped at age 17 by another boyfriend. Those traumatic experiences further damaged her development. Fortunately, she is intelligent and attractive and was able to sublimate her distress by applying herself, academically, and by involving herself in performing arts, including modeling, which provided her with some mitigation of the great shame she felt about herself.

As a result of her dysfunctional upbringing and childhood physical and sexual abuse, Ms. Clover developed severe personality disturbance, which is best characterized as a Borderline Personality Disorder, with Dependent and Histrionic Traits. The psychological testing indicates that she strongly desires to have love and support, but has great difficulty trusting that anyone could love or care about her since she sees herself as being a defective and unlovable woman and person. She tries to please men in order to get them to love her and becomes willing to allow herself to be abused and manipulated so that she can have their validation of her femininity. The profound damage to her identity as a woman is evident in that even though she is a model, she sees herself as ugly. Consequently, she sought attention from dysfunctional men, who abused and

RE: Kathryn Clover
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manipulated her, since she never believed that any other kind of man would want her. To some extent, she also gains some enhancement of her self-esteem by getting such dysfunctional and aggressive men to want her and deludes herself into thinking that she can control them since they desire her.

In order to ameliorate her emotional pain and deep sense of emptiness, she resorted to using alcohol and appears to have become Alcohol Dependent. Her alcohol abuse greatly increased when she married her ex-husband, who was a violent man, and dangerous criminal, who made bombs and set bombs in her home, to kill law-enforcement officials if they entered it. He sexually abused her, nightly, causing her to have severe genitourinary damage and pain. He would also repeatedly beat her and threaten to kill her. She would abuse alcohol, nightly, just to tolerate the physical pain and emotional trauma she knew would come almost every night, when he sexually assaulted her. She began to seek psychiatric medications and counseling in 2004 but didn't find much relief since she was afraid to tell even her mental health providers of the abuse she suffered, out of fear that her husband would kill her if she did.

Ms. Clover then found other older men, who manipulated her and her brother-in-law into becoming straw buyers for their real-estate fraud. Unable to fulfill herself in her relationships, she turned to the aura of money and power that they represented as another means to fill the void within her. Her self-esteem was reinforced with the money she acquired as well as the admiration and support that she received from the men that financed her venture. Unfortunately, given her personality disturbance, she didn't have the judgment to see that she was pursuing another dead end in finding emotional fulfillment for herself. Ultimately, she couldn't finance her scheme and became bankrupt. She and her co-defendants were caught by federal law-enforcement agents.

Her self-esteem sunk to a new low when she awoke out of one of her drunken states at a party in 2008 to find that she was being sexually assaulted by one of her husband's friends and a woman. At that point she tried to kill herself by overdose. Fortunately, she survived. However, after her husband beat her she again wanted to kill herself and was hospitalized at Oakwood Behavioral Health Center of Southwest General Hospital. Her hospitalization was cut short when he threatened to blow up the hospital if she didn't leave. It was not until her husband was kept in jail that she finally felt safe enough to divorce him and disclose what he had done to her counselors. Currently, she is working with a psychologist on repairing the psychological damage that was caused by her childhood and subsequent traumatic history. She finally feels safe enough to talk about the abuse that her ex-husband brought upon her. Physically, her genitourinary problems have significantly improved after her husband was incarcerated.

The psychological testing, mental status examination, and history clearly and unequivocally indicate that Ms. Clover has a Posttraumatic Stress Disorder that is caused by traumatic events involving sexual molestation and multiple rapes. The most traumatic events appear to be the sexual abuse she suffered at the hands of her ex-husband. Her lack of confidence in herself also causes her to have episodes of Generalized Anxiety Disorder. The psychological testing, mental status examination, and history unequivocally indicate that she also suffers from a chronic Major

RE: Kathryn Clover
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Depressive Disorder, with recurrent episodes of serious depression. All of these mental disorders, in combination with her personality disorder, cause her to be a mentally unstable individual who can quickly regress in the face of stress. The psychological testing indicates that her judgment and ability to act in her best interests can be readily overwhelmed by stress. The effects of alcohol only further aggravate her mental problems. Although it seems more likely that she is Alcohol Dependent, it may be possible that her use of alcohol was only abusive, particularly given that it has greatly curtailed after she was no longer being sexually assaulted, repeatedly, by her husband. Therefore, the diagnosis of Alcohol Abuse may be indicated instead of Alcohol Dependence, but this possibility remains to be ruled out with further observation of her alcohol use over more time. Currently, her alcohol use is in remission. Dr. Nelson, a treating psychiatrist, also diagnosed that she had a Bipolar Disorder, but the psychological testing and findings of the instant mental status examination do not support this diagnosis. Symptoms of Borderline Personality Disorder, particularly those of emotional instability, can mimic symptoms of Bipolar Disorder. Therefore, while the diagnosis of a Bipolar Disorder is possible, it cannot be made with reasonable psychological certainty. In any event, the prescription of a mood stabilizer, such as Lamictal, would be indicated simply to address the emotional instability that was caused by her personality disturbance. It is highly unlikely that she could have done as well as she did, academically, in high school and college, if she had an Attention Deficit/Hyperactivity Disorder and it would seem unlikely that she would meet the DSM-IV-TR diagnostic criteria for this diagnosis. However, the prescription of Adderall could be helpful in supporting her ability to concentrate on her legal studies in the face of the disruptive influence of her other psychological symptoms. The instant mental status examination indicates that she is having concentration problems due to her psychopathology.

Currently, Ms. Clover has found a new way to redeem herself, by acting as a material witness for prosecutors. Beyond the obvious benefits of a reduced sentence, her capacity to materially assist in the prosecution of criminals has become a new source of self-esteem for her and she appears personally motivated to remain in this role. Unfortunately, she has jeopardized remaining in this new role by not fully disclosing during a recent cross-examination everything she believed about a police report she filed during her bankruptcy. It appears that her misjudgment occurred in the face of several stressors. First, she had already been subjected to days of cross-examination, which fatigued and distressed her. Second, she was experiencing bladder pain at the time due to the residual effects of her husband's sexual abuse of her. Third, and perhaps most, she felt victimized by the aggressive manner in which the attorney who asked about the allegedly false report questioned her. During the instant examination, she indicated that she still felt frightened when older men yelled at her, since this is what an older man did to her when he molested her at age four. The attorney who questioned her looked like the man that molested her as a child. His image and behavior served as a trigger for traumatic stress reactions that overwhelmed her already fragile mental stability, and caused an impairment of her judgment. As previously indicated, the psychological testing indicates that her judgment is readily impaired by stress. Fourth, it appeared that she didn't want to relinquish the new role she found as a material witness to repair her badly damaged self-esteem, and thereby jeopardize her usefulness to the prosecution of that case and other cases. It also appeared that she didn't want to disappoint the prosecutors,

RE: Kathryn Clover
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who were men. Additionally, she feared the consequences of being subject to additional charges if she disclosed everything she believed about the police report and didn't have any opportunity to consult with her attorney about how to respond to such a question. She was apparently too overwhelmed at the moment, even as a law student, to realize her fifth amendment right to refuse to answer such a question on the grounds that it could incriminate her.

Following her lapse in judgment, Ms. Clover was able to realize that she needed the assistance of her attorney. She and her attorney asked the prosecutors to recall her to testify again during the trial. However, the prosecutors did not recall her since they reportedly believed that it jeopardized the outcome of their case. If that is the case, then it would appear that the prosecutors would also have felt that it served the best interests of justice to allow her testimony to remain unchanged. Therefore, it would be difficult to imagine how she could be punished for serving what the prosecutor believed was in the best interests of justice. It might be argued that, if the best interests of justice were not served, she would not be the only one who would be responsible.

In spite of the great emotional damage that she suffered, the psychological testing indicates that her prognosis for recovery is good. Her youth, intelligence, verbal ability, insight, and motivation for treatment favor a good treatment outcome. With regard to treatment interventions, she will need cognitive-behavioral therapy to restructure her negative self-image and assertiveness training to help her to develop more functional social relationships. Medications for anxiety, depression, and mood stability will also help her recover and should be part of the treatment plan. Abstinence from alcohol will also be necessary for her recovery. Now that she no longer fears her husband, she is able to be truly open with a psychotherapist and needs a therapist who will be warm and caring to provide her with a sense of nurturance that she never had. Such a therapeutic relationship would also serve as a model for her to seek in other relationships, since she has never really known what such a relationship is like. It will take years for her to recover, but the ultimate outcome is favorable. If she is to remain an effective material witness, such treatment should be required in order to prevent any future lapse in judgment. Treatment should also be more frequent when she is subjected to cross-examination.

Opinion

With reasonable psychological certainty, it can be stated that:

1. Ms. Kathryn Clover has severe mental disorders of: Posttraumatic Stress Disorder, Chronic; Major Depressive Disorder, Recurrent, Moderate Severity, Chronic; Generalized Anxiety Disorder; Alcohol Dependence, in Early Full Remission; and Borderline Personality Disorder, with Dependent and Histrionic Traits.

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Docket No.: 1:10CR00075-003

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2. Due to her traumatic history and these severe mental disorders, Ms. Kathryn Clover has fragile mental stability and is vulnerable to having impairment of her judgment when subjected to the stress of cross-examination, particularly by older men that yell at her.
3. Factors that previously caused her to have impaired judgment during cross examination include the following:
 - a. She had already been subjected to days of cross-examination, which fatigued and distressed her.
 - b. She was experiencing bladder pain at the time due to the residual effects of her husband's sexual abuse of her.
 - c. She was cross-examined aggressively by an attorney who looked like the man who molested her at age four. His behavior and appearance caused her to have posttraumatic stress reactions that disrupted her fragile mental stability and impaired her judgment.
 - d. She didn't want to relinquish the new role she found as a material witness to repair her badly damaged self-esteem and didn't want to disappoint the prosecutors in the case, who were also men.
 - e. She felt too overwhelmed by the cross examination, even as a law student, to realize her fifth amendment right to refuse to answer a question on the grounds that it could incriminate her, and didn't have the opportunity to consult with her attorney before responding to a question that could have incriminated her.
4. Beyond the obvious benefits of a reduced sentence, Ms. Kathryn Clover is strongly and personally motivated to serve the best interests of justice as it provides her with another means of repairing her low self-esteem.
5. With ongoing psychotherapy and psychiatric medications, it is unlikely that Ms. Kathryn Clover will have additional impairment of her judgment during cross-examination. The frequency of treatment should be increased whenever she is going to be subject to cross-examination.



Robert G. Kaplan, Ph.D., B.C.F.E., D.A.B.P.S.
Clinical Psychologist
Board Certified Forensic Examiner
Fellow, American College of Forensic Examiners
Diplomate, American Board of Psychological Specialties,
Psychological Disability Evaluation

RGK:dp

Exhibit D

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THE STATE OF OHIO,)
)) SS: DANIEL GAUL, J.
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION

THE STATE OF OHIO,)
))
 Plaintiff,))
))
 -v-) Case No. 536877
))
ANTHONY VIOLA,) TRIAL EXCERPT
))
 Defendant.)

TRANSCRIPT OF PROCEEDINGS
TESTIMONY OF KATHRYN CLOVER

Whereupon the following proceedings
were had in Courtroom No. 19-D, the Justice
Center, Cleveland, Ohio, before the Honorable
Judge Daniel Gaul commencing on Tuesday, March
20, 2012, upon the indictment filed heretofore.

APPEARANCES:

WILLIAM D. MASON, ESQ., Prosecuting Attorney,
by: DANIEL M. KASARIS, ESQ., and NICK
GIEGERICH, ESQ., Assistant County Prosecutors,
 on behalf of the Plaintiff;
ANTHONY VIOLA, PRO SE,
 on behalf of the Defendant.

Carla V. Kuhn, RMR, CRR
Official Court Reporter
Cuyahoga County, Ohio

1 THE COURT: Did you provide any
2 nonfactual information to them?

3 THE WITNESS: Yes.

4 MR. VIOLA: Okay.

5 BY MR. VIOLA:

6 Q Now we're going to talk about Transcontinental
7 Lending Group. Is it not a fact that I opened an
8 office of Transcontinental Lending, my own branch, my
9 branch at our location downtown opened up and was
10 licensed by the state on August 7th, 2006, correct?

11 A Yes.

12 Q Now, did you have an occasion to make a plea in
13 federal court to your involvement in the mortgage fraud
14 scheme?

15 A Yes, I did.

16 Q Does this look like a copy of your plea
17 agreement?

18 A Yes, it does.

19 Q You stood up in front of Judge Donald Nugent in
20 federal court, correct?

21 A That's correct.

22 Q When you pled guilty to conspiring with me at
23 Transcontinental when Mr. Lesniak bought the house on
24 Gertrude; is that correct?

25 A It was in that -- in the plea agreement but I had

1 already told Mark Bennett, as I stated in the federal
2 trial, that that was incorrect.

3 Q That's not my question.

4 My question was, you pled guilty to conspiring
5 with Viola's new mortgage company, Transcontinental
6 Lending Group, on the transaction on Gertrude, right?

7 A Correct.

8 Q That's what you pled guilty to?

9 A Correct.

10 Q You were aware that this was false when you pled
11 guilty?

12 A I told Bennett that that was incorrect, that you
13 did not own that branch.

14 THE COURT: Who's Mr. Bennett?

15 THE WITNESS: The federal prosecutor.

16 THE COURT: When did you tell him that?

17 THE WITNESS: In one of our meetings.

18 THE COURT: You read this document?

19 THE WITNESS: Yes.

20 THE COURT: You told him that was
21 incorrect?

22 THE WITNESS: I told him that was
23 incorrect and there's --

24 THE COURT: What did he say?

25 THE WITNESS: There's writing -- I don't

1 think he listened to me.

2 THE COURT: I'm going to sustain my
3 whole question and permit you to question the
4 witness.

5 MR. VIOLA: I actually liked when you
6 were doing it, your Honor.

7 BY MR. VIOLA:

8 Q So let's -- Mr. Bennett is aware that this plea
9 agreement has this factual defect in it, correct?

10 A I told him that, yes.

11 Q You -- how -- at what point before your plea was
12 Mr. Bennett made aware of this? Was it a matter of
13 hours? Days? Weeks?

14 A I'm not sure and I honestly can't recollect if it
15 was hours, days, weeks.

16 Q When you stood before Judge Nugent you -- when
17 you were in federal court in front of Judge Nugent
18 entering this guilty plea, did it occur to you at that
19 time to say, Hey, your Honor, there's something I need
20 to address with the Court, or I would like a sidebar,
21 or anything along those lines?

22 A No.

23 Q But you've been in law school, right?

24 A I was following -- I was in my second semester at
25 that time and I was following the advice of my counsel.

Exhibit E

I hereby certify that this instrument is a true and correct copy of the original on file in my office.

Attest: Geri M. Smith, Clerk

U.S. District Court

Northern District of Ohio



Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 URI GOFMAN,)
 ANTHONY VIOLA and)
 GENNADIY SIMKHOVICH,)
)
 Defendants.)

CASE NO. 1:08 CR 5506

JUDGE DONALD NUGENT

UNITED STATES' TRIAL BRIEF

Pursuant to the Court's Pretrial Order of January 9, 2009, which requests each party submit a memorandum detailing any "evidentiary questions and any other legal issues which may reasonably be anticipated to arise at trial" (Trial Order, p.3, ¶ 5), the United States submits this trial brief.

I. Legal Issues

A. Don't Blame the Victim

The United States more fully briefed its request that the Court issue an order preventing Defendants from "blaming the victim" during the course of trial, in its previously filed motion in limine (Doc. #161), which requested motion in limine is incorporated herein by reference.

witness' prior drug use would certainly be more than reasonable, and in turn eliminate the risk of unfair prejudice to the United States.

For the reasons set forth above, the United States respectfully requests that the Court preclude the introduction at trial of any evidence or argument, or cross-examination on the subject of any witnesses' prior drug use.

In the alternative, the United States requests a voir dire hearing, outside the presence of the jury, to establish what effect, if any, a witness' prior drug use has on his/her ability to recall relevant events.

F. Conflict of Interest Issue

On March 25, 2010, the United States filed its Motion for Conflict of Interest Inquiry (Doc. #110) under seal with this Court. Because the motion was filed under seal, the United States will not detail the issue in its trial brief. However, it is the position of the United States that the conflict of interest still remains and reiterates its requested remedy.

G. Bifurcated Trial

Because the Superseding Indictment includes forfeiture counts, the United States anticipates that the trial will be bifurcated into the guilt and forfeiture phases. The United States will be seeking money judgments against each of the Defendants. The determination of the amount of the money judgments is an issue for the Court to determine, and not for jury determination. With respect to the forfeiture, see the United States' Bill of Particulars regarding forfeiture previously filed.

PRIVILEGED AND CONFIDENTIAL

State of Ohio v. Uri Gofman, Case Nos. 527972 and 536877

And

State of Ohio v. Tony Viola, Case Nos. 527972 and 536877

And

United States v. Uri Gofman, Case No. 1:08 CR 506

And

United States v. Tony Viola, Case No. 1:08 CR 506

Joint Defense Counsel:

This letter is to confirm our mutual understanding concerning our joint defense obligations. The joint defense arises from and relates to our representation of our respective clients in connection with the defense of criminal charges as alleged in the above-captioned matters. This agreement contemplates all investigation, trial preparation and trial proceedings.

We mutually have concluded that our representation of our respective clients raises issues of common interest to our respective clients, including a common defense, and that the sharing of certain documents, information, factual materials, mental impressions, memoranda, communications with clients (written and oral), as well as resources and finances, will facilitate the rendition of professional legal services to our respective clients. These defense materials are privileged from disclosure to adverse or other parties as a result of the attorney-client privilege, the attorney work-product doctrine, and/or other applicable privileges.

It is our mutual understanding and agreement that the oral or written sharing or disclosure of defense materials between us, and between us and our clients, will not diminish in any way the confidentiality of such materials and will not constitute a waiver of any applicable privilege. We have further agreed that neither we, nor our clients, will disclose defense materials received from other counsel or their client, or the contents of any such defense materials, to anyone except our respective clients, attorneys within our firms, or our employees or agents, unless we first obtain the consent of the party who furnished such information pursuant to this agreement, as well as the consent of such party's counsel. It is further agreed that all persons permitted access to defense materials shall be advised that the defense materials are privileged and subject to the terms of this agreement.

We mutually understand and agree that, should any of our clients testify in any proceeding, counsel for the other parties to this agreement will not be disqualified from cross-examining the testifying client for any reason arising out of the existence of this agreement, including the ground that such counsel have been privy to attorney-client communications pursuant to this agreement.

We mutually understand and agree that nothing contained herein shall be deemed to create an attorney-client relationship between any of the undersigned counsel and anyone other than the client of such counsel as listed below.

We mutually understand and agree that if any other person or entity requests or demands, by subpoena or otherwise, any defense materials obtained from any party to this agreement (or to which access is permitted by any other party to this agreement), the firm or person receiving the request will immediately notify that other party. The person or entity seeking the defense materials will be informed that such materials are privileged and may not be disclosed without the consent of the party furnishing or granting access to them unless ordered by the court. Before any disclosure is made by a party to this agreement, the party will take all steps necessary and appropriate to facilitate the assertion of all applicable rights and privileges with respect to such defense materials, including permitting the other party a reasonable opportunity to intervene and be heard, and otherwise cooperating with the other party to enable that party to take any other appropriate steps to protect his rights under this agreement.

This agreement contemplates working together towards a common goal at trial and authorizes a request for a joint trial.

By executing this agreement, each counsel certifies that he has explained the contents of this agreement to his client and that his client agrees to be bound as a party to the agreement. Each counsel signing below represents that he is signing both on behalf of himself and on behalf of his client. This agreement incorporates all prior oral understandings, and it extends to all prior exchanges of defense materials.

AGREED BY:

For Uzi Goffman


Mark B. Marcini

For Tony Viola:


Jay Milano


Michael Goldberg

CASE INFORMATION**CR-11-551555-B THE STATE OF OHIO vs. MIKE SCOLA**[View Printer Friendly Version](#)**Attorney Information**

Attorney Name:	CRAIG T WEINTRAUB
Address/Phone:	55 PUBLIC SQUARE SUITE 1600 CLEVELAND, OH 44113-0000 Ph: 216-896-9090

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[Website Questions or Comments.](#)

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CASE INFORMATION

CR-11-556307-A THE STATE OF OHIO vs. ANGELA M PASTERNAK

[View Printer Friendly Version](#)

Attorney Information

Attorney Name:	CRAIG T WEINTRAUB
Address/Phone:	55 PUBLIC SQUARE SUITE 1600 CLEVELAND, OH 44113-0000 Ph: 216-896-9090

Only the official court records available from the Cuyahoga County Clerk of Courts, available in person, should be relied upon as accurate and current.

[Website Questions or Comments.](#)

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CASE INFORMATION

CR-09-525429-A THE STATE OF OHIO vs. MATTHEW FAIRFIELD

Attorney Information

Attorney Name: MICHAEL J GOLDBERG
323 LAKESIDE AVE WEST
SUITE 450
Address/Phone: CLEVELAND, OH 44113-0000
Ph: 216-696-4514

Only the official court records available from the Cuyahoga County Clerk of Courts, available in person, should be relied upon as accurate and current.

[Website Questions or Comments.](#)

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Mr. Goldberg
Represented
Matt Fairfield

Information Court Officials Departments Case/Docket Information Payment Center Home

Case Summary

General Information

Case Number : 09CRB00820
Attorney Name : MICHAEL J GOLDBERG
Offense Date : 6/6/2009
Date Filed : 6/8/2009
Waiverable : No
Affiant Name : PTL D BERNHARDT
Affiant Type : BEREA POLICE DEPARTMENT
Proof of Insurance : Unknown
Muni Name : BEREA

Financial Information

Total Fines & Costs : \$0.00
Total Paid : \$0.00
Total Owed : \$0.00

Warrant Information

Active Warrants : No

Case/Docket Information

Defendant Information (Last known address)

Name : MATTHEW P FAIRFIELD
Address Line1 : 8842 MORGANS RUN
Address Line2 :
City : OLMSTED FALLS
State : OH
Zip Code : 44138
Date of Birth : 11/26/1979

Counts

Table with columns: Count, Citation Number, Statute Code, Statute Description, Speed Limit, Actual Degree, Plea, Finding, Finding Date. Contains 3 rows of charges including USING WEAPONS/INTOXICATED, OBSTRUCTING OFFICIAL BUSINESS, and RESISTING ARREST.

Hearing Information

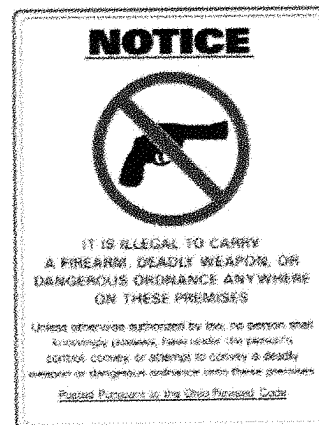
Table with columns: Description, Court Date, Court Time. Lists various court events such as CHANGE OF PLEA, TRIAL, PRE-TRIAL, and ARRAIGNMENT with their respective dates and times.

Docket Information

NOTE: The Docket Information below is an abbreviated version of the actual Docket Entry. Only the first 60 characters of each line will show.

Click Here to display Full Docket Entry or contact the court for the full text entry.

Table with columns: Entry Date, Count, Entry. Lists docket entries with dates and descriptions, including findings of dismissed state costs and hearing card notices.



Actions

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Search

Case Search
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Departments

Traffic/Criminal
Small Claims
Probation
Baiffiff
Civil

Authorized Users

User:

Password:

login

6/16/2009 Written MOTION DEMAND FOR DISCOVERY filed by Defendant's Att
6/16/2009 Written MOTION FOR BILL OF PARTICULARS filed by Defendant's
6/16/2009 Written REQUEST FOR EVIDENCE NOTICE filed by Defendant's Att
6/8/2009 Hearing Card w/attorney notice sent
6/8/2009 PRE-TRIAL set for 06/30/2009 at 09:30 AM in room 2 by Judge
6/8/2009 PNG/WSP/SET FOR PT
6/8/2009 MICHAEL J GOLDBERG filed notice of appearance
6/8/2009 Right to speedy trial waived by defendant on 06/08/2009
6/8/2009 3 Plea of NOT GUILTY entered on 06/08/2009
6/8/2009 2 Plea of NOT GUILTY entered on 06/08/2009
6/8/2009 1 Plea of NOT GUILTY entered on 06/08/2009
6/8/2009 ARRAIGNMENT set for 06/08/2009 at 09:00 AM in room 1
6/8/2009 Case Filed on 06/08/2009

PRIVACY & SECURITY STATEMENT, DISCLAIMER.

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This Web Site has been optimized for 1024x768 resolution.

Anthony L. Viola ID # 32238-160
McKean FCI - P.O. Box 8000
Bradford, Pa. 16701

RECEIVED

FEB 11 2016

February 5, 2016

Clerk of Courts
U.S. District Court

Clerk of Court
United States District Court
801 West Superior Avenue
Cleveland, Ohio 44113

RE: USA v. Anthony Viola; CR-08-506

Dear Sirs:

I am respectfully requesting a copy of ECF # 117, "conflict hearing" concerning the matter captioned above. I'm also enclosing a copy of a letter I forwarded to the court reporter. Kindly let me know how much the transcript costs and funds will be immediately sent.

In addition, the AUSA in this case, Mark Bennett, has stated that a conflict waiver was executed. I do not see any conflict waiver on the court's case docket. Can you confirm in writing that:

- (1) A conflict waiver was filed and added to the record and let me know how I can obtain that; or
- (2) State in writing no such waiver is on this record.

Thank you very much for your prompt response to this important request.

* No such waiver part
of record. Thank you.

USDC Clerk's Office

Respectfully Submitted,

Tony Viola
Tony Viola

cc: Mr. Roy Ford - United States Court of Appeals - Sixth Circuit
Mr. Mark Bennett - United States Attorney's Office

Anthony L. Viola ID # 32238-160
McKean Federal Correctional Institution
P.O. Box 8000 - Bradford, Pa. 16701

April 19, 2016

Mr. Mark Bennett
Assistant U.S. Attorney
801 West Superior Avenue
Suite 400
Cleveland, Ohio 44113

RE: USA v. Anthony L. Viola, Case # 16-3023

Dear Mr. Bennett,

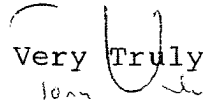
You have repeatedly informed both the District Court and the Court of Appeals in writing that conflicts of interest resulting from joint defense and multiple representation were "waived" and that the District Court "obtained a waiver" of these conflicts, page 14 of your filing, case # 14-3348, copy attached. That representation, and many other statements you have made in writing, are false. The Office of the Clerk of Court has provided written confirmation that "no such waiver is a part of this record," wholly contradicting many of your court filings.

I proved my innocence at a subsequent trial using evidence adverse to my co-defendant but I remain in jail because of your ongoing misrepresentations, copies of which are also attached hereto.

The purpose of this letter is to request that you promptly alert the Court of Appeals in your upcoming brief in the case captioned above that (1) no conflict waivers exist; and (2) that prior representations made by you concerning the existence of such waivers were incorrect. Please be advised that your failure to be forthright with the Court of Appeals will result in (1) a Motion for Sanctions being filed in this case; and (2) A law license complaint will be filed with the Ohio Supreme Court because of these false statements to the federal judiciary.

To underscore the seriousness of this letter, I have copied the acting United States Attorney on this letter and provided her with the same attachments that you have, trusting that your office will take immediate action to rectify this obvious injustice.

Very Truly Yours,


Tony Viola

cc: Ms. Carole S. Rendon - Acting U.S. Attorney
Mr. Roy Ford - United States Court of Appeals for the Sixth Circuit

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CASE NOS. 14-3348/14-3624

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANTHONY L. VIOLA,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Ohio
Eastern Division

BRIEF OF PLAINTIFF-APPELLEE

ANTHONY L. VIOLA
Inmate #32238160
McKean Federal Correctional Institution
P.O. Box 8000
Bradford, PA 16701

Defendant-Appellant, *Pro Se*

STEVEN M. DETTELBACH
United States Attorney
Mark S. Bennett
Assistant United States Attorney
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3878
(216) 522-2403 (facsimile)
Mark.Bennett2@usdoj.gov

Counsel for Plaintiff-Appellee

baseless. There was not conflict of interest involving Mr. Viola or his counsel of record.” (R. 453, PageID 10300). The conflict that arose before the trial of the case involved attorney Michael Goldberg, counsel for co-defendant Uri Gofman, and his previous representation of another co-defendant, Kathryn Clover, who had already entered a plea of guilty and that the government intended to call to testify at trial. The conflict did not involve attorneys Milano or Medici. The district court held a hearing on the matter, discussed the issue in open court, and obtained a waiver from the other parties involved based on a resolution of the conflict fashioned by the district court and the co-defendants involved in the conflict. At no time did the conflict between attorney Goldberg, and co-defendants Gofman and Clover affect Viola in any way. Viola was never represented by attorney Goldberg. Accordingly, this argument by Viola is baseless and should be denied.

Even if there were any merit to Viola’s argument regarding the conflict of interest, Viola did not preserve this issue for appeal at any point during the trial. As this Court noted in its opinion in Case No. 12-3112, Viola has not pointed to any instance in the trial record where he raised the issue of this conflict of interest involving the co-defendants and, therefore, “his unpreserved arguments are reviewed for plain error.” (Case No. 12-3112, November 6, 2013 Order, pg. 5)

Mr. Dezsi did refrain from filing a motion for bond pending resolution of the appeal, apparently recognizing that Mr. Viola did not meet the criteria for release under 18 U.S.C. § 3143(b)(1), and that he would not be able to overcome the presumption of detention. As noted above, a defendant's right to counsel does not give him a right to force his counsel to present every possible non-frivolous argument that could be made on his behalf, and it certainly does not require an attorney to present motions that have no chance of success. *See, Jones v. Barnes*, 463 U.S. 745, 751 (1983). Further, upon Mr. Dezsi's refusal or failure to file the motion for bond Mr. Viola filed his own motion pro se, both with the Court of Appeals and with this Court. (ECF #383). This Court and the Court of Appeal both denied the motion, in part because he filed it without counsel, but more importantly because it was without merit. (ECF # 384; Ct. App. #12-3112: R. 97-1: Order, PageID 1). Shortly after, Mr. Viola fired his attorney and opted to proceed pro se. Therefore, any other alleged errors are not attributable to Mr. Dezsi because Mr. Viola was in charge of his own appeal from that point forward. (Ct. App. #12-3112: R. 101: Motion to Withdraw, PageID 1 at 2). As set forth above, there is no evidence of inefficiency of appellate counsel and Ground Thirteen provides no basis for the requested relief.

C. Ground Fourteen: Joint Defense Agreement

Mr. Viola alleges that he was denied effective assistance of counsel because he suffered from an actual conflict of interest stemming from the implementation of a joint defense agreement during and preceding his federal trial. The existence of the joint defense agreement was certainly known to Mr. Viola at the time of his trial and therefore could have been raised as an issue on direct appeal. Mr. Viola did not raise the issue at this time and has, therefore, waived its presentation. Further, prior to trial, Mr. Viola waived any potential or actual conflict of

interest by agreeing to proceed under the joint defense agreement. There is no way to know whether this agreement may have worked to Mr. Viola's detriment or benefit. Either way, however, he knowingly accepted the risk of any conflict of interest in exchange for the benefit he believed he would gain from consolidating the costs and efforts of all of the defense lawyers who were party to the joint defense agreement. As noted by Mr. Viola, Mr. Bennett, the federal prosecutor raised the issue of potential conflict more than once prior to trial in order to ensure that Mr. Viola and the other defendants were fully aware of the risks they were undertaking. However, armed with that knowledge and fully cognizant of Mr. Bennett's concern, Mr. Viola and the other defendants agreed to waive the potential conflict and proceed under the agreement. Mr. Viola cannot now be heard to say that his trial was unfair on the basis of this agreement that he entered into with full awareness of the potential risks and benefits to the defense of his case. Ground Fourteen provides no basis for relief under 28 U.S.C. § 2255.

III. Prosecutorial Misconduct

Mr. Viola lists nine separate grounds asserting alleged prosecutorial misconduct.

A. Ground Four: Spying on Defense (Dawn Pasela)

Mr. Viola alleges that Mark Bennett, the federal prosecutor, and Dan Kasaris, the state prosecutor, directed Mortgage Fraud Task Force Office Manager Dawn Pasela to "wear a wire, invade my defense and secretly record a series of uncounseled and post-indictment interviews." He further alleges that the task force asked Ms. Pasela to make a contribution to Mr. Viola's defense fund so that they could track the fund's bank account and harass other contributors and supporters.

U.S. District Court for the Northern District of Ohio
Eastern Division
Clerk
[Signature]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 1:08 CR 506
)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
)	
v.	)	GOVERNMENT'S RESPONSE IN
	)	OPPOSITION TO DEFENDANT'S
ANTHONY L. VIOLA,	)	MOTION TO UNSEAL RECORDS
	)	AND DEFENDANT'S
Defendant.	)	NOTIFICATION OF LENDER
	)	SETTLEMENTS

Now comes the United States of America, by and through its counsel, Steven M. Dettelbach, United States Attorney, and Mark S. Bennett, Assistant United States Attorney, and hereby files its response in opposition to Defendant Anthony Viola's Motion to Unseal Records Relating to Conflict of Interest and Government Intrusion Into Right to Counsel (Doc. #445), and Notification of Lender Settlements and Payments Relating to Restitution Orders in this Case (Doc. #443).

other potential witness or co-defendants that had previously plead guilty and were testifying against Viola. By all accounts, Viola played an extremely active role in his defense and, as was testified to by his attorneys during the hearing on his motion for a new trial, Viola practically lived at his attorneys' office and worked on his case full-time.

Finally, the only "conflict" issue in the case did not involve Viola at all. Instead, it involved a potential conflict arising from attorney Michael Goldberg's previous representation of Kathryn Clover, one of Viola's co-defendants that plead guilty prior to the start of Viola's trial and testified against Viola. This potential conflict had nothing to do with Viola and did not impact his case or defense in any way. Instead, this Court addressed the issue in open court and Attorney Goldberg's client, Uri Gofman, waived the potential conflict, and the Court accepted the defense's plan to limit and mitigate any impact of the potential conflict.

So, at the end of it all, there is no connection between the Court's Order modifying Viola's conditions of pretrial release, the defendants' joint defense agreement and the potential conflict involved Attorney Goldberg and Ms. Clover. In addition, there are no records to "unseal" relating to this Court's Order on January 8, 2010 (Doc. #101), referred to by Viola, or any other document or record allegedly limiting Viola's participation in his own defense or "intrusion in [his] right to counsel".

CASE NO. 1:08 CR 506

07-24-2015

UNITED STATES OF AMERICA, Petitioner, v. ANTHONY L. VIOLA,
Respondent.

Example of Court
Rulings - I raised conflicts

C. Ground Fourteen: Joint Defense Agreement

Mr. Viola alleges that he was denied effective assistance of counsel because he suffered from an actual conflict of interest stemming from the implementation of a joint defense agreement during and preceding his federal trial. The existence of the joint defense agreement was certainly known to Mr. Viola at the time of his trial and therefore could have been raised as an issue on direct appeal. Mr. Viola did not raise the issue at this time and has, therefore, waived its presentation. Further, prior to trial, Mr. Viola waived any potential or actual conflict of interest by agreeing to proceed under the joint defense agreement. There is no way to know whether this agreement may have worked to Mr. Viola's detriment or benefit. Either way, however, he knowingly accepted the risk of any conflict of interest in exchange for the benefit he believed he would gain from consolidating the costs and efforts of all of the defense lawyers who were party to the joint defense agreement. As noted by Mr. Viola, Mr. Bennett, the federal prosecutor raised the issue of potential conflict more than once prior to trial in order to ensure that Mr. Viola and the other defendants were fully aware of the risks they were undertaking. However, armed with that knowledge and fully cognizant of Mr. Bennett's concern, Mr. Viola and the other defendants agreed to waive the potential conflict and proceed under the agreement. Mr. Viola cannot now be heard to say that his trial was unfair on the basis of this agreement that he entered into with full awareness of the potential risks and benefits to the defense of his case. Ground Fourteen provides no basis for relief under 28 U.S.C. § 2255.

Direct Appeal
Government Brief

12-3112

prior order.

Even if Viola is arguing that his counsel acted ineffectively by entering into a JDA without reference to events occurring after the filing of his notice of appeal, that claim should not be reviewed in the present context. Viola did not raise it below, and this Court "generally do[es] not review ineffective-assistance claims on direct appeal," unless the record is adequate to assess the merits of the claims. See United States v. Johnson, 581 F.3d 320, 328 (6th Cir. 2009), cert. denied, 130 S. Ct. 3409 (2010). The district court ruled on the ineffective assistance claims that Viola raised in the new trial motion filed immediately after trial, on April 6, 2011 (R.248, PageID 1960) and in his supplemental motion for new trial filed on November 22, 2011 (R.328, PageID 3831), and the record is thus adequate for this Court to assess those claims. The court did not consider Viola's new ineffective assistance claim stemming from the JDA, however, and that claim is therefore not one for which the record is adequate for this Court's review.

Even if this Court were to review Viola's new claim that his trial counsel provided ineffective assistance by entering into the JDA with Gofman's counsel, that claim lacks merit. Under Strickland, "a defendant claiming ineffective counsel must show that counsel's actions were not supported by a reasonable strategy and that the error was prejudicial." Massaro v. United States, 538 U.S.

500, 505 (2003). Here, Viola has not shown either that Milano effected an unreasonable strategy by entering into a JDA with Gofman's counsel or that Viola was prejudiced by that strategy.

Although the JDA was not an issue in Viola's first new trial motion (R.248, PageID 1960), it was discussed in the hearing on that motion. The court asked Goldberg, Gofman's counsel, "What's a joint defense agreement?" R.371 (Hearing Tr.), PageID 5031. Goldberg responded that Viola and Gofman and their attorneys "were going to share information, resources, [and] talk freely amongst us" Id. That way, "Gofman could talk to Mr. Milano if that became necessary, and [Goldberg] could talk to [Viola] on a regular basis," despite the fact that Goldberg did not represent Viola. Id., PageID 5032. Further, the attorney-client privilege would "attach for all of that," even though Goldberg "was not responsible for Mr. Viola's defense, and Mr. Milano was not responsible for Mr. Gofman's defense." Id. Mark Marein, Gofman's other counsel, confirmed that "there were . . . similar defenses that both Mr. Viola and Uri Gofman shared" and that "we felt that we could share resources, and that it would be a better use of our time that we had a collective effort, so [Marein] prepared the agreement. Everybody agreed." Id., PageID 5048.

Viola has not shown that Milano acted unreasonably in entering into a JDA

with Gofman's counsel or that he was prejudiced by the JDA. To the contrary, the district court suggested that Viola affirmatively benefitted from the JDA: "When the government rested, counsel for Mr. Gofman, acting also for Mr. Viola under the joint defense agreement, called four witnesses. These included an expert witness, who testified essentially that the defendants did not act criminally, but rather conducted business according to the way real estate transactions were done at the time." R.343 (Opinion and Order), PageID 3930. Indeed, defendants enter joint defense agreements fairly frequently in criminal cases, and those agreements can provide the defendants with significant benefits, particularly in complex cases. See, e.g., United States v. Dierker, 417 F. App'x 515, 523 n.7 (6th Cir. 2011) (unpublished) ("All defendants . . . participated in the same Joint Defense Agreement, and therefore were expected to share information produced in discovery."); Noe v. United States, 601 F.3d 784, 789 (8th Cir. 2010) ("Noe and Schultz signed a joint defense agreement . . . to allow the attorneys to discuss the case between themselves, while maintaining attorney-client confidentiality."); United States v. Henke, 222 F.3d 633, 637 (9th Cir. 2000) ("A joint defense agreement establishes an implied attorney-client relationship with the co-defendant"); United States v. Gonzalez, 669 F.3d 974, 978 (9th Cir. 2012) (same); United States v. Dong Dang Huynh, 420 F. App'x 309, 322 (5th Cir. 2011)

(unpublished) ("The defendants entered into a joint-defense agreement requiring the sharing of relevant information.").

In sum, Viola's claims of prejudice resulting from an allegedly deficient JDA were not timely raised by Viola or ruled upon by the district court, and, in any event, Viola has not shown that Milano pursued an unreasonable strategy by entering into the JDA. Nor could such claims properly be raised in a motion for new trial based on newly discovered evidence pursuant to Fed. R. Crim. P. 33(b)(1), because the existence of a pre-trial JDA between Viola and Gofman obviously was not new. See United States v. Kenny, 505 F.3d 458, 462 (6th Cir. 2007) (defendant failed to meet his burden of showing that his motion for new trial was based on newly-discovered evidence).

3. Decision That Viola Would Not Testify

The district court likewise did not err when it denied Viola's motion for new trial based on the alleged "ineffective assistance . . . of his attorneys' decision to not have him testify" R.343 (Opinion and Order), PageID 3946. Although Viola now maintains that he instructed Milano to call him as a witness (Br. 19), the record and the case law both belie that claim.

At the hearing on Viola's motions for new trial, attorneys for Gofman and Viola indicated that the determination that Viola would not testify was a strategic

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

STEVEN M. DETTELBACH
United States Attorney
Northern District of Ohio

MARK S. BENNETT
Assistant U.S. Attorney
Northern District of Ohio

MYTHILI RAMAN
Acting Assistant Attorney General

DENIS J. McINERNEY
Acting Deputy Assistant Attorney General

s/Daniel Steven Goodman
DANIEL STEVEN GOODMAN
Criminal Division
Appellate Section
U.S. Department of Justice
Main Justice Bldg., Room 1264
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 514-2338
Facsimile: (202) 305-2121
E-mail: dan.goodman@usdoj.gov
Attorney for the United States

May 1, 2013

Exhibit F

KOBLENTZ & PENVOSE, LLC

ATTORNEYS AND COUNSELORS AT LAW

THE ILLUMINATING BUILDING

55 PUBLIC SQUARE - SUITE 1170

CLEVELAND, OHIO 44113

TELEPHONE (216) 621-3012

FAX (216) 621-6567

WWW.KOBLENTZ-LAW.COM

RICHARD S. KOBLENTZ

BRYAN L. PENVOSE

OF COUNSEL

PETER A. RUSSELL

MARVIN A. KOBLENTZ

(1922 - 1995)

December 2, 2011

Kevin M. Spellacy, Esq.
McGinty, Hilow & Spellacy Co., LPA
614 W Superior Ave, Suite 1300
Cleveland, OH 44113

Re: ***United State v. Anthony Viola, et al.***
United States District Court, Northern District of Ohio
Hon. Donald Nugent
Case No. 1:08:CR506

Dear Mr. Spellacy:

Please allow this correspondence to serve as the professional opinion which our office was requested to render relative to the issue of whether an actual conflict of interest existed between Anthony Viola and his counsel, Jay Milano, Esq., before and during the trial held in the above referenced matter.

By way of background and in support of my qualifications to serve as an expert witness relative to the foregoing issue, please find a copy of my Circula Vitae attached hereto as Exhibit "A" and fully incorporated herein by reference. Upon your review of the attached, please note that I have been an attorney-at-law registered to practice law by the Supreme Court of Ohio since November 7, 1975 and that I am registered to practice law before all courts in Ohio, the U.S. District Court for the Northern District, the Sixth Circuit U.S. Court of Appeals, the D.C. Circuit Court of Appeals, and the United States Supreme Court.

In addition to my primary practice in the areas of the law of legal ethics and professional responsibility, I also practice in the areas of civil litigation, legal malpractice, real estate, small business, criminal defense, white collar criminal defense, domestic relations, and probate. I have represented numerous attorneys and judges as their legal ethics counsel and as their defense counsel when facing professional charges before bar associations and the Supreme Court of Ohio.

Exhibit (F) P1

I was led to my aforementioned practice in the areas of law of legal ethics and professional responsibility by my past volunteer service with the local bar associations. I served as a member and secretary of the Cuyahoga County Bar Association Ethics Committee from 1977 to 1980, as a member of the Grievance Committee of the Cuyahoga County Bar Association Grievance Committee from 1980 to 1995, as chair of said committee from 1988 to 1990. In addition to my service with the Cuyahoga County Bar Association, I also served as trial counsel to the Cleveland Bar Association Grievance Committee.

Throughout the time I have practiced in the area of legal ethics, I have spoken at many seminars on the topic of the former Ohio Code of Professional Responsibility and now the Ohio Rules of Professional Conduct, as well as other topics, and have also been a guest lecturer at the Cleveland-Marshall College of Law and the University of Akron School of Law on the topics of the Ohio Rules of Professional Conduct and the former Code of Professional Responsibility. In light of my above described qualifications, I reasonably believe that I am qualified to provide the professional opinion which you have requested.

As a brief aside, the below opinion addresses the issue of whether any conflict of interest existed between Mr. Milano and Mr. Viola during the federal criminal trial which prohibited any further representation by Mr. Milano. The incorporated Factual Statement and Predicate discusses in great detail the confusing set of events surrounding the legal fees charged by Mr. Milano. However, this opinion does not deliver any opinion as to any attorney fee issue including, but not limited to, whether Mr. Milano entered into any valid, ethical or reasonable fee agreements with Mr. Viola or whether those fees were earned and appropriately collected. Rather the discussion of fees is relative to examining the attorney-client relationship between Mr. Milano and Mr. Viola and whether any conflict of interest existed between them. In arriving at my professional opinion below, I have reviewed the information and materials provided to our office by Mr. Viola taken together with communications had with you and Mr. Viola in order to establish the incorporated Factual Statement. In addition to my general knowledge and understanding of the Ohio Rules of Professional Conduct (and the former Ohio Code of Professional Responsibility), I have reviewed the specific legal authority identified within the below opinion.

I. Factual Statement and Predicate

Prior to being indicted, but subject to investigation along with other multiple persons relative to an alleged mortgage fraud scheme, Anthony Viola sought legal representation and was referred to Jay Milano and the law firm of Milano Weiser in 2006. By and through a correspondence under the date of **August 7, 2006**, Mr. Viola retained and engaged Mr. Milano and his firm for an initial retainer of **\$5,000.00**. Mr. Viola had directed Mr. Milano to offer Mr. Viola's full cooperation with the government in its investigation (although Mr. Viola has

seen no evidence in his files of any such efforts by Mr. Milano). The fee letter provides that the aforementioned retainer would not be the entire fee for the representation, but that with payment of the retainer, Mr. Milano would begin to review Mr. Viola's case and determine what the total fee would be. The fee letter ambiguously continues by saying that:

"In any event, and even if there are no additional fees other than the retainer, please be aware that your case ends with the final [court] appearance and at that time our fee agreement ends. We will be happy to answer any questions you may have that arise after such a time but if additional work is necessary there will be additional charges."

The August 6, 2006 letter does not disclose whether Mr. Milano's fees will be charged on an hourly basis or on a flat fee basis, but does indicate that the firm's fee policy is more fully discussed in the materials provided. [1]. However, Milano Weiser's website, www.milanolaw.com, during the pendency of Mr. Viola's Motion for New Trial, contained the following general representation:

"6. OUR FLAT FEES ARE THE RESULT OF A BARGAIN MADE BETWEEN US.

Our primary fees and our investigative fees are set. That means you are paying us a specific amount to complete a service. If your case is dismissed after one phone call, or if our work lasts three years, we have agreed on the fee. It remains the same. You have come to us to solve a problem. We will do everything we can to accomplish that. It is in your interest to have the problem solved sooner rather than later. On the other hand, we will complete the work upon which we agree – no matter how long it takes.

We are expensive, more expensive than most. Some clients look for the cheapest lawyer they can find. It is your decision, your money and your life. We have earned our reputation. We will earn our fee."

Following Milano Weiser's initial August 7, 2006 fee letter, many more fee letters and demands for fees were made in the several years to follow:

- By and through a letter carrying the date of **February 26, 2009**,

¹ No such fee policy was produced to the undersigned or this office with the copy of the August 7, 2006 letter or the copies of the other subsequently sent fee letters which were in Mr. Viola's possession and no such fee policy was provided to his office from Mr. Viola's entire client file produced to him by Milano Weiser. Following his termination of Milano Weiser, Mr. Viola made repeated requests for his client file to be produced along with "copies of any and all fee agreements, billing statements, invoices and itemization of [Mr. Milano's] time ..." April 12, 2011 correspondence of Mr. Viola to Mr. Milano.

Mr. Milano wrote to Mr. Viola stating that due to the "complexity and gravity" of his situation he was required to pay an additional **\$15,000.00** in fees and that would be the fee should his case end without Mr. Viola being charged. If Mr. Viola was charged, the letter said that some amount of fees (an undisclosed amount) would be owed.

- Following Mr. Viola's indictment in federal court, Mr. Milano sent Mr. Viola another fee letter dated **June 4, 2009** stating that the "flat fee" for his case was **\$55,000.00**, payable over the following three months, in addition to the \$22,500.00 which Mr. Viola had already paid (not including the original \$5,000.00 retainer). Mr. Milano further wrote that he "believe(s) this to be [Mr. Viola's] entire fee" unless compelled to go to trial and then there would be an additional \$2,500.00 trial fee owed. [Thus, Mr. Viola's fees in total were to be \$82,500.00 unless required to go to trial and then the fees would be \$85,000.00.] The letter states that:

The "fees represent an agreement between [Mr. Viola] and [Mr. Milano] based on a mutual desire to determine a *concrete cost* for [Mr. Viola's] case. That is true if your case becomes more or less complex. In any case, we have to agree on a total fee." (emphasis added).

- On **September 23, 2009**, Mr. Milano sent a letter demanding payment of the \$27,500.00 for the installments that were to be paid in July and August per the June 4, 2009 letter. Mr. Milano wrote, "I know that you will have to impose on other sources, but the amount and date are firm ... I will address the issue of *additional fees* as soon as we have a better idea of where this case is going. Keep fighting." (emphasis added). Mr. Viola paid the demanded fees.
- After also being indicted by the State of Ohio by the Cuyahoga County Grand Jury, Mr. Milano sent yet another fee letter to Mr. Viola under the date of **December 23, 2009** stating that the "flat fee" for the cases was **\$100,000.00** with a \$5,000.00 balance remaining due. The letter further states that once again, Mr. Milano "believes" this to be Mr. Viola's *entire fee* – although, the letter further provides that there will be an additional \$3,000.00 trial fee per case, per day (estimated at \$45,000.00) to be deposited into escrow prior to trial. As with the previous fee letter, the December 29, 2009 letter states that:

The "fees represent an agreement between [Mr. Viola] and [Mr. Milano] based on a mutual desire to determine a

concrete cost for [Mr. Viola's] case. *That is true if your case becomes more or less complex. In any case, we have to agree on a total fee.*" (emphasis added). Mr. Viola paid the demanded fees.

- Still arbitrarily seeking additional fees, Mr. Milano sent another fee letter under the date of **January 21, 2010**, wherein he writes"

"Tony,

You got the message about fees. To be clear – to accommodate you and *to end our fee discussions* – we require a payment of **\$55,000.00** (\$5,000.00 from prior payments not made before March 1, 2010). *This will be your fee in total. There will be additional fees, at least the trial fee, but you need not pay additional fees until after the first trial.* If there is a second trial, you will need to deposit additional fees before it begins.

This represents an accommodation to you. As you are aware, there are additional fees due now. However, given your situation and if you meet this obligation, *I will wait for any balance.* If you cannot meet this obligation, I will have no choice to withdraw." (emphasis added). Mr. Viola paid these additional fees.

- Yet, on or about **December 2, 2010** ... twelve months later, after a related second State of Ohio indictment, and approximately three (3) months before the trial in the above-referenced federal case was to commence, Mr. Milano wrote to Mr. Viola:

"To be clear about fees, you[r] case has expanded beyond a point of understand (sic) including additional indictment. "As a result we will require additional fees in the amount of Fifty-Thousand Dollars (**\$50,000.00**). I understand you[r] financial situation is difficult. Your three (3) cases and the level of complexity have far exceeded the fees that have been charged so far."

Despite assurances from Mr. Milano that the discussion relative to fees would cease, fee discussions continued thereafter resulting in the well documented conflict and dispute erupting between Mr. Milano and Mr. Viola on the weekend after the trial had commenced and while the trial was on-going. In an effort to satisfy the demand for additional fees in the weeks leading up to the federal trial, Mr. Viola sought to settle two insurance claims on his behalf and that of his company, Realty Corporation of America, and to assign a portion of those settlement proceeds to Mr. Milano and Milano Weiser to satisfy their demands for additional fees. Initially, Mr. Milano was satisfied with the proposed \$50,000.00 assignment and communicated directly with the insurance carrier. However,

later and contrary to past written promises to wait to be paid, Mr. Milano was obviously unwilling to wait to be paid his additional fees.

Just prior to trial commencing, in an e-mail sent February 19, 2011, Mr. Milano demanded that Mr. Viola *borrow \$50,000.00 from his family for payment of additional fees*, emphasizing that Mr. Viola's family can wait to be paid, but that Milano Weiser would not wait. No such arrangement was made and the federal criminal trial commenced the final week of February, 2011.

During the weekend following the first week of the federal trial but while the trial was still in its early stages, Mr. Milano again changed his demand for fees. In a chain of e-mails between Mr. Viola and Mr. Milano on March 5 and 6, 2011, Mr. Milano requested that Milano Weiser be paid additional fees through a \$25,000.00 loan solicited by Mr. Milano from Mr. Viola's family and through an assignment of \$50,000.00 from the insurance settlement proceeds (which settlement proceeds were anticipated at the time to total \$75,000.00). Mr. Milano proposed that from the anticipated \$75,000.00 settlement amount, Milano Weiser would retain \$50,000.00 for payment of additional fees and reimburse Mr. Viola's family for the loan they extended to Mr. Viola for payment of additional fees with the remaining \$25,000.00. According to what was told to Mr. Viola, Milano Weiser was in immediate need of the \$25,000.00 to meet payroll and/or other overhead business expenses. On March 5, 2011, Mr. Milano drafted a proposed e-mail to be sent to a family member of Mr. Viola soliciting the loan and aggressively insisted that Mr. Viola follow the e-mail with one of his own verifying Mr. Milano's self-serving solicitation. Mr. Viola was willing and agreed to approach his family for a loan, but was unwilling to make such a request through the e-mail solicitation made by Mr. Milano.

Mr. Milano became increasingly insistent of an immediate loan from Mr. Viola's family to pay the additional fees to the extent Mr. Viola believed that Mr. Milano was threatening to curtail his efforts at trial if the fees were not paid. In an e-mail sent from Mr. Milano to Mr. Viola at 9:37 a.m. on Sunday, March 6, 2011, Mr. Milano wrote in pertinent part, "*If you have raised the fees by Tuesday [March 8, 2011 and during trial] that is all that matters. **If not- then we will do the best we can under the changing circumstances.***" (emphasis added).

Later that day, on March 6, 2011, the Sunday after the trial had already commenced and the night before they were scheduled to return to trial, Mr. Milano sent Mr. Viola multiple e-mails about that night which are very revealing and telling as to whether any dispute and conflict of interest had emerged between them. Those e-mails include, but are not limited to, the following:

- At 2:53 p.m. sent from Mr. Milano to Mr. Viola: "Regarding fees, you have not complied with my requests, nor have we heard back from Mr. Fazio or any other member of your family. *We still anticipate \$25,000.00 in fees to be received by 5PM Tuesday*

March 8, 2011. This amount would be anticipated to come as a short term loan from your family. As I have assured you and Mr. Fazio, we will repay your \$25,000.00 loan from your family from the \$75,000.00 insurance proceeds when they arrive. Please review the attached documents before arriving today. I expect you to sign both the fee agreement and the assignment today. If there are any problems we will discuss them first thing." (emphasis added).

Upon arriving at Milano Weiser, Mr. Viola was presented with a draft "Assignment/Power of Attorney" and a draft "Contingency Fee Agreement." [2]. prepared for his signature where together, the draft documents deliver payment of the entire \$75,000.00 insurance proceeds to Milano Weiser (\$50,000.00 for fees allegedly owed in the federal criminal case and \$25,000.00 for a "flat retainer" for Rachel Weiser, Mr. Milano's partner, and Milano Weiser to represent Mr. Viola in the State of Ohio civil case). Nowhere in those documents presented for Mr. Viola's signature was there any assurance to repay any \$25,000.00 loan to Mr. Viola's family – as Mr. Milano had solicited and made assurances of repayment to Mr. Viola's family from the insurance settlement proceeds just hours before Mr. Viola's arrival. Upon Mr. Viola questioning Mr. Milano about the change in fee proposal without any terms relative to repayment of any monies loaned from his family, Mr. Milano became irate with Mr. Viola and an insurmountable conflict and dispute occurred.

Tensions boiled over. Mr. Viola was convinced that he had been lied to by Mr. Milano about his family being repaid if they agreed to make the loan and Mr. Milano was attempting to take advantage and coerce payment of another \$100,000.00 in fees from him – when the only focus between them should be preparing to continue for the remainder of the trial which reconvened the next day. After years of satisfying arbitrary, periodic demands by Mr. Milano for additional fees (as outlined above) without any adequate explanation as to the need for more fees, how prior fees had been earned and without the originally agreed legal work for set amounts of fees having yet to be completed, Mr. Milano's insistence of a loan from Mr. Viola's family to pay yet more fees during the pendency of the federal trial (... or else ...) was the proverbial straw that broke the camel's back.

As a result, Mr. Viola became angry and left the meeting at the offices of Milano Weiser where he had agreed to meet to continue preparing for his federal criminal trial. Mr. Milano's e-mails ensued:

- Sent at 5:15 p.m. from Mr. Milano to Mr. Viola; "... We do we have the second issue of fees. That issue was off the table when you said it was. You said that you needed to discuss that issue

² Though referenced as a "Contingency Fee Agreement" in the heading of the letter, the terms set forth therein do not appear to establish any contingency fee terms.

with your family and that was that.

Fee issues are totally separate from (sic) from preparation.

I will do everything I can for the remainder of trial. You need to assist....."

- Sent at 6:45 p.m. from Mr. Milano to Mr. Viola; After Mr. Viola informed Mr. Milano that he was seeking outside counsel to review his fees and Mr. Milano's recent conduct, Mr. Milano pled with him via e-mail for Mr. Viola to return to the office to assist Mr. Milano's co-counsel, a newly admitted attorney named Joe Medici [3], with trial preparation "You told Joe that you would never come back to our office. I cannot believe the location of work is at question.

If you cannot assist me personally, as your lawyer, then you must make that plain, in writing, before the trial begins tomorrow at 8:30.

You must trust me as your lawyer completely. You must make that clear. If you do not, then you need to make that clear too. These are very serious matters.

Tonight, if (sic) you do not return it will hurt your defense. To continue to refuse to assist will make your defense impossible. We will need to address that with the Judge.

Again, as I said before and earlier tonight and in the last e-mail, our preparation and fees are two different issues. They do not overlap.

Of course, it would have been helpful if your family had lent you a portion of what is due. I do not know why you made me ask them but you would not do so yourself. None of that is an issue now. I accept that you are seeking counsel on fees. Do as you please. The fee issue is over for the rest of the trial. It was over within minutes of when it arose today.

The insurance issue has always been handled by Rachel. You

³ Mr. Medici's attorney-client relationship with Mr. Viola has not been called into question. However, it should be noted that upon Mr. Milano informing Mr. Viola that his partner, Rachel Weiser, would not be available to assist Mr. Milano with the federal criminal trial as Mr. Viola had been previously assured, Mr. Milano advised Mr. Viola to pay Mr. Medici another \$5,000.00 in attorney fees in addition to the thousands of dollars in fees already paid to Mr. Milano. Mr. Viola paid Mr. Medici's fees.

need to let her know if you wish her to continue to pursue it. When you saw her Friday, your position was that you would do anything she needed to complete that part. If that has changed let her know.

So you need to –

- 1: go back to the office and assist Joe right now.
- 2: Affirm that you will assist me in preparing your case, in my office and at court and anywhere else that I see necessary.
- 3: Confirm that you trust my judgment and that we will cooperate in completing the case, or say that you no longer, for whatever reason, trust me as your lawyer.
- 4: Let Rachel know if you wish her to continue to work with the insurance company.”

- Sent at 7:03 p.m. from Mr. Milano to Mr. Viola; Mr. Milano wrote:

“Fees are not an issue in this trial. You need to go to the office and assist Joe tonight.

You need to be specific as we are going to be in Court tomorrow at 8:30 AM. What do you intend to do. You need to answer my questions about how we continue with specificity. Further, do you intend to have another lawyer with you tomorrow. We will not simply walk in and begin the trial without resolution of the assistance and trust issues.”

- Sent at 8:56 p.m. from Mr. Milano to Mr. Viola:

“Last communication of the day.
The issues have distilled.

Fees are not an issue related to the rest of trial.

You need to determine and inform me if you trust me or not.

You need to inform me if today was an aberration and from now on you will cooperate fully with me (face to face in my office) or not.

You need to give me answers to these questions before Court tomorrow. Your answer could be: 1) yes I do trust you and will cooperate from now on. Or 2) no, I do not.

If the answer to both questions is a clear and unambiguous yes, then we will proceed tomorrow. If it is no, or if you do not respond, then I will need to approach the Judge.

If you have retained counsel on the issue, just have him respond.
I will await your reply."

Mr. Viola did not return to the offices of Milano Weiser. No resolution of these issues was ever reached. No written conflict waiver was ever obtained by Mr. Milano from Mr. Viola with his informed consent to proceed with the representation at the already commenced trial.

Rather, acting out of fear and anxiety of the potential consequences of either not having the benefit of his counsel of the approximate past five years assist him with the remainder of trial or of otherwise approaching the court with the disputes which he had with his counsel after trial had commenced and was still on-going, Mr. Viola continued with Mr. Milano as his counsel at the federal trial.

Nonetheless, the issue of fees (and the resulting feelings of distrust and lack of confidence in Mr. Milano) were not set aside or put on hold during the course of the remaining federal criminal trial. Mr. Viola has stated that he was verbally berated by Mr. Milano about the issue at trial. In addition, the tension is memorialized through an e-mail from Mr. Milano's law partner. While stating that "[n]ow the pressure point of [Mr. Viola] obtaining immediate funds to pay your fees from your family has passed" and that "[Mr. Viola] and [Mr. Milano] are in trial and you should not deal with this ... But you and I have to ...," Mr. Milano's partner, Rachel Weiser, sent an e-mail to Mr. Viola on March 16, 2011 seeking resolution of payment of fees in both re-establishing the terms of the additional legal fees allegedly owed in the federal case and the requisite fees for the commencement of her work in the State of Ohio civil matter as presented on March 6, 2011 in the "Contingency Fee Agreement" and Assignment of insurance settlement proceeds.

Again, as the trial proceeded, the issue of fees (and the resulting, lack of trust and confidence in Mr. Milano) were not resolved and issues of presentation of evidence at trial materialized. Mr. Viola, although being tried together with Co-Defendant Mr. Gofman and even though their counsel had entered into a cooperative joint defense letter agreement, always believed that additional evidence or testimony specific to him and relative to his lack of wrong-doing or lack of knowledge of wrong-doing by others would be presented by Mr. Milano on his behalf.

In fact, several other fact witnesses who had been interviewed who could offer testimony exculpatory in nature towards Mr. Viola's defense and who had been told that they would be called and expected to testify at trial, were never contacted during trial or called to testify at trial by Mr. Milano.

In addition to the multiple fact witness who Mr. Viola anticipated to testify, Mr. Viola, at Mr. Milano's direction, retained a private investigator, Colley

Intelligence, to interview witnesses and provide a report. Mr. Viola was puzzled as to the reason as to why the investigator retained did not testify at trial or the witnesses that were interviewed by the investigator. After timely filing his pending motion for new trial, Mr. Viola learned that Colley Intelligence had, in fact, conducted an in-depth investigation and completed a report, but did not produce it to Mr. Milano as their services had not been compensated. Mr. Viola had paid to Mr. Milano the funds which were anticipated to be needed to satisfy the investigator's fees, but other than a couple of itemized billing statements from Colley Intelligence provided early during its investigation, Mr. Viola has not seen any other billing statements from Colley Intelligence as all statements were sent to Mr. Milano's office directly.

The partial, but incomplete investigative report of Colley Intelligence and the affidavits of the various fact witnesses who were not called to testify at trial are attached as exhibits to the motion to show cause which Mr. Viola filed in the federal matter, *pro se*, on April 25, 2011.

Mr. Viola was frustrated and perplexed as to why after extensive preparation, in which he directly assisted, as to why the witnesses he expected to be called were never called to the stand at trial. Rather, after Mr. Gofman's attorneys completed the presentation of their case, Mr. Viola believed that Mr. Milano put on a quick and incomplete defense on his behalf without calling the many witnesses who Mr. Viola believed would be called to testify. Despite the assurances to the contrary which Mr. Milano provided in his March 6th e-mails, it became clear to Mr. Viola as the trial unfolded that his defense was being compromised or limited on account of his not paying the demanded additional fees.

Following the trial and the guilty verdict rendered against him which he believes to have directly resulted from the limited defense presented on his behalf, Mr. Viola terminated Mr. Milano and his firm. In addition, Mr. Viola made numerous requests following the termination of his representation by Mr. Milano for copies of any and all fee agreements, billing statements, invoices and itemization of [Mr. Milano's] time along with a copy of Colley Intelligence's full report and an accounting of the funds provided for payment of the investigator's fees. Aside from the fee letters referenced above, no such requested fee information has been produced to Mr. Viola in his client file or otherwise.

Aside from their representation in federal matter, Mr. Milano and Milano Weiser no longer represent Mr. Viola in the two State of Ohio criminal matters and the State of Ohio civil matter which have yet to go to trial. To date, no unearned fees have been returned to Mr. Viola by Milano Weiser.

II. Legal Analysis

Attorneys admitted to practice before the United States District Court for

the Northern District of Ohio are bound by the ethical standards of the Ohio Rules of Professional Conduct adopted by the Supreme Court of Ohio LCrR 57.7(a). Specific as to the requirements of attorneys in analyzing conflict of interest issues, Rule 1.7 of the Ohio Rules of Professional Conduct ("RPC") provides when lawyers are permitted and not permitted to accept or continue a representation of a current client when a conflict of interest exists. RPC 1.7 states:

Rule 1.7. CONFLICT OF INTEREST: CURRENT CLIENTS

(a) A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:

(1) the representation of that client will be directly adverse to another current client;

(2) there is a *substantial* risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests.

(b) A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division (a) of this rule, unless all of the following apply:

(1) the lawyer will be able to provide competent and diligent representation to each affected client;

(2) each affected client gives *informed consent, confirmed in writing*;

(3) the representation is not precluded by division (c) of this rule.

(c) Even if each affected client consents, the lawyer shall not accept or continue the representation if either of the following applies:

(1) the representation is prohibited by law;

(2) the representation would involve the assertion of a claim by one client against another client represented by the lawyer in the same proceeding. Ohio Rev Code Ann RPC 1.7 (Baldwin 2011).

While attempted collection and payment of legal fees does not always necessarily involve the existence of a conflict of interest, one can certainly emerge from an attorney's agreement for payment of legal fees and the attorney's efforts to collect legal fees. Official Comment 5 of RPC 1.5 ("FEES AND EXPENSES") provides the following insight:

"An agreement may not be made whose terms might induce the *lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest*. For example, a lawyer *should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required*, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction." Ohio Rev Code Ann RPC 1.5 Ofc Cmt 5 (Baldwin 2011).

Mr. Milano's numerous and vague "flat fee" agreement letters, as identified above, create an agreement where his services were to be performed up to an arbitrarily chosen amount, while the letters also recognize within their contents that additional amounts of fees would most likely be charged without adequately explaining why additional work would need to be performed and why additional fees would be required. The ultimate result was the conflict and dispute that occurred on March 6, 2011 while the trial was proceeding and the appearance to Mr. Viola that Mr. Milano curtailed his services and put on Mr. Viola's defense in a manner which was contrary to Mr. Viola's interests. Mr. Milano's March 6, 2011 e-mail at 9:37 a.m. reveals Mr. Milano's intention to curtail services in the middle of trial by stating that, "If you have raised the fees by Tuesday [March 8, 2011 and during trial] that is all that matters. If not- then we will do the best we can under the changing circumstances." Rather than concretely settling the terms of legal fees to be paid well in advance of trial, Mr. Milano's fee agreement letters and demands for payment of additional fees up through the midst of trial created a situation that could induce Mr. Milano to limit his services at trial.

Clearly, as expressly acknowledged by Mr. Milano's e-mails on March 6, 2011, a dispute arose and a conflict existed between Mr. Viola and Mr. Milano during the course of trial. Given the timing of Mr. Milano's insistent demands for a large payment of additional fees (even if it meant Mr. Viola borrowing money from his family and being deceptive as to whether that loan would be repaid), Mr. Milano's priorities were his own personal and business interests in being paid immediately rather than focusing on preparing for trial, proving Mr. Viola's innocence and maintaining Mr. Viola's liberty.

Moreover, while the dispute between lawyer and client arose out of demands for payments of additional legal fees, Mr. Milano's e-mails shed

important light on the trust and confidence that a client must have in a lawyer which was at the very least compromised, if not destroyed, between Mr. Viola and Mr. Milano while the trial was underway. Mr. Milano recognized the dispute and conflict of interest which existed, but failed to take the required remedial measures – if it was possible to remediate those issues at this point in time.

Mr. Milano's response to the dispute was to place the burden and responsibility on his client, Mr. Viola. To begin, Mr. Milano saying that the issues of fees, preparation for trial and whether or not Mr. Viola trusted him are all separate issues, does not make it so. Likewise, Mr. Milano self-servingly saying that the dispute relative to payment of fees was over hours before trial was to commence when Mr. Viola did not or could not accede to his demands, also does not make it so. These issues of being pushed to a breaking point over demands for additional fees and simultaneously protecting the important traits of the attorney-client relationship are intertwined and cannot be segregated. Mr. Milano's e-mails appear to be a futile after-the-fact attempt to rectify his own misconduct.

Further, despite Mr. Milano's repeated insistence in his March 6th e-mails, it is not the obligation of the client, Mr. Viola, to provide a written statement of his affirmed trust and confidence in his attorney before continuing with the representation and proceeding with the trial. Mr. Milano, by his own written words, realized that there was a dispute between himself and his client, and that a resulting conflict of interest existed between them the night before trial – to the extent Mr. Viola told him he was seeking independent counsel to review Mr. Milano's fees and relative conduct. At that point, Mr. Milano was required by RPC 1.7 to not continue with his representation of Mr. Viola and to not proceed as his counsel at trial until he obtained Mr. Viola's "informed consent, confirmed in writing" as to the conflict between them.

These steps obviously were not taken. Rather, Mr. Milano attempted to conceal the conflict and proceed at trial without either obtaining Mr. Viola's informed consent, confirmed in writing, or otherwise approaching the court with his ethical dilemma – as he said he would do in his e-mails.

Also relative to the above dispute, Mr. Milano was obligated to obtain Mr. Viola's informed consent before soliciting and attempting to collect payment of legal fees from a third party – regarding both the loan from Mr. Viola's family and the assignment of insurance settlement proceeds.

As RPC 1.8(f) states:

RPC 1.8 (f) A lawyer shall not accept compensation for representing a client from someone other than the client unless divisions (f)(1) to (3) and, if applicable, division (f)(4) apply:

- (1) the client gives *informed consent*;
- (2) there is *no interference* with the lawyer's independence of professional judgment or *with the client-lawyer relationship*;
- (3) information relating to representation of a client is protected as required by Rule 1.6; Ohio Rev Code Ann RPC 1.8(f) (Baldwin 2011) (emphasis added).

Mr. Viola did not provide his informed consent for Mr. Milano to solicit payment of legal fees from Mr. Viola's family in the form a loan in the manner in which he did and under false assurances of repayment. In fact, Mr. Viola expressly objected to the solicitation in his reply e-mails to Mr. Milano. Still, Mr. Milano pushed him to seek the loan. Likewise, Mr. Viola never agreed to an assignment of the entire \$75,000.00 insurance settlement proceeds – only a portion thereof. Further, as is manifested in the numerous e-mails relative to the sought loan and payment of fees during the course of the trial, Mr. Milano's duty to exercise independent professional judgment in his attorney-client relationship with Mr. Viola was interfered with as the lawyer and client needed to be working cooperatively towards preparing for trial rather than arguing over payment of fees.

Under these facts and applicable law, Mr. Milano was ethically prohibited from continuing his representation of Mr. Viola as a conflict of interest existed to which Mr. Viola did not provide his informed consent, confirmed in writing.

"There is nothing more critical to the professional relationship between attorney and client than the trust and confidence of the person being represented." *Cincinnati Bar Assoc'n v. Hackett*, 129 Ohio St.3d 186, 188 (Ohio 2011) quoting *Fox & Assoc. Co., L.P.A. v. Purdon* (1989), 44 Ohio St.3d 69, 71, 541 N.E.2d 448. A lawyer's duties of trust and confidence and the ethical rules incumbent upon Ohio lawyers require that the personal desires of the lawyer must be subordinated to those of the client. *Id.*

The Sixth Amendment entitles a defendant in a criminal case to the effective assistance of competent counsel which includes the right to representation that is *free from conflicts of interest*. *United States v. Frances M. Flood*, 2:07-CR-485 DB (UTCDC) (April 7, 2010) citing *United States v. Gallegos*, 39 F.3d 276, 277-78 (10th Cir. 1994) see also *Wood v. Georgia*, 450 U.S. 261, 271 (1981) (emphasis added). Where there was no objection to a claim at trial of a conflict of interest claim, the client must demonstrate an actual conflict of interest which adversely affected his lawyer's performance." *Id.*, citing *United States v. Alvarez*, 137 F.3d 1249, 1251 (10th Cir. 1998) (quoting *United States v. Bowie*, 892 F.2d 1494, 1500 (10th Cir. 1990)). "[D]efense counsel's performance [is] adversely affected by an actual conflict of interest if a specific and seemingly valid or genuine alternative strategy was available to defense counsel, but it was

inherently in conflict with his duties to others or to his own personal interests." *Bowie*, 892 F.2d 1494, 1500 (10th Cir. 1990). If a defendant is able to show an actual, as opposed to a potential, conflict and that the conflict affected the adequacy of her representation, the law does not require her to show prejudice in order to obtain relief. *Culyer v. Sullivan*, 446 U.S. 335, 350 (1980). See also *United States v. Robbins*, Civil 08-CV-390-TCK-TLW (OKNDC) (August 24, 2011).

"While the point of the Sixth Amendment is not to allow Monday-morning quarterbacking of defense counsel's strategic decisions, a lawyer cannot make a protected strategic decision without investigating the potential bases for it. See *Id.* at 690-91, 104 S.Ct. 2052; see also *Bigelow v. Haviland*, 576 F.3d 284, 288 (6th Cir.2009). It is particularly unreasonable to fail to track down readily available and likely useful evidence that a client himself asks his counsel to obtain without ascertaining what the evidence is. See *Bigelow*, 576 F.3d at 287-88." *Couch v. Booker*, 632 F.3d 241, 246 (6th Cir. 2011).

Mr. Viola provided to Mr. Milano fact witnesses who could testify as to his innocence and further agreed to engage a private investigator. Mr. Viola expected and anticipated these persons and the investigator to testify at trial as his counsel had told the witnesses that they would. Yet, to Mr. Viola's surprise and frustration, those witnesses never testified and as is *Couch*, Mr. Milano made a decision to not call those witnesses or the investigator without receiving Colley Intelligence's full report and work product.

Without question, and without being required under the law to show prejudice as set forth above, the above-discussed existence of a conflict of interest prohibiting the continued representation, together with the failure of Mr. Milano to call the multiple fact witnesses and a representative of Colley Investigation (without knowing the contents of the report) in presenting Mr. Viola's defense at trial affected the adequacy of Mr. Milano's representation of Mr. Viola.

(remainder of page intentionally left blank)

III. Professional Opinion

In light of all the above, and upon review of the materials and information reviewed and provided, together with my knowledge of applicable legal authority and my own professional experience in the area of legal ethics and professional responsibility, it is my professional opinion, to a reasonable professional certainty, that an actual conflict of interest existed as between Mr. Milano and Mr. Viola immediately prior to and during Viola's federal criminal trial which affected the adequacy of the legal representation.

Very truly yours,

KOBLENTZ & PENVOSE, LLC

A handwritten signature in black ink, appearing to read "Richard S. Koblentz", is written over a horizontal line.

Richard S. Koblentz

EXHIBIT "A"

Richard S. Koblentz

Koblentz & Penvose, LLC
55 Public Square, Suite 1170

Cleveland, Ohio 44113

216-621-3012

Law Practice:

General Practice of Law, including Legal Ethics and Discipline Law, Civil Litigation, Real Estate, White Collar Criminal Defense, Small Business, Criminal Defense, Domestic Relations, Probate.

Education:

J.D. - Cleveland-Marshall College of Law - Cum Laude 1975

B.S. - Ohio State University - 1972

Professional Associations:

1. Ohio State Bar Association
2. Cleveland Bar Association
3. Geauga County Bar Association
4. National Association of Criminal Defense Lawyers
5. Ohio Criminal Defense Lawyers Association
6. Cuyahoga Criminal Defense Lawyers Association
7. Cleveland-Marshall Law Alumni Association

Professional Activities and Honors:

1. Named outstanding alumnus - Cleveland Marshall College of Law, 1997
2. Inside Business= Leading Lawyer List for Northeast Ohio - Attorney Discipline - 2001 - Present
3. Cincinnati Magazine - List of Ohio Super Lawyers, 2003 - Present
4. Rated *AV* and listed by Martindale-Hubbell in the *Bar Register of Preeminent Lawyers 1990 - Present*
5. Trustee - Cuyahoga County Bar Association - 1985 -1989
6. Vice President - Cuyahoga County Bar Association - 1989 -1992
7. Trustee - Cleveland-Marshall Law Alumni Association - 1985 -1987
8. Secretary - Cleveland-Marshall Law Alumni Association - 1987 -1988
9. Vice President - Cleveland-Marshall Law Alumni Association - 1988 -1989
10. President Elect - Cleveland-Marshall Law Alumni Association - 1989 -1990
11. President - Cleveland-Marshall Law Alumni Association - 1990 -1991
12. Honorary Trustee - Cleveland-Marshall Law Alumni Association - 1991 - Present
13. Charter Life Member - Judicial Conference, Eighth Judicial District

EXHIBIT "A"

14. Member, Grievance Committee - Cuyahoga County Bar Association -
1980 - 1995
15. 1988 - 1990
16. Member and Secretary - Cuyahoga County Bar Association Ethics
Committee - 1977 - 1980
17. Member, Legislative Committee of Ohio Association of Criminal
Defense Lawyers
18. Member, Court Oversight Committee of Cuyahoga Criminal Defense
Lawyers Association
19. Trial Counsel to Cleveland Bar Grievance Committee
20. Co-Chairman, Annual Cleveland-Marshall Alumni Luncheon -
1986 - 1989
21. Speaker, Various Seminars on Legal Ethics and Other Topics
Sponsored by -
Ohio Judicial College
Board of Commissioners on Grievances and Discipline
Ohio Legal Center
Cuyahoga County Bar Association
Cleveland-Marshall College of Law
Cleveland Bar Association
American Association of Attorney-Certified Public Accountants
Various Proprietary Organizations
David Myer College
Cleveland-Marshall Law Alumni Association
22. Guest Lecturer - Cleveland-Marshall College of Law - Topics of
Professional Responsibility and Criminal Law

Community Activities:

1. Board Member - Cuyahoga County Board of Mental Retardation and
Developmental
Disabilities - 1986 - 1996
2. Chairman - Cuyahoga County Board of Mental Retardation
and Developmental Disabilities - 1988 - 1990; 1991
3. President - Cleveland Baseball Federation - 1996 - Present
Member of Executive Committee; Trustee and Counsel for Cleveland
Baseball Federation - 1985 - 1996
4. Board Member - Project Love - 2003 - Present
5. Chairman - Kick Off for Kindness - Project Love - 2002 - Present
6. Member of Campaign Cabinet of Jewish Community Federation
7. Co-Chairman - Friends of the Mentally Retarded (Committee for
Passage of Cuyahoga County Board of Mental Retardation and
Developmental Disabilities levy, November, 1990 election)
8. Vice President - American Jewish Congress, Ohio Region -
1991 - 1995
9. Co-Chairman - Committee on Law and Social Action - American Jewish
Congress, Ohio Region - 1991 - 1995
10. Trustee - Law Advisory Board - Cleveland Works - 1990 - 2003

ex 4 0 19

Colley Intelligence

July 07, 2009

**PO Box 6600
Columbus, OH 43206**

Federal Tax ID #31-1291716

Invoice submitted to:

Jay Milano, Esq.
MILANO WEISER
ATTORNEYS & COUNSELORS AT LAW
2639 Wooster Road
Rocky River OH 44116

In Reference To: Tony Viola
Invoice/Case #09119

Professional Services

			<u>Hrs/Rate</u>	<u>Amount</u>
5/29/2009	PSO	Receive assignment, File creation.	0.10 135.00/hr	13.50
6/11/2009	LEC	Conference with Attorney and Client.	4.00 195.00/hr	780.00
6/12/2009	LEC	Travel time (reduced rate).	1.50 75.00/hr	112.50
	LEC	Teleconference with Client.	0.10 195.00/hr	19.50
6/15/2009	LEC	Attention to file, Edit intake notes.	4.50 195.00/hr	877.50
6/16/2009	LEC	Interview witnesses.	10.00 195.00/hr	1,950.00
	LEC	Conference with Client.	1.00 135.00/hr	NO CHARGE
	LEC	Travel time (reduced rate).	4.00 75.00/hr	300.00
6/17/2009	EAS	Review indictment.	0.50 135.00/hr	67.50
6/19/2009	LEC	Teleconference with Attorney.	0.10 195.00/hr	19.50

ex 4 0 20

Jay Milano, Esq.

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		<u>Hrs/Rate</u>	<u>Amount</u>
6/22/2009	LEC Attention to interview summaries.	6.00 195.00/hr	1,170.00
	JBM Attention to file, Identify Research, Analyze data.	1.75 135.00/hr	236.25
6/23/2009	LEC Attention to interview summaries, Attention to emails to and from Realty Corporation employees.	1.50 135.00/hr	202.50
	JBM Residential Research regarding five (5) subjects, Legal Research, Analyze data.	1.50 135.00/hr	202.50
6/24/2009	JBM Business Research (Clover), Analyze Residential History (Clover), Analyze Residential History (Capuozzo).	1.50 135.00/hr	202.50
6/25/2009	JBM Legal Research, Additional Business Research.	1.50 135.00/hr	202.50
6/26/2009	JBM Analyze Leoni Residential History.	0.50 135.00/hr	67.50
6/29/2009	LEC Attention to file, Teleconference with Client, Teleconference with Fairfield (message), Teleconference with Bloch, Memo to file.	1.50 195.00/hr	292.50
	JBM Legal Research regarding three (3) subjects, Property research regarding four (4) subjects, Analyze data.	2.00 135.00/hr	270.00
6/30/2009	JBM Attempt Education Verification, Property Research, Legal Research, Prepare report. (Clover)	2.50 135.00/hr	337.50
7/1/2009	LEC Attention to file, Attempt interview with witnesses by telephone.	1.75 195.00/hr	341.25
	JBM Property Research, Legal Research, Corporation Research, Research c/o BMV, Analyze data, Prepare reports. (D. Myles, N. Myles)	2.75 135.00/hr	371.25
7/2/2009	LEC Attempt interview with Moran c/o Homestar, Look for Spizullo c/o Paninni's, Look for Manners c/o Manners, Interview Mrs. Calo.	2.50 195.00/hr	487.50
	LEC Travel time (reduced rate).	1.50 75.00/hr	112.50
	JBM Legal Research, Property Research, Prepare report. (Capuozzo).	1.25 135.00/hr	168.75
7/3/2009	LEC Look for Fairfield c/o Starbucks, Teleconference with Fairfield, Look for Ballente c/o Willoughby Hills, Look for Spizullo c/o Panninis, Teleconference with Ryan, Teleconference with Client.	4.00 195.00/hr	780.00

ex 9 p 21

Jay Milano, Esq.

Page 3

	<u>Hrs/Rate</u>	<u>Amount</u>
7/3/2009 LEC Travel time (reduced rate).	2.00 75.00/hr	150.00
7/6/2009 LEC Interview Jordan, Attention to interview summaries.	2.83 195.00/hr	552.50
	<hr/> 64.63	<hr/> \$10,287.50
For professional services rendered		
Additional Charges :		
6/11/2009 LEC Mileage.		71.50
6/16/2009 LEC Mileage.		159.50
6/22/2009 JBM Database expense.		130.00
6/23/2009 LEC BMV abstract expense. (5)		100.00
JBM Database expense.		175.00
6/24/2009 RXS Direct case expense		178.00
7/1/2009 JBM BMV registration expense. (2)		20.00
7/7/2009 LEC Mileage. (7/2 and 7/3)		147.95
Total additional charges		<hr/> \$981.95
Total amount of this bill		<hr/> \$11,269.45
Accounts receivable transactions		
6/12/2009 Payment - advanceCheck No. 6901		(\$2,500.00)
6/18/2009 Payment -Check No. 50602		(\$1,500.00)
Total payments and adjustments		<hr/> (\$4,000.00)
Balance due		<hr/> \$7,269.45

ex 4 p 22

COLLEY INTELLIGENCE
Case Intake Form

Intake Date 5/29/2009

Client MILANO WEISER
ATTORNEYS & COUNSELORS AT LAW

Contact Jay Milano, Esq.
Billing Address 2639 Wooster Road
Rocky River, OH 44116

Telephone (440) 356-2828 **Facsimile** (440) 356-2873
Cellular (216) 280-9715 **Email** jm@milanolaw.com

Secondary Contact REALTY COPORATION OF AMERICA
Address Tony Viola, President Cell: 216-214-4665
815 Superior Avenue, 16th Floor
Telephone Cleveland, OH 44114
tony@realtycorpofamerica.com

Case # 09119 **Repeat Client** Yes

Case Type Mortgage Fraud **Assigned to** LEC

Subject(s)
Case Name Viola, Tony

BUDGET **RATE** \$135.00

ADVANCE \$2,500.00 **Date Received** 6/12/2009
\$1,500.00 6/17/2009

Additional Authorization **Date Received**
TAX **County**

Case History:

Objective:

To Do:

Case Balance **As of**

CLIENT COMMUNICATION			
Date	Investigator	Method	
Message			

Colley Intelligence

October 02, 2009

**PO Box 6600
Columbus, OH 43206**

Federal Tax ID #31-1291716

Invoice submitted to:

Jay Milano, Esq.
MILANO WEISER
ATTORNEYS & COUNSELORS AT LAW
2639 Wooster Road
Rocky River OH 44116

In Reference To: Tony Viola
Invoice/Case #09119

Professional Services

			<u>Hrs/Rate</u>	<u>Amount</u>
7/6/2009	JBM	Corporation Research, Legal Research, Update reports (Capuozzo, Clover).	5.75 135.00/hr	776.25
	LEC	Attention to reports.	1.50 195.00/hr	292.50
7/7/2009	JBM	Legal Research, Analyze data, Update reports (Clover, N. Myles, D. Myles)	6.00 135.00/hr	810.00
	LEC	Teleconference with Caputo.	1.10 195.00/hr	214.50
7/8/2009	JBM	Professional license research, Prepare report (Leoni)	2.75 135.00/hr	371.25
7/9/2009	JBM	Legal Research, Update report (Leoni).	4.25 135.00/hr	573.75
	LEC	Re-interview Caputo, Attention to reports.	4.00 195.00/hr	780.00
8/21/2009	MDK	Prepare summary (C. Manners).	2.00 135.00/hr	270.00
		For professional services rendered	27.35	\$4,088.25

ex 4 024

Jay Milano, Esq.

Page 2

Additional Charges :

	<u>Amount</u>
7/7/2009 JBM Database expense.	25.00
Total additional charges	<u>\$25.00</u>
Total amount of this bill	<u>\$4,113.25</u>
Previous balance	\$7,269.45
Accounts receivable transactions	
9/17/2009 Payment -Check No. 0992	(\$2,000.00)
Total payments and adjustments	<u>(\$2,000.00)</u>
Balance due	<u>\$9,382.70</u>

Restatement of billed Additional Charges

- 6/11/2009 LEC Mileage.
- 6/16/2009 LEC Mileage.
- 6/22/2009 JBM Database expense.
- 6/23/2009 LEC BMV abstract expense. (5)
- JBM Database expense.
- 6/24/2009 RXS Direct case expense
- 7/1/2009 JBM BMV registration expense. (2)
- 7/7/2009 LEC Mileage. (7/2 and 7/3)

EXY-025

Anthony Viola
2280 Mayfield Road # 205
Cleveland Heights, Ohio 44118
MrTonyViola@lcloud.com
(330) 998-3290

June 3, 2020

Mr. Richard Koblentz
Koblentz & Penvose
3 Summit Park Drive, Suite 440
Cleveland, Ohio 44131

Dear Mr. Koblentz,

As a follow up to our earlier conversations, I'm pleased to summarize two potential assignments for your consideration. The first assignment appears to be the most critical because it may result in the reversal of the federal conviction. Due to limitations on funds, we may need to divide these assignments into two retainer agreements, and I'd prefer to work out an up front, flat fee agreement if possible. Please let me know your thoughts on that subject and on the following action items:

ASSIGNMENT # 1: Conflicts of Interest

Despite timely objection to conflicts of interest, Judge Donald Nugent failed to conduct any conflict of interest inquiry, and Assistant U.S. Attorney Mark Bennett stated in writing that an actual conflict of interest existed. However, when I raised conflict issues in post-conviction court filings, Assistant U.S. Attorney Mark Bennett changed his position and falsely said that I waived conflicts and that Judge Nugent conducted a conflict inquiry, when the Clerk of Court has confirmed that both of those statements are false.

I'm requesting that you write to Mr. Bennett (and copy the U.S Attorney, Justin Herdman) demanding that Mr. Bennett correct his false statements about the existence of a conflict of interest waiver. As the attached documents confirm, AUSA Bennett has falsely informed the federal judiciary that I executed a conflict of interest waiver concerning joint defense and that I waived conflicts concerning the simultaneous representation of government witnesses and informants and lender employees by the same lawyers in the joint defense. Bennett has also falsely claimed that the district court conducted a conflict of interest inquiry, when such is also not the case. These false representations about the existence of this conflict waiver have misled the federal judiciary and caused courts to rule that issues related to conflicts were either moot or waived. As you know, the Supreme Court held that a trial judge has a duty to inquire into the existence of an potential conflicts of interest raised before trial and make a factual determination whether or not a conflict exists or can be waived. Failure to conduct such an inquiry means that

any subsequent conviction is subject to automatic reversal, Holloway v. Arkansas, 435 U.S. 475 (1980).

Additional Background – Conflicts of interest

Prior to the federal trial, several conflicts of interest, or potential conflicts of interest, were identified in a court filing, (USA v. Viola, 08-cr-506, N.D. Ohio, Docket # 110) and presented to Judge Nugent. That filing, titled “Motion for Conflict of Interest Inquiry” is said to contain an affidavit Prosecutor Dan Kasaris prepared for Kathryn Clover detailing confidential information she gave to attorneys in the joint defense, along with other information about actual conflicts of interest. This filing was sealed by Judge Nugent. Judge Nugent did, however, acknowledge the conflict, but stated that he would only conduct a conflict inquiry “if there’s a trial” and “if” Kathryn Clover testified – both of which took place but no inquiry was ever undertaken, and the Court never make a factual determination that there was no conflict of interest. (A copy of this transcript is attached and can be found at USA v. Viola, 08-cr-506, N.D. Ohio, Docket # 117).

On the day the trial commenced, AUSA Mark Bennett filed a trial brief that stated “It is the position of the United States that the conflict of interest remains.” Docket # 201, page 18, attached hereto.

Conflicts of interest can be summarized as follows:

- A joint defense agreement signed between Jay Milano and the other attorneys for defendants who proceeded to trial obligated me to engage in a “non-antagonistic defense” but I never agreed to such a defense, which prevented key witnesses favorable to me but adverse to Mr. Gofman from testifying. Several of these witnesses (including Jonathan Rich, Rick Wagner and Matt Fairfield) appeared at the second trial.
- Attorney Michael Goldberg simultaneously represented government informant / government witness Kathryn Clover and criminal defendant Uri Gofman.
- Mr. Goldberg also represented Clover’s husband Matt Fairfield, (Cuyahoga County Common Pleas Court Case # 09-cr-525429 and Case # 09-crb-820, Berea, Ohio.) Matt Fairfield provided favorable information to the defense appeared at the second trial as a defense witness but did not testify in federal court because of what attorneys called “privilege issues.”
- Mr. Gofman paid for the following: (A) The defense of co-defendant Gennadiy Simhovich, who was represented by Craig Weintraub. Mr. Weintraub shared offices with Attorney Michael Goldberg. (B) Mr. Gofman paid expert Richard Bitner, who testified at trial, instead of my expert, Frank Ruma. Mr. Ruma’s report was adverse to Mr. Gofman, as he blamed property seller Gofman, and not real estate agents, for any property condition issues. Mr. Ruma testified at my second trial. (C) Mr. Gofman paid for the investigation undertaken by Investigator Tom Pavlish. Jay Milano did not utilize investigative materials from investigator Lois Colley or Expert Frank Ruma, but instead utilized Gofman investigators and experts.

- As you wrote in your initial report, Jay Milano subordinated my legal interests to his financial interests when he violated his own “flat fee” agreements, charged me \$15,000 for an investigation and never paid his investigator and sought a personal loan. The joint defense – where Gofman-paid attorneys and investigators did all the trial preparation -- further damaged my defense but was in Mr. Milano’s financial interests.
- Craig Weintraub, paid by Mr. Gofman to represent defendant Mr. Simkhovich, simultaneously represented lender employees indicted by the Task Force, including Mike Scola and Angela Pasternak, see Ohio vs. Harris, et. al., Case #10-cr-551555 and Ohio v. Pasternak, Case # 556307-A, Cuyahoga County Common Pleas Court. The Harris case involves many of the same transactions at issue in my indictment. I blamed these employees of Argent Mortgage for any wrongdoing at my second trial, yet these individuals were represented by counsel in my joint defense.

During the trial itself, defense attorneys repeatedly informed jurors they were involved in a joint defense and prosecutors also repeatedly made references to joint defense. For example, AUSA Bennett, informed the Court and jurors that defendants were “engaged in joint defense,” see trial transcript page 2361.

It is unclear to me why Judge Nugent has (a) ignored the conflict; (b) Allowed me to sit in jail for a decade because of these conflicts; (c) refused to grant me an evidentiary hearing in federal court so I can present the exact same proof of my innocence utilized at the second trial; and (d) Refused to unseal the records concerning conflicts of interest despite numerous attempts. Regardless, our target here is the US Attorney’s Office, they’ve lied about the conflict waiver and ruined all of my post-conviction proceedings. Had they acknowledged there was a conflict – a position they took before trial – I would have been released from jail long ago.

SUPPORTING DOCUMENTS -- PART ONE, Actual Conflicts of Interest

- Joint Defense Agreement, signed by Mr. Milano but not me.
- Docket # 201 – Mr. Bennett’s Trial Brief says the government’s position is that a conflict exists.
- Attorney Goldberg represents Matt Fairfield
- Attorney Craig Weintraub represents Lender Employees
- Letter from Clark of Court – No waiver exists // No Conflict Hearing Ever Took Place

SUPPORTING DOCUMENTS – PART TWO, False Statements by Mark Bennett

- In my direct appeal, case # 12-3112, Bennett states that conflicts were not raised on a timely basis, even though timely objections to conflicts were raised.
- In my 2255 / habeas proceeding, Bennett states I executed a conflict waiver.
- In Court of Appeals case 14-3348, Bennett again falsely informs the Sixth Circuit I executed a conflict waiver
- Copy of section of court ruling stating I waived conflicts

ASSIGNMENT # 2: Contacting The Ohio Supreme Court with Newly Discovered Evidence and asking the Discipline Counsel to re-open its investigation of Dan Kasaris

Following the government's initiation of criminal charges in both state and federal court, but prior to the first trial, Prosecutors Mark Bennett and Dan Kasaris became enraged that I refused to enter a guilty plea under any circumstances. Shortly thereafter, these same prosecutors directed the multi-jurisdictional Task Force's Office Manager, Dawn Pasela, to pose as a graduate student studying criminal justice and working with local defense attorneys on similar cases. Ms. Pasela then began attending happy hours that friends and supporters sponsored and offered to assist my defense. Unbeknownst to me at the time, she recorded a series of post-indictment conversations about trial preparation so prosecutors could obtain confidential defense trial strategy information. Ms. Pasela also donated funds towards my legal fees so prosecutors could utilize her cancelled checks to identify the law firm's bank account, track investigative expenses and identify potential defense witnesses. These individuals were promptly threatened with indictment if they testified for the defense. FBI Agent Jeff Kassouf admitted listening to these tapes, and Dan Kasaris has admitted wiring up Ms. Pasela. However, these voice recordings were never provided to the defense before either trial – and still have not been provided to the defense all this time later. These voice recordings are part of the litigation being pursued by Covington & Burling. And, as you are aware, following the initiation of adversarial proceedings, the government is not permitted to elicit confidential defense trial strategy information or otherwise intrude on the Sixth Amendment right to counsel, Massiah v. United States, 377 U.S. 201 (1964).

As you may know, Ms. Pasela later came forward and informed me what was going on, and provided evidence not produced before the first trial. She claimed the U.S. Attorney shifted exculpatory evidence from their office to the Task Force location, where Ms. Pasela worked, then pled ignorance to this evidence. She not only provided me with that evidence but also helped me prepare for the second trial by making exhibits and helping write questions for witnesses. She also offered to testify as a defense witness. After she was added to my witness list, however, the FBI and County Prosecutors threatened to imprison and indict her if she testified. She was found dead in her apartment by her Father shortly after her scheduled testimony. Without her assistance, I do not believe I would have been acquitted at the second trial, yet her death has never been investigated, nor have the actions of prosecutors concerning their intrusion into the Sixth Amendment right to counsel.

In 2012, after the second trial, I filed a law license complaint with the Ohio Supreme Court about Prosecutor Kasaris's improper and illegal activities including his administrative assistant (who had no undercover training) as a clandestine operative. Kasaris responded that the Cuyahoga County Sheriff had previously investigated Ms. Pasela, and he requested the Supreme Court should take no further action, a position the Supreme Court accepted. However, we possess proof that Mr. Kasaris's response to the Disciplinary Counsel contained the following material misrepresentations:

- (1) Bob Friedrick has confirmed that the Cuyahoga County Sheriff never conducted any such investigation, a fact confirmed by the Sheriff's Office.

- (2) Mr. Kasaris did not truthfully inform the Supreme Court that he utilized Ms. Pasela's cancelled check to subpoena the law firm's bank account.
- (3) Mr. Kasaris falsely stated that Ms. Pasela only attended a single event, and only stayed a few minutes, but these recordings continued over an extended period of time, a fact confirmed by Mr. and Mrs. Pasela in affidavits and text messages and phone records I've previously provided to the federal courts but that are included with this submission.

Assignment # 2 is to approach the Ohio Supreme Court with this new evidence and ask them to re-open this investigation, with the goal of having Mr. Kasaris's license suspended or revoked.

SUPPORTING DOCUMENTS ATTACHED HERETO INCLUDE:

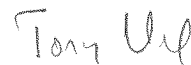
- (1) The Ohio Supreme Court's 2013 letter concerning this matter
- (2) Affidavits from Karen and Edward Pasela, Dawn's parents
- (3) Cancelled check from one of Dawn's contributions towards our legal fees
- (4) An e mail from Dan Kasaris threatening to prosecute Dawn for violating her confidentiality agreement and a letter from the Ohio Attorney General stating there was no such confidentiality agreement.
- (5) Resume and job description, proving Dawn had access to federal evidence
- (6) A document confirming the FBI shifted evidence in my case from the U.S. Attorney's Office to the Task Force location prior to the first trial.
- (7) An FBI admission in my case that FBI Agent Jeff Kassouf listened to tapes but then sent those voice recordings to the Task Force location.
- (8) Defense subpoena proving Dawn was on our witness list
- (9) Judge Gaul's announcement of Dawn's death before the end of the second trial.

Should you wish to speak with Mr. Friedrich or counsel at Covington & Burling concerning these matters, kindly note following contact information:

- Stephen Raiola
Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: 202 662 5786 E mail: sraiola@cov.com
www.cov.com
- Mr. Robert Friedrich
Friedrick & Associates
P.O. Box 41035
Brecksville, Ohio 44141
Telephone: 440 546-8393 E mail: Bob@FAInvestigations.com

Thank you very much for reviewing this submission. I'm looking forward to hearing your thoughts about the merits of these assignments and how we can structure a fee agreement that works given my limited financial resources.

Very Truly Yours,

A handwritten signature in black ink that reads "Tony Viola". The signature is written in a cursive, slightly slanted style.

Tony Viola

Exhibit G

SWORN AFFIDAVIT

I, Matthew Fairfield, swear under the penalty of perjury that the following statement is true and correct:

- 1) I was married to Kathryn Clover from 2006-2010. We lived together during this time in Cleveland, Ohio.
- 2) From 2005-2008, Kathryn purchased rental properties with Paul Lesniak using Realty Corporation of America, a real estate brokerage owned by Tony Viola. She later rented office space from Viola where she was affiliated with Transcontinental Lending and Pacific Guarantee Mortgage. However, she presented herself as Tony Viola's Partner.
- 3) I visited her office several times and on one occasion I overheard a phone conversation she was having with a mortgage rep about "altering" loan documents. When I ask her about this, she said "Don't say anything. Tony can never know I am doing this. He'd never let this deal close if he knew what I was doing."
- 4) In 2009, Kathryn was indicted for mortgage fraud. Shortly after the indictment, I entered our home and found Kathryn shredding documents she had brought home from her office and compiling computer hard drives (3 total) to destroy. When I asked her what she was doing, she said she was getting rid of things because she was cooperating with the prosecutor as their "key witness" to get herself out of trouble and set up Viola to take the fall in her case.
- 5) Over the next few months, I became very concerned about the amount of time Kathryn was spending at the prosecutor's office and that she was meeting prosecutor Dan Kasaris outside of the office at all hours of the day and night. I saw that her email account showed numerous email communications between the two of them. I read the text messages between Kathryn and Dan, which included sexual photos of both of them.
- 6) During this time she was not employed but regularly had huge amounts of cash - thousands of dollars in hundred dollar bills - on her person.

- 7) December 2009, Kathryn had forgotten that she had asked me to pick her up from school and I saw her exit the building and get into an unknown vehicle. I followed this car to a bar in Lakewood where she jumped out of the car and kissed Kasaris who was waiting for her to arrive.
- 8) In February 2010, I confronted Kathryn about the texts, emails, and the rendezvous with Dan Kasaris at the Lakewood bar. I demanded to know what was going on. It was then she admitted she had been having a sexual affair with Kasaris.
- 9) Later in 2010 Kathryn told me that she was in love with Dan Kasaris and wanted to end our marriage. We were subsequently divorced by 2011.

Around May, 2020, I became aware that Tony Viola had been released from prison. I heard his broadcast on a national radio show shortly afterwards. I reviewed his website to learn that he has a federal case pending that directly pertains to missing evidence in his original criminal case, the same evidence that I witnessed being destroyed by Kathryn Clover.

Under the penalty of perjury, I swear the foregoing is true and correct and comports with any and all previous statements I have made regarding this matter.

OFFICIAL STAMP
RAYNA MARIE HERNANDEZ
NOTARY PUBLIC - OREGON



Date 7/27/20

Matthew Fairfield
Matthew Fairfield

Notary Public Rayna Hernandez
07-27-2020

STATE OF OREGON
COUNTY OF KLAMATH

OFFICIAL STAMP
RAYNA MARIE HERNANDEZ
NOTARY PUBLIC - OREGON
COMMISSION NO. 979570
MY COMMISSION EXPIRES SEPTEMBER 26, 2022

To: dan kasaris
Subject: RE:

Yeah I have kept up with Manuel's condition. I told John I'm free this Thursday to go so he was going to call your mom and see what is going on this week. Have you gone yet?

On Sep 3, 2012 9:35 PM, "dan kasaris" <danieljkasaris@yahoo.com> wrote:

Yea I thought pretty good too..when u guys going 2 c manual..havent talked to John today..tumor grapefruit size in stomach..whole stomach coming out..ahhhh not good..like mag told me and my kids..u see what smoking did to me ..same there..he was commenting a month ago how he was surprised he was cancer free after all the smoking he did

From: Kelly Patrick
Sent: 9/3/2012 9:32 PM
To: Danny Kasaris
Subject: Re:

Pretty cool! Love Melanie's blue eyes.

On Mon, Sep 3, 2012 at 8:31 PM, Danny Kasaris <danieljkasaris@yahoo.com> wrote:
<http://thepostnewspapers.com/royalton/>

check out dem and mel

Daniel J. Kasaris
Assistant Cuyahoga County Prosecutor
Representing the Residents of Ward 6
North Royalton City Council
North Royalton, Ohio
440-305-4226

From: John Rydarowicz <johnr72hd@yahoo.com>
To: dan kasaris <danieljkasaris@yahoo.com>
Sent: Monday, September 3, 2012 4:56 PM
Subject: Re:

Dan:
Was that at mom's house on Viola?
LoveDad

From: dan kasaris <danieljkasaris@yahoo.com>
To: Kat Clover <kclover24601@yahoo.com>; John Rydarowicz <johnr72hd@yahoo.com>
Sent: Monday, September 3, 2012 2:30 PM
Subject:

As u can see I started early..grabbed my dzia beer bottle and away I went..nothing like a Stroh s. Hahahah

Affidavit of Kelly Patrick

State of Ohio
County of Cuyahoga

I, Kelly Patrick, hereby depose and state under oath the following:

- (1) I was married to Attorney John Patrick from May 2001 to July 2011. John is a corporate partner at Reminger, a Cleveland-based law firm. We had two children together.
- (2) John Patrick is biological brothers with Senior Ohio Attorney General Dan Kasaris. I met Dan and his wife Susan Kasaris in 1999. Throughout my marriage, I was close with Dan and Susan. I hosted many family parties at our home. Dan and Susan's children were very close with me and eventually my children, their eldest daughter frequently spending the night at our home.
- (3) Despite divorcing in 2011, I remained close and was in regular communications with Dan. In 2012, Dan sent me an email referencing a picture of him and bragged how he was young when he started drinking alcohol. In that email, Dan also copied Kat Clover. Dan and I would talk frequently because I created and built a family tree for my children, researching not only my family but also John and Dan's family history. And despite being divorced, I still visited John's house when Dan was visiting, often taking pictures of everyone together.
- (4) In 2016, Susan Kasaris discovered that her husband Dan was having an affair and Dan moved out of the family home on Beckingham, sometimes staying at John's home. During this time, Susan reached out to me for support. For over a year, from October 7, 2016 through October 17, 2017, we exchanged messages about Dan seeking counseling for his excessive drinking and his sexual relationships outside of the marriage. In one message, Susan discusses Dan's "affair" and in another, she states "He must not want her because he isn't divorcing me." In addition to this affidavit, I am providing print outs of all of the messages between Susan and me.
- (5) Susan's messages confirm that Dan had left twice during this time after his affair was publicized. Susan and I exchanged messages sharing details of our alcoholic and abusive marriages to John and Dan. She repeatedly told me Dan called her and her daughter "fat." Susan described Dan's "mid-life crisis" with his excessive drinking and out of control behavior.
- (6) During a visit to John's house, John complained to me about Dan's behavior. John claimed that his brother was drinking a lot, taking pills, and obsessed with finding girls to have sex with. Dan complained that he could not get an erection when he was with his wife and sought out sexual relationships with other females to determine whether or not he could sustain an erection.
- (7) During a visit to John's home, I found several bottles of prescription medications prescribed to Dan Kasaris for anxiety and pain.

- (8) My communications with Susan abruptly ended in October, 2017 after Dan Kasaris and John Patrick discovered them. Susan wrote that “why are you sending John an e mail Dan is in alcoholic counseling! ... I can’t talk ... I asked you not to talk about our convo” and then she blocked me from Facebook Messenger.
- (9) In addition to written messages between Susan and me, I also have in my possession e mails from Dan Kasaris describing his “hand jobs we got from co-workers,” among other admissions.
- (10) I am coming forward now and providing this information in hopes that it will be helpful to others. I am very concerned that Dan Kasaris committed misconduct during his prosecution of criminal cases and I felt compelled to make the information in my possession available to the public.

Further affiant sayeth naught.

Kelly Patrick
Kelly Patrick

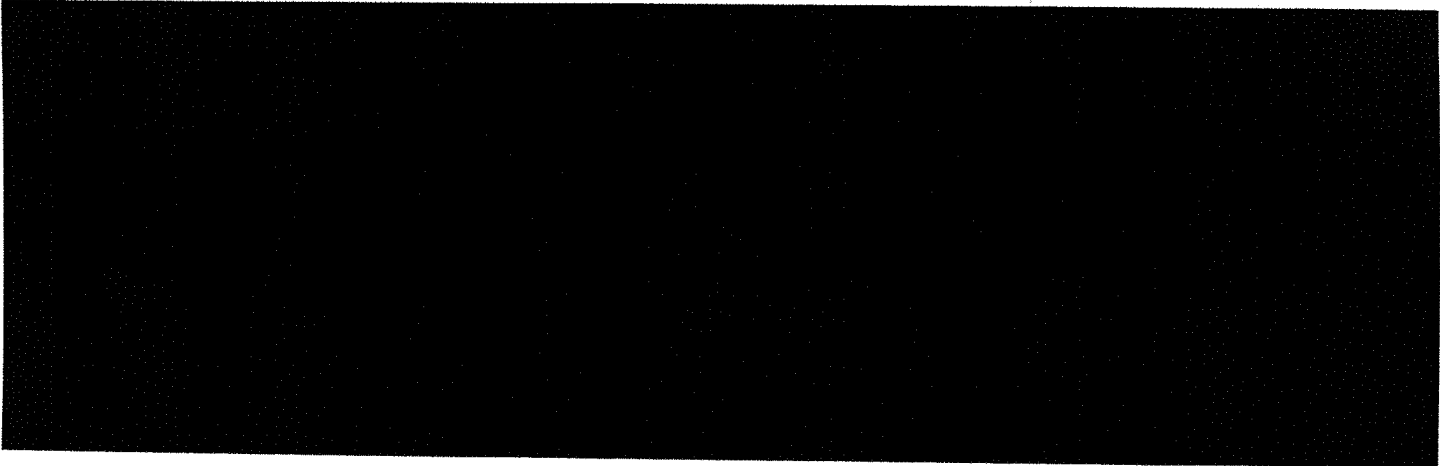
6/27/20
DATE

NOTARY:




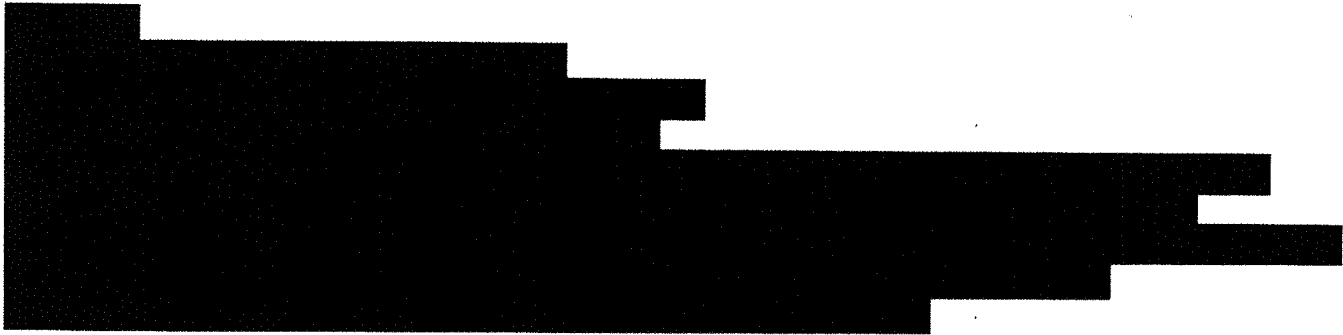
[Handwritten Signature]

3/29/24

Exhibit H



From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Gary Stein <gstein@cuyahogacounty.us>; Nicole DiSanto <ndisanto@cuyahogacounty.us>
Cc: Jaye Schlachet <jaye@schlachetlaw.com>; Mark Bennett <Mark.Bennett2@usdoj.gov>
Sent: Thursday, February 2, 2012 8:51 AM
Subject: KAT CLOVER AKRON PROPERTIES



Daniel J. Kasaris
Assistant County Prosecutor
Cuyahoga County, Ohio
1200 Ontario ST. 9th Floor
216-443-7863
216-698-2270 (fax)

[REDACTED]

From: Kasaris, Daniel
Sent: Thursday, February 2, 2012 9:49 AM
To: Kathryn Clover
Subject: Re: KAT CLOVER AKRON PROPERTIES
Attachments: Daniel Kasaris.vcf

[REDACTED]

Assistant County Prosecutor
Cuyahoga County, Ohio
1200 Ontario ST. 9th Floor
216-443-7863
216-698-2270 (fax)

>>> Kathryn Clover <kclover24601@yahoo.com> 2/2/2012 9:29 AM >>>

[REDACTED]

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Gary Stein <gstein@cuyahogacounty.us>; Nicole DiSanto <ndisanto@cuyahogacounty.us>
Cc: Jaye Schlachet <jaye@schlachetlaw.com>; Mark Bennett <Mark.Bennett2@usdoj.gov>
Sent: Thursday, February 2, 2012 8:51 AM
Subject: KAT CLOVER AKRON PROPERTIES

[REDACTED]

[REDACTED]

From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Thursday, February 2, 2012 9:29 AM
To: Kasaris, Daniel; Kathryn Clover
Subject: Re: KAT CLOVER AKRON PROPERTIES

[REDACTED]

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Gary Stein <gstein@cuyahogacounty.us>; Nicole DiSanto <ndisanto@cuyahogacounty.us>
Cc: Jaye Schlachet <jaye@schlachetlaw.com>; Mark Bennett <Mark.Bennett2@usdoj.gov>
Sent: Thursday, February 2, 2012 8:51 AM
Subject: KAT CLOVER AKRON PROPERTIES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Daniel J. Kasaris
Assistant County Prosecutor
Cuyahoga County, Ohio
1200 Ontario ST. 9th Floor
216-443-7863
216-698-2270 (fax)

Exhibit I

5407 Alber Ave
Parma, OH 44129
440.915.9207
dawn_pasela@hotmail.com

Dawn Pasela

Professional

Profile: Experienced professional manager of administration in a variety of environments. Office manager looking to continue a career in the security industry through investigations. Ambitious Law Enforcement/Information System student with success in coordinating career path with education.

History:

State of Ohio, Attorney General's Office – Mortgage Fraud Task Force
Office Manager 2008-Present

- Direct communications between multiple agency task force members.
- Efficiently communicate with local, state and federal level agencies.
- Design and implement evidence receiving and recording system for documenting chain of custody.
- Convert files to electronic formats and filings for case preparation.
- Prepare cases' documents for trial.
- Design and maintain network of information for task force and deconfliction purposes.
- Evidence processing, including but not limited to receiving evidence, creating chain of custody, converting files for investigators, creating and maintaining case file evidence structure.

Shooz Beachwood, OH
General Manager 2007

- Executed daily operations of financial reporting, employee files, store operations, loss prevention, document retention and reconciliations.
- Trained and managed 45 employees and achieved significant improvements in their productivity, margin and customer relations skills.
- Interpreted company policies to workers' and human resource regulations.
- Instructed computer courses on Microsoft applications and basic computer hardware operation.
- Working knowledge in SAP, ADP, IMS, POS, JDA, Kronos, Macros and Microsoft Excel, Word, Access, PowerPoint and Outlook.
- Conducted and assisted in both internal and external theft cases, check fraud and credit card disputes.

CompUSA Beachwood, OH
Operations/HR Manager 2004 - 2007

- Served as Training Department Coordinator for locations network maintenance, including class set-ups, software requirements, firewall setup, computer configuration, network setup (hardware and software) and computer trouble shooting.
- As Training Department Coordinator, instructed Microsoft Office Application courses to consumers and businesses, instructed employees on computer system use and services.
- Same responsibilities as General Manager of Shooz.

Education: Cuyahoga Community College Parma Heights, OH
Associate – Law Enforcement May 2009

Language: American Sign Language
English Sign Language

Volunteering: Youth Challenge 1999-2003
St. Ignatius Soup Kitchen 2002-2004
Parma Animal Shelter 2008
Founder of Student Criminal Justice Club – Tri-C 2008

Exhibit J

DAWN M. PASELA 06-05
1520 CLEARBROOKE DR., UNIT 103
BRUNSWICK, OH 44212

25-3071
440
700161631

147

210 HR. - SN Norman Star RATE 11-12-09

PAY TO THE
ORDER OF

Toby Wilson Trust Fund

\$ 25.00

Twenty Five Dollars

DOLLARS

CHASE

JPMorgan Chase Bank, N.A.
Columbus, OH 43271
www.Chase.com

MEMO

VIA DOR FUND

M. P. H.



Exhibit K

AFFIDAVIT OF KAREN PASELA

STATE OF OHIO
COUNTY OF CUYAHOGA

I, Karen Pasela, depose and state under oath as follows:

1. I was the mother of Dawn Pasela, who died on April 25, 2012.
2. Dawn worked for the Cuyahoga County Mortgage Fraud Task Force, first as a contract employee and then as a county employee. Dawn was recruited to work at the task force by Arvin Clar. Then Assistant Cuyahoga County Prosecutor Daniel Kasaris was Dawn's boss. While at the task force, she worked with FBI agents. In fact, she was told if she finished two more subjects, and with her background and experience, she could work for the FBI.
3. Dawn served in the capacity of office manager. One of her duties was to maintain the task force's files. After Dawn worked there for a while, she said she was concerned that things were being taken from the files and not returned. She also said some individuals had signed her name when they took the files, and she feared they were hiding them from attorneys representing the people the task force was investigating. She particularly expressed concern about the way the case against Anthony Viola and Susan Alt were being handled. Dawn showed me photos she had taken of files haphazardly stacked in the hallway, which made them easily accessible to almost anyone.
4. Dawn also mentioned that some computers in the office had disappeared, and she couldn't find out why or where they went. Dawn also mentioned that Katheryn Clover was frequently in the Prosecutor's Office, accessing files and evidence.
5. Although Dawn was not trained as an investigator, she was asked to go to a fundraising event for Anthony Viola after he had been indicted and to secretly record what was said. Dan Kasaris gave Dawn money and told her to write a personal check for Viola's defense fund so the prosecutors could determine at which bank the fund was being maintained. Dawn wondered about the propriety of these tactics.
6. Dawn was told that she had to continue to attend events sponsored by Viola's supporters wearing a wire, or her job would be in jeopardy. I was very alarmed and afraid for my daughter's safety and advised her not to wear a wire. However, Dawn felt she had no choice but to comply with her boss's orders.

7. Eventually, Dawn began to sympathize with Viola because she felt that prosecutors were withholding documents that could help in his defense.
8. As her disenchantment over what was going on at the task force grew, Dawn began drinking excessively. This finally led to her termination. The task force later asked her to come in to discuss reinstatement, but she declined.
9. After Dawn was no longer working at the task force, she told me she was meeting with Viola. I was very worried about Dawn and I was concerned that if she tried to help Viola, she could be prosecuted. I urged not to get involved.
10. During Viola's second trial, Dan Kasaris showed up at our house, with another individual, wanting to come in and search for computers and hard drives. He demanded entry into my house but my husband Edward refused, and told him we had no computers from his office and to return with a search warrant.
11. After the task force learned that Dawn had been subpoenaed to testify on Viola's behalf, two investigators came to her apartment to pressure her to reveal what Viola wanted her to testify about. Dawn called me one morning, upset and crying, saying that the two men said that it would be wise for her to leave Ohio for a while and that if she testified for Viola, she could end up in federal prison. As a result, Dawn did not testify.
12. Dawn was so frightened that the investigators might return that she moved into our house for 10 or more days and stopped drinking. She also parked her car in our garage so no one would see it. Dawn eventually began to feel stronger physically and emotionally and moved back to her apartment.
13. During Viola's second trial, when Dawn was staying at our house, I heard Dawn speaking to Viola. She was crying and so upset that she was visibly shaking. She said she was too upset to talk more about what was going on during the trial.
14. When we visited Dawn the day before she died, I could tell that she started drinking again, and we urged her to stop.
15. After Dawn was found dead in her apartment, the police refused to allow my husband Ed to see Dawn's body. When my daughter Christine arrived at Dawn's apartment, police officers told her that she was not allowed to see Dawn's body. No one in my family ever saw Dawn's body and no one in my family was ever asked to identify Dawn's body.
16. Later, Ed called the Cuyahoga County Coroner, requesting to see Dawn's body. When the Coroner called back, they were adamant that I should not come because

you want to remember her the way she was and that she looked bad. I was insistent and wanted to see my daughter but I was again told not to go to the Coroner's Office. I was told to wait to see Dawn at the funeral parlor.

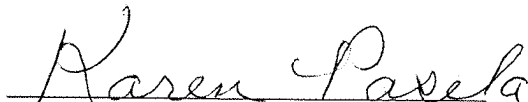
17. At the funeral parlor, when I first saw Dawn's body at a private viewing, I was shocked at the way her face looked. Many other family members told me the same thing, which I thought at the time was the result of a poor makeup job. Because of our complaints, the funeral home redid Dawn's makeup before the public viewing. Even after the second makeup job, family members who did not see Dawn at the private viewing commented that Dawn did not look natural.

18. I agree with my husband Ed's opinion, which is that Kasaris contributed towards my daughter's death because

- The way he treated her was wrong
- The unprofessional tactics that were used in the office made my daughter extremely upset and she did not know how to handle what was going on with the files and computers.
- Dawn was also threatened with prosecution for violating a confidentiality agreement, but we have proof that she never signed any agreement.

19. I believe that there should be a full investigation into the actions of Kasaris as well an entirely new investigation into my daughter's death.

Further I sayeth naught.


Karen Pasela

Sworn and subscribed in my presence this 25 day of May, 2022.


NOTARY PUBLIC



ANDREW SCHMIDT
Notary Public, State of Ohio
My Commission Expires
January 2, 2024

AFFIDAVIT OF EDWARD PASELA

STATE OF OHIO
COUNTY OF CUYAHOGA

I, Edward Pasela, depose and state under oath as follows:


1. I was the Father of Dawn Pasela, who died on April 25, 2012.
2. For the last three years of her life, Dawn worked for the Cuyahoga County Mortgage Fraud Task Force, first as a contract employee and then as a county employee. Dawn was recruited to work at the task force by Arvin Clar. Then Assistant Cuyahoga County Prosecutor Daniel Kasaris was Dawn's boss. While at the task force, she worked with FBI agents. In fact, she was told if she finished two more subjects, and with her background and experience, she could work for the FBI.
3. Dawn served in the capacity of office manager. One of her duties was to maintain the task force's files. After Dawn worked there for a while, she said she was concerned that things were being taken from the files and not returned. She also said some individuals had signed her name when they took the files, and she feared they were hiding them from attorneys representing the people the task force was investigating. She particularly expressed concern about the way the case against Anthony Viola and Susan Alt were being handled. Dawn showed me photos she had taken of files haphazardly stacked in the hallway, which made them easily accessible to almost anyone.
4. Dawn also mentioned that some computers in the office had disappeared, and she couldn't find out why or where they went.
5. Although Dawn was not trained as an investigator, she was asked to go to a fundraising event for Anthony Viola after he had been indicted and to secretly record what was said. Kasaris gave Dawn money and told her to write a check for Viola's defense fund so the prosecutors could determine at which bank the fund was being maintained. Dawn wondered about the propriety of these tactics.
6. Dawn continued to attend events sponsored by Viola's supporters and eventually began to sympathize with him because she felt that prosecutors were withholding documents that could help in his defense.

7. As her disenchantment over what was going on at the task force grew, Dawn began drinking excessively. This finally led to her termination. The task force later asked her to come in to discuss reinstatement, but she declined.
8. During Viola's second trial, Dan Kasaris showed up at our house, with another individual, wanting to come in and search for computers and hard drives. He was very insistent that I let him into my house. I refused, and told him we had no computers from his office and that he was welcome to return with a search warrant.
9. After the task force learned that Dawn had been subpoenaed to testify on Viola's behalf, two investigators came to her apartment to pressure her to reveal what Viola wanted her to testify about. She told me that the two men said that it would be wise for her to leave Ohio for a while and that if she testified for Viola, she could end up in federal prison. As a result, Dawn did not testify.
10. Dawn was so frightened that the investigators might return that she moved into our house for 10 or more days and stopped drinking. She also parked her car in our garage so no one would see it. Dawn eventually began to feel stronger physically and emotionally and moved back to her apartment.
11. When we visited Dawn the day before she died, I could tell that she started drinking again, and we urged her to stop.
12. I was concerned about Dawn and could not reach her on the phone, so I went to her apartment to check on her. When she did not answer the door, I requested a welfare check. During previous welfare checks, one or two officers showed up within 20 – 30 minutes. In this case, six police officers immediately arrived on the scene. They refused to let me into my daughter's apartment, physically held back in the hallway, refusing to allow me access to the apartment. I was never allowed into the apartment to view Dawn's body.
13. After I left Dawn's apartment to tell my wife Karen what happened, my daughter Christine arrived at Dawn's apartment. Police officers told her that she was not allowed to see Dawn's body. No one in my family ever saw Dawn's body and no one in my family was ever asked to identify Dawn's body.
14. In my personal opinion, Kasaris contributed towards my daughter's death because
 - The way he treated her was wrong
 - The unprofessional tactics that were used in the office made my daughter extremely upset and she did not know how to handle what was going on with the files and computers.

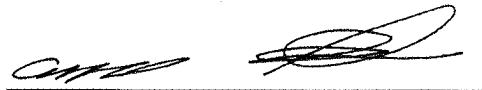
- Dawn was also threatened with prosecution for violating a confidentiality agreement, but we have proof that she never signed any such agreement.

15. I believe that there should be a full investigation into the actions of Kasaris as well a new investigation into my daughter's death.

Further I sayeth naught.


Edward Pasela

Sworn and subscribed in my presence this 25 day of May, 2022.


NOTARY PUBLIC



ANDREW SCHMIDT
Notary Public, State of Ohio
My Commission Expires
January 2, 2024

Exhibit L

would have been located through the FBI's searching efforts. As a result of its search efforts, the FBI located responsive main file 329E-CV-71645, and several sub-files 329E-CV-71645-1A and 329E-CV-71645-GJ-1A, which were indexed to plaintiff's name. During a detailed review and processing of the records, the FBI did not locate the specific two items detailed above.

(25) In a further effort to locate the above items, RIDS contacted on November 14, 2016, the lead FBI Special Agent ("SA") over plaintiff's criminal investigation, and he confirmed that the above described items are not in the FBI's custody. The SA informed RIDS, "There were no tapes, consensual monitoring, or transcripts in which the FBI tasked Ms. Dawn Pasela. Any [taskings] *sic* would have been done by the Cuyahoga County Mortgage Fraud Task Force, and not the FBI." The FBI did not retain any such records. In addition, as to any emails from and to Katherine Clover, the SA reported, "Early in the investigation Ms. Clover retained her attorney, therefore to my knowledge any correspondence would have been between the USAO and her attorney."

JUSTIFICATION FOR NONDISCLOSURE UNDER THE PRIVACY ACT

(26) When an individual requests records about themselves from the FBI, RIDS first considers the request under the Privacy Act, which generally provides individuals a right of access to records about them maintained in government files, unless the records are part of a system of records exempted from individual access. See 5 U.S.C. § 552a(d). Exemption (j)(2) exempts from mandatory disclosure systems of records "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals..." 5 U.S.C. § 522a(j)(2).

Vida vs
Dept of Justice
15-CV-242,
erie, PA

1 some resources to investigate mortgage fraud. And a lot of
2 the mortgage fraud investigations you'll see, we will see --
3 excuse me. We may start this investigation on an
4 individual, and that spirals out into many other
08:38:13 5 individuals.

6 So a portion of mortgage -- part of the Mortgage Fraud
7 Task Force was used to de-conflict with other potential
8 agencies that may be working mortgage fraud.

9 Q. Who all is involved in the Task Force?

08:38:27 10 A. Mortgage Fraud Task Force is comprised of various
11 local state and federal agencies to include the FBI. I was
12 one of the members over there. It is funded by the State
13 Attorney General's office, so the State Attorney General and
14 then various local agencies such as the Sheriff's
08:38:49 15 Department, Beachwood police, Pepper Pike police and various
16 other entities.

17 Q. Is there a particular aspect of mortgage fraud that
18 entails or requires the local and the state and the federal
19 to coordinate?

08:39:04 20 A. Just in general, for us to coordinate the Cuyahoga
21 County nationally, it became a big priority. The FBI became
22 one of our big priorities, one of our top priorities on the
23 criminal side, so it was a large focus.

24 In terms of Cuyahoga County, there was a lot of
08:39:24 25 mortgage fraud that was a significant amount of mortgage

1 Q. And were there times when you listened to it with
2 members of the U.S. Attorney's Office?

3 A. Well, a lot of those documents -- not documents. I
4 don't know what type of file it would be. Maybe a PDF,
5 whatever type of wave.

15:34:23

6 Q. Audio wave?

7 A. Audio wave file. Apologize about that. Whenever they
8 were provided to us, I had a chance to listen to some and
9 so did Mr. Saunders.

Federal trial transcripts

FBI Agent Jebb Kassouf testimony

USA vs Viola
03-12-506

Exhibit M

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CASE NO. 14-3348/3624

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANTHONY L. VIOLA,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Ohio
Eastern Division, Case No. 1:08CR506

GOVERNMENT'S OPPOSITION TO, AND MOTION TO STRIKE, VIOLA'S
REQUEST(S) THAT THE COURT TAKE JUDICIAL NOTICE OF
AFFIDAVITS

Anthony L. Viola, Pro Se
#32238-160
F.C.I. McKean
P.O. Box 8000
Bradford, PA 16701

STEVEN M. DETTELBACH
United States Attorney

Mark S. Bennett
Assistant United States Attorney
United States Court House
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3878; (216) 522-2403 (fax)
Mark.Bennett2@usdoj.gov

Viola initially filed his Request That The Merits Panel Take Judicial Notice of Affidavits Filed In The District Court and Unopposed By The Government (Doc. #31) with the affidavits attached in this Case on February 2, 2015. Viola filed the same Request and affidavits (Doc. # 35) on March 2, 2015¹. The Government respectfully requests that this Court deny Viola's Requests and Strike these filings (Doc. #31 and #35) from the record for the following reasons:

One, these affidavits are not in the record. Second, the averments within the affidavit do not comport with Federal Rule of Evidence 201(b)(1) and (2). The facts alleged are not generally known in the community, and the facts claimed in the affidavit certainly are not ones that "can accurately and readily be determined from sources whose accuracy cannot reasonably be questioned." Accordingly, since the affidavits do not satisfy the Rule, this Court should not take judicial notice of the affidavits or any of the information asserted.

Furthermore, the United States hotly dispute Viola's allegation that Dawn Pasela was ever threatened by the Undersigned or any federal agents, or that the Undersigned or any federal agent had anything to do with Mr. Pasela untimely

¹ The Undersigned respectfully requests that the Court not consider the delay in opposing Viola's initial Request as a reduction to the extent with which the Undersigned disputes Viola's allegations. The Undersigned has been preparing for a particularly contested trial since January, 2015, and in trial since February 20, 2015 in United States v. Atway, et al. in the Northern District of Ohio. (Case #1:14CR070).

death. Viola's allegations are baseless and asserted simply in an attempt to inflame the matter. Accordingly, both Requests should be stricken from the Record.

Finally, Viola incorrectly states to this Court that the United States did not oppose the Motion to which he attached the affidavits. (R. 470, Motion to Compel, PageID 10355). In fact, the United States filed a Response in Opposition (R. 471, PageID 10369) in the District Court, and the District Court denied Viola's Motion to Compel. (R. 473, Memorandum and Order, PageID 10379). Because the affidavits had no bearing on Viola's Motion to Compel, and Viola's allegations were so frivolous, neither the United States, nor the District Court needed to address Viola's allegations or the affidavits.

Respectfully Submitted,

Steven M. Dettelbach
United States Attorney

s/Mark S. Bennett
Mark S. Bennett (0069823)
Assistant U.S. Attorney
801 W. Superior Ave., Suite 400
Cleveland, Ohio 44113
216.622.3878 (ph)
216.522.2403 (fx)
Mark.Bennett2@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March 2015, a copy of the foregoing Government's Response in Opposition to Viola's Requests That The Merits Panel Take Judicial Notice of Affidavits, was filed electronically. Notice of this filing will be sent to Mr. Viola at the address listed above.

/s/ Mark S. Bennett

Mark S. Bennett

Assistant United States Attorney

Exhibit N

How May We Help You?



DAVE YOST
OHIO ATTORNEY GENERAL

[Law Enforcement](#) > [Bureau of Criminal Investigation](#) > [Investigative Services](#) > Cold Case Unit

Cold Case Unit

Unsolved homicides and sexual assaults are some of the most challenging and frustrating investigations facing law enforcement officers, and Attorney General Dave Yost has made it a top priority to offer help.

A new unit at the Ohio Bureau of Criminal Investigation, called the Cold Case Unit (CCU), reaches out to local law enforcement agencies to initiate a fresh look at unsolved cases. The unit offers new forensic analysis and investigative resources.

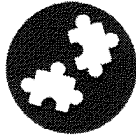
"We can make a difference, even when years have passed since a murder or sexual assault," Yost says. "The passage of time can actually help, in that some witnesses become more willing to cooperate and technology advances. Consider, for example, how DNA testing has unmasked, time and again, violent criminals who got away with living among us for too long."

Cold Case Q&A



What makes an unsolved case a cold case

Unsolved Cases



Some of the cases CCU is assisting with

Sexual Assaults Section



A specially focused section of the CCU

Tools & Methodologies



From DNA testing to criminal intelligence

Successes



Previous cold cases solved at BCI

Unit Contacts

Roger Davis
Special Agent Supervisor
740-845-2123 | Roger.Davis@OhioAGO.gov

Kristen Slaper
DNA Lab Manager
740-845-2509 | Kristen.Slaper@OhioAGO.gov

Dana Forney
Criminal Intelligence Supervisor
740-845-2087 | Dana.Forney@OhioAGO.gov

CONTACT

Cold Case Unit
Ohio Bureau of Criminal Investigation
1560 State Rt. 56 SW, P.O. Box 3e5
London, OH 43140
Phone: 555-BCI-OHIO (855-224-6446)

QUICK LINKS

[Investigative Services](#)
[Laboratory Division](#)
[Ohio Missing Persons](#)
[Special Victims Unit](#)
[Professional Standards](#)
[BCI In the News](#)

PUBLICATIONS

[BCI Overview Booklet](#)
[On the Job newsletter](#)
[Keep Your Children Safe: Missing Persons palm card](#)
[BCI Criminal Intelligence Unit flyer](#)
[Project LINK for Law Enforcement](#)

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[Parents](#)
[Seniors](#)
[Tipster](#)
[Victims](#)
[Task Force on Criminal Justice and Mental Illness](#)

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[Services for Bingo](#)
[Collections](#)
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[OPOTA](#)
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[myOhio.gov](#)
[Diversity & Inclusion](#)
[Job Opportunities](#)

From: Edward Pasela edwardkarenb03@gmail.com

Subject:

Date: August 26, 2022 at 7:25:01 PM

To: MrTonyViola@icloud.com

We were told by detective Traxler that a letter would have been written by the 24th of August, to be sent to the B.C.I. stating that they would re-open the case concerning the death of Dawn Pasela, with the possibility of foul play.

Exhibit O

Friedrick & Associates

F&A, Inc.

P.O. Box 41035
Brecksville, Ohio
44141

Enclosed is a copy of my resume.

By way of background, I graduated from the United States Naval Academy and was commissioned in the United States Marine Corps where I served for seven years. Within one year of resigning my commission I was accepted in the Federal Bureau of Investigation through the Philadelphia office. My resume details some of my accomplishments during my thirteen years of service. My years with the Bureau provided me with an in-depth knowledge of federal and state law. While with the Bureau I handled several major RICO cases as a special agent and as supervisor of the Organized Crime Squad.

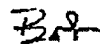
I have conducted private investigations for over twenty years. I have done extensive medical negligence. In particular I do backgrounds (to include medical experts), interviews, locate witnesses and extensive surveillance. My video equipment is extremely sophisticated. Other areas of my expertise include: Computer forensics, due diligence investigations, general investigative matters (criminal and civil), health care investigations, asset searches/bankruptcy fraud, white collar crime investigations and environmental investigations. I also conduct/arrange special investigations to include locating forensic experts, electronic countermeasures (office and telephone debugging), video camera installation (overt and covert) and pre-employment screenings/background investigations. I have an extensive network of contacts both nationally and internationally, which enables me to coordinate investigations in both a timely and cost-efficient manner.

Computer forensics has been very helpful to our clients when investigating various matters. This piece of the puzzle often supports other investigative tools in order to bring a more effective result. We have our own forensic data analyst that has the same training as law enforcement and has been a computer technician for over fifteen years. All of our equipment and methods follow chain of evidence rules and are modeled after law enforcement procedure. More information can be provided upon request.

My fee for general investigation is \$125.00 per hour. Background investigation is \$85.00 per hour. For computer forensics I charge \$150.00 per hour. For surveillance I charge \$75.00 per hour.

If you feel my background/experience could contribute to the overall efforts of your firm, please contact me and I will arrange to meet with you at your convenience.

Sincerely,



Robert S. Friedrich

RESUME OF ROBERT S. FRIEDRICK

Education

UNITED STATES NAVAL ACADEMY, Annapolis, Maryland – B.S. Engineering

Experience

FRIEDRICK & ASSOCIATES, President

Formed company in 1987 to provide competitive intelligence to lawyers, corporation executives and individuals. Conducted extensive major medical defense. Performed due diligence investigation; health care investigation, including the ability to conduct sophisticated surveillance; asset search/bankruptcy fraud; white collar crime investigation; environmental investigation; and computer forensics.

FEDERAL BUREAU OF INVESTIGATION (FBI)

Supervisory Agent – Supervised fourteen Agents who handled Organized Crime (O.C.) investigations. Supervised a narcotics/gangland murder investigation, targeting the Mafia underboss and his two lieutenants. Forty individuals were identified as being associated with the narcotics operation. Responsible for soliciting the cooperation of a subject who detailed the narcotics operation and murders. Three Mafia figures, including the underboss of the family, and fourteen high-level associates were indicted and convicted for narcotics distribution and seven murders. Responsible for the underboss agreeing to cooperate with the Government. Underboss testified against Mafia figures in Chicago, New York, Kansas City and Milwaukee. Supervised and coordinated the Cleveland Informant Program, considered one of the best in the United States. Was contact Agent for Jackie Presser. Presser's position in the Teamsters gave him access to all the Locals and Joint Councils throughout the United States. His information was instrumental in convicting the leadership on the La Cosa Nostra (LCN) families across the country to include the famous New York Commission Case. Received outstanding performance ratings as well as letters of commendation from the FBI Director and other high bureau officials.

Case Agent – Investigated Federal violations of O.C. statutes. Initiated the first Federal O.C. arson-for-profit investigation in Cleveland. Handled an O.C. informant and was responsible for the arrest of a top echelon O.C. racketeer. Received an incentive award for the arrest. Responsible for the investigation of a highly publicized gangland murder of a rackets figure slain in Cleveland. Investigation resulted in an arrest of a Top Ten FBI fugitive and the arrests and convictions of all of the hierarchy of the Cleveland Mafia, with the exception of the underboss. In addition, a top echelon O.C. Mafia figure agreed to cooperate with the government and his testimony had significant impact on O.C. Mafia families throughout the country. Coordinated and directed the investigative efforts of FBI Agents in many FBI offices in handling this case. Received a quality step increase (equivalent to early advancement) and an incentive award for this investigation.

Surveillance Agent – Conducted O.C. surveillances. Responsible for the indictment of one O.C. figure. Responsible for indictment of two O.C. figures and conviction of one for an attempted gangland murder. Responsible for indictments and convictions of several O.C. loan sharks and gamblers. Received letters of commendation from the FBI Director.

Special Weapons & Tactics (SWAT) Team Commander – Responsible for selecting, training and equipping eighteen Agents designated to make arrests and execute raids where the potential for violent confrontation existed (a para military operation). Responsible for the development of operation plans, and the coordination and execution of same. Conducted several high-risk operations without incident.

Military

UNITED STATES MARINE CORPS (USMC). Left USMC as a Captain.