

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

Anthony Viola,	)	Case No. 1:20-cv-765-PAB
	)	
Plaintiff	)	AMENDED COMPLAINT
	)	
-vs.-	)	
	)	Hon. Pamela Barker
Ohio Attorney General Dave Yost, et. al.,	)	
	)	
Defendants	)	

**NATURE OF THE ACTION**

Plaintiff was tried two times by a multi-jurisdictional task force, established actual innocence at a second trial, and yet remains in Federal custody without so much as an evidentiary hearing in federal court. These circumstances prompted Judge Daniel Gaul, who presided over the second trial, to state that the plaintiff is wrongfully incarcerated and that prosecutors committed “misconduct” in the criminal matters. Each and every defendant named herein has an obligation under the code of Federal Regulations or under the Rules of Professional Conduct to report misconduct to the proper authorities, yet none of these individuals has ever complied with their legal obligations, thereby injuring the Plaintiff. Moreover, the Plaintiff and other citizens were threatened “with prosecution” for allegedly violating Ohio Revised Code 2921.03(a) for speaking out about misconduct in the criminal cases. This action seeks a declaratory judgment that the state statute is an unconstitutional abridgment of First Amendment rights and a ruling that that each defendant named herein must report misconduct outlined in this amended complaint. Plaintiff alleges that the facts described in this complaint constitute an actual controversy between the parties and seeks a declaratory judgment pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § § 2201 and 2202, for the purpose of determining a question of actual controversy between the parties.

**SUMMARY OF THE CONTROVERSY BETWEEN THE PARTIES**

Plaintiff Anthony L. Viola 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 funded by the Bureau of Justice Assistance Grant # 2009-SC-B9-0080. These prosecutions featured three indictments and two criminal trials with opposite results. Prosecutors 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. Following a federal conviction, Task

Force Office Manager Dawn Pasela provided the Plaintiff with evidence Federal Prosecutor Mark Bennett stated in writing did not exist, and which was not produced before the first trial, but relocated to the Task Force location instead, **Exhibit A**.

When substantially different evidence was introduced at the second trial, actual innocence was established, kindly compare USA v. Viola, 08-cr-506, N.D. Ohio, guilty verdict and 150 month prison sentence, with the acquittal two months later on the exact same charges, Ohio v. Viola, 10-cr-543886 and 10-cr-536877, Cuyahoga County Common Pleas Court. Judge Gaul has taken the extraordinary step of stating in writing that the Plaintiff is innocent, wrongfully incarcerated, and that prosecutors committed "misconduct," **Exhibit B**.

This complaint utilizes evidence presented at the second trial, government admissions made during post-conviction proceedings, documents provided by Ms. Pasela and information obtained during investigation undertaken by Plaintiff's private investigator, former FBI agent Robert Fredrick. These documents provide evidentiary support for six (6) major categories of government misconduct. The controversy between the Plaintiff and the named defendants centers on the failure of defendants to report misconduct to the Department of Justice's Office of the Inspector General, contrary to Section 45.11 of Title 28 of the Code of Federal Regulations, and/or the failure of defendants to report misconduct to the Ohio Supreme Court Disciplinary Counsel pursuant to the Ohio Rules of Professional Conduct.

OVERVIEW OF MISCONDUCT BY PROSECUTORS MARK BENNETT AND DAN KASARIS AND FBI AGENT JEFF KASSOUF

**PART ONE: PROSECUTORS MARK BENNETT AND DANIEL KASARIS, ALONG WITH FBI AGENT JEFF KASSOUF, POSSESSED PROOF OF THE PLAINTIFF'S INNOCENCE YET FAILED TO PRODUCE THAT EVIDENCE BEFORE EITHER CRIMINAL TRIAL** – Mark Bennett and FBI Agent Jeff Kassouf shifted exculpatory evidence from the U.S. Attorney's Office to the Task Force location, including Bates Stamped federal evidence obtained pursuant to federal subpoenas and FBI 302 interview summaries, then pled ignorance to evidence they relocated to the Task Force. Bennett and Kasaris also claimed the Task Force "lost" computers seized in televised raids. Prior to the second trial, the Task Force's Office Manager Dawn Pasela provided the undersigned with those FBI interviews and internal bank documents confirming banks knowingly offered borrowers 'no money down, cash back' mortgage loans that did not require ANY representations about income or assets, and approved 'no money down, cash back' mortgage loans in writing and before closing for each count in the indictment.

In support of this claim, the following documents are attached:

**EXHIBIT C** -- Letter detailing the "loss" of computers by prosecutors

**EXHIBIT D** -- Admission by FBI that it made false statements about evidence

**EXHIBIT E** -- Admission by the US Attorney that it false statements about evidence

**EXHIBIT F** -- E mail from Mark Bennett and Dan Kasaris there was no 302

**EXHIBIT G** — The 302 Interview summary that Bennett, Kasaris and Kassouf claim not to know anything about.

**EXHIBIT H** -- Documents proving banks weren't "innocent victims" of fraud schemes, but knowingly made "no income no asset" mortgage loans and authorized borrowers to acquire properties without a down payment and to receive cash back at closing.

**PART TWO: GOVERNMENT INTRUSION INTO THE SIXTH AMENDMENT RIGHT TO COUNSEL** – Following the filing of federal and state indictments, but prior to the commencement of either criminal trial, prosecutors Bennett and Kasaris directed Ms. Pasela to pose as a graduate student studying criminal defense and working with local defense attorneys defending similar cases. Ms. Pasela shared helpful information with the Plaintiff and offered to assist our defense team. Ms. Pasela recorded a series of post-indictment conversations with the undersigned so prosecutors could obtain confidential defense trial strategy information. FBI Agent Jeff Kassouf admitted listening to these tapes, which to this day have yet to be produced. Ms. Pasela was also given funds to make donations towards defense legal fees so prosecutors could use her cancelled checks to identify the law firm's bank account and track investigative expenses before trial. When one of Ms. Pasela's co-workers informed her it was illegal to intrude into the defense's trial preparation, she realized what she was doing was wrong. Concerned that federal prosecutor Bennett and state prosecutor Kasaris were not producing exculpatory evidence, Ms. Pasela provided the undersigned with key evidence, assisted with preparation for the second trial, prepared defense exhibits and offered to testify as a witness about misconduct inside the Task Force. Ms. Pasela was added to the defense witness list, served with a valid defense subpoena, signed by Judge Gaul. But when prosecutors saw her name on the defense witness list, FBI Agent Jeff Kassouf, and Detectives Arvin Clar and Donald Cleland were dispatched to Ms. Pasela's apartment to advise her to "leave town" or face "federal Prison." After Mark Bennett and Dan Kasaris huddled together in the back of Judge Gaul's courtroom, Dan Kasaris sent an e mail that Ms. Pasela would face "indictment" and "prosecution" if she appeared in court as a defense witness. Ms. Pasela never appeared in court and was found dead in her apartment by her Father shortly after her scheduled testimony. No investigation into her death or the intrusion into the defense's right to prepare for trial has ever been undertaken, nor has the Plaintiff ever been granted an evidentiary hearing in his case.

The Plaintiff is greatly honored that Edward and Karen Pasela, the parents of Dawn Pasela, have joined the efforts of the undersigned to have Mark Bennett and Dan Kasaris investigated for their actions, which caused the death of their daughter at age 26.

In support of this claim of misconduct, kindly consult the following exhibits:

**EXHIBIT I** – Pasela affidavit and cancelled check

**EXHIBIT J** – Defense Subpoena

**EXHIBIT K** – FBI Agent Kassouf admitted listened to tapes made by Dawn Pasela

**EXHIBIT L** – Dawn Pasela job description / professional resume.

**EXHIBIT M** – E mail from Dan Kasaris threatening to prosecute Dawn Pasela if she testified as a defense witness pursuant to a defense subpoena.

**PART THREE: KNOWING USE OF KATHRYN CLOVER'S PERJURED TESTIMONY TO OBTAIN A CONVICTION** – Prosecutors Dan Kasaris, Mark Bennett, John Siegel and Micah Ault all knowingly utilized the perjured testimony of government witness Kathryn Clover. According to Mark Bennett, "Clover provided false testimony during the trial," USA v. Clover, 10-cr-75, Docket # 46, page 2. These defendants are all aware that Clover committed perjury because, **during the federal trial**, Clover informed her attorney, Jaye Schlachet that she committed perjury by falsely testifying that the Plaintiff conspired with her to commit mortgage fraud – testimony she recanted at the second trial. But when Mr. Schlachet contacted Mark Bennett and asked him to recall Clover to the stand to correct her false testimony, Bennett refused because doing so "jeopardized the outcome of the case ... [and] it served the best interests of justice to allow her testimony to remain unchanged," USA v. Clover, Docket # 29-1, page 8. Attorney Schlachet accepted Bennett's decision and failed to report the knowing use of perjured testimony to obtain a conviction to the Ohio Supreme Court Disciplinary Counsel. Even worse, prosecutors Bennett and Kasaris CONTINUED to use Clover as a government witness in dozens of criminal and grand jury proceedings, USA v. Clover, Docket # 29-1, pages 43-44. Moreover, multiple individuals have stated that Clover received undisclosed financial support from federal and state prosecutors, including cash, assistance paying bills and obtaining a Barrister's Scholarship to attend the Cleveland Marshall College of Law. And according to Clover's own resume, she was an employee of the prosecutor's office while she was testifying as a fact witness in criminal cases and grand jury proceedings.

In support of this misconduct claim, kindly consult the following exhibits:

- EXHIBIT N** -- Clover resume stating she worked at the Prosecutor's Office
- EXHIBIT O** – Mark Bennett's court filing stating Clover committed perjury
- EXHIBIT P** – Mark Bennett believes perjury is in "the interests of justice"
- EXHIBIT Q** – Kasaris letter, prosecutors CONTINUE using perjured testimony
- EXHIBIT R** – Clover recants her federal court testimony

**PART FOUR: ROMANTIC RELATIONSHIP BETWEEN SENIOR ASSISTANT OHIO ATTORNEY GENERAL DANIEL KASARIS AND GOVERNMENT WITNESS KATHRYN CLOVER** – Multiple individuals, including Attorney Marcus Sidoti, government witness Lucas Fairfield, Clover's former husband Matt Fairfield, recent Clover Boyfriend Bryan Butler, Daniel Kasaris' wife Susan Kasaris and Daniel Kasaris' former Sister in Law Kelly Patrick have all stated in writing that Clover and Prosecutor Kasaris had a long term romantic and sexual relationship. Mr. Kasaris – who ran and won several elections as a North Royalton city councilman – faced political opponents who conducted opposition research on Mr. Kasaris. These individuals also unearthed proof that Kasaris had a lengthy romance with Cover, even taking her to local hotels for sexual encounters. Lucas Fairfield has stated that he saw a highly intoxicated Kasaris and Clover together at Progressive Field at a Cleveland Indians game. Moreover, to conceal his illicit affair with Clover, Kasaris communicated with her on his Yahoo e mail account, bragging about receiving "hand jobs at work." Patrick also provided Facebook messages between her and Susan Kasaris, where Susan (the wife of Daniel Kasaris) and Patrick discuss Dan Kasaris' infidelity, porn addiction, alcohol counseling and abusive behavior, like calling his wife and daughters "fat."



The facts recited above underscore the need for an immediate investigation by the proper authorities into these serious allegations, which may result in the dismissal of dozens of criminal cases in which Clover testified and/or the initiation of criminal charges against Bennett and Kasaris.

Kindly consult the attached exhibits in support of this misconduct claim:

**EXHIBIT S** -- Affidavit of Kelly Patrick

**EXHIBIT T** -- Facebook Messenger statements of Susan Kasaris

**EXHIBIT U** -- Dan Kasaris E mail from his private Yahoo account to Kathryn Clover

**EXHIBIT V** -- Bryan Butler confirms Clover-Kasaris affair

**PART FIVE: MARK BENNETT'S REPEATED FALSE STATEMENTS ABOUT CONFLICTS OF INTEREST RESULTING FROM JOINT DEFENSE DESPITE TIMELY OBJECTION CONTINUE TO MISLEAD THE FEDERAL JUDICIARY.** Prior to the federal trial, timely objections to conflicts of interest resulting from joint defense between all defendants who proceeded to trial and the simultaneous representation by those same attorneys of government witness Kathryn Clover and lender employees were filed, USA v. Viola, 08-cr-506, N.D. Ohio, Docket # 110. The Clerk of Court has confirmed in writing that the district court never conducted any inquiry into these conflicts, nor did the Court ever obtain any conflict waivers from any party. Before the first trial, Mark Bennett stated in writing that an actual conflict of interest existed, USA v. Viola, 08-cr-506, Docket No. 201, p. 18.

After trial, however, Mark Bennett repeatedly lied in multiple court filings – falsely claiming conflicts of interest were waived, or that the Plaintiff executed a conflict of interest waiver, when such is not the case. Bennett's lies have caused the federal judiciary to rule that conflict claims were moot, because they were waived. Mark Bennett and other members of the Task Force have also falsely claimed that the Task Force did receive federal funding or house federal documents, or that Ms. Pasela was merely a "former County employee" who did not have access to federal evidence.

Kindly consult the following exhibits in support of this claim:

**EXHIBIT W** – Mark Bennett claims there is a conflict of interest

**EXHIBIT X** – Clerk of Court states there was never a conflict hearing / waiver

**EXHIBIT Y** -- Mark Bennett falsely states conflicts were waived

**EXHIBIT Z** – Proof the Task Force received federal funds and false affidavits by \_\_\_\_\_

Christa Dimon of the Ohio Attorney General's Office, falsely stating the Task Force did not receive federal funds.

**PART SIX: PROSECUTOR DAN KASARIS ACTED UNDER COLOR OF LAW AND USED AN UNCONSTITUTIONAL STATE STATUTE TO THREATEN TO PROSECUTE INDIVIDUALS POSTING COMMENTS ON BLOGS RELATED TO THE PLAINTIFF'S CASE.**

Following the second trial, family, friends and colleagues expected the Plaintiff to be released from jail or – at the very least – given the opportunity to present the same proof of actual innocence utilized at the second trial. But after repeated denials in federal court, friends and supporters set up a web site about the criminal case: [www.FreeTonyViola.com](http://www.FreeTonyViola.com). The web site's mission, which is also available on the web site, is restated below:

FREETONYVIOLA.COM's mission is to shine a bright spotlight on the 'win at all costs' tactics, prosecutorial overreach and misconduct the United States Department of Justice employs when prosecuting American citizens.

Anthony Viola is currently in federal custody, serving a twelve-and-a-half year prison sentence for conspiracy to commit mortgage fraud. He was investigated by the Cuyahoga County Mortgage Fraud Task Force, a multi-jurisdictional task force comprised of state, local and federal agencies, and prosecuted in parallel federal and state cases. He lost the federal case but won the subsequent state trial after offering evidence that the government failed to produce before the federal trial. The judge who oversaw the state case has stated that Viola is innocent and he has expressed hope that Viola's state court "exoneration" will assist in "overturning" his "federal conviction." But the federal judiciary has repeatedly denied Tony's request to present the same proof of innocence Tony used at his second trial. As a result, over eight years after Tony proved his innocence at trial, he remains in custody. The evidence proving Tony's innocence may also exonerate over 1,300 other citizens prosecuted by the same Task Force.

The website, originally created to solicit leads for Tony's investigative team, has evolved into a tool to keep the public informed about critical developments in his case, and to share information that could potentially assist others who have been wrongfully ensnared by our criminal justice system.

Prosecutor Kasaris was none too pleased that his romance with Kathryn Clover was all over the internet and that his misconduct was widely disseminated. Kasaris contacted Facebook and successfully used his position as a prosecutor to have a Fan Page with 5,000 individuals removed from that platform. Then Kasaris threatened to prosecute the FreeTonyViola.com web master, Robert Ryan, so Mr. Ryan quit, forcing the relocation of the web site to another web hosting company. Then, Kasaris sent threatening letters to the Plaintiff as well as other citizens (including Larry Norris) who posted comments on our blog, threatening to prosecute these individuals pursuant to Ohio Revised Code 2921.03(a), which prohibits any person from using a

materially false or fraudulent writing with a malicious purpose from attempting to influence, intimidate or hinder a public servant.

This statute unconstitutionally infringes upon and chills First Amendment Rights, especially since Kasaris was an elected North Royalton City Councilman. This suit seeks a declaratory judgment that this statute is unconstitutional. This litigation also asks the Court to declare that each defendant, in their professional capacity, is required to report the credible allegations of misconduct described herein, either to the Department of Justice's Inspector General or the Ohio Supreme Court Disciplinary Counsel, and further declare that all defendants named herein are required to follow the Code of Federal Regulations and Rules of Professional Conduct.

Attached please find the following Exhibits in Support of this claim:

**EXHIBIT AA** – Kasaris threatens to prosecute citizens for posting comments on FreeTonyViola.com

**EXHIBIT BB** – E mails from citizens threatened by Kasaris

#### **THE PARTIES**

- (1) Ohio Attorney General Dave Yost  
Ohio Attorney General's Office  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215
- (2) Heather Buchanan  
Ohio Attorney General's Office  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215
- (3) Tiffany Carwile  
Ohio Attorney General's Office  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215
- (4) Special Assistant US Attorney Micah Ault  
Ohio Attorney General's Office  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215
- (5) Senior Assistant Ohio Attorney General Daniel Kasaris  
11964 Beckenham Road  
North Royalton, Ohio 44133

- (6) Justin Herdman  
U.S. Attorney, N.D. Ohio  
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Cleveland, Ohio 44113
  
- (7) Mark Bennett  
Assistant U.S. Attorney  
801 West Superior Avenue  
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Cleveland, Ohio 44113
  
- (8) Steven Dettelbach  
Baker & Hostetler  
127 Key Tower  
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Cleveland, OH 44114-1213
  
- (9) John Siegel  
Baker & Hostetler  
127 Key Tower  
Suite 2000  
Cleveland, Ohio 44114-1214
  
- (10) Michael O'Malley  
Cuyahoga County Prosecutor  
1200 Justice Center – 8th Floor  
Cleveland, Ohio 44113
  
- (11) Jaye Schlachet, Esq.  
55 Public Square – Suite 1300  
Cleveland, Ohio 44113
  
- (12) Marcus Sidoti, Esq.  
50 Public Square – Suite 1900  
Cleveland, Ohio 44113
  
- (13) John Moustakas  
Assistant U.S. Attorney  
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Washington, DC 20530



(14) Laura S. Irwin  
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700 Grant Street  
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Pittsburgh, PA 15219

### **JURISDICTION AND VENUE**

Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 because the claims asserted in this action arise under the laws of the United States and the defendants named herein are required by law to perform duties owed pursuant to law, 28 U.S.C. § 1391. This case was transferred to this venue by the United States District Court for the Southern District of Ohio because that Court determined a substantial part of the events giving rise to this action occurred in this judicial district, 28 U.S.C. § 1391(b)(2).

### **STANDING**

This complaint seeks a declaratory judgment concerning a concrete controversy of parties having adverse legal interests. The facts alleged are not hypothetical but proven, largely by the government's own documents. The failure of the defendants to adhere to their lawful obligations to report misconduct has injured, and will continue to injure, the undersigned. Threats to prosecute citizens posting comments on the FreeTonyViola.com web site has chilled First Amendment rights, and increased Plaintiff's expenditures for maintaining the web site. Moreover, the Plaintiff continues to incur the expense of paying a private investigator to amass more and more proof of criminal activities by Bennett and Kasaris. The Plaintiff has a legally protected interest in the fair administration of justice, and that licensed attorneys will follow the Rules of Professional Conduct and the Code of Federal Regulations. Absent a declaratory judgment, the Plaintiff's injuries will continue.

### **FACTS IN SUPPORT OF THE ISSUANCE OF A DECLARATORY JUDGMENT and CLAIM FOR RELIEF**

- (1) Defendants Mark Bennett, Micah Ault, Dan Kasaris and John Siegel prosecuted the undersigned, yet failed to report misconduct throughout the criminal proceedings.
- (2) Defendant Jaye Schlachet, despite being fully aware that his client committed perjury in federal court and was CONTINUING to commit perjury in other proceedings, curried favor with Bennett and Kasaris by enabling the ongoing incarceration of innocent persons based upon Kathryn Clover's false testimony. Defendant Schlachet had an affirmative obligation to report Bennett and Kasaris to the Ohio Supreme Court Office of Discipline Counsel, but chose to ignore this lawful obligation.

- (3) Defendant Marcus Sidoti contacted the undersigned in federal prison on an unsolicited basis stating that his client Lucas Fairfield saw Prosecutor Kasaris at a Cleveland Indians game with Kathryn Clover. Mr. Sidoti also stated, on a recorded phone call, that Prosecutor Kasaris and Ms. Clover frequently left the prosecutor's office to head to local hotels for sexual trysts, then returned to the office to continue working on cases together, indicting more innocent people, but Defendant Sidoti never reported this information to the Ohio Supreme Court.
- (4) Defendant Michael O'Malley campaigned for election as prosecutor as a reformer, and the Prosecutor's web site states that "Prosecutor Michael C. O'Malley took office on January 3, 2017, with a bold and comprehensive plan to restore the public's confidence by: 1) ensuring justice is sought fairly and impartially by instituting justice reforms; 2) building bridges in the community to keep our neighborhoods, families and children safe; and 3) providing leadership within the Prosecutor's Office and its justice system partners," <http://prosecutor.cuyahogacounty.us/en-us/meet-the-prosecutor.aspx>. Nevertheless, Prosecutor O'Malley has refused to investigate wrongdoing by his colleague, Mr. Kasaris, or look into the death of Ms. Pasela. Mr. O'Malley, the great reformer, has also enabled misconduct by failing to produce voice recordings made by Ms. Pasela and by allowing his office to be utilized as a location where federal prosecutors can stash exculpatory evidence.
- (5) Defendants O'Malley, Dave Yost, Steven Dettelbach and Justin Herdman all have or had obligations as supervisory officials who oversee prosecutors. These individuals have been repeatedly made aware of the wrongdoing by Bennett and Kasaris described herein and have obligation to immediately report misconduct to the proper authorities, including the Department of Justice's Office of the Inspector General, yet have failed to follow these lawful obligations. Defendant Dettelbach even went so far as to state in writing he refused to report Ms. Pasela's death to the Inspector General or further look into this matter, **EXHIBIT CC**.
- (6) Defendants Laura Irwin and John Moustakas are employed by the Department of Justice and have contested every single claim made by Plaintiff in post-conviction litigation. Despite being fully aware that their colleagues in Cleveland committed misconduct, these defendants refuse to follow the Code of Federal Regulations and report misconduct to the Inspector General.
- (7) Persecutors Daniel Kasaris, Mark Bennett, Micah Ault and John Siegel have an ongoing duty to correct the wrongful imprisonment of an innocent American citizen, but have failed to adhere to this lawful obligation.
- (8) Defendants Heather Buchanan and Tiffany Carwile have also been made aware of improper actions by Prosecutor Kasaris but have defended his actions in court, and utilized an unconstitutional statute in their defense. When the undersigned objected to Kasaris' threats to prosecute the undersigned, and others, under Ohio Revised Code

2921.03(a), Carwile and Buchanan argued that Kasaris was not acting under color of law, but in a personal capacity, as any citizen could file a criminal complaint or contact Facebook, Viola v. Kasaris, Case No. 2:16-1036, S.D. Ohio. Carwile and Buchanan defended Kasaris' supposedly private actions in court at taxpayer expense in court, despite a prohibition on the Ohio Attorney General defending the non-official actions of employees of that office. Not only have defendants Carwile and Buchanan used taxpayer funds to defend Kasaris' allegedly personal actions for free, they have also failed to report his misconduct to the Ohio Supreme Court.

- (9) Not one of these defendants has ever expressed the slightest concern about Ms. Pasela, or the any apprehension over the tragedy her family has experienced. Instead of reporting the illegal and reckless actions of Bennett and Kasaris, they have elected to cover up their misconduct, in violation of the law.
- (10) Not only do the Plaintiff and all Defendants have adverse legal interests, each of the defendants have an ongoing obligation to report misconduct described herein. The failure of these defendants to follow their lawful obligations has caused injury to the undersigned.
- (11) Concrete injuries suffered by the Plaintiff include: (a) Ongoing expenses to fund an investigation of the facts in this case, despite the fact that the Plaintiff is not the right party to conduct an investigation of criminal activities by Bennett and Kasaris; (b) Ongoing threats of being prosecuted for exercising First Amendment rights to alert the public about criminal activities by prosecutors; and (c) The denial of post-conviction relief because of Mark Bennett's materially false statements, which have been accepted as true by the federal judiciary.
- (12) Plaintiff is entitled to this Court's declaration, pursuant to 28 U.S.C. § § 2201 and 2202 that:
- a. Plaintiff has a right to demand compliance with the Code of Federal Regulations and the Rules of Professional Conduct governing attorneys;
  - b. That the defendants are in breach of those lawful obligations;
  - c. That each and every defendant is obligated, without further delay, to report misconduct to the proper authorities;
  - d. That Ohio Revised Code 2921.03(a) is unconstitutional; and
  - e. That Prosecutor Kasaris was not entitled to taxpayer funded legal services by the Ohio Attorney General's Office for his purportedly private actions.
- (13) This Court has the inherent authority to declare the legal rights and relations between the parties to this action. A declaratory judgment will terminate the controversy between the parties and resolve the dispute about whether or not defendants have an affirmative obligation to report misconduct to the proper authorities.

## STATEMENT OF LAW

**Part One: Defendants have a Duty to Report Misconduct** – Section 45.11 of Title 28 of the Code of Federal Regulations imposes a duty on all Department of Justice (DOJ) employees to report allegations of “criminal or serious administrative misconduct” to the DOJ’s Office of Inspector General (OIG), or to their supervisor or internal affairs for referral to OIG. Section 45.12 imposes a duty on DOJ employees to report to the Office of Professional Responsibility (OPR) allegations of misconduct by a DOJ attorney or “law enforcement personnel when such allegations are related to allegations of attorney misconduct.” Defendants Yost, O’Malley, Dettelbach and Herdman have additional responsibilities as supervisors of prosecutors: they must immediately report – not cover up – misconduct by their employees, American Bar Association Committee on Ethics and Professional Responsibility Formal Opinion 14-467 (2014); also see National Prosecution Standard 1-1.6 “Duty to Report Misconduct,” National District Attorney’s Association.

Likewise, Defendants Bennett, Kasaris, Moustakas, Irwin, Carwile and Buchanan have an affirmative duty to report misconduct in the Viola criminal matters. The aforementioned “Duty to Report” states that “A prosecutor’s failure to report known misconduct may itself constitute a violation of the prosecutor’s professional duties.” The American Bar Association Standards for Criminal Justice likewise acknowledge that prosecutors have a duty of disclosure beyond the constitutional obligation, ABA Committee on Ethics and Professional Responsibility Formal Opinion 09-454 (2009).

The United States Attorney’s Manual further requires full disclosure of evidence in criminal trials beyond the constitutional guarantees, and states that prosecutors have ongoing duties to produce evidence casting doubt on convictions, USAM § 9-5.001C.

Defense attorneys Sidoti and Schlachet are also under an obligation to report the use of perjured testimony and information concerning the improper personal relationship between Prosecutor Kasaris and Kathryn Clover to the Ohio Supreme Court. Pursuant to Rule 8.3(a), “Reporting Professional Misconduct” provides that “A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, **shall** inform the appropriate professional authorities,” emphasis added.

In December, 2013, the Ohio Supreme Court issued conduct guidelines for prosecutors and defense attorneys. These guidelines, titled “The Professionalism Dos and Don’ts: Conduct of Prosecutors and Defense Attorneys” states that “The integrity of our criminal justice system depends a great deal on the professionalism of the lawyers who prosecute the cases and the lawyers who defend the accused.” The Supreme Court made clear that licensed attorneys must administer justice fairly and not engage in illegal or underhanded tactics to “win” a case. In addition, the Supreme Court of Ohio’s Board of Commissioners on Grievances & Discipline Advisory Opinion 2016-2 states, “A lawyer has a duty to report unprivileged knowledge of another lawyer’s misconduct” under Rule 8.3. Taken together, multiple controlling legal authorities require attorneys to report misconduct in criminal cases, while no legal authority stands for the proposition that misconduct should be covered up or ignored.



**Part Two: The Ohio Attorney General's Office was so Enthusiastic to Defend Dan Kasaris that it Violated the Ohio Revised Code and Misused Taxpayer Dollars.** As discussed above, friends and supporters of the Plaintiff established the FreeTonyViola.com web site to highlight the obvious injustice of incarcerating an American citizen who proved his innocence at trial, and alert the public of illegal "win at all costs" litigation by the U.S. Attorney in Cleveland. Following Prosecutor Kasaris' threats to prosecute citizens posting comments on the web site's blog, a First Amendment action was initiated by the Plaintiff and defended by the Ohio Attorney General's Office. But the Ohio Attorney General was not authorized to spend taxpayer dollars to defend Kasaris because he claimed to be acting in his personal – and not professional – capacity. Defendants Carwile and Buchanan violated Ohio Revised Code 109.36, "Defense of Officers and Employees" by defending Mr. Kasaris, then violated the Ohio Rules of Professional Conduct by not referring misconduct to the appropriate authorities.

**Part Three: Plaintiff's claims of Misconduct and Actual Innocence are Grounded in Law and Sufficiently Credible to Trigger a Duty to Report Misconduct.** – Federal prosecutors Bennett, Siegel, Ault and state prosecutor Kasaris suppressed evidence proving the Plaintiff's innocence. The materiality of this Brady violation is not a matter of speculation or conjecture because, at a subsequent trial on the same charges, a jury acquitted the Plaintiff when evidence suppressed by prosecutors before the first trial was presented at the second trial, Brady v. Maryland, 373 U.S. 83 (1963).

The knowing use of Kathryn Clover's perjured testimony and ongoing failure to correct her false testimony violates the constitutional guarantee of due process of law, Napue v. Illinois, 360 U.S. 264 (1959).

Prosecutors Bennett, Kasaris, Ault and Siegel were not permitted to invade the Plaintiff's Sixth Amendment right to counsel to obtain confidential defense trial strategy information, Massiah v. United States, 377 U.S. 201, (1964); United States v. Levy, 577 F.2d 200 (3d Cir. 1979).

When a trial court ignores timely objection to conflicts of interest from joint defense at trial, any subsequent conviction is subject to automatic reversal, Holloway v. Arkansas, 435 U.S. 475, 489-92 (1978).

**PART FOUR: Ohio Revised Code 2921.03(a) is unconstitutional.** The United States Supreme Court has held that actions like those of Prosecutor / Councilman Kasaris constitute an unconstitutional "prior restraint" on free speech, Carroll v. Princess Anne, 393 U.S. 175, 181 (1968); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963). In Dombrowski v. Pfister, 380 U.S. 479 (1965), the Supreme Court decided that a federal court may enjoin enforcement of a statute that is so overbroad in its prohibition of unprotected speech that it substantially prohibits or otherwise chills protected speech — especially if the statute is being enforced in bad faith. Moreover, this statute is unconstitutionally vague, because a citizen has no way to determine whether nor not his or her speech constitutes an "attempt" to "influence, intimidate or hinder a public servant," please see Kolender v. Lawson, 461 U.S. 352 (1983).

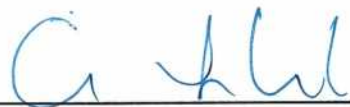
**PRAYER FOR RELIEF**

Plaintiff respectfully requests this Court will:

- (1) Declare the rights and legal relations of the parties to the subject matter here in controversy, particularly with respect to the proper applicability and interpretation of the Code of Federal Regulations and Rules of Professional Conduct;
- (2) Declare that the misconduct described herein constitutes sufficiently credible evidence of misconduct to trigger duties to report this misconduct to the proper authorities;
- (3) Declare that Ohio Revised Code 2921.03(a) is unconstitutional;
- (4) Appoint counsel, for the reasons set forth in a separate Motion for the Appointment of Counsel; and
- (5) Grant any additional relief this Court deems proper.

Thank you very much for your consideration.

Respectfully Submitted,



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Anthony Viola  
2820 Mayfield Road # 205  
Cleveland Heights, Ohio 44118  
July 24, 2020

**CERTIFICATE OF SERVICE**

I, Anthony Viola, hereby swear and affirm that I caused a copy of the foregoing Motion to be served upon the following individuals, via regular U.S. mail, postage prepaid, on this 24th day of July, 2020:

Bridget C. Coontz, Esq.  
Counsel for Defendants Kasaris, Yost, Buchanan, Ault, and Carwile  
Ohio Attorney General's Office  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215

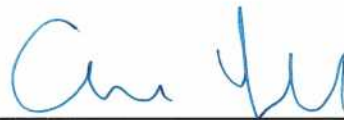
Ruchi Asher, Esq.  
Counsel for Defendants Herdman, Bennett, Dettelbach, Siegel, Irwin, and Moustakas  
801 West Superior Avenue  
Suite 400  
Cleveland, Ohio 44113

Robert Cathcart, Esq.  
Counsel for Defendant O'Malley  
1200 Justice Center – 8th Floor  
Cleveland, Ohio 44113

Jaye Schlachet, Defendant  
55 Public Square – Suite 1300  
Cleveland, Ohio 44113

Marcus Sidoti, Defendant  
50 Public Square – Suite 1900  
Cleveland, Ohio 44113

Respectfully Submitted,



---

Anthony Viola

## SUMMARY OF EXHIBITS:

- EXHIBIT A -- Evidence relocated from the U.S Attorney's Office to the Task Force Location
- EXHIBIT B – Letter from Hon. Daniel Gaul detailing Dan Kasaris' misconduct
- EXHIBIT C – Letter about "missing" computers
- EXHIBIT D – FBI admissions – it made false statements about evidence
- EXHIBIT E – US Attorney's Office admissions – it made false statements
- EXHIBIT F – Prosecutors Bennett & Kasaris state there is no 302 with lender executive who testified at both trials
- EXHIBIT G – The 302 Interview summary Prosecutors Bennett and Kasaris say doesn't exist
- EXHIBIT H – Example of evidence proving innocence utilized at the second trial
- EXHIBIT I – Pasela affidavit and cancelled check
- EXHIBIT J – Defense Subpoena
- EXHIBIT K – FBI Agent Kassouf admitted listened to tapes made by Dawn Pasela
- EXHIBIT L – Dawn Pasela job description / professional resume.
- EXHIBIT M – E mail from Dan Kasaris threatening to prosecute Dawn Pasela if she testified as a defense witness pursuant to a defense subpoena.
- EXHIBIT N -- Clover resume stating she worked at the Prosecutor's Office
- EXHIBIT O – Mark Bennett's court filing stating Clover committed perjury
- EXHIBIT P – Mark Bennett believes perjury is in "the interests of justice"
- EXHIBIT Q – Kasaris letter, prosecutors CONTINUE using perjured testimony
- EXHIBIT R – Clover recants her federal court testimony
- EXHIBIT S -- Affidavit of Kelly Patrick
- EXHIBIT T -- Facebook Messenger statements of Susan Kasaris



**SUMMARY OF EXHIBITS (Continued)**

EXHIBIT U -- Dan Kasaris E mail: he gets "hand jobs" at work

EXHIBIT V -- Bryan Butler confirms Clover-Kasaris affair

EXHIBIT W – Mark Bennett claims there is a conflict of interest

EXHIBIT X – Clerk of Court states there was never a conflict hearing / waiver

EXHIBIT Y -- Mark Bennett falsely states conflicts were waived

EXHIBIT Z – Proof the Task Force received federal funds and false affidavit

EXHIBIT AA – Kasaris threatens to prosecute citizens for posting comments on FreeTonyViola.com

EXHIBIT BB – E mails from citizens threatened by Kasaris

EXHIBIT CC – Steven Dettelbach refuses to look into misconduct by his friends

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 04/06/2010

b6  
b7C

On April 6, 2010, at 3:35pm, Special Agent [redacted] [redacted] accepted a box of documents which were being held at the United States Attorney's Office. The documents were originally provided by [redacted] to Special Agent [redacted] of Alcohol Tobacco and Firearms (ATF).

At 4:04 pm, SA [redacted] delivered these documents to the Cuyahoga County Mortgage Fraud Task Force, for scanning and to be turned over for evidence.

b6  
b7C

On March 16, 2010, these documents were brought to a meeting held at the United States Attorney's Office. Present at the meeting were SA [redacted] and [redacted] of the ATF, SA [redacted] and Assistant United States Attorney [redacted]. The documents were placed in storage at the conclusion of this meeting.

*[Handwritten signature]*  
b6  
b7C

The documents turned over to the MFTF included [redacted]

b6  
b7C

Investigation on 04/06/2010 at Cleveland, Ohio

File # 329E-CV-71645-179

Date dictated

by SA [redacted]

b6  
b7C

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

EXHIBIT A

*04/06/2010*



THE COURT OF COMMON PLEAS

COUNTY OF CUYAHOGA

JUSTICE CENTER

1200 ONTARIO STREET

CLEVELAND, OHIO 44113

DANIEL GAUL

Judge

(216) 443-8706

February 17, 2017

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

Dear Tony:

I hope you are as well as a person can be in federal prison.

Just thought I would write to express my feelings of regret on your continued incarceration. I had hoped that your exoneration in my courtroom would have assisted you in overturning your federal conviction.

In any case, I am writing to inform you that there is a newly elected Cuyahoga County Prosecutor. His name is Mike O'Malley. His office may be willing to take a fresh look at Daniel Kasaris' misconduct in your case. If Kasaris participated in your federal case, O'Malley's office may be able to intervene, or at least support a post-release remedy before Judge Nugent.

Anyway, this is just a thought. Please let me know if I may assist you in any way.

I regard you as an extremely decent man and I do hope you will have your conviction overturned.

Sincerely,

Daniel Gaul  
Judge

DG/mlt

EXHIBIT B

*Leonard F. Carr Co., L.P.A.*

*Attorneys and Counselors at Law  
1392 S. O. M. Center Road  
Mayfield Heights, Ohio 44124*

DIRECTOR OF LAW:  
MAYFIELD HEIGHTS

OF COUNSEL:  
L. BRYAN CARR

TELEPHONE  
(440) 473-2277

FAX  
(440) 473-0166

CELL  
(216) 469-7566

E-MAIL  
lc@carrlawfirm.net

March 30, 2010

VIA FACSIMILE (216-781-6242) AND REGULAR U.S. MAIL - 3-30-10

Michael Goldberg, Esq.  
Michael J. Goldberg & Associates  
323 Lakeside Avenue, Suite 450  
Cleveland, Ohio 44113

**Re: *United States of America vs. Anthony Capuozzo, et al.*  
*U.S. District Court, Northern District of Ohio, Eastern Division*  
*Case No. 1:10 CR 00075-DCN-2*  
*My Client: Nicholas Myles***

Dear Mr. Goldberg:

This letter is being written pursuant to your request, relative to the captioned matter. I will also notify both the Federal and County Prosecutors that I have no objection to doing so.

From time-to-time during my recent involvement in this case, you and I have discussed the matter of certain documents and computer hardware that had been in my client's possession and then turned over to the Cuyahoga County Prosecutor's Office.

It is my understanding that, in 2006, the County Prosecutor's Office issued a Subpoena to Nicholas Myles, for certain records and computer hardware, relative to his former employer Central National Mortgage. The Subpoena was issued by, or in conjunction with, Assistant County Prosecutor Michael Jackson.

In compliance with the Subpoena, my client (with his wife) delivered several boxes of files and documents, as well as 2 grey Dell desktop computers (hard-drives) to the 9<sup>th</sup> floor of the Justice Center (the Prosecutor's Office) where a representative of Mr. Jackson received those items into his/her custody and control.

EXHIBIT C-0-1



It is my understanding that the Subpoena was complied with in its entirety, and in the time since the issuance of the Subpoena no complaint has been made by the County Prosecutor's Office that my client failed to comply with same in any fashion.

It is my understanding now that one or more of the computers in question may have been lost or misplaced within the County Prosecutor's Office. It is also my understanding (secondhand) that Prosecutor Jackson does not deny having received the subpoenaed information and computers, but merely cannot recall it as a result of the passage of time.

It is my understanding that, with the issuance of this letter, you will withdraw your previously issued Subpoenas on this subject.

Very Truly Yours,



LEONARD F. CARR

/cs

EXHIBIT C- 0-2

**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.

EXHIBIT D - 0.1

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.

EXHIBIT e-01



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

exhibit e-02

RE: Newcomb 302 request from Tony Viola

Page 1 of 1

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](mailto: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

EXHIBIT f-01

and this was my response to mark  
I do not have any newcomb 302



dan

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

Attached Message

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>  
To: Mark (USAOHN) Bennett <Mark.Bennett2@usdoj.gov>  
Cc: Jeffrey P. (FBI) Kassouf <Jeffrey.Kassouf@ic.fbi.gov>, John (USAOHN) Siegel <John.Siegel@usdoj.gov>  
Subject: Re: Viola - 302s of lender, Rich and Calo  
Date: Sun, 08 Apr 2012 12:56:01 -0400

mark  
this is what you sent  
I do not have a 302 for steve newcomb  
thx  
dan

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

>>> "Bennett, Mark (USAOHN)" <Mark.Bennett2@usdoj.gov> 2/29/2012 5:25 PM >>>  
Dan,

I have not found the interview of Steve Newcomb from Argent, but you probably already have that one. In addition, please be advised that we have put all of our trial exhibits on a disk and will send that disk, along with the Colley disk out tomorrow.



Thanks,  
Mark

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](mailto:mark.bennett2@usdoj.gov)

EXHIBIT f-0.2

- 1 -

## 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




329A-TV-71645

Continuation of FD-302 of SCOTT NEWCOMBE . On 02/18/2011 . Page 2

documents back to Argent. Once this was done Argent would fund the loan.

The account executive, was the sales representative in the field who dealt with the mortgage brokers.

The account manager oversaw the underwriter and funding processes.

Underwriting approved the loans, if there were any exceptions or conditions not met the account manager could override or waive a condition, if it made good business sense. 

It was important to underwriting to pull the borrower's credit report. The credit score drove the loan process.

The borrower's income was important to assess the risk of repayment.

A debt to income ratio was calculated based upon the income provided in the 1003.

Purchase loans required proof of the down payment.

The appraisal was required to be done by a disinterested third party.

The appraiser dealt with the mortgage broker, who submitted the appraisal report to Argent. Once received the appraisal would be sent for a desk review. If any followup by the desk review was needed they could call the appraiser.

The Account Manager and Underwriter placed heavy reliance that the 1003 was completed accurately and truthfully.

If the borrower was self employed a third party letter from a Certified Public Accountant was needed.

Argent required 5% of the down payment must be from the borrowers own funds, regardless of the Loan to Value.

Gift funds had to come from an immediate family member. If a gift was provided a gift letter was required, stating the funds were given truly as a gift and no repayment was required.

EXHIBIT G - 0.2



329A-CV-71646

Continuation of FD-302 of SCOTT NEWCOMBE, On 02/18/2011, Page 3

Argent did not accept third party down payments from a down payment provider.

Argent accepted seller second mortgages, also known as seller carry backs. The loan contract stating the terms and conditions was required to be provided to Argent. If a seller second was entered into Argent expected this was a legitimate transaction which would be repaid.

At one point Argent allowed only the buyer HUD Settlement Statement, however, their policy switched to requiring both the buyer and seller side. Argent switched this policy when it was discovered unauthorized third party disbursements were being made on the loans.

Closing costs were based upon the purchase agreement. The closing costs were capped at a certain percentage. Therefore the seller could only provide a certain maximum percentage.

Any money going to the buyer would need to be disclosed to Argent.

exhibit G-0.3

## Argent Mortgage Company

### BORROWER'S DISBURSEMENT AUTHORIZATION

SETTLEMENT /CLOSING AGENT TITLE NETWORK OF AMERICA LLC 35401 EUCLID AVENUE SUITE 215  WILLOUGHBY, OH 44094	BORROWER(S) KATHRYN CLOVER	
PROPERTY ADDRESS 3233 DELLWOOD ROAD, CLEVELAND HEIGHTS, OH 44118	SELLER(S)	
CLOSING DATE 06/30/2005	FUNDING DATE 06/30/2005	LEGAL DESCRIPTION LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF:
LOAN NUMBER 0082568999 - 9705		
LOAN PURPOSE Purchase		

FROM: Argent Mortgage Company, LLC - Division 03 - Reg 05 Sales PHONE NO. (800)369-5117 FAX  
 FUNDING CONTACT:

**INSTRUCTIONS TO SETTLEMENT/CLOSING AGENT:**

BELOW IS A LIST OF ALL SETTLEMENT CHARGES AND DISBURSEMENTS APPLICABLE TO THIS LOAN. YOU MUST USE THESE FIGURES TO PREPARE YOUR SETTLEMENT STATEMENT. YOU CANNOT DEVIATE FROM THESE FIGURES WITHOUT PRIOR WRITTEN AUTHORIZATION FROM Denise Obrock. ANY AMOUNTS MARKED WITH AN " \* " ARE PREPAID FINANCE CHARGES AND CANNOT BE INCREASED OR ADDED ONCE LOAN DOCUMENTS HAVE BEEN PREPARED UNLESS NEW LOAN DOCUMENTS ARE GENERATED.



Settlement Charges

LOAN AMOUNT: \$ 161,508.00

Item Payable	Pay to	Paid Outside of Closing (POC)	Paid by Borrower	Paid by Lender	Paid by Seller	Total Amount Paid
Underwriting Fee to Lender	Argent Mortgage Company, LLC	\$0.00	\$550.00	\$0.00	\$0.00	\$550.00 *
Interest 1 days @ 36.06	Argent Mortgage Company, LLC	\$0.00	\$36.06	\$0.00	\$0.00	\$36.06 *
Origination Fee to Broker 2.477%	Central National Mortgage (W)	\$0.00	\$4,000.36	\$0.00	\$0.00	\$4,000.36 *
Appraisal Fee	HUDAK APPRAISAL (W)	\$0.00	\$350.00	\$0.00	\$0.00	\$350.00
Tax Related Service Fee	Argent Mortgage Company, LLC	\$0.00	\$70.00	\$0.00	\$0.00	\$70.00 *
Flood Search Fee	Argent Mortgage Company, LLC	\$0.00	\$9.00	\$0.00	\$0.00	\$9.00 *
Hazard Insurance Premium	INSURANCE OFFICE OF (W)	\$0.00	\$860.50	\$0.00	\$0.00	\$860.50
Closing/Remote Close/Trip	FAMILY TITLE SERVICES INC (W)	\$0.00	\$450.00	\$0.00	\$0.00	\$450.00 *
Title Ins/Endorsements/Survey	FAMILY TITLE SERVICES INC (W)	\$0.00	\$576.25	\$0.00	\$0.00	\$576.25
Recording/Recording	FAMILY TITLE SERVICES INC (W)	\$0.00	\$200.00	\$0.00	\$0.00	\$200.00
Coercion/Wire/E-Mail Fee	FAMILY TITLE SERVICES INC (W)	\$0.00	\$115.00	\$0.00	\$0.00	\$115.00 *
TOTAL CHARGES						\$7,217.17

ESCROW ACCOUNTS

	Annual Amount	Monthly Amount	Number of Months	Total Charge
TAXES	\$0.00	\$0.00	0	\$0.00
HAZARD INSURANCE	\$0.00	\$0.00	0	\$0.00
FLOOD INSURANCE	\$0.00	\$0.00	0	\$0.00
EARTHQUAKE INSURANCE	\$0.00	\$0.00	0	\$0.00
WINDSTORM INSURANCE	\$0.00	\$0.00	0	\$0.00
INITIAL DEPOSIT				\$0.00

EXHIBIT A - 0.1

**Argent Mortgage Company, LLC**  
**BORROWER'S DISBURSEMENT AUTHORIZATION**

**Additional Disbursements to Others**

Item Payable	Account Number	Balance	Total Amount Paid
<b>TOTAL DISBURSEMENTS</b>			

<b>FUNDING INFORMATION</b>	
WIRE AMOUNT	
DEPOSIT(S) / EARNEST MONEY	
WAREHOUSE LINE	
CASH OUT	\$15,717.17
<b>FUNDING CONTACT:</b>	



**BORROWER'S AUTHORIZATION**  
 Argent Mortgage Company, LLC ("LENDER") IS HEREBY AUTHORIZED AND REQUESTED TO DISBURSE THE LOAN FUNDS TO THE SETTLEMENT/CLOSING AGENT TO BE APPLIED/DISBURSED IN ACCORDANCE WITH LNR AS SHOWN IN THIS AUTHORIZATION. IT IS UNDERSTOOD THAT THIS STATEMENT IS AN ESTIMATE ONLY AND IS AUTHORIZED TO MAKE ADJUSTMENTS TO THE FIGURES AS NECESSARY TO REFLECT CHANGES IN THE CLOSING/SETTLEMENT DATE OR TO REFLECT UPDATED PAYOFF AMOUNTS FOR ANY PRIOR LIENS OR ACCOUNTS TO BE SATISFIED WITH THEIR LOAN PROCEEDS.

*Kathryn Clover* 6/30/05  
 Borrower KATHRYN CLOVER Date Date

\_\_\_\_\_  
 Borrower Date

\_\_\_\_\_  
 Borrower Date

\_\_\_\_\_  
 Borrower Date

*[Signature]* 6-30-05  
 SETTLEMENT/CLOSING AGENT REPRESENTATIVE Date

e x h i b i t 11-0.2



AFFIDAVIT OF KAREN PASELA

STATE OF OHIO  
COUNTY OF CUYAHOGA, SS:

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. For the last three years of her life, Dawn worked for the Cuyahoga County Mortgage Task Force, first as a contract employee and then as a county employee.
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 employees 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 cases against Anthony Viola and Susan Alt were being handled. Dawn showed us photos she had taken of file boxes 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 fund-raising event for Anthony Viola after he had been indicted and to secretly record what was said. She was also asked 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. 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 us 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 a federal prison. As a result, Dawn did not testify.

EXHIBIT I - (0.1)

9. 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.

10. When we visited Dawn the day before she died, we could tell that she had started drinking again, and we urged her to stop.

11. Dawn was found dead the next day. The cause of death was listed as acute alcohol intoxication. She was only 26.

Further I sayeth naught.

Karen Pasela  
Karen Pasela

Sworn and subscribed in my presence this 16<sup>th</sup> day of December, 20 16

Paul Vargo  
NOTARY PUBLIC



PAUL VARGO  
NOTARY PUBLIC  
STATE OF OHIO  
Recorded in  
Cuyahoga County  
My Comm. Exp. 1/25/17

exhib I - p. 2



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

06-05  
440  
700161631

146

c/o Mr. Norman Starbuck 11-12-09

PAY TO THE  
ORDER OF

Tony Vision D... Fund

\$ 25.00

Twenty Five Dollars

DOLLARS

**CHASE**

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

MEMO

Vision D... Fund

D-M-Rh

EXHIBIT I - 03

822974

# DEFENSE SUBPOENA

(Criminal Rule 17)

RECEIVED FOR FILING  
03/15/2012 08:34:26  
GERALD E. FUERST, CLERK

THE STATE OF OHIO

PRECIPE

DS 822974

Cuyahoga County

Case Number: CR-10- 543886 -A

To the Sheriff of Cuyahoga County:  
You are hereby commanded to summon:  
DAWN PASELA  
5676 BROADVIEW ROAD APT. 201  
CLEVELAND, OH 44134-0000

JUDGE: DANIEL GAUL  
ROOM: JC19D

Please Call Defense Attorney: JOHN B GIBBONS at (216) 363-6086 BEFORE Appearing

TO THE WITNESS

YOU ARE HEREBY ordered to appear, under penalty of law, before the COURT OF COMMON PLEAS, held at the Courts Tower - Justice Center, Lakeside and Ontario Streets, in the City of Cleveland, within and for said County, on the 21st day of March, 2012, at 09:00 o'clock A.M., to testify to all and singular such matters and things which you may know in a certain action in court pending, and then and there to be determined, between the STATE OF OHIO, plaintiff, and ANTHONY L VIOLA (defendant 11873387), on the part of the DEFENSE.



WITNESS, GERALD E. FUERST, Clerk Court of Common Pleas, and the seal of said Court, as Cleveland, Ohio, this 15th day of March, A.D. 2012.

GERALD E. FUERST, Clerk

by

FOR SHERIFF'S USE ONLY

RETURN OF SUBPOENA:

On 3/19/12, I STEVEN PRINCE PERSONALLY served the within named for him, them, at their usual place of business or residence, a true and certified copy thereof with all endorsements therein.

SHERIFF FEES			
Service and Returns .....	\$		
Miles Traveled .....	\$		CUYAHOGA COUNTY SHERIFF DEPT., Sheriff
Total .....	\$		
			<del>Deputy Sheriff</del> PROCESS SERVER

EXHIBIT J

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).

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.

EXHIBIT K-02



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**  
General Manager

Beachwood, OH  
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**  
Operations/HR Manager

Beachwood, OH  
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  
Associate – Law Enforcement

Parma Heights, OH  
May 2009

**Language:**

American Sign Language  
English Sign Language

**Volunteering:**

Youth Challenge  
St. Ignatius Soup Kitchen  
Parma Animal Shelter  
Founder of Student Criminal Justice Club – Tri-C

1999-2003  
2002-2004  
2008  
2008

exhibit L



From: Daniel Kasaris <dkasaris@cuyahogacounty.us>

To: tonytopaz <tonytopaz@aol.com>

Subject: Re: Final witnesses

Date: Mon, Apr 16, 2012 11:34 pm

OK

she has has a right to have an attorney court appointed for her to represent her. If you confer with john I am sure he will agreee. If I do not raise that issue with the judge and she testifies and admits to being on pain killers or whatever she was on and admits other things and is then indicted all sorts of problems woulexist. Therefore, in the abundance of caution I will suggest that he appoint an attorney for her to deal with her drug abuse issues as well as whatever crimes she may have committed after she was fired.

The purpose of the hearing will be to ascertain if she needs a laywer. She cant testify without an attorney unless she does not want one. She will be asked incrimidating questions and may incriminidate herself.

dan

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

>>> 04/16/12 7:49 PM >>>

3 witnesses left: michelle crissey, Steve Greenwald and Dawn Pasela, Gibbons was going to get with all of them, we're trying to have them there first thing ... if they don't show, we'll move to my testimony. If Dawn does not show, I'll ask for a hearing after trial to figure out what, if anything, she knows about computers or discovery.

Thanks,  
Tony

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

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>

To: tonytopaz <tonytopaz@aol.com>

Cc: Donald Cleland <dcleland@cuyahogacounty.us>; Nick Giegerich <lgiegerich@cuyahogacounty.us>

Sent: Sat, Apr 14, 2012 7:59 pm

Subject: Re: MONDAY

thank you

I have to ask the judge to appoint an attorney to represent dawn pasela because she has 5th amendment rights and issues like greenwald and fairfield, just an FYI --I think I mentioned that on the record at least twice She was fired for refusing a drug test in late May 2011 when she was clearly stoned --staggering down the hallway of our office, eyes rolling back into her head, slurred groggy speech--so there is an issue with respect to which drugs she may have abused that day, in addition to the issues surrounding her breaching a statutory mandated confidentiality agreement she signed with the OAG which she apparently broke.

she is apparently subject to prosecution for both of the above issues.

dan kasaris

Daniel J. Kasaris  
Assistant County Prosecutor  
Cuyahoga County, Ohio  
1200 Ontario ST. 9th Floor

exh. D. J M

Resumes

Kathryn Clover - Lakewood, OH

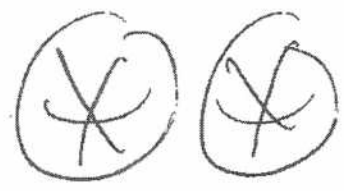
Work

Company: Neighborhood progress inc May 2012 to 2000  
Legal intern

Company: Housing advocates inc - Cleveland, OH May 2011 to Oct 2012  
Senior law clerk

Company: Cuyahoga county prosecutor's office - Cleveland, OH Mar 2010 to May 2012  
Such investigation lead to the indictments and convictions

Company: Chateau management investments - Cleveland, OH Feb 2005 to Aug 2008  
Owner and partner



Education

School: Marshall College Of Law, Cleveland State University - Cleveland, OH Jul 2013  
J.d.

Hide details

PHONES & ADDRESSES

Name	Address	Phone
Kathryn K Clover	206 Springwood Dr, Oxford, OH 45056	(513) 523-4470
Kathryn Clover	13935 Lake Ave, Lakewood, OH 44107	(216) 221-5955
Kathryn E Clover	2750 Fair, Lancaster, OH 43130	(740) 653-9079
Kathryn E Clover	2750 Fair Ave, Lancaster, OH 43130	(740) 653-9079
Kathryn K Clover	3233 Dellwood Rd, Cleveland, OH 44118	(216) 320-0301
Kathryn E Clover	435 Eastwood Ave, Lancaster, OH 43130	(740) 653-9079
Kathryn Clover	517 Herbert Pl Nw, Canton, OH 44703	
Kathryn Clover	1093 Norka St, Akron, OH 44307	
Kathryn Clover	717 Sylvan Ct Ne, Canton, OH 44704	
Kathryn Clover	1512 2Nd St Se, Canton, OH 44707	
Kathryn K Clover	4236 Riggs Rd, Oxford, OH 45056	
Kathryn Clover	202 Young Ave Se, Canton, OH 44707	
Kathryn Clover	206 Springwood Dr, Oxford, OH 45056	(513) 284-****

ORGANIZATIONS

Name / Title	Company / Classification	Phones & Addresses
Kathryn Clover	REINE MODEL MANAGEMENT LLC	
Kathryn Clover	CHATEAU MANAGEMENT LLC	
Kathryn K Clover	MKM TALENT GROUP, LTD	
Kathryn Clover	CHATEAU MANAGEMENT INVESTMENTS LLC	

SOCIAL NETWORKS

GooglePlus

Kathryn K Clover age ~36

Lived in: Oxford, OH, Westlake, OH, Cleveland, OH, Lakewood, OH, Olmsted Falls, OH, North Olmsted, OH, Westerville, OH, Columbus, OH, Cincinnati, OH, Hamilton, OH

EXHIBIT N

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.	)	
	)	GOVERNMENT'S RESPONSE IN
KATHRYN CLOVER,	)	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;

EXHIBIT 6-01

-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

Exhibit O - P.2



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

Page 6

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.

Exhibit

P



**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@cuvalioencounty.us](mailto:prosecutor@cuvalioencounty.us)  
[www.prosecutormason.com](http://www.prosecutormason.com)

Exhibit Q - P.1

Sincerely

A handwritten signature in black ink, appearing to read "D. Kasaris". The signature is written in a cursive style with a large, looped initial "D".

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 Q-0.2



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

IN THE COURT OF COMMON PLEAS  
CRIMINAL DIVISION

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

-v-

*Kathryn  
Clower Testimony*

- - - - -

EXCERPT TRANSCRIPT OF PROCEEDINGS

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

OFFICIAL COURT REPORTERS  
Cuyahoga County, Ohio

*Exhibit R-0.1*



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

EXHIBIT R - P. 2

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.

exhibit 5-0.1

- (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 S-0.2

It hurts..I know!

Nov 28, 2016, 10:01 AM

Susan Kasaris

I understand. It is sad.

Nov 28, 2016, 10:00 AM

Kelly Patrick

I'm mad because it's his issues that are blocking us from being a family. He's an asshole and all he cares about is his alcohol.

Nov 28, 2016, 9:59 AM

Kelly Patrick

I won't. That's good that Dan is getting help.

Nov 28, 2016, 9:59 AM

Susan Kasaris

Please dont repeat

Nov 28, 2016, 9:58 AM

Susan Kasaris

Why r u mad at him

Nov 28, 2016, 9:57 AM

Susan Kasaris

Yes.he has been in counseling for awhile

Nov 28, 2016, 9:57 AM

Kelly Patrick

Dan is getting help??

Nov 28, 2016, 9:54 AM

Susan Kasaris

They play with our emotions!

Nov 28, 2016, 9:54 AM

Susan Kasaris

That is good...you were strong!

Nov 28, 2016, 9:53 AM

Susan Kasaris

EXHIBIT T - P.1



Nov 28, 2016, 11:09 AM

Kelly Patrick

Of course he is. That's all he ever wanted was sex, no relationship or connection with anyone. And there will be women who jump all over him. He has no shortage of women to fuck.

Nov 28, 2016, 11:08 AM

Susan Kasaris

Idk. He is probably ly suppressing his feelings

Nov 28, 2016, 11:07 AM

Kelly Patrick

Fucking loser. He's 51 and that's what he aspires to be.

Nov 28, 2016, 11:07 AM

Susan Kasaris

That he just wants sex.....no drama

Nov 28, 2016, 11:06 AM

Kelly Patrick

What?

Nov 28, 2016, 11:03 AM

Susan Kasaris

That is what John told Dan

Nov 28, 2016, 11:03 AM

Kelly Patrick

That's what they want. Someone to fuck and not tell them what to do.

Nov 28, 2016, 11:00 AM

Susan Kasaris

Again...the media image of women

Nov 28, 2016, 10:59 AM

Kelly Patrick

They both did. They'll never find women to tolerate them.

Nov 28, 2016, 10:39 AM

Susan Kasaris

That is crazy. He constantly told me I was a good Mom. Typical stuff that guys say when they have ever an affair. He messed himself up

exhibit J - 0.2

Nov 28, 2016, 11:13 AM

Susan Kasaris

He has self confidence issues

Nov 28, 2016, 11:13 AM

Kelly Patrick

Yep, calls Demi and Melanie fat all the time.

Nov 28, 2016, 11:13 AM

Susan Kasaris

He is fat..lol

Nov 28, 2016, 11:13 AM

Susan Kasaris

His daughters are fat? With

Nov 28, 2016, 11:13 AM

Kelly Patrick

He sat in John's backyard eating shit food complaining about how fat you and his daughters are and how he is working out and taking care of himself.

Nov 28, 2016, 11:12 AM

Susan Kasaris

Last summer we were together

Nov 28, 2016, 11:11 AM

Susan Kasaris

Dan has other issues

Nov 28, 2016, 11:09 AM

Kelly Patrick

No, last summer.

Nov 28, 2016, 11:09 AM

Susan Kasaris

When was that...in 2012

Nov 28, 2016, 11:09 AM

Kelly Patrick

That's what Dan told me he wanted too.

EXHIBIT J - P.3

My kids are pissed at him for it

Nov 28, 2016, 11:21 AM

Susan Kasaris

Dan makes fun of fat people constantly. It is just wrong

Nov 28, 2016, 11:19 AM

Susan Kasaris

He is skewed by the media image of women

Nov 28, 2016, 11:19 AM

Susan Kasaris

I do know Dan loves me. He shows ot daily. That said why it is difficult

Nov 28, 2016, 11:18 AM

Susan Kasaris

Idk why this happens. It sucks

Nov 28, 2016, 11:18 AM

Kelly Patrick

I'm better off without John. I don't really know why this is my life, dealing with him.

Nov 28, 2016, 11:15 AM

Susan Kasaris

Just more bad raising issues

Nov 28, 2016, 11:15 AM

Susan Kasaris

Oh brother

Nov 28, 2016, 11:14 AM

Kelly Patrick

And of course they blamed you for buying bad food and making them fat.

Nov 28, 2016, 11:14 AM

Susan Kasaris

He called demi family to her face on Easter and they got in a big fight

Nov 28, 2016, 11:14 AM

Kelly Patrick

He is fat!!!

exhibit T - p. 4

Kelly Patrick

Omg susan. How fucking horrible. That will stay with her for a long time.

Nov 28, 2016, 11:29 AM

Susan Kasaris

Cried a lot

Nov 28, 2016, 11:28 AM

Kelly Patrick

How did demi react?

Nov 28, 2016, 11:27 AM

Susan Kasaris

Kelly...i am not fat. I know that

Nov 28, 2016, 11:27 AM

Susan Kasaris

Again..improper raising

Nov 28, 2016, 11:26 AM

Susan Kasaris

I know. That is just wrong!

Nov 28, 2016, 11:25 AM

Kelly Patrick

What kind of parent does that?

Nov 28, 2016, 11:24 AM

Susan Kasaris

Correction

Nov 28, 2016, 11:24 AM

Susan Kasaris

\*he called demi fat to her face

Nov 28, 2016, 11:23 AM

Kelly Patrick

John says the same stuff about fat people too. Watching too much porn and playboy.

Nov 28, 2016, 11:22 AM

Susan Kasaris

Exhibit 7 - P.5



Nov 28, 2016, 12:01 PM  
Susan Kasaris

Idk....i just don't get it

Nov 28, 2016, 12:00 PM  
Susan Kasaris

Han is obsessed with it

Nov 28, 2016, 12:00 PM  
Kelly Patrick

Why are they so preoccupied with weight?

Nov 28, 2016, 12:00 PM  
Susan Kasaris

I dont care about being a skinny minny.....there are way more important things in life

Nov 28, 2016, 12:00 PM  
Susan Kasaris

Seriously kelly.....i am like 15 lbs overweight but I am healthy

Nov 28, 2016, 11:59 AM  
Susan Kasaris

Demi didn't talk to Dan for 2 months after that

Nov 28, 2016, 11:59 AM  
Kelly Patrick

I saw her fb post.

Nov 28, 2016, 11:59 AM  
Susan Kasaris

Melanie is safe at Oosu...fyi

Nov 28, 2016, 11:58 AM  
Kelly Patrick

What shitty men they are.

Nov 28, 2016, 11:41 AM  
Susan Kasaris

That was the day he left

Nov 28, 2016, 11:33 AM

exhibit 7 - 0.6

Nov 28, 2016, 12:06 PM

Susan Kasaris

Becuz he wants our family life and he is embarrassed by his actions

Nov 28, 2016, 12:05 PM

Kelly Patrick

He's living a double life. He's one man to John and another one to you. He doesn't want John to know this side of him.

Nov 28, 2016, 12:04 PM

Kelly Patrick

John and I once had a good thing too. But it's been more bad years than good.

Nov 28, 2016, 12:04 PM

Susan Kasaris

He didn't want that girl...if he did...why didn't he divorce me?

Nov 28, 2016, 12:04 PM

Susan Kasaris

Idk what I want anymore

Nov 28, 2016, 12:03 PM

Susan Kasaris

The affair was him lashing out over his internal issues

Nov 28, 2016, 12:03 PM

Susan Kasaris

U dont see what we really have b4 the affair

Nov 28, 2016, 12:02 PM

Kelly Patrick

After all this, why do you want him?

Nov 28, 2016, 12:02 PM

Susan Kasaris

It is how u feel

Nov 28, 2016, 12:01 PM

Susan Kasaris

I dont care if Dan gains 50 lbs

..I told him that ...looks don't matter to me

Exhibit 7 - 0.7

# Fwd:

June 22, 2020 at 8:54 AM

From Kelly Patrick

----- Forwarded message -----

From: **dan kasaris** <danieljkasaris@yahoo.com>

Date: Mon, Sep 3, 2012 at 11:00 PM

Subject: RE:

To: Kelly Patrick

Yes they r..i have some with Tom that r awesome..ok..one night he was working til 5 and I needed the car cause I was closing..no Tom..so I took my mothers car and went to work..i get there and I see the car rocking back and forth..all steamed up in McDonald's parking lot..i jumped on the bumper and up popped 2 heads..tom and a female coworker he was banging in the car..then there were the hand jobs we got from co workers in the cooler.hahahaha...alot of memories.hahahaha..john worked at the Boardman McDonald's ..he wanted 2 work there or maybe they figured 3 of us were 2 much...

---

**From:** Kelly Patrick  
**Sent:** 9/3/2012 10:42 PM  
**To:** dan kasaris  
**Subject:** RE:

That is pretty cool. They're creating memories they'll remember for the rest of their lives.

On Sep 3, 2012 10:39 PM, "dan kasaris" <danieljkasaris@yahoo.com> wrote:

I like Dem and mel working 2 gether send me back 2 1982 to 1985 when Tommy and I worked 2 gether..

---

**From:** Kelly Patrick  
**Sent:** 9/3/2012 10:10 PM  
**To:** dan kasaris  
**Subject:** RE:

And John's texting me what you're telling him!

On Sep 3, 2012 10:07 PM, "dan kasaris" <danieljkasaris@yahoo.com> wrote:

Yep..hey emailing u and texting John hahahaa

---

**From:** Kelly Patrick  
**Sent:** 9/3/2012 9:51 PM  
**To:** dan kasaris  
**Subject:** Re:

It's sad. It's not easy to see or hear about people suffering. So many people don't realize the consequences of what you do to your body will always catch up to you in some way.

On Mon, Sep 3, 2012 at 9:48 PM, dan kasaris <danieljkasaris@yahoo.com> wrote:

no haven't talked 2 her 2 day..she was waiting for result of cat scan 2 see if it spread as of 2 weeks ago it hadnt spread..wont operate for another week in the mean time it grows..need 2 get him stronger I guess..

---

**From:** Kelly Patrick  
**Sent:** 9/3/2012 9:38 PM  
**To:** dan kasaris

EXHIBIT U- 0-1

**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

exhibit 0-02





**Bryan Butler**

I was recently dating Kat Clover and yes she told me that her and Dan had been sleeping together since the trial where he prosecuted her ex husband Matt

Apr 7 at 6:30 PM • Like • Reply



**Melanie Wood**

Bryan, I sent you a msg on your Facebook page, tony would love to talk to you directly, please chk your msg's thanks! 😊

Apr 8 at 3:08 PM • Like • Reply



Write a comment...



I was going through screen shots..literally 10,000 records and found this one..thought I would send it to you and me to place in a file.

Trying to get organized...:)

Sent from Yahoo Mail on Android

exhibit ✓

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.

EXHIBIT W

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.

Respectfully Submitted,

Tony Viola  
Tony Viola

\* No such waiver part  
of record. Thank you.

USDC Clerk's Office

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

exhibit X

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*

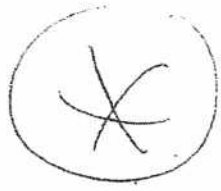
STEVEN M. DETTELBAUGH  
United States Attorney  
Mark S. Bennett  
Assistant United States Attorney  
801 West Superior Avenue, Suite 400  
Cleveland, OH 44113  
(216) 622-3878  
(216) 522-2403 (facsimile)  
Mark.Bennett2@usdoj.gov

Counsel for Plaintiff-Appellee

exhibit 4-01



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)

EXHIBIT 4-02

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  
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).

EXHIBIT 4-05



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".

Exhibit 7-0.6

# Bureau of Justice Assistance

**Award Title:** Recovery Act Grant Program

**Award Description:**

The Recovery Act Edward Byrne Memorial Competitive Grant Program (Byrne Competitive Program) will help communities improve the capacity of state and local justice systems and provide for national support efforts including training and technical assistance programs strategically targeted to address local needs. This competitive grant announcement focuses on initiatives in eight areas: 1) preventing and reducing violent crime through community-based data-driven approaches; 2) providing funding for neighborhood-based probation and parole officers; 3) reducing mortgage fraud and crime related to vacant properties; 4) hiring of civilian support personnel in law enforcement (training staff, analysts, dispatchers, etc.); 5) enhancing forensic and crime scene investigations; 6) improving resources and services for victims of crime; 7) supporting problem-solving courts; and 8) national training and technical assistance partnerships.

Under category 3, the Cuyahoga County Prosecutor's Office will use the grant to increase their number of law enforcement partners and expand their efforts to aggressively investigate and prosecute fraudulent mortgages within Cuyahoga County. The Cuyahoga County Prosecutors Office convened the Cuyahoga County Mortgage Fraud Task Force in January 2007. Since 2007, the Cuyahoga County Prosecutors Office has indicted 219 defendants for their involvement in fraudulent loans (totaling more than \$55 million), taken on 353 homes. Of the 353 home loans under investigation, 252 of the houses (71 percent) have fallen into foreclosure. The task force is comprised of 12 federal, state, and local law enforcement agencies. The grant funds will be used to hire three additional full-time employees. The increased capacity provided by adding staff is expected to result in criminal indictments being brought against an additional 250 defendants for fraudulent mortgages by the end of the 24-month grant cycle.

CA/NCF

<b>Awardee Name:</b> Cuyahoga County Prosecutors Office	<b>Award Number:</b> 2009-SC-B9-0080
<b>Solicitation Title:</b> BJA FY 09 Recovery Act Edward Byrne Memorial Competitive Grant Program: Reducing Mortgage Fraud and Crime Related to Vacant Properties	<b>Fiscal Year:</b> 2009
<b>Supplement Number:</b> 00	<b>Amount:</b> \$279,950.00
<b>Earmark:</b> No	<b>Recovery Act:</b> Yes
<b>State/Territory:</b> OH	<b>County:</b> Cuyahoga
<b>Congressional District:</b> 11	<b>Award Status:</b> Closed

Exhibit 2-0.1

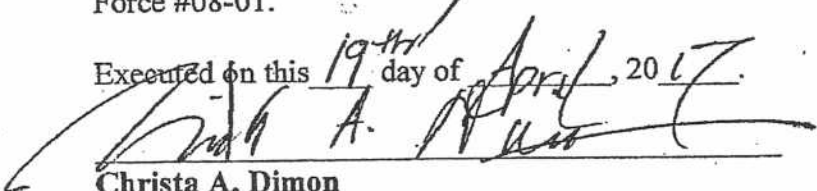
**AFFIDAVIT OF CHRISTA A. DIMON**

STATE OF OHIO  
COUNTY OF FRANKLIN:

The undersigned, **CHRISTA A. DIMON**, being duly sworn, hereby deposes and says:

1. I am over the age of 18 and am a resident of the State of Ohio. I have personal knowledge of the facts herein, and if called as a witness, could testify completely thereto.
2. I am an attorney in good standing licensed to practice in The State of Ohio, bar number 0029910.
3. I am currently employed by The Office of the Ohio Attorney General. I am a Principal Attorney assigned to the Ohio Organized Crime Investigations Commission. (OOCIC)
4. On September 26, 2007, OOCIC formed Task Force #08-01 which was established as a Mortgage Fraud Task Force to investigate organized criminal activity in Cuyahoga County, Ohio.
5. The establishment of Task Force #08-01 was governed by the terms set forth in a MOU, attached hereto as Exhibit A.
6. As provided in the attached MOU, the funding of Task Force #08-01 was the joint responsibility of OOCIC and the Ohio state and/or local participating agencies/departments. (See page 3) and no federal funding was utilized in the creation of or the maintaining of Task Force #08-01.

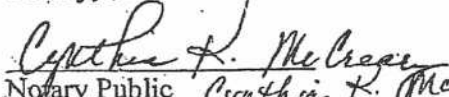
Executed on this 19<sup>th</sup> day of April, 2017.

  
**Christa A. Dimon**

State of Ohio  
County of Franklin

On the 19<sup>th</sup> day of April 2017, before me, the undersigned notary public, personally appeared **Christa A. Dimon**, personally known to me and acknowledged that she did sign the foregoing Affidavit, and being first duly sworn on oath according to law, deposes and says she has read the foregoing Affidavit subscribed by her and that the matters stated herein are true to the best of her knowledge and belief.

Witness my hand by Christa A. Dimon before me on this 19<sup>th</sup> day of April, 2017, Franklin County, Ohio

  
Notary Public Cynthia R. McCreary, Notary Public  
My Commission expires 8-15-2020

Anthony L. Viola  
# 32238 160  
McKean Federal Corrections Institution  
P.O. Box 8000  
Bradford, PA 16701

RE: Ohio Revised Code Section 2921.03(a)

September 26, 2016

I am writing you to inform you that Ohio Law provides that, "No person, knowingly using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant in the discharge of the person's duty". Please see Ohio Revised Code 2921.03(a). For approximately a year you or others on your behalf have carried on a campaign publishing false or materially false writings in a reckless manner attempting to intimidate me in the performance of my duties as a prosecutor and as a city councilman in the City of North Royalton by using absolutely false writings some of which have already been adjudicated to have been false, in a reckless manner. In addition you and/or others acting on your behalf and possibly with your consent have attempted to interfere business relationships which I have and employment.

Please cease the above describe conduct and please remove or cause to be removed any reference to me, and my family, including my wife and daughters from the website known as [www.freetonyvioa.com](http://www.freetonyvioa.com), or any social media. Please remove or cause to be removed the pictures of myself and my daughters from [www.freetonyviola.com](http://www.freetonyviola.com) or any social media to have direct or indirect control over. Failure to do so may result in the initiation of a complaint against you for violation of the above statute which is a felony of the third degree per occurrence, with the appropriate law enforcement agency.

Sincerely,

  
Dan Kasaris

POSTAGE WILL BE PAID BY ADDRESSEE  
PERMIT NO. 10739





Anthony Viola  
# 32238 160  
McKean Federal Corrections Institute  
PO Box 8000  
Bradford, PA 16701

EXHIBIT AA



TRULINCS 32238160 - VIOLA, ANTHONY L - Unit: MCK-E-A

---

FROM: Ryan, Rob  
TO: 32238160  
SUBJECT: Kasaris  
DATE: 10/12/2016 04:06:08 PM

Tone So I got a letter from Kasaris addressed to me here at the house. He is definitely pissed. It seems to be a cease and desist letter, he references a Ohio Revised Code Section 2921.03(a) I just don't want to get into any trouble. Let me know what you think.. I can mail you a copy of it if you want.

---

EXHIBIT BO - (0.1)

TRULINCS 32238160 - VIOLA, ANTHONY L - Unit: MCK-E-A

---

FROM:  
TO: 32238160  
SUBJECT: Hey  
DATE: 10/20/2016 11:51:30 AM

Hi,

I just read the text of the letter sent to your web people. They need to take this very seriously and hire an attorney asap.. The letter says that a criminal complaint has been initiated. I know you don't think that they should, but they do need to hire an attorney. I think they should call that gentleman that you suggested.

What I am wondering is, how are you stopping official business for Kasaris? That law is so un-constitutional its absurd. You can't have an opinion and voice it now? You must make certain that everything that you say is absolutely verifiable. Or, you could say, "in my opinion." Also, I think that Judge Baxter might want to know about this because you need to have your FOIA case moved forward - and quickly. I don't think she would like the intimidation factor of his letter - and the completely unconstitutional nature of the law he sites. A federal judge would understand that it's unconstitutional.

EXHIBIT BB-0.2



U.S. Department of Justice

*United States Attorney  
Northern District of Ohio*

United States Court House  
801 West Superior Avenue, Suite 400  
Cleveland, Ohio 44113-1852

August 9, 2013

Anthony L. Viola #32238160  
Ashland Federal Correctional Institution  
P.O. Box 6001  
Ashland, Kentucky 41105

Re: United States v. Viola, et al. 1:08CR506

Dear Mr. Viola:

This office is in receipt of your letters of March 31, 2013 and April 15, 2013. We have reviewed your allegations that members of a "joint state-federal Mortgage Fraud Task Force" engaged in "significant misconduct." Based upon our review of your allegations, this office will take no further action.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven M. Dettelbach", written over a circular stamp or mark.

Steven M. Dettelbach  
United States Attorney

EXHIBIT CC