

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: January 19, 2023

Ms. Kimberly Kendall Corral
Law Office
4403 St. Clair Avenue
Cleveland, OH 44103

Ms. Rebecca Chattin Lutzko
Office of the U.S. Attorney
801 W. Superior Avenue
Suite 400
Cleveland, OH 44113

Re: Case No. 23-3050, *In re: Anthony Viola*
Originating Case Nos. 1:08-cr-00506-6 : 1:15-cv-00542

Dear Counsel:

The Movant's application under 28 U.S.C. § 2244 for permission to file a second or successive habeas petition has been docketed as case number **23-3050**. The case number must appear on all filings.

Counsel for the respondent is expected to file a response electronically with the Clerk's office by **February 2, 2023**. If the respondent chooses not to file a response, a letter saying so and why must be filed by the deadline.

Appearance forms are due no later than **February 2, 2023**.

When the court issues its decision in this matter, the Clerk's office will send a copy to all parties. Pursuant to § 2244(b)(3)(E), that decision is final and not subject to a petition for rehearing or rehearing en banc.

Sincerely yours,

s/Amy E. Gigliotti
Case Management Specialist
Direct Dial No. 513-564-7012

RECEIVED

01/12/2023

DEBORAH S. HUNT, Clerk

**United States Court of Appeals
for the Sixth Circuit****MOTION UNDER 28 U.S.C. § 2244 FOR LEAVE TO FILE A
SECOND OR SUCCESSIVE MOTION TO VACATE, SET ASIDE, OR CORRECT
SENTENCE UNDER 28 U.S.C. § 2255 BY A PERSON IN FEDERAL CUSTODY**

Case Number (to be provided by the court): _____

Name: Anthony L. ViolaPrisoner Number: 32238-160Place of Confinement: Supervised Release, US Probation**Instructions**

- (1) **Purpose.** Use the attached form to file a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive motion under 28 U.S.C. § 2255.*

* If the district court transferred your motion to this court and you do not feel that you should be required to obtain prior authorization, you must still complete this form. You may, however, attach an additional statement explaining to the court why you oppose the transfer.

- (2) **Form.** You must answer all questions completely and concisely in the proper space on the form. Attach additional pages if necessary to list all of your claims and the facts upon which you rely to support those claims. Your failure to provide complete answers may result in the court of appeals denying your motion for authorization.
- (3) **Standard of Review.** In accordance with the Antiterrorism and Effective Death Penalty Act of 1996, as codified at 28 U.S.C. § 2255, before authorization to file a second or successive motion can be granted by the United States Court of Appeals, the movant must make a prima facie showing that he or she satisfies either of the following conditions found in 28 U.S.C. § 2255(h):

- (1) The claim contains newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; **or**
- (2) The claim contains a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court, that was previously unavailable.

Pursuant to 28 U.S.C. § 2244(b)(1), the court will not consider claims that were presented in a prior 28 U.S.C. § 2255 motion.

- (4) **Attestation.** You must sign the motion at the end of page 9. Failure to sign the motion for authorization may result in the court of appeals denying your motion.
- (5) **Copies.** If they are reasonably available, you must file with your motion the magistrate judge's report and recommendation and the district court's opinion from your prior 28 U.S.C. § 2255 proceedings.
- (6) **No Filing Fee.** There is no fee for filing a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive motion under 28 U.S.C. § 2255.
- (7) **Filing.** When this motion for authorization is fully completed, **mail the original (with all documents attached) to the below address.** The court of appeals will serve your motion and attachments on the appropriate United States Attorney using the electronic case filing (ECF) system.

Sixth Circuit Court of Appeals
Clerk's Office
Room 540, Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, OH 45202

MOTION UNDER 28 U.S.C. § 2244 FOR LEAVE TO FILE A SECOND OR SUCCESSIVE MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE UNDER 28 U.S.C. § 2255 BY A PERSON IN FEDERAL CUSTODY

A. CONVICTION AND DIRECT APPEAL PROCEEDINGS

1. (a) Name and location of the United States District Court that entered the judgment of conviction under attack:

Northern District of Ohio

(b) Case number: 08-cr-506, ND Ohio

2. Date of judgment of conviction: January 13, 2012

3. Length of sentence: 150 months

4. Offense or offenses for which you were convicted:

Wire fraud, 18 USC 1343

Conspiracy to commit wire fraud, 18 USC 371 & 1343

5. Did you appeal the conviction and sentence? YES NO

6. If you appealed, give the name of court, the result, and the date of the result:

Sixth Circuit, appeal denied November 12, 2015.

Appeal of denied of Motion for New Trial Pursuant to Rule 33 denied November 6, 2013.

B. PRIOR COLLATERAL PROCEEDINGS

7. Have you ever filed a motion to vacate, set aside, or correct sentence related to this conviction and sentence?

YES NO

If "yes," how many? one

If more than one, attach a separate page providing the information required in items 7(a) through 7(g) for the additional petitions, applications, or motions.

As to the **first** motion, give the following information:

(a) District court: **Ohio Northern District Court**

(b) Case number: **1:08-CR-00506**

(c) Claims raised (list **all** claims, using extra pages if necessary):

Actual Innocence, Ineffective Assistance of Counsel, Failure to Interview, Invading Defense

Knowing Use of Perjured Testimony of Ms. Clover, Hiding Newcomb 302, Sham Prosecution, Brady Violations

Vindictive Prosecution, Newly Discovered Evidence, Youngblood Bad Faith, Obstruction of Justice Dawn's Testimony

Ineffective Assistance of Appeallate Counsel, Conflicts from Joint Defense, Giglio Violations

(d) Result and date of result: **Petition Denied**

Novemeber 6, 2013

(e) Did you appeal? YES NO

(f) If you appealed, give the result and the date of the result:

Judgement Affirmed, March 18, 2014

C. PROPOSED CLAIMS IN CURRENT MOTION FOR AUTHORIZATION

8. State concisely the claim (or claims) that you **now** wish to raise. Summarize briefly the facts supporting each ground.

Claim One: The government acted in bad faith in failing to preserve computers subpoenaed from Nick Myles containing material and exculpatory evidence.

Supporting **FACTS** (tell your story briefly without citing cases or law):

As a result of records litigation in the United States District Court, Western District of Pennsylvania the FBI produced receipts evidencing that it had Dell computers from Central National Mortgage. Nick Myles subsequently approached Petitioner and disclosed that he turned over computers to the prosecution, and was ordered by prosecutor, Dan Kasaris, to testify falsely that he never gave the prosecution the computers.

Was this claim raised in a prior motion? YES NO
Does this claim rely on “newly discovered evidence”? YES NO

If “yes,” state the new evidence and why it was not previously available:
Nick Myles has provided an affidavit evidencing that Kasaris threatened Myles in order to secure false testimony from him regarding the Dell computers.

Does this claim rely on a “new rule of constitutional law”? YES NO

If “yes,” state the new rule of law (give case name and citation):

Claim Two: The convictions rest on the tainted testimony of government witness, Katheryn Clover, who was an undisclosed government agent.

Supporting **FACTS** (tell your story briefly without citing cases or law):
Clover was held out as a fact witness to Petitioner at the time of trial.

However, it has been discovered that Clover was in fact an agent working for the prosecutor's office. Further, AUSA Bennet has conceded that Clover's testimony in Viola's trial was false.

Was this claim raised in a prior motion? YES NO

Does this claim rely on “newly discovered evidence”? YES NO

If “yes,” briefly state the new evidence and why it was not previously available:
Cuyahoga County Prosecutor's Office produced

electronic mail exchanges between prosecutor Dan Kasaris and government witness, Kathryn Clover.

Does this claim rely on a “new rule of constitutional law”? YES NO

If “yes,” state the new rule of law (give case name and citation):

Claim Three: _____

Supporting **FACTS** (tell your story briefly without citing cases or law):

Was this claim raised in a prior motion? YES NO

Does this claim rely on “newly discovered evidence”? YES NO

If “yes,” briefly state the new evidence and why it was not previously available:

Does this claim rely on a “new rule of constitutional law”? YES NO

If “yes,” briefly state the new rule of law (give case name and citation):

Additional grounds may be asserted on additional pages if necessary.

9. Do you have any motion or appeal now pending in any federal court as to the judgment now under attack?

YES NO

If “yes,” name of court and nature of proceeding: _____

Case number: _____

Wherefore, movant asks the United States Court of Appeals for the Sixth Circuit to grant an order authorizing the district court to consider the movant's second or successive motion to vacate, correct, or set aside sentence under 28 U.S.C. § 2255. I declare under penalty of perjury that my answers to all the questions in this motion for authorization are true and correct.

Executed on 1/12/2023
(Date)

/s/ Anthony L. Viola

Movant's Signature

I. OVERVIEW OF PETITION

Petitioner, Anthony Viola, moves this Court to grant him permission to file a second or successive habeas corpus petition pursuant to 28 U.S.C.2244(b). In 2011, Petitioner was convicted in Ohio's Northern District for Mortgage Fraud Claims brought by a multi-district mortgage fraud task force.

The evidence presented at trial included testimony of Kathryn Clover who was held out by the government as merely a fact witness. Clover was a key government witness who testified that Petitioner, one of the many realtors utilized by Clover, was aware that Clover had included fraudulent information on her mortgage applications. Further, Petitioner proceeded to trial without the benefit of mortgage agent, Nick Myles, computer hard drives which contained correspondence with lenders. These correspondence would have evidenced that lenders approved sub-prime mortgages, not because the applications were fraudulent but because the lenders waived the guidelines. Government agents testified that no such computers were turned over, and adduced testimony consistent with that claim.

Newly discovered evidence establishes that Clover was not merely a fact witness for the government. Rather, she was an agent on behalf of the mortgage fraud task force, employed as a pro bono law clerk with the prosecutor's office. As part of her employment, she attended interviews and interrogations of other witnesses, reviewed complete files, produced work product, conducted surveillance of Petitioner's home, and did trash pulls outside Petitioner's home. Clover worked at the direction of the mortgage fraud task force prosecution.

Additionally, FOIA litigation out of the United States Court of Appeals, Third Circuit produced FBI receipts documenting that Nick Myles/Central National Mortgage computers were

received by the FBI and in the possession of the government. Further, Nick Myles has produced a sworn affidavit averring that the government threatened and coerced him to wrongfully testify that he had never turned over his computers in response to the subpoenas issued.

Based on newly discovered evidence, Petitioner can establish that his conviction was based, in material part, by testimony of an undisclosed government agent and advocate. Her tainted testimony violated Petitioner's due process and resulted in an unreliable conviction; one which would not have occurred but for Clover's testimony. Further still newly discovered evidence related to the government's possession of the exculpatory computer hard drives gives rise to *Arizona v. Youngblood* and *Napue* claims which require vacation of Petitioner's convictions.

Here, Petitioner can establish that "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(2)(B).

II. STATEMENT OF FACTS

Anthony Viola formerly served a twelve-and-a-half prison sentence, pursuant to a federal conviction in the Ohio Northern District Court. *U.S. v. Viola*, No. 1:08-CR-506 (N.D. Ohio). Following a 2011 jury trial, Viola was convicted of two counts of conspiracy to commit wire fraud, a thirty-three counts of wire fraud in violation of 18 U.S.C. §§371 and 1343. The conviction followed an investigation by the Cuyahoga County, Ohio Mortgage Fraud Task Force, which operates under the Attorney General's Ohio Organized Crime Investigations Commission. In addition to Mr. Viola's federal case, he was also charged in state court with receiving stolen

property in violation of O.R.C. 2913.51, telecommunications fraud in violation of O.R.C. 2913.05, tampering with records in violation of O.R.C. 2913.42, money laundering prohibitions O.R.C. 1315.55, aggravated theft in violation of O.R.C. 2913.02(A)(3) and engaging in a pattern of corrupt activity in violation of O.R.C. 2923.32. On April 26, 2012, the jury found Viola not guilty as to all counts, with one count dismissed by the state on a prior date.

Following Petitioner's federal conviction, the 6th Circuit Court of Appeals affirmed the decision of the Ohio Northern District Court. In its opinion, the 6th Circuit provides some factual clarity to the procedures that following Mr. Viola's federal conviction:

Prior to sentencing, Viola filed an initial Federal Rule of Criminal Procedure 33 motion for a new trial pro se, alleging ineffective assistance of trial counsel, Jay Milano. The district court denied Viola's motion because Viola failed to show that Attorney Milano was deficient and that Viola was prejudiced by Milano's performance. At the sentencing hearing, the district court denied Viola's motion for reconsideration and then sentenced Viola to sixty months of imprisonment for each of the conspiracy counts, and 150 months of imprisonment for each of the wire fraud counts, with all terms of imprisonment to run concurrently and to be followed by three years of supervised release. John B. Gibbons was appointed counsel under the Criminal Justice Act ("CJA") to represent Viola on appeal. On January 25, 2012, Gibbons filed a notice of appeal from Viola's judgment of conviction and sentence. In the meantime, Viola was tried in state court on similar charges as those in his federal trial, but was acquitted on all state charges. Thereafter, Viola filed another Rule 33 motion for a new trial, alleging that his acquittal on the state charges supports his claim that he is entitled to a new federal trial. The district court denied Viola's second motion for a new trial. Although the notice of appeal is taken from the judgment of conviction and sentence, the arguments in Viola's appellate brief focus on the denial of his motion for a new trial that was based on his contention that he was denied the effective assistance of counsel. Therefore, the appeal is construed as taken from that order. *U.S. v. Anthony Viola*, Case No. 1:08cr506-6, Order No. 12-3112, at Page ID 91076-07.

After Petitioner's acquittal in state court, he filed a subsequent Rule 33 Motion for a New Trial, which was also denied by the 6th Circuit. Following these denials, Petitioner has exhausted all avenues of appeal and served the entirety of his federal sentence.

III. PREREQUISITES TO FILING A SUCCESSIVE APPLICATION

In accordance with 28 USC 2244(b), before leave to file a second or successive petition can be granted by the United States Court of Appeals, the petitioner has the burden to make a prima facie showing that satisfies the conditions in 28 U.S.C. § 2244(b), stated below;

(b)(1) a claim presented in a second or successive habeas corpus application under [28 U.S.C.]section 2254 that was presented in a prior application shall be dismissed.

(2) a claim presented in a second or successive habeas corpus application under [28 U.S.C.] section 2254 that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(d)(1)(D) holds that:

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

However, this Court determined in *In re McDonald*, 514 F.3d 539, 543 (6th Cir.2008) that

28 U.S.C. § 2244(b)(4) charges the district court, and not the court of appeals, to "dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the

requirements of this section." (emphasis added). Thus, investigating compliance with the one-year statute of limitations outlined in 28 U.S.C. § 2244(d) -- clearly a separate subsection from 28 U.S.C. § 2244(b) -- is not within the purview of the court of appeals' consideration of applications requesting authorization to file a second or successive habeas corpus petition pursuant to 28 U.S.C. § 2244(b).

Indeed, not only does the text of the statute require this conclusion, but logic counsels that a court of appeals considering a request for authorization to file a second or successive habeas corpus petition would not consider whether or not the habeas corpus petition complies with the one-year statute of limitations. When considering motions pursuant to 28 U.S.C. § 2244(b) for permission to file a second or successive habeas corpus petition, the court does not have a developed record because the new petition has not yet been considered by a district court. As a result, courts of appeal cannot determine whether the one-year statute of limitations should be equitably tolled, see, e.g., *Souter v. Jones*, 395 F.3d 577, 589 (6th Cir. 2005) (determining that, based upon the particular facts of the case, the petitioner had presented sufficient evidence of actual innocence to be granted equitable tolling); see also *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005) (stating that equitable tolling is available when the petitioner can demonstrate "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way"), or on what date the defendant was able to discover the evidence in question through due diligence. See, e.g., *Granger v. Hurt*, 90 F. App'x 97, 99-101 (6th Cir. 2004) (finding that, because of the particular facts of the case, the one-year period should begin after the date the information in fact became available); see also 2 Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure*, 1447-48 (5th ed. 2005) ("The statute limits the scope of review at this stage to the specific question whether the motion makes a prima facie showing that any of the claims in the petition satisfy AEDPA's substantive successive petition standards, thereby evidently rendering irrelevant other possible grounds for dismissal such as ultimate lack of merit, nonexhaustion, procedural default, and the like.").

In fact, in the instant case, it is difficult to determine whether McDonald would run afoul of the one-year statute of limitations given that Harris's affidavit is dated December 21, 2001 and McDonald first commenced state court proceedings on account of Harris's affidavit on May 1, 2003. If a district court were to find that, using reasonable due diligence, McDonald would have only

discovered the information by May 1, 2002 -- less than five months after Harris signed her affidavit -- then a court might find McDonald in compliance with the one-year statute of limitations.

In re McDonald, 514 F.3d 539, 542 (6th Cir.2008). Nevertheless, the factual predicate of Petitioner's claims fall within the one year statute of limitations.

Before Petitioner may file a second or successive § 2255 motion in the district court, he must obtain this Appellate court's authorization by showing that the motion relies on newly discovered evidence of his innocence or a new rule of constitutional law. *See* 28 U.S.C. §§ 2244(b)(3)(C), 2255(h). *In re Daniel*, 6th Cir. No. 22-5917, 2023 U.S. App. LEXIS 415, at *2 (Jan. 6, 2023).

Each of the claims presented here constitute a new ground for relief and therefore constitutes a second or successive § 2255 motion. *See* 28 U.S.C. § 2244(b); *Gonzalez v. Crosby*, 545 U.S. 524, 532, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005) (holding a claim filed subsequent to a first § 2255 petition which asserts a "new ground for relief" is a second or successive petition). Here, Petitioner Viola's claims rely on newly discovered evidence which support his claims. *See* 28 U.S.C. § 2244(b)(2)(B)(i). The factual predicate of these claims was not available to Viola at the time that he filed his original 2255.

Further, the 6th Circuit Court of Appeals has provided that legal claims previously before the court may survive the doctrine of res judicata where the claims are supported by new facts and changed circumstances. *Ohio ex rel. Boggs v. City of Cleveland*, 655 F.3d 516, 523 (2011). In *Ohio ex rel. Boggs* the court provided that res judicata did not preclude raising the claims at issue as there was "substantial change in the scope of continuing harm". *Id.* at 524. This finding is consistent with that of the Ohio Supreme Court, which has provided that a plaintiff may not use an alternative legal theory overlooked in previous proceedings absent changed circumstances.

Ohio ex rel. Boggs, 655 F. 3d at 523 (citing *Grava v. Parkman Township*, 73 Ohio St. 3d 379, 383 (1995)).

This Court has previously held that In *Wogenstahl*, we held that a habeas claim was ripe if the facts underlying the claim "had already occurred when he filed his petition, although Wogenstahl was unaware of these facts." *In re Wogenstahl*, 902 F.3d at 627-28. In particular, in that case as in this one, we found that the petitioner's *Brady* claim fell "within the scenario contemplated by § 2244(b)(2)(B)," because he was raising claims that he did not raise in his first petition and he was relying on recently discovered facts. *Id.* at 628. *In re Jackson*, 12 F.4th 604, 608 (6th Cir.2021).

Here, Petitioner submits newly discovered evidence which could not have been discovered sooner through the exercise of due diligence.¹

IV. GROUNDS FOR RELIEF

First Ground For Relief:

Newly Discovered Evidence Establishes that The Government Failed to Produce Evidence in Its Possession, Coerced False Testimony, and Failed to Correct Known False Testimony In Violation of Petitioner's Firmly Established Federal Rights

A. OVERVIEW OF CLAIM

This claim was not raised in Petitioner Viola's first habeas petition and therefore constitutes a new ground for relief. The factual predicate for this claim relies on newly discovered evidence which could not have been discovered through the exercise of reasonable diligence.

Contemporaneous to trial, the government represented to the district court that it did not receive or possess Nick Myles/Central National Mortgage. Further, the government adduced

¹ See Exhibit 1: Letter by investigator Bob Frederick and Exhibit 2

testimony from its witnesses that no computers from defendant Nick Myles were ever in the possession of the government.

Newly discovered evidence reveals that the government, by and through the FBI, was in possession of the computers, and that the testimony in support of the government's denial of computers was knowingly made in bad faith. The government coerced and adduced known false testimony.

B. FACTS ESTABLISHED IN DISTRICT COURT

It was well established by Petitioner and his co-defendants that the Nick Myles/ Central National Mortgage computers at issue contained materially exculpatory information, which could not be obtained by other means.

1. Petitioner Made Contemporaneous Assertions that Computers were Favorable and Material

During the trial, Petitioner and his codefendants were unequivocal Nick Myles/ Central National Mortgage Computers were apparently exculpatory. The evidence at issue was both material and favorable to Petitioner's claims.

i. On January 15 and June 8, 2010 Petitioner and co-defendant Uri Gofman by and through counsel filed a motion to compel specifically stating;

Counsel has previously filed a motion similar to this on January 15, 2010, asking for documents and information seized from Nicholas Myles and associated companies. Since this time, counsel has been made aware that the requested items were turned over to the Cuyahoga County Prosecutor in 2006. The investigation in this matter was a coordinated effort, in all regards, by a multi-jurisdictional task-force with federal, state and county elements. While the documents requested were turned over to the Cuyahoga County Prosecutor, it is the belief of the undersigned that these documents are also in the possession of the United States Attorney. The cases against the Defendants were the result of a concerted

effort of the United States and the State of Ohio. The Defendants move this Honorable Court to order the production of the requested evidence, which would be highly helpful/exculpatory to the Defendants.

The codefendants identified the Central National Mortgage Computer data as being highly exculpatory. Doc #: 124 Filed PageID #: 552

2. The State Adduced Testimony That it Never Possessed Computers Because Nick Myles Never Turned the Over.

i. On March 30, 2010 Attorney Leonard Carr drafts a letter to Michael Goldberg stating that “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....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 9th floor of the justice center (the Prosecutor’s Office) where a representative of Michael Jackson received those items into his/her custody and control.” Exhibit 3

ii. The on July 1, 2020 Leonard Carr mysteriously did an about face, testifying under oath that he was “incorrect” when he typed the letter. Doc #: 173 Filed PageID #: 880.

iii. On July 1, 2010 L. Bryan Carr testified that “to his knowledge” Nick Myles of Central National Mortgage turned over no computers. Doc #: 173 Filed PageID #: 873.

iv. On July 1, 2010 AUSA Mark Bennet, in regard to the 2006 Myles Computers, states to the Court We obviously would love to handle and get our hands on any computer that may have been turned over. Doc #: 173 PageID #: 840. Further he stated, if a computer exists we would be happy to get that evidence as well but it is not relevant or necessary. Doc #: 173 Filed PageID #: 843.

v. On July 1, 2010 Nick Myles was asked, did you have occasion to turn over any of the computers used by Central National Mortgage, he answered, “No I did not.” 857.

vi. On March 11, 2011 Nick Myles unequivocally testified that he did not turn over any computers in response to the 2006 subpoena. Doc #: 393 Filed PageID #: 6645.

vii. On March 14, 2011 Dyan Myles testified at trial that she thought that they brought computers and files to the prosecutor’s office. Doc #: 394 Filed PageID #: 2136. She further testified that she recalled a discussion with the prosecution indicating that they couldn’t find the computers. Doc #: 394 Filed PageID #: 2136-37. She later testified that she could not remember whether she and her husband had turned over computers in 2006 or not.

viii. On March 22, 2011 Jeffrey Kassouf , FBI Agent testified that Nick Myles did not turn over any computers in 2006 that Kassouf was aware of. Doc #: 400 Filed PageID #: 8296.

C. NEWLY DISCOVERED EVIDENCE

In the course of FOIA legislation, in the United State District Court, Western District of Pennsylvania, case number 15:cv 242, new information was disclosed by the government. The District Court initially accepted the government’s statements as true; that (1) no federal evidence was placed at the multijurisdictional mortgage fraud taskforce location, and (2) that the search that the government performed was adequate. Upon appeal to the United States Third Circuit Court of Appeals, Petitioner attached records which contradicted the governments assertions during the District Court legislation.

The Third Circuit appointed the law firm of Covington & Burling who represented petitioner, submitting an appellate brief. In response to Petitioner's brief by and through counsel, the government made compelling admissions of prior false statements to the district court.

The Department of Justice responded to Petitioner's appellate brief by and through Covington, stating;

“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.* [emphasis added]. The federal defendants therefore requested a partial remand to allow EOUSA to reprocess responsive records and submit a new Vaughn index and declaration to the district court. The other parties to this appeal did not oppose the motion, and this Court granted it on October 31, 2019.

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

Case: 18-2573 Document: 99 Page: 2 Date Filed: 06/29/2020. Upon discovering its “inaccuracies” the United States Attorney's office concluded, saying, “The government regrets those inaccuracies and the resulting inconvenience to the Court.” Case 1:15-cv-00242-SPB Document 116-1 Filed 09/27/19 Page 2 of 2. The District Court was required to vacate its prior rulings in the government's favor.

As a result of this litigation, the FBI produced record receipts evidencing that it had dell computers from Nick Myles/ Central National Mortgage. See Exhibit 4. This third circuit FOIA legislation is presently ongoing. The Yale Law School Appellate Advocacy Clinic and the

Wiggins Law Firm is currently representing Petitioner by appointment of the United States Court of Appeals, Third Circuit. It is anticipated that additional favorable materials will become available during the disposition of that matter.

Subsequent to the government's admission that it possessed Nick Myles/Central National Mortgage, on or about December 2022, Nick Myles contacted Petitioner to disclose an alarming admission. On December 15, 2022 Nick Myles disclosed that he did turn over computers but was *ordered* by Dan Kasaris to falsely testify in federal court that he never brought any computers to prosecutors office. Myles averred that "even though I provided honest and truthful information to prosecutors, both Mark Bennet and Dan Kasaris frequently raised their voices during meetings and threatened to prosecute my wife Dyan unless I entered a guilty plea and agreed to testify against Anthony Viola, Uri Gofman and others." While in the final stages of negotiations of his case, Myles offered sworn statement that Kasaris stated that unless Myles signed a plea agreement at that moment, he intended on returning to his office to indict Dyan Myles. See Exhibit 5.

D. LEGAL STANDARD

1. Petitioner is entitled to New Trial when the Government Fails to Correct Known False Statements

A conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under the due process clause of the Fourteenth Amendment; the same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears. *Napue v. Illinois*, 360 U.S. 264, 265, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). It is immaterial that the silence of the state representatives' guile or a desire to prejudice. Unlike Brady claims, *Napue* claims do not turn on materiality. The Supreme Court has firmly established that Where a representative of the state in a criminal trial solicits false testimony or permits it to go uncorrected, the fact that the jury was apprised of other grounds for believing that the witness may

have had an interest in testifying against the defendant does not turn what is otherwise a tainted trial into a fair one. *Napue v. Illinois*, 360 U.S. 264, 265, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).

Here, Myles affidavit evidence s that the government knew the computers were turned over. If the government had a good faith belief if had not received them, it would not have needed to coerce Myles, and presumably Leonard Carr. The government failed to correct the misstatements and the Petitioner is entitled to a new trial.

2. Coerced Testimony is Violative and Due Process and Requires Reversal

Under the *Napue* decision, the prosecution must ensure that it does not knowingly allow false testimony, and correct testimony known to be false. *In re Jackson*, 12 F.4th 604, 607 (6th Cir.2021). Like this case, Jackson similarly argues that the facts underlying his *Brady/Napue* false testimony claim were unavailable until Ivana King provided Jackson's counsel with a declaration that law enforcement had intimidated her into falsely testifying that Jackson had confessed to the murders. Jackson has made a prima facie argument that this evidence was suppressed as well and that he could not have obtained it through the exercise of due diligence. See *In re McDonald* , 514 F.3d 539, 545 (6th Cir. 2008) (finding that claims regarding coerced testimony could not have been discovered for purposes of § 2244(b) application until key witness provided an affidavit regarding coercion).

Likewise, Nick Myles affidavit constitutes a prima facie argument this evidence was suppressed as well and that he could not have obtained it through the exercise of due diligence.

3. The Government Acted in Bad Faith, resulting in the Unavailability of Favorable Evidence and Petitioner is Entitled to Habeas Relief

Here, government law enforcement was in possession of the computers, as proven by the receipt produced in recent litigation. In *California v. Trombetta*, 467 U.S. 479, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984), the Supreme Court held that for destruction or loss of evidence to

constitute a constitutional violation, "the evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." Id. at 489. In Arizona v. Youngblood, 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281 (1988), the Court further held that where lost or destroyed evidence is deemed to be only potentially exculpatory, as opposed to apparently exculpatory, the defendant must show that the evidence was destroyed in bad faith. Id. at 58. United States v. Garza, 435 F.3d 73, 75 (1st Cir.2006).

The apparent value of the computers was known to the government as the government subpoenaed and reviewed them. The apparent exculpatory value was made known to the Court and the government by the Petitioner's early and repeated filings pleading with the court for an order to compel production given the information was known to be "highly exculpatory."

Second Claim for Relief:

Newly Discovered Evidence Establishes that Kathryn Clover was an undisclosed government agent, whose testimony "tainted" the proceeding.

A. OVERVIEW OF CLAIM

This claim was not raised in Petitioner's first habeas petition and therefore constitutes a new ground for relief. This claim is based on newly discovered evidence.

During the trial in the above captioned matter, Kathryn Clover was presented as a fact witness for the government. Importantly, she was also a defendant in a companion case, similarly dealing with "Mortgage Fraud." Newly discovered evidence reveals that Clover was not merely a co-defendant and a fact witness but was acting as an agent of the government. Midway through law school, Clover was working with State Prosecutor, Dan Kasaris and Federal Prosecutor Mark Bennet in a quasi-legal capacity.

Though the AUSA was aware of- and benefitted from- this fact, it was secreted from the Petitioner and co-defendants during trial. Newly discovered evidence, in the form of electronic mail, between Clover and Prosecutor Kasaris, copying AUSA Bennet. That newly discovered evidence, despite diligence by Petitioner, could not have been discovered until recently as it took years to obtain the information from the prosecution.

B. FACTS ESTABLISHED IN DISTRICT COURT

During direct examination Clover is asked about her education and employment history. Doc. #38, PageID #:2985. Though Clover discloses that she is a student at Cleveland Marshall College of Law, she fails to disclose that she works with the prosecutor's office. Doc. #38, PageID #:2985-91. AUSAs on behalf of the government fail to correct her known misstatement.

Arguing, without conceding, that the government may not viewed Clover's entangled paralegal services with he government as formal employment, it nevertheless failed to disclose that involvement in any manner whatsoever. A complete view of the record indicates that this omission is not mere oversight. For example; it was disclosed through the testimony of government witness Pirichy that Pirichy met with government agents eight to ten times. Doc. #38, PageID #:2981. Further, Pirichy's testimony revealed that he had also had three to four meetings with County Prosecutors. Doc. #38, PageID #:2984. Further, Pirichy's testimony revealed that he was only able to review the statements of other defendants through his defense counsel in the normal course of discovery in his case. Doc. #38, PageID #:2953. Notably, his review of other witness statements occurred only after he had given his own statement. ID.

On Direct, Clover testified that she had been in contact with the Cuyahoga County prosecutor's office. Doc. #38, PageID #:3003. Upon cross examination Clover discloses that she has met with Federal Prosecutors and agents approximately ten times and that she has met with

state prosecutors approximately fifteen times. Doc. #391, PageID #:6027. Clover does not disclose that other defendants and witnesses were present; nor that she was preparing attorney work product by request of the government; nor that she was reviewing statements and documents of other defendants and witnesses as a government agent.

C. NEWLY DISCOVERED EVIDENCE

The newly discovered evidence which establishes the factual predicate of Petitioner's first claim for relief could not have been discovered previously through the exercise of due diligence. In fact, Petitioner exercised zealous diligence to always obtain all possible information in the case at bar since his conviction. After years of records request, the Cuyahoga County Prosecutor's office finally produced electronic mail exchanges between state prosecutor Dan Kasaris and government witness Kathryn Clover. Notably Federal prosecutor Mark Bennet is copied on many of these emails.

Most notably, at 10:17 am on February 23, 2012 Clover asks Prosecutor Kasaris if she can include her legal work with the Mortgage Task Force on a resume to secure a legal position working for housing court. EXHIBIT 6

In that correspondence, Clover writes to Kasaris;

[my law school professor] wonderd if it would be possible for me to put something like, "pro-bono assistance in the investigation, prosecution and investigation [sic] in mortgage frau with the mortgage fraud task force of cuyahoga county...

thoughts?

(As you know I am trying to get into the Housing Court to do work with helping people who have gone through foreclosures get title out of their names etc..volunteer at firs, but hope to turn it into a job by summer.

He wants to make sure I show my ability and things I have done, but I don't want to overstep anything

thanks so much-

Just a little under an hour later on February 23, 2012 at 11:12 am, Kasaris responds,

Something like this is fine with me

March of 2010- August 2011

Assisted Cuyahoga County Prosecutor's office Mortgage Fraud Unit in investigation crime committed by Lender Employees, Appraiser, Realtors, and Mortgage Brokers. Such investigation lead [sic] to the indictment and or conviction of a number of people involved in committing more than \$10,000,000.00 worth of Mortgage Fraud in Cuyahoga County.

Clover fires back an electronic mail response a few minutes later on February 23, 2012 at 11:16 am;

Am I not currently doing so? I am still assisting w [sic] Argent.

Kasaris responds to Clover on February 23, 2012 at 11:21 am;

yes with the corporation

march of 2010-Present

Assisted Cuyahoga County Prosecutor's office Mortgage Fraud Unit in investigating crime committed by Lender Employees, Appraiser, Realtors, and Mortgage Brokers. Such investigation lead [sic] to the indictment and or conviction of a number of people involved in committing more than \$10,000,000 worth of mortgage fraud in Cuyahoga County.

thx

dan

Kasaris, after changing the proposed language for Clover's resume language from "March 2010-August 2011" to "March-Present" Kasaris sends a follow up electronic mail response to Clover on February 23, 2012 at 11:24 am, stated;

yes you are

my mind is wrapped up in tony v. now but yes once done with this i will have some more stuff for you to look at with argent

dan

Additional emails evidence that Clover was doing surveillance outside Petitioners Meadowbrook Blvd home in Cleveland Heights home. Clover was doing trash pulls at Kasaris' instruction. See Exhibit 6.

While Dan Kasaris is a county prosecutor, rather than a federal prosecutor, these newly discovered communications make unequivocally clear that clover's role in the mortgage fraud task force was to assist in securing prosecutions. She was not a neutral fact witness. Importantly, a sole Mortgage Fraud Task Force included county and federal members who worked in concert to secure prosecutions in federal and state mortgage fraud cases. Task Force members include: Ohio Organized Crime Investigations Commission, Cuyahoga County Prosecutor's Office, Ohio Bureau of Criminal Identification and Investigation, Cuyahoga County Sheriff's Office, Cleveland Heights Police Department, Solon Police Department, Beachwood Police Department, Pepper Pike Police Department, HUD Inspector General's Office, Cuyahoga County Recorder, Cuyahoga County Auditor, Cuyahoga County Treasurer, Ohio Department of Commerce-Division of Financial Institutions, F.B.I., U.S. Attorney's Office and U.S. Postal Inspector. Necessarily, Clover's pro bono involvement with the task force would have included federal prosecutions.

The dates of Clover's pro bono employment with the task force are material in establishing Clover's role during Petitioner's federal trial. Between March 2010 and August 2011 Cuyahoga County had not indicted or convicted people involved in more than \$10,000,000 worth of mortgage fraud. In order to be true, Kasaris' recommended language for Clover's resume line necessarily contemplated her involvement in the Mortgage task Force's federal prosecutions of Cuyahoga

county mortgage fraud allegations. Petitioner was tried in federal court March 2011, squarely during the time in which Clover was an undisclosed pro bono law clerk for the Mortgage Fraud Task Force, and the government's key witness in its prosecution of petitioner.

D. Relevant facts affecting the analysis of Petitioner's Second Ground for Relief

The government's misconduct regarding its handling of Clover's testimony is not limited to its failure to disclose her role as pro-bono law clerk. While Petitioner is procedurally barred from raising separate claims which have already been adjudicated, other government misconduct evidences the fatal prejudice of withholding the truth of Clover's role as an advocate for the government. Clover was held out as a fact witness to Petitioner at the time of trial. However, the government by and through AUSA Bennet has conceded that Clover's testimony in Petitioner Viola's trial was false.²

Further still, AUSA Bennet set forth that the false testimony was necessary to secure convictions.³ Finally, the government adduced testimony that Clover was in law school but failed to adduce other relevant information which was material to her credibility. Not only did the government fail to disclose her role as a pro bono law clerk in mortgage fraud task force prosecutions, but the government further failed to disclose that government agents had assisted Clover in securing law school tuition scholarships.

The government's misconduct resulted in a "star witness" who; (1) lied under oath (according to filings made by AUSA Mark Bennet), (2) received pro bono employment as a law clerk, (3) and was able to tout the resulting wrongful conviction as a personal success for the

² See Exhibit 7. Bennet files a sentencing memorandum to the court averring that Clover gave false testimony.

³ *USA v. Clover* 210 CR 75 Northern District Doc #:46.

purpose of securing future employment in the legal field. See Clover “LinkedIn” Resume Exhibit 8 In addition to these off the record benefits, Clover also received the benefits which were set forth on the record; including no prosecution in state court and a sweetheart deal in her federal case.

E. Legal Standard

The government’s misconduct is violative of Petitioner’s rights in numerous ways. First, prosecutors are prohibited from testifying in cases in which they play a prosecutorial role. Second, Clover’s crossover role constitutes tainted testimony as firmly established in *In Mesarosh v. U.S.*, 352 U.S. 1, 9 (1956). Finally, the nondisclosure of Clover’s role constitutes impeachment evidence and is violative of *Brady*, *Giglio*, and *Napue*.

1. Prosecutorial Testimony is Violative of the Advocate Witness Rule

Federal Courts have firmly established that a prosecutor should only testify in a trial he is prosecuting in “extraordinary circumstances or for compelling reasons” and such practice is universally “frowned upon”. *Riddle v. Cockrell*, 288 F.3d 713 (5th Cir. 2002); *U.S. v. Birdman*, 602 F.2d 547, 553 (3d Cir. 1979).

A pro-bono law clerk working on behalf of the prosecuting attorneys in the task force is not distinguishable. The Ethical Rules as established by the American Bar Association, require that agents of attorneys, such as a pro-bono law clerk, "must conform to the standards of ethical and professional conduct set forth in the Code of Professional Responsibility of the American Bar Association as amended February 24, 1970" 37 C.F.R. § 1.344 (1984). Therefore, Clover had the same ethical obligations as her supervising counsel.

In *Ramon v. Quarterman*, 316 Fed. Appx. 339 (5th Cir. 2009), the prosecutor testified in the trial he was prosecuting. However, since he didn’t address the defendant’s guilt or innocence

or focused on her years of experience as a prosecutor the court found it was not prejudicial. Here, a law-student agent of the prosecutor assigned to actively prosecute the case against Petitioner testified and did in fact address guilt or innocence. Plus, she hid her prosecutorial experience from the jury. In *Walker v. Davis*, 840 F.2d 834 (11th Cir. 1988) the court found that the prosecutor's testimony was prejudicial partially because of that "prestige". The court in *Walker* stated:

In this case, it is reasonably probable that the prosecutor acting as both advocate and witness misled the jury because of the likelihood that the prosecutor's credibility was enhanced by the prestige of his office. As this court stated in *Drake v. Kemp*, "Arguments delivered while wrapped in the cloak of state authority have a heightened impact on the jury." 762 F.2d 1449, 1459 (11th Cir.1985) (citing *Berger v. United States*, 295 U.S. 78, 55 S. Ct. 629, 79 L. Ed. 1314 (1934)), cert. denied, *Kemp v. Drake*, 106 S. Ct. 3333, 92 L. Ed. 2d 739 (1986). Indeed, Mr. Hendrix played upon the respect accorded his office in rebuttal and in closing argument. His assistant, Mr. Whetstone, referred to Hendrix's long tenure in office and to the fact that the people of the county had never failed to return him to office. Hendrix also, in closing, commented upon his twenty-one years as a prosecutor and the fact that he never in his entire career had to testify in a murder case but felt compelled to do so in this very special case. Secondly, this case did not involve merely an isolated remark or a single improper comment. This was a trial in which the advocate for the State testified and then continued to prosecute the case. Certainly, there was the danger of confusion on the part of the jury. The jury was placed in a position of being unable to differentiate between Hendrix, the prosecutor and Hendrix, the witness. The damage to the trial process was exacerbated by Hendrix stepping in and out of his roles. *Walker*, 840 F. 2d at 838-39.

While the government in this case withheld Clover's cross over roll from the defense and the jury, that fact is not dispositive. The *Walker* court looked at this issue to answer the question of "whether the prosecutor's conduct was so egregious and influenced the outcome of the trial to such a degree that the rigorous standard of review in federal habeas review of a state court proceeding is met". *Walker*, at 837. Here, like *Walker*, the prosecutor knew there was crossover between Clover's factual involvement and her involvement with Petitioner's case in aiding the prosecution as a pro bono law clerk.

The *Walker* court refers to this claim as the “advocate-witness” rule. It is also recognized in the Sixth Circuit and Ohio courts specifically. *Coleman v. Mitchell*, 268 F.3d 417 (6th Cir. 2001); *U.S. v. Markwood*, 48 F.3d 969 (6th Cir. 1995) (citing *Birdman*, 602 F.2d 547, 561-63); *Oblinger v. Donegal Grp. Inc.*, No. 1:18-cv-775, 2019 U.S. Dist. LEXIS 140942 (S.D. Ohio Aug. 20, 2019). *See also Omnicare, Inc. v. Provider Servs.*, No. 1:05 CV 2609, 2006 U.S. Dist. LEXIS 6497 (N.D. Ohio Feb. 21, 2006); *U.S. v. Poulsen*, No. CR2-06-129, 2006 U.S. Dist. LEXIS 68214 (S.D. Ohio Sep. 12, 2006).⁴ Even though the facts are different than the *Walker* case, Clover was both an advocate for the prosecution and a witness - it’s just that the jury didn’t know that. The reasoning behind the rule is that “justice must satisfy the appearance of justice”, so it works to preserve public trust in the judicial system. *Birdman* at 554. The rule pivots on “the appearance of injustice” to the sitting jury. Where the government wants to avoid the appearance of injustice which may taint the jury, non-disclosure is not a remedy.

If the jury had known this information, it would have undermined their trust in the system. Further, if the jury had known that Clover was both an advocate and a witness, the result would have been different. Clover was held out as a neutral fact witness- or worse, a duped victim. However, as a result of governmental non-disclosure the jury was unaware that Clover had attended other witness interviews and interrogations by the government, had prepared trial exhibits, had completed document review assignments from the government, and needed a successful outcome to secure future legal employment. Had the jury been made aware that Clover was an advocate for the government under false representations as a mere fact witness, the sitting jury would have been materially impacted by the overwhelming appearance of injustice.

⁴ Although these cases analyze the rule in the context of a defense attorney advocating for his or her client, Circuit Courts including the 6th Circuit, have demonstrated that this rule applies to the State as well.

The Third Circuit has stated that in federal courts prosecutorial testimony alone is not sufficient for reversal, unless there are additional circumstances of government misconduct. *Birdman*, 602 F.2d at 556. Here, as set forth above, the government also failed to disclose its role in securing Clovers law school tuition scholarship. Further, AUSA Bennet filed a notice with the court that Clover gave known false testimony during her trial. However, Bennet filed that document subsequent to Petitioner's conviction and failed to correct the known falsity while Clover was still on the stand.

Here, the testimony impacted the fairness of the trial. In *Riddle*, the court provided that prosecutorial misconduct - such as a violation of the advocate-witness rule- must be viewed as a potential due process violation: "to establish that [petitioners] right to the due process of law has been violated he must show that the actions of the prosecutor so infected the trial with unfairness as to make the resulting conviction a denial of due process" *Kutzner v. Johnson*, 242 F.3d 605 (2001) (citing *Darden v. Wainwright*, 477 U.S. 168, 181, 106 S. Ct. 2464, 91 L. Ed. 2d 144 (1986) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974)); *Guidroz v. Lynaugh*, 852 F.2d 832, 834-5 (5th Cir. 1988)).

In addition, some courts have made the advocate-witness rule even more restrictive – providing that the disqualification of one member of a firm applies to all members. In *Ominicare Inc.* the court considered the advocate-witness rule in the context of a defense attorney acting as a witness for his client. In *Ominicare Inc.* the court explored a potential violation of Disciplinary Rule ("DR") 5-102(A) of the Ohio Code of Professional Responsibility which "addresses the propriety of an attorney representing a client when it is obvious that he will be called as a witness on behalf of that client". *Ominicare Inc.* at 7. This has since been revised and is now recognized as Rule 3.7, and is identical to Rule 3.7 of the ABA Model Rules of Professional Conduct. In

Omicare Inc., the court considered whether one of the following recognized exceptions to the rule would permit the attorney to continue representation and also testify as a witness:

- (1) Testimony relating solely to an uncontested matter
- (2) Testimony regarding the nature and value of legal services
- (3) Testimony as to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony. *Omicare, Inc.*, at 8 (citing DR 5-101(B)(1)-(3)).

In applying such exceptions to the instant case, it is clear that none are applicable. Clover's testimony related to a highly contested matter – the guilt or innocence of the Petitioner. Additionally, none of her testimony was merely formality or pertaining to legal services provided to any party. As previously stated, the fact that she provided any legal services to the prosecution at all was kept entirely hidden. Today, exception three has been altered to permit testimony where “disqualification of the lawyer would be a substantial hardship to the client”. In *Markwood*, the court provided that an attorney working for the federal government is “working for a single client—the United States”. *Markwood*, 48 F.3d at 985 (quoting *In re April 1977 Grand Jury Subpoenas*, 584 F.2d at 1372); *see also Seitz*, 1993 WL 501817, at 11 (“Lt. Col. Phillips is representing the United States of America”). Here, Clover as an agent of the prosecution and therefore a representative of the United States. Her testimony, rather than preventing significant hardship has caused it, as her testimony has undermined the integrity of the entire judicial system by taking on her dual role as advocate and witness. As a representative of the United States, Clover had a duty to uphold the Constitution and thus acted at the detriment her “client” and Petitioner in abandoning such. Although the above exceptions apply more neatly to the circumstances at issue in *Omicare Inc.*, where an attorney was acting as advocate and witness for his client, it is important to note that none would have permitted Clover to act as both advocate and witness for the government. Additionally, the Southern District cited to *Birdman*, a prosecutor as advocate

and witness case, in its discussion regarding Rule 3.7. *Oblinger*, at 4 (citing *Birdman* at 553 in its discussion).

Further, the bar for prosecutors as advocates may be even higher as case law has called for *extraordinary* circumstances for permitted such crossover. *Coleman*, 268 F.3d at 439 (citing *Birdman*, 602 F.2d 547, 553). In *Coleman*, the 6th Circuit provided that there was no violation where the prosecutor who testified in the case had no other role in the trial and therefore did not violate due process. *Coleman*, at 439. In following *Birdman*, the *Coleman* provided that a prosecutor may testify “so long as they otherwise withdraw from the trial”. *Id.* Here however, Clover both testified and had substantial involvement in trial preparation in Petitioner’s case.

The *Omicare Inc.* court further cited other federal case law which demonstrates that some courts have held that “when one lawyer is disqualified under DR 5-102(A) because he will testify as a witness, his entire law firm and all other lawyers in it must also be disqualified”. *Omicare Inc.* at 9 (*Reed Elsevier, Inc. v. THELAW.net Corp.*, 197 F.Supp.2d 1025, 1027 (S.D. Ohio 2002) (citing *Universal Athletic Sales Co. v. Am. Gym, Rec. & Athletic Equip. Corp., Inc.*, 546 F.2d 530, 538 (3rd Cir. 1976); *Estate of Andrews v. United States*, 804 F. Supp. 820, 830 (E.D. Va. 1992); *Mason & Dixon Lines, Inc., v. Glover*, 1989 U.S. Dist. LEXIS 12693, 1989 WL 135219 (N.D. Ill. 1989)). Rule 3.7(c) of the Ohio Rules of professional conduct also provides that a government lawyer participating in a case shall not testify or offer the testimony of another lawyer in the same government agency, unless permitted under the above listed exceptions. Further, the 2nd Circuit considered the issue in the context of a testifying prosecutor specifically, and provided that any member of a United States Attorney’s Staff is discouraged, and such members are permitted to testify as witnesses only in cases in which they play no other role. *U.S. v. Arredo-Sarmiento*, 545 F.2d 785, 793 (2nd Cir. 1977). In consideration of this restriction, the prosecutor’s office should

have considered the conflict that Clover's involvement in the case and with the office would have caused and excluded her from the witness list in Petitioner's case.

For the forgoing reasons, Clover's crossover role entirely negated the fairness of the trial violating Petitioner's due process rights. Clover's advocacy, pervasively testify as to Petitioner's guilt so infected the trial with unfairness that Petitioner's conviction is a denial of due process.

2. The Presentation of "Tainted Testimony" Infected the Proceeding thereby Tainted the Integrity of the Judicial Process

The testimony provided by Katheryn Clover in Petitioner's case is considered "tainted testimony" according to United States Supreme Court case law. In *Mesarosh v. U.S.*, 352 U.S. 1, 9 (1956) the Supreme Court provided that "the dignity of the United States Government will not permit the conviction of any person on tainted testimony". In *Mesarosh*, the Supreme Court stated that the witness testimony at issue was entirely discredited by the government's disclosure that the witness demonstrated unreliability in other proceedings. The *Mesarosh* court stated that an admission of "tainted testimony" taints the entire proceeding, requiring a new trial in order to protect the integrity of the judicial process. Further, this Court has a duty to ensure that the "waters of justice are not polluted". *Mesarosh*, 352 U.S. at 14. *See also Communist Party v. Subversive Activities Control Board*, 351 U.S. 115, 124 (1956) ("The untainted administration of justice is certainly one of the most cherished aspects of our institutions").

Case law suggests that the "tainted testimony" claim in *Mesarosh* applies only "in those rare situations where the credibility of a key government witness has been wholly discredited by the witness's commission of perjury in other cases involving substantially similar subject matter". *United States v. Berry*, 624 F.3d 1031, 1043 (9th Cir. 2010) (quoting *United States v. Krasny*, 607

F.2d 840, 845 (9th Cir. 1979)). In *Mesarosh*, just as is the case here, it is clear from evidence outside the record that Clover's testimony against Petitioner in his federal case was perjured. This became clear in Viola's state case. Further, evidence outside the record also shows that the prosecution knew that Clover had committed perjury as acknowledged in the filed sentencing memorandum.

In Petitioner's federal trial, the jury reached a guilty verdict on January 13, 2012, just before trial testimony began in Mr. Viola's state case in Cuyahoga County Common Pleas Court. Before Viola was sentenced in federal court, the prosecutor recognized that Clover had committed perjury due to her testimony in his state case. Therefore, her perjury occurred *before* Petitioner's case had concluded. By this point Clover had perjured herself on two occasions, and only saved herself from a third instance by pleading the 5th Amendment. In addition, Clover herself was charged federally only obtaining a deal due to agreement to cooperate with the prosecution in regards to Petitioner's federal case. Clover's plea deal was secured based upon a guarantee of inculcating information against Petitioner in his federal case – which the government has now conceded was a lie. Further, her federal case involved the same factual circumstances at issue in Petitioner's state and federal cases.

The *Mesarosh* doctrine requires a series of circumstances in which a witness perjured herself. The reason for such requirement is that numerous instances of perjury completely eradicates any guarantee of credibility that taking an oath of truthfulness before the court would provide. Here, Clover has demonstrated that her testimony lacked any guarantee of credibility as she testified at the grand jury⁵ leading to an indictment of Petitioner, she pled the 5th Amendment

⁵ This is known to be true as Kasaris conceded that Clover testified in "only two cases" and that she had also testified before the grand jury – which would mean that such grand jury testimony occurred in those two cases:

in Petitioner's state case, and omitted her involvement with the prosecutor's office on several other occasions.

In *U.S. v. Boyd*, the court provided:

Implicit in any dignified concept of due process, and well rooted in American jurisprudence, stands the principle that a conviction obtained through use of false evidence or testimony, known to be such by representatives of the prosecution, must be set aside in favor of a new trial. *See Miller v. Pate*, 386 U.S. 1, 6-7, 87 S. Ct. 785, 788, 17 L. Ed. 2d 690 (1967); *Napue v. Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, 1177, 3 L. Ed. 2d 1217 (1959); *Mesarosh v. U.S.*, 352 U.S. 1, 9, 77 S. Ct. 1, 5, 1 L. Ed. 2d 1 (1956); *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S. Ct. 340, 342, 79 L. Ed. 791 (1935). Further, this fundamental tenet "does not cease to apply merely because the false testimony goes only to the credibility of a witness." *Napue*, 360 U.S. at 269, 79 S. Ct. at 1177. *U.S. v. Boyd*, 833 F. Supp. 1277, 1335 (1993).

As previously stated, the government has conceded that Clover committed perjury before this Court. Not only did the testimony that Clover provided contain factual falsities, it also neglected to mention the involvement she had in Petitioner's case specifically and with the prosecutor's office overall.

In order to determine whether a new trial is required due to false testimony, the defendant must establish: (1) the prosecution's case included perjured testimony; (2) the prosecution knew, or should have known, of the perjury; and (3) there is any likelihood that the false testimony could have affected the judgment of the jury. *Boyd*, 833 F. Supp. at 1335 (citing *U.S. v. Adebayo*, 985 F.2d 1333, 1341 (7th Cir.), cert. denied, 113 S. Ct. 2947, 124 L. Ed. 2d 695 (1993); *U.S. v. Guadagno*, 970 F.2d 214, 220 (7th Cir. 1992); *U.S. v. Verser*, 916 F.2d 1268, 1271 (7th Cir. 1990);

Viola's state case and federal case. *Anthony Viola v. Dave Yost, et al.*, Case No. 2:21-CV-3088 at Tr. 10; *U.S. v. Anthony M. Capuozzo, et al.*, Case No. 1:10CR75; Case No. 1:08CR506 at Tr. 57.

U.S. v. Douglas, 874 F.2d 1145, 1159 (7th Cir.), cert. denied, 493 U.S. 841, 110 S. Ct. 126, 107 L. Ed. 2d 87 (1989); *U.S. v. Kaufmann*, 803 F.2d 289, 291 (7th Cir. 1986)).

Here, the government knew there was a conflict with Clover and that employing her, albeit pro-bono, in Petitioner's case could influence her testimony. Further, giving a key government witness access to the governments complete file, including its trial strategy, while she is both a defendant and a key witness in the matter gives rise to a significant risk of tainting her statement.

It is clear from Petitioner's state case, where she claimed fifth amendment privilege, that she perjured herself in the federal case, and her testimony could have influenced the jury as she told them that Petitioner conspired with her to engage in fraudulent loan app.

3. Clover's pro-bono employment as a law clerk with the Mortgage Fraud Task Force Constitutes Newly Discovered Impeachment Evidence and its non-disclosure is violative of *Brady*, *Giglio*, and *Napue*.

There is also case law that states that newly discovered impeachment evidence alone may be enough for a new trial in cases similar to the factual circumstances of *Mesarosh*. *United States v. Taglia*, 922 F.2d 413, 415-16 (7th Cir. 1991). However, its "rare" and should be invoked only "if the government's case rested entirely on the uncorroborated testimony of a single witness who was discovered after trial to be utterly unworthy of being believed because he had lied consistently in a string of previous cases." *United States v. Custis*, 988 F.2d 1355, 1359 (4th Cir. 1993) (quoting *United States v. Taglia*, 922 F.2d 413, 415 (7th Cir. 1991)). In *Taglia*, the 7th Circuit considered whether a single former instance of perjury was sufficient to support the granting of new trial. The *Taglia* court answered in the affirmative, not because the perjury had only occurred on one prior occasion, but because the court believed that the jury would have convicted the defendants even if the witness's testimony had been given no weight. *Taglia*, 922 F.2d at 416. This is because the crucial evidence against the defendants was not the witness's testimony at issue. *Id.* at 416. Here,

Clover's testimony went directly to the issue of fraud. Her testimony was extraordinarily helpful to the prosecution as Kasaris knew of and in fact insured, that she had deep involvement in Petitioner's case. Such involvement would have given a false perception of her credibility to the jury as she had knowledge that she should not have had as a "fact witness". Further, Petitioner's state case – in which he was acquitted– demonstrated that her testimony played a critical role in his conviction, as she pled the 5th when testifying before the Cuyahoga County Court of Common Pleas.

Even in the absence of such finding narrow as that in *Taglia* (following the doctrine of *Mesarosh*), Clover's employment as a clerk with the Mortgage Fraud Task Force constitutes newly discovered impeachment evidence and its non-disclosure is violative of *Brady*, *Napue*, and *Giglio*. As previously stated, under *Napue*, the prosecution must ensure that it does not knowingly allow false testimony and must correct testimony known to be false. *In re Jackson*, 12 F.4th at 607. Not only did Clover provide factually false information on several occasions as to Viola's guilt, the government failed to disclose her involvement with the prosecutor's office which weighs on both her credibility and impeachment under *Napue* and *Giglio*.

When "the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule". *Napue*, at 269. Here, the government failed to disclose that Clover had heavy involvement in the prosecution of Viola's case. Not only was she an agent for the government, she also had significant participation in trial preparation and investigation in building a case against him. Knowledge of such involvement would have been an essential consideration for the jury as to the credibility of her statements against Viola. Further, such information was material as her testimony alleged engagement of fraud on the part of the Petitioner.

Therefore, her undisclosed involvement with the government was material and would have been vital in the defense of Petitioner's innocence.

V. CONCLUSION

Petitioner, Anthony Viola, has met his burden and hereby respectfully moves this Court to grant him permission to file a second or successive habeas corpus petition pursuant to 28 U.S.C.2244(b).

Respectfully submitted,

/s/ Kimberly Kendall Corral
Kimberly Kendall Corral (0089866)
4403 St. Clair Avenue
Cleveland, Ohio 44103
PH: 216.926.7285
KKC@KimLawCrimLaw.com

Counsel for Petitioner Viola

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2022, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Respectfully submitted,

/s/ Kimberly Kendall Corral
Kimberly Kendall Corral (0089866)
4403 St. Clair Avenue
Cleveland, Ohio 44103
PH: 216.926.7285
KKC@KimLawCrimLaw.com
Counsel for Petitioner Viola

Friedrick & Associates

Member: Society of Former Special Agents of the Federal Bureau of Investigation

F&A, Inc.January 12, 2023
P.O. Box 41035
Brecksville, Ohio 44141

Ms. Kim Corral, Esq.
The Law Office of Kim Corral
2800 Euclid Avenue -- Suite 620
Cleveland, Ohio 44115

RE: Anthony Viola

Dear Ms. Corral,

I have enclosed a copy of my resume to introduce myself.

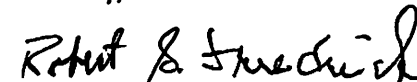
I have been providing investigative services to Mr. Viola since 2015.

A primary focus of the investigation has been to obtain post-indictment voice recordings with Viola's voice on them, and to learn the whereabouts of missing computers and other evidence not produced before Viola's federal trial. I have been able to obtain emails between Prosecutor Daniel Kasaris and government witness Kathryn Cover, as well as many witness statements, indicating that Clover was acting as a paralegal inside the prosecutor's office, with access to evidence in multiple criminal cases. Several government officials have informed me that evidence was destroyed in Viola's case. These admissions, and an extended amount of time the government has taken to respond to our requests, has delayed receipt of evidence in this investigation.

My investigation has included interviewing numerous witnesses, including Matthew Fairfield, Bryan Butler, and Kelly Patrick, all of whom indicated that there was an improper relationship between Prosecutor Daniel Kasaris and Ms. Clover, but no agency I contacted has initiated any investigation into this matter.

At this time, I am continuing to investigate and follow up on leads, and I will provide your office with the results of my investigation.

Sincerely,


Robert S. Friedrich

Friedrick & Associates

F&A, Inc.

P.O. Box 41035
Brecksville, Ohio
44141

September 13, 2021

Jonathon A. Rich, Esq.
jar@zrlaw.com

Dear Nancy:

Enclosed is a copy of my resume.

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

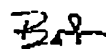
I have conducted private investigations for over twenty years. I have done extensive medical negligence. In particular I do backgrounds (to include medical experts), interviews, locate witnesses and extensive surveillance. My video equipment is extremely sophisticated. Other areas of my expertise include: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

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

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

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

Sincerely,



Robert S. Friedrich

RESUME OF ROBERT S. FRIEDRICK

Education

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

Experience

FRIEDRICK & ASSOCIATES, President

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

FEDERAL BUREAU OF INVESTIGATION (FBI)

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

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

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

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

Military

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

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

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

TELEPHONE
(440) 473-2277

FAX
(440) 473-0166

CELL
(216) 469-7566

E-MAIL
lc@carrlawfirm.net

DIRECTOR OF LAW:
MAYFIELD HEIGHTS

OF COUNSEL:
L. BRYAN CARR

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 9th 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

FD-597 (Rev 8-11-94)

Page 1 of 1

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

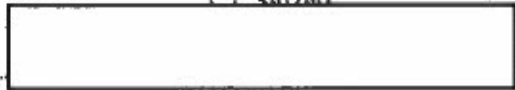
File # 329E cv 7165

On (date) 4/3/12

item(s) listed below were:

- Received From
- Returned To
- Released To
- Seized

(Name) Cuyahoga Cty Pres. Office



(Street Address)

b6 - 5, 7
b7C - 5, 7

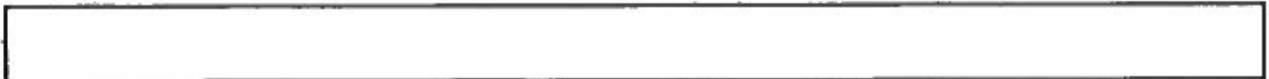
(City) Cleveland Ohio

Description of Item(s): One box
Central National Mortgage files



b6 - 1, 7
b7C - 1, 7

15-cv-00242-6975



Evidence Envelope - Chain of Custody

OOCIC Property #

Investigator Name

Sa [Redacted]

b6 - 1
b7C - 1

Investigator Agency

MFTF

Contents:

One Dell Computer [Redacted]

b6 - 1, 3, 7
b7C - 1, 3, 7

Requesting:

Audio Processing

Video Processing

	Accepted Custody	Date	Time	Released Custody	Date	Time
Signature	[Redacted]	3/16/10	10:15A	[Redacted]	3/23/10	3:57 AM
Reason	Collected			Process/Imaging		
Signature	[Redacted]	3/23/10	9 AM	[Redacted]	3/26/10	09:29 HRS
Reason	Collected FOR PROCESSING			COMPUTER THROUGH		
Signature	[Redacted]	3-31-10	09:14 HRS	[Redacted]	3-31-10	10:00 HRS
Reason						
Signature	[Redacted]	3/31/10	10:00	[Redacted]	4/1/10	11:54 P
Reason				Released to		
Signature	[Redacted]			[Redacted]		
Reason						
Signature						
Reason						
Signature						

RECEIPT

The undersigned hereby acknowledges receipt of one Dell Computer processor belonging to [redacted] of Central National Mortgage from the Carr Law Firm Co., LLP, 1392 SOM Center Road, Mayfield Heights, Ohio 44124, this 16th day of March, 2010.

b6 - 5
b7C - 5

Identifying stickers on this item are as follows:

1. Side Sticker:

a. Windows XP Home Edition

b. Service Tag: [redacted]

c. Express Service Code: [redacted]

d. Product Key: [redacted]

e. Bar Code: [redacted]

b6 - 5
b7C - 5

2. Back Sticker:

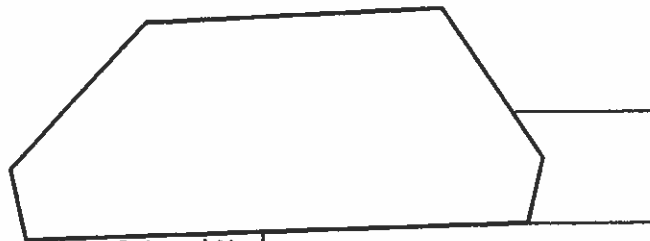
a. Bar Code: [redacted]

b. Bar Code: [redacted]

c. Bar Code: [redacted]

Date: 3/16/2010

b6 - 1
b7C - 1



Printed Name

Special Agent

Title

[redacted]

Phone Number

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

File # CV 71645

On (date) 4/16/15

item(s) listed below were:

- Received From
- Returned To
- Released To
- Seized

(Name)

Attorney for

(Street Address)

b6 - 5, 7
b7C - 5, 7

(City) Mayfield Heights Ohio

Description of Item(s): One Dell CPU

Received By:

Received From:

b6 - 1, 7
b7C - 1, 7

(re) 15-cv-00242-3507

AFFIDAVIT OF NICHOLAS MYLES

STATE OF OHIO
COUNTY OF CUYAHOGA

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

1. I was a licensed loan officer in the State of Ohio from approximately 2001 through 2009.
2. I was indicted in State of Ohio v. Myles, 11-cr-557589 and USA v. Myles, 10-cr-75, N.D. Ohio.
3. Prosecutors alleged that I was involved in a mortgage fraud conspiracy with Anthony Viola and others to defraud lenders into making 'no money down' mortgage loans and that various loan applications contained material misrepresentations.
4. Following the indictments, I authorized my legal counsel to negotiate a resolution to these charges.
5. During the criminal proceedings, I met with federal and state prosecutors who worked together through a multi-jurisdictional Mortgage Fraud Task Force.
6. During these interviews, I informed prosecutors Mark Bennett and Dan Kasaris that the state of Ohio Division of Financial Institutions conducted multiple audits of Central National Mortgage, where I was operations manager, and that the company passed all audits.
7. During the investigation, I received a subpoena to provide computers and other documents to Cuyahoga County Prosecutor's Office.
8. I complied with the subpoena and brought computers and documents to Prosecutor Michael Jackson, and he did not pursue any criminal charges.
9. Several years later, Prosecutor Dan Kasaris ordered me to falsely testify that I never brought any computers to the Prosecutor's Office.

10. During interviews with law enforcement, I also informed Mr. Bennett and Mr. Kasaris the following:
 - Lenders including Argent Mortgage, Long Beach Mortgage, New Century and Washington Mutual routinely 'waived' guidelines and permitted 'no money down' mortgage loans
 - Any seller funded down payment assistance was disclosed to lenders and was not part of any fraudulent scheme
 - Lender representatives routinely authorized loans that did not meet the lender's guidelines.
 - I fired Kathryn Clover as a mortgage originator at Central National Mortgage because she was committing fraud.
11. Even though I provided honest and truthful information to prosecutors, both Mark Bennett and Dan Kasaris frequently raised their voices during meetings and threatened to prosecute my wife Dyan unless I entered a guilty plea and agreed to testify against Anthony Viola, Uri Gofman and others.
12. Mr. Bennett insisted that I testify that lenders were victims of mortgage fraud schemes, even though I did not believe lenders were victims and that, in many of the charges against me, I was not involved with the loan submissions.
13. While I was in final negotiations to resolve my case, Mr. Kasaris stated that unless I signed a plea agreement at that moment, he intended on returning to his office and indicting my wife Dyan.
14. Upon reading court dockets and reviewing email exchanges between Kathryn Clover and Dan Kasaris, I believe I was prosecuted in order to protect Mr. Kasaris' romantic relationship with Clover.
15. I believe both my plea agreement and trial testimony against Anthony Viola were coerced.



Further I sayeth naught.



Nicholas Myles

Sworn and subscribed in my presence this 09 day of December, 2022.



NOTARY PUBLIC



Leah R Caskey

Notary Public, State of Ohio
My Commission Expires
August 26, 2024



Michael C. O'Malley
Cuyahoga County Prosecutor

August 28, 2020

Mr. Anthony Viola
2820 Mayfield Road #205
Cleveland Heights, Ohio 44118

Re: Public Record Requests for Cuyahoga County Prosecutor's records regarding Daniel Kasaris emails

Dear Mr. Viola:

I am an Assistant Prosecuting Attorney assigned to review and respond the public records requests that you made on July 18, 2020 requesting emails from former Assistant Prosecuting Attorney Daniel Kasaris' personal Yahoo email account. Specifically, you state that you are seeking:

1. All e mails [sic] from this Yahoo account that mention my name, "Anthony Viola" or "Tony Viola."
2. All e mails [sic] from this Yahoo account that mention "Dawn Pasela," a former employee of your office who is deceased...; and
3. E mails [sic] between Prosecutor Kasaris and Kathryn Clover, or e mails that mention 'Kathryn Clover.'"

The CCPO does not possess any records in response to your first two requests. In response to your third request, attached please find 572 pages of records that are responsive to your request. Redactions to these records have been made to remove attorney work product, trial preparation records, and grand jury materials, which are exempt from public disclosure under Ohio Revised Code §149.43(A)(1)(g) and (A)(1)(v).

Sincerely,

/s/ Nora E. Poore
Nora E. Poore
Assistant Prosecuting Attorney



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Tuesday, August 9, 2011 12:47 PM
To: Kasaris, Daniel;Kathryn Clover
Subject: Re: appraiser

Well I am basically finished with the appraisals.. I need to read the appraisal book which I should have time to do tomorrow as I am not going into the office. I was there all day yesterday and am about to go there now. So I will take care of it this week!

thanks

kat

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Tuesday, August 9, 2011 12:37 PM
Subject: appraiser

please advise as to where you are at with the first place bank appraiser
 thx
 dan

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



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Thursday, August 11, 2011 11:28 AM
To: Kasaris, Daniel;Kathryn Clover
Subject: Re: first place bank

so far I have found none by her. let me check on how many I have to go. Also, as I told you I am working at the clinic on 2 projects too, but I will work on this first today. Will get back to you in a bit on where we stand

kat

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Thursday, August 11, 2011 10:23 AM
Subject: first place bank

please advise which properties linda warner appraised for first place bank and if the cost method of appraisals was use by her or the sales compairson method was used

thx
dan

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

[Redacted]

From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Sunday, August 14, 2011 9:43 PM
To: Kasaris, Daniel;Giegerich, Nick;Kathryn Clover
Subject: Appraisal rule violations
Attachments: appraisal rule violations.doc

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Tuesday, September 6, 2011 1:30 AM
To: Kasaris, Daniel;Giegerich, Nick;Kathryn Clover
Subject: heights title/ wells fargo
Attachments: all conglomerated docs cuyahoga county recorder.xls; all assured docs cuyahoga county recorder.xls; appraisal.pdf; pages 1-94.pdf; pages 95-199.pdf; pages 200-299.pdf; pages 300-324.pdf; sykes jackson wells fargo issues.doc; both huds from jan 27.pdf

Attached is a summary, the loan file (in 4 pieces) the appraisal and some other info. The Sykes Jackson Wells Fargo Issues is the summary.

Thanks

Kat



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Tuesday, September 6, 2011 5:52 PM
To: Kasaris, Daniel; Kathryn Clover
Subject: do we have the following argent people?

i need to know if i need to look at the following loans please

Carrie Wehner
Andrea Hickey
Robert Siebert
(e 133 sept 2004, gaineboro sept 2004)

have one 2004 with Sabruno but dont recognize Nicole Serafini or Chris Wasek? (milverton)

then another with Siebert and Hickey in 2004 (w 61)

kat



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Thursday, September 8, 2011 8:11 PM
To: Kasaris, Daniel;Kathryn Clover
Subject: argent refi guidelines
Attachments: argent refi guidelines.doc

Please review. The guidelines are mainly the same. So yes, on a refi failure to state assets is incorrect.

thank you



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Friday, September 9, 2011 12:24 PM
To: Kasaris, Daniel;Kathryn Clover
Subject: last new spreadsheet
Attachments: new argent spreadsheet.xls

ok this one i added a column for appraisal issues-
just will need to check yes or no for appraisal issues

kat

From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Tuesday, September 13, 2011 11:23 AM
To: Kasaris, Daniel; Kathryn Clover
Subject: Re: spreadsheet

I will review the Marcy file today (I think its Marcy you did) and let you know if you are on the right track!

thanks!
kat

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Monday, September 12, 2011 8:27 PM
Subject: spreadsheet

attached please find the spreadsheet we have been working on. I highlighted what I thought were the important columns in red.

Please advise what you think
thx
dan

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

[Redacted]

From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Tuesday, September 13, 2011 7:51 PM
To: Kasaris, Daniel; Kathryn Clover
Subject: Re: spreadsheet

[Redacted]

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Tuesday, September 13, 2011 4:28 PM
Subject: Re: spreadsheet

[Redacted]

[Redacted]

>>> Kathryn Clover <kclover24601@yahoo.com> 9/13/2011 2:41 PM >>>

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted] Also considering all the other issues there is no way this loan should have gone through.

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Monday, September 12, 2011 8:27 PM
Subject: spreadsheet

[Redacted]

[Redacted]



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Thursday, September 22, 2011 11:28 AM
To: Kasaris, Daniel;Kathryn Clover
Cc: Jaye, Schlachet M.
Subject: Re: kat clover

From what I understand if they give me 3 points I would be at a 13, which I do not believe is eligible for a split sentence, so I know Jaye is looking into this. Thank you both.

Kat

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: jaye@schlachetlaw.com
Cc: kclover24601@yahoo.com
Sent: Thursday, September 22, 2011 10:49 AM
Subject: RE: kat clover

please confirm receipt of this email
 thx
 dan

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

>>> Jaye Schlachet 09/22/11 5:38 AM >>>

Please put it on letterhead and e mail it ASAP. The Gov. has not responded to me for the points and that is so incredibly unfair that it is unimaginable . How can I prepare and do a sentencing memo if I don't know what they are seeking. I will file for a continuance today as soon as I receive your letterhead e mail.

Jaye M. Schlachet, Esq.
 The Law Office of Jaye M. Schlachet
 55 Public Square, Suite 1600
 Cleveland, Ohio 44113
 (216) 456-2488 (Office)
 (216) 456-2499 (facsimile)
 Jaye@schlachetlaw.com
<http://schlachetlaw.com>

From: Daniel Kasaris [mailto:dkasaris@cuyahogacounty.us]
Sent: Tuesday, September 20, 2011 2:33 PM
To: Jaye Schlachet

Cc: kclover24601@yahoo.com
Subject: kat clover

how is this?
if it is ok ---I will put on office letterhead and email over

Jaye Schlachet
Attorney at Law
55 Public Sq.
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.

At the present time your client 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, who may have participated in the Tampering with internal Argent loan documents. Her work as already lead to the indictment of several past Argent employees. 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 end of November so that the above matter may be concluded.

please advise
thx
dan

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

</html



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Monday, October 3, 2011 6:33 PM
To: Kasaris, Daniel;Kathryn Clover
Subject: Re: WELLS FARGO

Next tuesday I have class until noon, but I could come down there after school and then meet Gary?

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Monday, October 3, 2011 1:32 PM
Subject: Re: WELLS FARGO

wed-Friday.
I will schedule wells fargo next Tuesday from 11 to 1? how is that?
Kasaris

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

>>> Kathryn Clover <kclover24601@yahoo.com> 10/3/2011 11:58 AM >>>
When are you going to Chicago and for how long?

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Monday, October 3, 2011 8:23 AM
Subject: WELLS FARGO

please advise when your schedule permits you to
1. discuss long beach
2. discuss wells fargo
3. discuss argent

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



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Friday, October 7, 2011 1:57 PM
To: Kasaris, Daniel;Kathryn Clover
Subject: Re: Fwd: Pasternak ran the 4506 on Heather Rice

I don't see a response from Inco Check which would merely indicate that she faxed the information to them to make it look like she was actually running the 4506 and if she got a response that was not what she wanted then she threw it out, or she never actually got a response at all. I could make a piece of paper that says Inco Check at the top that makes it look like I am trying to verify the 4506 and have it be some bs company... like Denis making up a roofing company invoice from a company that didn't exist, you know what I am saying?

kat

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Wednesday, October 5, 2011 8:48 AM
Subject: Fwd: Pasternak ran the 4506 on Heather Rice

----- Forwarded Message -----

this could be HUGE and I mean HUGE

dan

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

Page 180 in the Heather Rice Argent file (followed by 4506 and fake income docs). This would seem to indicate that Pasternak ran the 4506 on Rice. My understanding is that the response to verify earnings as reported to the IRS is received within a few days. I do not see the response in the file. Per prior interview with Mitch, the income docs in the file are fake. Is Inco-Check still in existence? How many loans went through after she ran the 4506 on people and when did she get the response from Inco-Check? How many Crossland deals went through after this one?

Kim Kepling
U. S. Postal Inspector
2400 Orange Ave., 2nd Floor
Cleveland OH 44101-0726



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Wednesday, October 12, 2011 11:30 AM
To: Kasaris, Daniel; Kathryn Clover
Subject: wells fargo

When we meet on Thursday I would like to please discuss where we are at with the Wells Fargo subpoenas. I know there is a lot on the plate, but you know I can multi task very well. I need to fulfill obligations to both parties I work for as you know and I know this woman was taken advantage of and I can't just sit by. I know assured and wells are doing bad things. I would at least like to start perusing. (not too much) We can discuss Thursday.

Thanks
 Kat

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Gary Stein <gstein@cuyahogacounty.us>
Cc: kclover24601@yahoo.com
Sent: Wednesday, October 12, 2011 7:23 AM
Subject: argent

gary
 the report you and kat are working on does not need to be done for another month
 thx
 dan

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

From: Kasaris, Daniel
Sent: Wednesday, October 12, 2011 12:35 PM
To: Kathryn Clover
Subject: Re: wells fargo
Attachments: Daniel Kasaris.vcf

well said--alot on my plate--my office looks like an office supply store with 90 binders in it.
 yes Thursday will discuss wells fargo.
 also I know you are a full time law student so you have a lot 2 do to.

ok

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

>>> Kathryn Clover <kclover24601@yahoo.com> 10/12/2011 11:30 AM >>>
 When we meet on Thursday I would like to please discuss where we are at with the Wells Fargo subpoenas. I know there is a lot on the plate, but you know I can multi task very well. I need to fulfill obligations to both parties I work for as you know and I know this woman was taken advantage of and I can't just sit by. I know assured and wells are doing bad things. I would at least like to start perusing. (not too much) We can discuss Thursday.

Thanks
 Kat

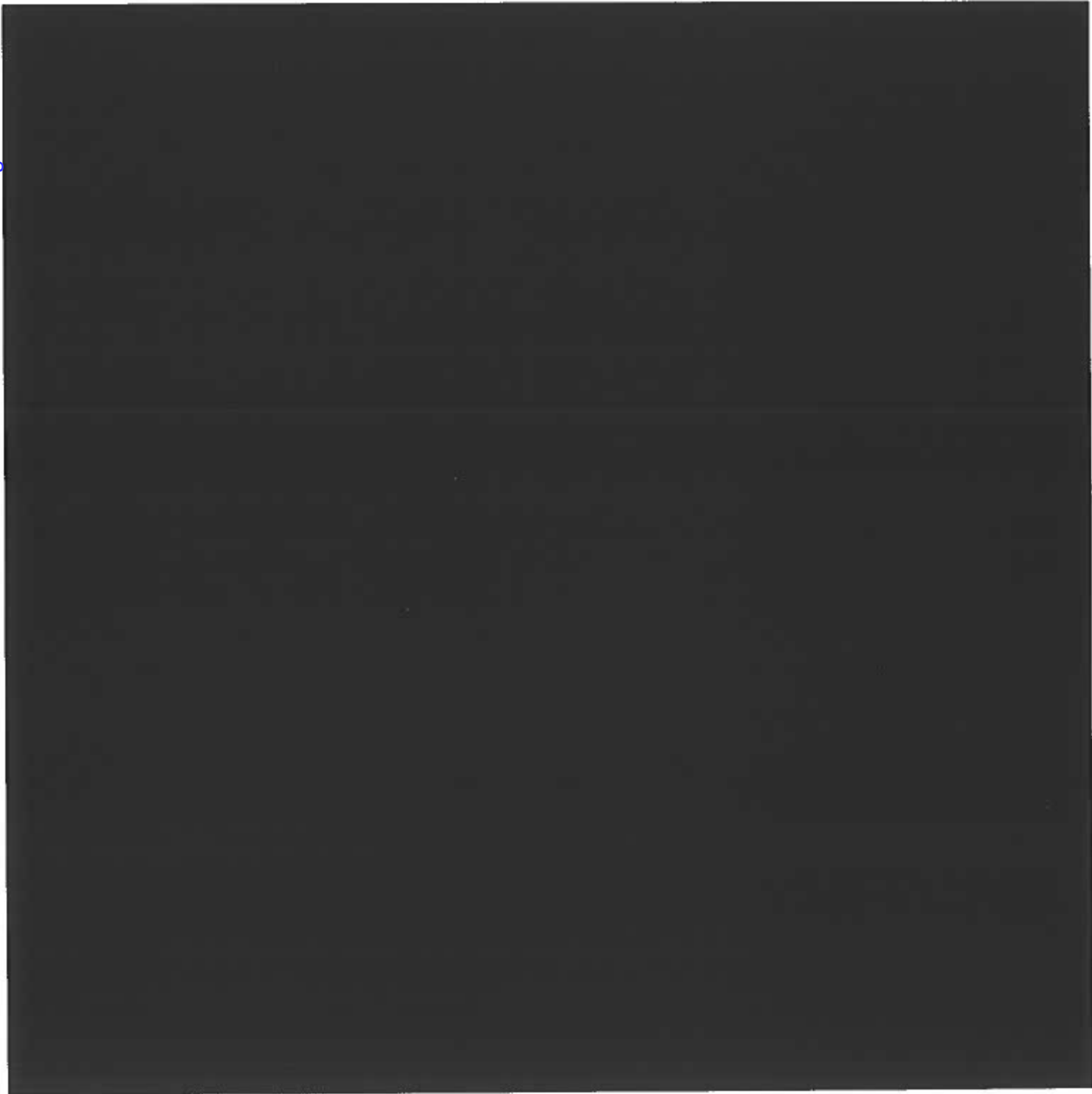
From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Gary Stein <gstein@cuyahogacounty.us>
Cc: kclover24601@yahoo.com
Sent: Wednesday, October 12, 2011 7:23 AM
Subject: argent

gary
 the report you and kat are working on does not need to be done for another month
 thx
 dan

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



From: Kasaris, Daniel
Sent: Tuesday, November 8, 2011 8:02 AM
To: Kathryn Clover
Cc: Giegerich, Nick;DiSanto, Nicole;kkkepling@uspis.gov
Subject: Re: argent guidelines etc.
Attachments: Daniel Kasaris.vcf



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Thursday, December 1, 2011 11:15 AM
To: Kasaris, Daniel;Kathryn Clover
Subject: Fw: jeff muzila
Attachments: jeff zephix muzila fake.docx

This guy is stealing pics from my photographer and others and claiming them as his own and selling them, possibly my pics too, and other models. What would you suggest I do? He has several identities apparently, and has shut down his pages bc he found out that we were on to him. I am afraid though he will just make a new id. I don't know if he sold anything, he shut it down before I could go in as a spy. I will see if Mike knows...

Any thoughts?

thank you
kat

here is his info:

Jeff Muzila aka Jeff Zephix

DR-05-307139

JEFFREY MUZILA
659 DEWITT DRIVE Highland Heights- prior addy

17825 Lakeshore Blvd. 44119
(216) 513-3760

<http://www.custombrackets.com/> says he works there

<http://www.blogger.com/profile/12853485087313548505>

<http://www.myspace.com/darkzephix>

<http://twitter.com/#!/izephix>

<http://zephix.deviantart.com/>

From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Friday, December 2, 2011 5:04 PM
To: Kasaris, Daniel;Kathryn Clover
Subject: Re: 7902 decker
Attachments: Part.002; Part.003; Part.004; Part.005; Part.006; Part.007; Part.008; Part.009

sometimes the auditor is off as you know. must have been an off day
 sorry

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Thursday, December 1, 2011 12:33 PM
Subject: 7902 decker

General Information	Transfer History	Certified Values	Land Record	Residential Bldg. Sketch	Taxes	Search Page
---------------------	------------------	------------------	-------------	--------------------------	-------	-------------

PRIMARY OWNER T-STONE PROPERTIES INC.
PROPERTY ADDRESS 7900 Decker AVE, Cleveland, OH 44103
TAX MAILING ADDRESS T-STONE PROPERTIES INC., 7902 DECKER Ave, CLEVELAND, OH 44103
LEGAL DESCRIPTION 345 REYNOLDS 0003 WP
PROPERTY CLASS TWO FAMILY DWELLING

[Field Definitions](#)

on your report form warner regarding 7611 decker, 7902 does exist --please see above
 thx
 dan

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

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

>>> "Kat Clover" <kclover24601@yahoo.com> 1/11/2012 12:47 PM >>>

Why not nugent? That's odd isn't it? Since nugent knows him and the case? do you know what will happen to him?

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-----Original message-----

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Wed, Jan 11, 2012 12:39:46 EST
Subject: luke fairfield

luke fairfield plead to a bill of information recently in federal court.
He had his federal probation hearing today
His sentencing is scheduled for March 14, 2012 in front of Judge Patty Gaughn (a don nugent cloan but tougher--former county prosecutor and state judge)
When I have more information I will advise
dan

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



From: Kasaris, Daniel
Sent: Monday, January 23, 2012 3:18 PM
To: Kathryn Clover
Subject: Re: irony
Attachments: Daniel Kasaris.vcf

all will b in my office tomorrow
dan

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

>>> Kathryn Clover <kclover24601@yahoo.com> 1/23/2012 3:11 PM >>>
i told you what i need
the box that has all of my records in it- it has folders with the addresses for each property on it- all the
folders i need bc they have rent info in it

i also want my quick books or accounting spreadsheets.

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Monday, January 23, 2012 1:57 PM
Subject: Re: irony

where are you doing that case at?
is he saying that he had to pull the trigger once for every bullet to file?

I have not been over the task force yet to get the tubs they will b here tomorrow
what do you want to look through?
thx
dan

Daniel J. Kasaris
Assistant County Prosecutor
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>>> Kathryn Clover <kclover24601@yahoo.com> 1/23/2012 1:06 PM >>>
i am doing a case where a guy had an ar 15 converted to a m 16 and claimed he didn't know, and
that it only fired
one round at a time.... huh....

From: Kasaris, Daniel
Sent: Monday, January 23, 2012 3:29 PM
To: Kathryn Clover
Subject: Re: viola
Attachments: Daniel Kasaris.vcf

i don't know ok
 try and keep it out and the stuff in it out but it is not just these proceeds I am concerned about ok --I am concerned about your future as well.
 i am concerned about a lot of things

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

>>> Kathryn Clover <kclover24601@yahoo.com> 1/23/2012 3:25 PM >>>
 yes i am aware that everyone in the world can see it. got it. not a fan.
 now we just have to mitigate . what else can you do

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Monday, January 23, 2012 3:24 PM
Subject: Re: viola

look I agree but that report is public record now--every one has access to it. I mean everyone and everything in it is there for whomever to read and I dont like that one bit.

as far as intimidation concerned that is NOT going to happen.
 I have full faith in you and in your ability to handle Tony and in our ability to prepare you for tony and what may happen.
 We can discuss milano later. I dont care what I have been told that is an anomaly or was an anomaly. Like I said I have full faith in you, your abilities and in our ability to prepare you for it.

dan

Daniel J. Kasaris
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>>> Kathryn Clover <kclover24601@yahoo.com> 1/23/2012 3:20 PM >>>

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Monday, January 23, 2012 1:12 PM
Subject: Re: viola



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

>>> Kathryn Clover <kclover24601@yahoo.com> 1/23/2012 1:08 PM >>>
oh did i ask? who is tony's lawyer?

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Daniel Kasaris <dkasaris@cuyahogacounty.us>
Cc: Nick Giegerich <lgiegerich@cuyahogacounty.us>
Sent: Monday, January 23, 2012 12:51 PM
Subject: viola

Item Type: Appointment
Start Date: Wednesday, 25 Jan 2012, 10:00:00am (Eastern Standard Time)
Duration: 1 Hour
Place: dan gaul

pretrial

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

thanks
kat

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Wednesday, January 25, 2012 6:56 PM
Subject: Re: tomorrow

kat
I am good all friday pm--doc apppointment in am
the followign week I am good all day monday
on tues i have grand jury at 1:00
wed I have uri sentencing and tony pre-trial at 1:00 (u wanna see tony in orange)
thursday I am in columbus
friday I am out

have to get moving on tony as we are going to be trying him real soon
again my appologies
please advise
thx

dan

Daniel J. Kasaris
Assistant County Prosecutor
Cuyahoga County, Ohio
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216-698-2270 (fax)

>>> "Kat Clover" 01/25/12 6:01 PM >>>
My apologies but based on the previous email I made other plans pertaining to school. We will
have to reschedule

Kat

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-----Original message-----

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kenneth_dodds@ohnp.uscourts.gov
Cc: kclover24601@yahoo.com
Sent: Wed, Jan 25, 2012 17:52:25 EST
Subject: tomorrow

please permit miss clover to be at my office from 2 to 4:30 tomorrow to do witness preparation and bill
of particulars work on our argent matter.

thank you
dan

Nicole is no long working the argent case--the drama there is enough to give me a stroke or heart issues---!

Dan

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

>>> Kathryn Clover <kclover24601@yahoo.com> 1/31/2012 1:34 PM >>>
oh. you sub'd her file remember? like 3 or 4 months ago? dont think you ever got it

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Tuesday, January 31, 2012 10:52 AM
Subject: Re: housing clinic

apparently a 77year old woman elizabeth redrick was wronged by argent in 2008 and Professor
Kramer/Housing Clinic sued argent. There is a 2008 pd article on it.
do you know about that?
do you know what happened?
thank you
danny

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

>>> Kathryn Clover <kclover24601@yahoo.com> 1/31/2012 10:49 AM >>>
I am but due to my hectic schedule and all that has happened I have actually not been there yet this
semester. I plan
to next week.

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Tuesday, January 31, 2012 9:58 AM
Subject: housing clinic

are you still working at the housing clinic?
dan

Daniel J. Kasaris
Assistant County Prosecutor
Cuyahoga County, Ohio



From: Kasaris, Daniel
Sent: Wednesday, February 1, 2012 10:24 AM
To: Kat Clover
Subject: Re: binders
Attachments: Daniel Kasaris.vcf

ok
if you need help I am here
dan

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

>>> "Kat Clover" <kclover24601@yahoo.com> 2/1/2012 9:38 AM >>>



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-----Original message-----

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kat Clover <kclover24601@yahoo.com>
Sent: Wed, Feb 1, 2012 08:36:59 EST
Subject: Re: binders





From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Wednesday, February 1, 2012 7:09 PM
To: Kasaris, Daniel;Kathryn Clover
Subject: Re: binders

lets start with tuesday. i will let you know later this week about thurs. i know we have to do a lot of work, but you may have/want to do some sat or sun like the feds did. i am taking more classes now, and in the summer finally started getting a s again, same with fall.

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Wednesday, February 1, 2012 7:01 PM
Subject: Re: binders

look school as to come first. I do not want a repeat of last year when you were testifying. School has to be and is your priority. You will be meeting with me and will go over the argent stuff first. Maybe after your quiz thursday--dont have your schedule with me though -what time is yoru quiz

dan

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

>>> Kathryn Clover 02/01/12 6:20 PM >>>
ok, i can be there after the doctor, as soon as i get done i will come there (hope to be there by 2 15)
I will try for Thurs also, but I have a quiz thurs... need to try to balance this all

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Wednesday, February 1, 2012 6:13 PM
Subject: Re: binders

how about 230 to 4:15 or 4:30?
with tony's trial timetable on a short lease have alot to discuss with you maybe thursday to?
dan

Daniel J. Kasaris
Assistant County Prosecutor

From: Kasaris, Daniel
Sent: Thursday, February 2, 2012 1:45 PM
To: Kathryn Clover
Subject: Re: tony v
Attachments: ArgentGuidelines.pdf; Daniel Kasaris.vcf

ok hey when you go to the housing court please find out what you can about the attached
thank you

da

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

>>> Kathryn Clover <kclover24601@yahoo.com> 2/2/2012 1:33 PM >>>

more i think about it, the more i don't think that is even tony's signature at the bottom. looks like lying
lin ass

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Thursday, February 2, 2012 1:23 PM
Subject: Re: tony v

hey
here you go
I send you a few
please advise what your thoughts are
thx
dan

Daniel J. Kasaris
Assistant County Prosecutor
Cuyahoga County, Ohio
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>>> Kathryn Clover <kclover24601@yahoo.com> 2/2/2012 11:59 AM >>>

i dont think so... send me one of mine please to compare. i think there is one part that is his, but
otherwise i dont think so.
send one of mine. not dellwood or 3439 e 71. any other

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Saturday, February 4, 2012 10:32 AM
To: Kasaris, Daniel;Kathryn Clover
Subject: Re: tony v

we can go over anything you want to tuesday. if i have time before then i will look at them.

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Friday, February 3, 2012 7:59 PM
Subject: Re: tony v

i think gary and I are going to grab munoz for a chat see what he knows as he will be on tony's witness list. sarah gave me a coupon to her restaurant maybe we will have a discussion with him there. also tv has called bressler 30 plus times and she refuses his call--every time

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

>>> "Kat Clover" 02/03/12 5:16 PM >>>
Yeah all brand new rehabs in perfect condition

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-----Original message-----

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Fri, Feb 3, 2012 16:15:21 EST
Subject: tony v

i do not recall--did tony v. make any representations to you, luke or sapper regarding the condition of any of the house you, luke or lesniak bought

dan

Daniel J. Kasaris
Assistant County Prosecutor



From: Kasaris, Daniel
Sent: Monday, February 6, 2012 12:27 PM
To: Kathryn Clover
Subject: Re: tomorrow
Attachments: Daniel Kasaris1.vcf

ok
hey which buyer of lukes had an 807 credit score? if you recall
thx

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

>>> Kathryn Clover <kclover24601@yahoo.com> 2/6/2012 12:24 PM >>>
i can stay till 4 30 or so

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Monday, February 6, 2012 12:08 PM
Subject: Re: tomorrow

ok
how late?
do I need to clear anything with po
I think I had told him 12:30 to 4:30 last week
we will go over argent first have to get that out of way
before I even look at tony and his bs
looking at emails now--alot with burtons
tony claimed you messed the deal up (in court last week) and he had to come to your rescue and that was all he
did
dan

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

>>> Kathryn Clover <kclover24601@yahoo.com> 2/6/2012 12:05 PM >>>
yes. i will be done at 2, so will come to the jc after

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Monday, February 6, 2012 1:24 PM
To: Kasaris, Daniel;Kathryn Clover
Subject: Re: forms

fyi in the fed trial weintraub tried to make a big deal about the brochure... apparently matt made chateau management website or something that mimicked the uri form almost verbatim. i had never seen matt's website pages before they showed them to me in the fed trial. i didn't have time for his nonsense and he made like a website every day.

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Cc: Deborah Kitley <dkitley@cuyahogacounty.us>; Gary Stein <gstein@cuyahogacounty.us>; Nathan Carnes <ncarnes@cuyahogacounty.us>
Sent: Friday, February 3, 2012 4:21 PM
Subject: forms

we are going to use these forms
and brochure--kat had them
please print out in color for use
thx

dan

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



From: Kasaris, Daniel
Sent: Monday, February 6, 2012 2:10 PM
To: Sarah;Kathryn Clover
Subject: Re: "the meadowbrook estate"
Attachments: Daniel Kasaris1.vcf

thank you
 we are doing the trash pull tomorow lets see what we get
 let me know what you see next
 thx
 dan

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

>>> Sarah <solidgoldsarah@live.com> 2/6/2012 2:08 PM >>>
 Darn the car was gone but now I know to get plate for future sightings :) garage door was up today- topaz and old burgundy Benz were in there- newspapers still in driveway

"Diamonds are Formed Under Pressure"

On Feb 5, 2012, at 5:12 PM, Kathryn Clover <kclover24601@yahoo.com> wrote:

totally! get the license plate! what bitch is staying there lol!!! hahahahaha

From: Sarah <solidgoldsarah@live.com>
To: Daniel Kasaris <dkasaris@cuyahogacounty.us>; Kat <kclover24601@yahoo.com>
Sent: Sunday, February 5, 2012 4:44 PM
Subject: "the meadowbrook estate"

That's what tv called his house on meadowbrook ha! So just drive pastit-4 newspapers in the driveway and a gold dodge stratus- want me to get license plate number? Trash is tues so I'll let u know if I see anything out tomorrow night after I leave work

"Diamonds are Formed Under Pressure"



From: Kathryn Clover <kclover24601@yahoo.com>
Sent: Monday, February 6, 2012 3:27 PM
To: Kasaris, Daniel;Kathryn Clover
Subject: Re: tomorrow

what is all this for? ps- the first attachment the pics, where are they from? uri?
if so, convenient most are in lakewood.
also... why is 27134 1st st in westlake on there? luke and denis bought it from the bank and lived in it....
does tony have all this stuff?

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Monday, February 6, 2012 12:12 PM
Subject: Re: tomorrow

fiy

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

>>> Kathryn Clover <kclover24601@yahoo.com> 2/6/2012 12:05 PM >>>
yes. i will be done at 2, so will come to the jc after

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Monday, February 6, 2012 11:49 AM
Subject: tomorrow

what time do you have availalbe tomorrow
i recall you informing me you had a medical appoitnmetn tomrorrow

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



From: Kasaris, Daniel
Sent: Tuesday, February 7, 2012 4:09 PM
To: Kathryn Clover
Subject: Re: Fwd: RE: argent interview
Attachments: Daniel Kasaris1.vcf



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

>>> Kathryn Clover <kclover24601@yahoo.com> 2/7/2012 4:04 PM >>>
what do you mean if the grant of immunity is issued

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Tuesday, February 7, 2012 4:01 PM
Subject: Fwd: RE: argent interview

----- Forwarded Message -----

please see below
this will b the procedure
dan

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

Thank you. If the grant of immunity is issued then she can be cross-examined on them.

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



From: Kasaris, Daniel
Sent: Thursday, February 23, 2012 11:21 AM
To: Kathryn Clover
Subject: Re: assistance in investigating crimes
Attachments: Daniel Kasaris1.vcf

yes with the corporation

march of 2010-Present

Assisted Cuyahoga County Prosecutor's office Mortgage Fraud Unit in investigating crime committed by Lender Employees, Appraiser, Realtors, and Mortgage Brokers. Such investigation lead to the indictment and or conviction of a number of people involved in committing more than \$10,000,000.00 worth of mortgage fraud in Cuyahoga County.

thx
dan

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

>>> Kathryn Clover <kclover24601@yahoo.com> 2/23/2012 11:16 AM >>>
Am I not currently doing so? I am still assisting w Argent

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Thursday, February 23, 2012 11:12 AM
Subject: Re: assistance in investigating crimes

something like this is fine with me

march of 2010-August 2011

Assisted Cuyahoga County Prosecutor's office Mortgage Fraud Unit in investigating crime committed by Lender Employees, Appraiser, Realtors, and Mortgage Brokers. Such investigation lead to the indictment and or conviction of a number of people involved in committing more than \$10,000,000.00 worth of mortgage fraud in Cuyahoga County.

dan

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



From: Kasaris, Daniel
Sent: Thursday, February 23, 2012 11:24 AM
To: Kathryn Clover
Subject: Re: assistance in investigating crimes
Attachments: Daniel Kasaris1.vcf

yes you are
my mind is wrapped up in tony v. now but yes once done with this i will have some more stuff for you too look at with
argent

dan

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

>>> Kathryn Clover <kclover24601@yahoo.com> 2/23/2012 11:16 AM >>>
Am I not currently doing so? I am still assisting w Argent

From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: Kathryn Clover <kclover24601@yahoo.com>
Sent: Thursday, February 23, 2012 11:12 AM
Subject: Re: assistance in investigating crimes

something like this is fine with me

march of 2010-August 2011
Assisted Cuyahoga County Prosecutor's office Mortgage Fraud Unit in investigating crime committed by
Lender Employees, Appraiser, Realtors, and Mortgage Brokers. Such investigation lead to the indictment and or
conviction of a number of people involved in committing more than \$10,000,000.00 worth of mortgage fraud in
Cuyahoga County.

dan

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

>>> Kathryn Clover <kclover24601@yahoo.com> 2/23/2012 10:29 AM >>>
ok thanks, no worries, I said that I would get it to him this weekend!
I just wanted to clear it with you obviously



From: Kasaris, Daniel
Sent: Thursday, February 23, 2012 11:34 AM
To: Kathryn Clover
Subject: Re: assistance in investigating crimes
Attachments: Daniel Kasaris1.vcf

nothing overstepped. you should use what you have done here and are doing here.
that would be awesome if you were hired --totally awesome
dan

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

>>> Kathryn Clover <kclover24601@yahoo.com> 2/23/2012 10:17 AM >>>
thanks, but I can't really put names on a resume... how would you suggest I word it:
Professor Lind wondered if it would be possible for me to put something like,
"pro bono assistance in the investigation, prosecution and investigation in mortgage fraud with the
mortgage fraud task force of Cuyahoga County..."
thoughts?
(As you know I am trying to get into the Housing Court to do work with helping people who have gone
through foreclosure get title out of their names etc.. volunteer at first, but hope to turn it into a job by
summer)

thanks so much-
He wants to make sure I show my ability and things I have done, but I don't want overstep anything
From: Daniel Kasaris <dkasaris@cuyahogacounty.us>
To: kclover24601@yahoo.com
Sent: Thursday, February 23, 2012 10:12 AM
Subject: assistance in investigating crimes

per your request since march of 2010 you have assisted investigators and or investigated the following persons
which have lead to indictmetns and or convictions of crimes:

1. denise obrock--argent
2. mike scola--argent
3. angela pasternak--argent
4. Linda Warner--appraiser
5. Gerald Spuzzillo--appraiser
6. Leighann McCarthy--realtor
7. Dale Adams--Mortgage Broker
8. Nick Myles--Broker

this list does not include other person who you provided information on

dan

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;

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

-3-

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

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

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

Respectfully submitted,

STEVEN M. DETTELBACH
United States Attorney

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

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CERTIFICATE OF SERVICE

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

s/Mark S. Bennett

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

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



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