

Court of Appeals Appoints Covington & Burling to Represent Tony Viola

The United States Court of Appeals for the Third Circuit rejected the Justice Department's contention that evidence relocated to a Federal-State Task Force is not subject to disclosure by the government, then appointed the law firm of Covington & Burling (www.cov.com) to represent Tony Viola in litigation concerning evidence in his case. Tony was tried twice on identical charges by a federally funded Mortgage Fraud Task Force on allegations he duped banks, including JP Morgan Chase, into making 'no money down' mortgage loans. Following a conviction in federal court, Tony proved his innocence at a second trial in state court, on identical charges, prosecuted by the same prosecution team, using evidence prosecutors said didn't exist, but that was given to Tony by the Task Force's Office Manager, Dawn Paseia.

After the second trial, Tony filed suit against the Justice Department and the Task Force, alleging that federal prosecutor Mark Bennett and FBI Agent Jeff Kassouf used the structure of the joint Task Force to shift evidence proving Tony's innocence between locations and jurisdictions to hide it before his first trial. The DOJ and Task Force responded that the Task Force was a purely local endeavor, and the federal government was not responsible for evidence stored at the Task Force, or for any misconduct that took place there. The Court of Appeals rejected that argument, appointed counsel and requested a full briefing concerning the government's "disclosure decisions" within 60 days, *Viola vs. DOJ, et. al.*, Case # 18-2573, April 3, 2019 ruling.

"I'm extremely grateful that Covington & Burling has accepted the Court's appointment," said Tony Viola. "and I do not believe the Justice Department's actions throughout my case will survive judicial scrutiny."

To read the Court's order and recent submissions in this case, please visit the Evidence Locker on the FreeTonyViola.com web site.

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ALD-098

February 14, 2019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUITC.A. No. 18-2573

ANTHONY VIOLA, Appellant

VS.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.

(W.D. Pa. Civ. No. 1:15-cv-00242)

Present: BIBAS, Circuit Judge

Submitted is Appellant's motion for appointment of counsel in the above-captioned case.

Respectfully,

Clerk

ORDER

Upon consideration of the factors set out in Tabron v. Grace, 6 F.3d 147, 155–56 (3d Cir. 1993), Appellant's motion for appointment of counsel is granted. The Clerk is directed to locate and appoint counsel for Appellant and then issue a new briefing schedule. In addition to any other issues the parties wish to address in their briefs, the parties shall address: (1) whether the District Court properly considered documents outside the pleadings in ruling on the Task Force's motion to dismiss, see Fed. R. Civ. P. 12(d); Rose v. Bartle, 871 F.2d 331, 339 n.3 (3d Cir. 1989); Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993); and (2) whether the District Court provided a sufficiently detailed analysis in granting the FBI's and DOJ's motion for summary judgment, in order to establish that a careful de novo review of the agencies' disclosure decisions has taken place, see Van Bourg, Allen, Weinberg & Roger v. NLRB, 656 F.2d 1356, 1358 (9th Cir. 1981) (per curiam); Founding Church of Scientology of Washington, D.C., Inc. v. Bell, 603 F.2d 945, 950 (D.C. Cir. 1979)).

By the Court,

s/Stephanos Bibas
Circuit Judge

Dated: April 3, 2019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-2573Viola v. Dept. of Justice
(W.D.Pa. 1-15-cv-00242)**ORDER**

Stephen F. Raiola, Esq. is hereby appointed as counsel for Appellant without compensation pursuant to 28 U.S.C. 1915(e)(1). This appointment shall remain in effect until termination of this case unless the Court grants the withdrawal or substitution of counsel earlier. Counsel shall have a period of 60 days from the date of this order to review the record. Prior to the expiration of that 60 day period, counsel shall advise the Clerk whether additional documents are necessary. If counsel does not need additional documents, the Clerk will issue a briefing schedule immediately after the 60 day review period ends. Counsel shall file the entry of appearance form within 14 days of the date of this order.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: April 3, 2019

cc: Anthony L. Viola
Laura S. Irwin, Esq.
Charles E. Hannan, Esq.
Kathryn Clover
Stephen F. Raiola, Esq.

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Kevin King

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001 4956
T +1 202 662 5488
kking@cov.com

By First Class Mail

April 5, 2019

Anthony L. Viola
Reg. No. 32238-160
Federal Correctional Institute McKean
P.O. Box 8000
Bradford, PA 16701

Re: *Anthony Viola v. United States Department of Justice, et al.*, No. 18-2573 (3d Cir.)

Dear Mr. Viola:

The United States Court of Appeals for the Third Circuit has appointed us to represent you in your appeal captioned *Anthony Viola v. United States Department of Justice, et al.*, No. 18-2573, and we have agreed to undertake the representation. We are writing to ask you to confirm that you will accept our representation, which is subject to the terms and conditions set forth in this letter.

We are not undertaking to handle any further appeal from an adverse decision, or a remand or collateral proceeding in any other forum. Any representation in such other proceeding must be the subject of a new engagement letter.

Stephen Raiola will be the principal lawyer handling your case, under my supervision. We will call upon other attorneys to assist as needed.

We have agreed to undertake this representation on a pro bono basis, and will not charge you a fee for the professional services of our lawyers and paralegals. We will not seek reimbursement from you for any disbursements or costs incurred by Covington & Burling LLP in the course of our representation of you.

Our records reveal no representation of another client adverse to you in any existing matter presently being handled by this firm or in this matter. However, as you recognize, we are a large law firm with multiple practices in multiple offices throughout the world, and we represent many different clients in many different industries, including clients who are competitors of each other and sometimes adversaries in legal matters. In taking on this representation, we commit that we will not represent any other client in any matter adverse to you that is substantially related to this matter. In this context, "substantially related" is a term that has come to have a settled meaning in the case law and in Bar ethics opinions. What this commitment means is that we will not take on any matter adverse to you on behalf of another client in circumstances in which any of your confidential data or information, as normally would have been obtained by us in our

COVINGTON*Anthony L. Viola*

April 5, 2019

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representation of you, would be material to any new matter adverse to you that we might accept from another client.

In return for our agreement to represent you in this matter, you consent and agree that we may be adverse to you on behalf of other clients in matters that are not substantially related to the matter we are now undertaking on your behalf or to any additional matter we may undertake on your behalf in the future. This means that we might be adverse to you in litigation, in intellectual property matters (including patent litigation), transactional matters, counseling, matters involving administrative agencies, lobbying and legislative matters, or any other type of matter so long as the matter is not substantially related to work we have performed for you.

In addition, if there are parties adverse to you in the matter we are undertaking on your behalf, it is possible that those adverse parties will have need for counsel in matters which do not have a substantial relationship to the matter in which we represent you. Even though we would, as a result, be receiving some fee income from your adversary, you consent to our representing such parties in matters that are not substantially related to any of our work for you. We, for our part, commit to continued zealous representation of your interests in the matters in which we do represent you notwithstanding any fee income we may receive from your adversary.

In the course of our representation, we will communicate with you primarily by legal mail or, where possible, by arranging for unmonitored calls to speak with you about your case. Restricting communication to these methods is the best way to ensure that our correspondence and your confidences will be protected by attorney-client privilege. If circumstances require, we may contact you by phone in a monitored call to discuss logistical issues, such as the process for scheduling an unmonitored phone call with you or confirming whether you have received mail from us. In the event that we are authorized to communicate with you by e-mail and we agree to do so, we may also use e-mail to correspond with you about logistical issues. Should we decide to communicate with you in a monitored call or by e-mail, you should be aware that these communications may be monitored by prison officials and you should therefore refrain from discussing the details of your case in those communications.

You understand that we have agreed to provide legal representation in this matter because we believe, on the basis of the facts now known to us, that the arguments to be advanced have merit and raise important legal issues of concern to the community at large. You further understand that we may terminate this representation if: (i) we determine in our professional judgment that further proceedings would be frivolous, unreasonable or groundless, or that important facts are significantly different from the facts as stated to us at the commencement of the representation; or (ii) termination is otherwise permitted by the pertinent ethical rules. In the event of termination, we will provide you with reasonable assistance in locating substitute counsel unless excused from doing so by the Court. You retain the right to discharge us as your counsel at any time, with or without cause.

Covington & Burling LLP is a limited liability partnership organized under the laws of the District of Columbia. Under this form of partnership, a partner's personal assets are not subject to claims against the firm (and other partners) based on contracts, professional negligence or other liability unless the partner is personally liable based on his or her own conduct.

COVINGTON

Anthony L. Viola
April 5, 2019
Page 3

I trust this letter accurately states our mutual understanding. If you have questions about any aspect of it, please let me know promptly. Otherwise please confirm our understanding by signing and returning a copy of this letter to me.

Sincerely,



Kevin King

Agreed to:

Mr. Anthony L. Viola

By: 

Date: April 11, 2019

the U.S. Postal Inspectors, the HUD Inspector General, the U.S. Attorney's Office in Cleveland, the ATF and the FBI, see Task Force Press Release attached hereto as Exhibit A. Evidence collected by federal officials pursuant to federal search warrants and federal raids were brought to the Task Force location, Exhibit B. FBI Agents Jeff Kassouf, Christy Hawkins, ATF Agent Ron Saunders and other federal officials were assigned to the Task Force; Agent Kassouf testified that federal officials "had access to these documents at any time," Exhibit C, Kassouf testimony in USA v. Viola.

OVERVIEW OF CRIMINAL PROCEEDINGS

Following the filing of indictments but prior to the commencement of either trial, prosecutors directed the Task Force's Office Manager, Dawn Pasela, to pose as a graduate student studying criminal defense, befriend the undersigned, assist with trial preparation, record a series of post-indictment conversations with the Appellant concerning defense trial strategies and tactics, identify potential defense witnesses and donate funds towards defense legal fees, Exhibit D.

The Appellant was convicted in federal court but prior to the federal sentencing of 150 months in jail, Ms. Pasela informed the undersigned about the voice recordings and said she obtained confidential defense trial strategy information and shared that knowledge with the prosecution team. Ms. Pasela was in the chain of custody of all evidence located at the Task Force and maintained the evidence log. She said exculpatory evidence was shifted between jurisdictions and locations to hide it from defendants. She offered to appear as a defense witness at the second trial then provided the undersigned with FBI 302 reports and other evidence utilized at the second trial to prove that lenders knowingly signed off on all loan terms, approved 'no money down, cash back' mortgage loans in writing before closing, and promoted 'no income, no asset' mortgage loans to borrowers involved in the Viola criminal cases. This evidence -- which was not provided by the government prior to the first trial -- led to an acquittal on the same charges at issue in federal court two months earlier. When prosecutors became aware that Ms. Pasela was

eager to tell her story in open court and testify for the defense, FBI Agent Jeff Kassouf and Detective Arvin Clar threatened Ms. Pasela with indictment and "federal prison" if she testified. She was found dead in her apartment by her Father shortly after her scheduled court appearance, Exhibit E. Hon. Daniel Gaul, who presided over the second trial, stated that prosecutors committed "misconduct" in his courtroom and further wrote that "I do hope you will have your federal conviction overturned," Exhibit F.

OVERVIEW OF PUBLIC RECORDS LITIGATION

Following the second trial, Appellant initiated public records requests to obtain voice recordings made by Ms. Pasela, which were never provided to the defense prior to either criminal trial, contrary to Fed. R. Crim. P. 16. The public records request, a copy of which is attached to the complaint in this matter, also sought exculpatory evidence described by Ms. Pasela but not provided by the government prior to either trial, including information concerning undisclosed payments to informants and the FBI Agent's original notes from various witness interviews. None of the requested materials or voice recordings were ever provided, prompting this lawsuit. During this litigation, FBI Agent Kassouf admitted listening to tapes made by Ms. Pasela and further claims he returned those tapes to the Task Force location, Exhibit G. The federal government and the Task Force argued that the Task Force was a purely local endeavor, not subject to FOIA requirements, and that neither the federal government nor the Task Force itself had any obligation to search that location for records responsive to the FOIA request. The District Court adopted that position and this timely appeal follows.

ASSIGNMENTS OF ERROR RAISED ON APPEAL

ASSIGNMENT OF ERROR # 1 -- The District Court erred in granting summary judgment to the Department of Justice and Task Force before requiring a search of the Task Force location for records responsive to the public records request.

ASSIGNMENT OF ERROR # 2 -- Since Agent Kassouf confirmed he listened to tapes made by Ms.

Pasela then forwarded the recordings to the Task Force, the FBI constructively possesses these materials, which should either be produced in this litigation or the government should be required to explain why these recordings are exempt from disclosure.

ASSIGNMENT OF ERROR # 3 -- Early in this litigation, Appellant challenged the FBI's statement that it did not control the Task Force and requested the District Court require the FBI to produce its Memorandum of Understanding with the Task Force. The District Court erred when it did not require production of this document, which would be dispositive of the issue.

ASSIGNMENT OF ERROR # 4 -- The District Court's June 18th ruling adopting the Magistrate's Report refers to this matter as a "Prisoner Civil Rights Action" when it is an action under the Freedom of Information Act, 5 U.S.C. § 552 et. seq. (Order, page 1.)

MEMORANDUM OF LAW

Summary judgment is inappropriate in this case because "a review of the record raises substantial doubt" about the adequacy of the search and because the Justice Department failed to "follow through on obvious leads to discover requested documents," Valencia-Lucena v. United States Coast Guard, 180 F. 3d 321, 325-26 (D.C. Cir., 1999). When Agent Kassouf listened to voice recordings made by Ms. Pasela, they were "in the custody or control of the government," United States v. Bailleaux, 685 F.2d 1105, 1113 (9th Cir., 1982); also see Burka v. U.S. Department of Health and Human Services, 87 F.3d 508, 515 (D.C. Cir., 1996).

All voice recordings made by Ms. Pasela, and related documents, concern the intentional intrusion by the prosecution into the attorney-client relationship, serve no legitimate law enforcement purpose and constitute a per se violation of the Sixth Amendment right to counsel, United States v. Levy, 577 F.2d 200, 210 (3d Cir., 1978). Moreover, the District Court's ruling concerning the Task Force is contrary to circuit precedent, which holds that extensive federal participation in a Task Force "imputes" knowledge of evidence at the task force to federal officials, United States v. Risha, 445 F.3d 298, 304

(3d Cir. 2006).

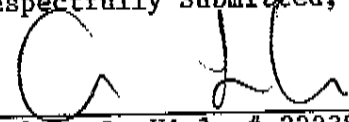
RELIEF SOUGHT ON APPEAL

Appellant respectfully requests the following relief on appeal:

- (1) The District Court's ruling should be vacated and this matter remanded with instructions that the Department of Justice is required to search the Task Force location for documents and voice recordings responsive to the FOIA request;
- (2) That the government's intrusion into the Sixth Amendment Right to Counsel and its actions concerning Ms. Pasela be referred to the Department of Justice's Inspector General for an investigation; and
- (3) Any additional relief deemed appropriate by the Court.

WHEREFORE, since Appellant paid the initial filing fee as required by this Court in its August 9th order, and given the foregoing Argument in Favor of the Appeal, Appellant respectfully requests that this Court set a briefing schedule in this matter.

Respectfully Submitted,



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

CERTIFICATE OF SERVICE

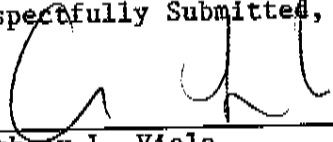
I, Anthony L. Viola, hereby swear and affirm that I caused a copy of the foregoing Argument in Favor of Appeal to be served upon the following individuals, via regular U.S. mail, postage prepaid, on this 22nd day of August, 2018:

Ms. Laura S. Irwin, Esq.
Counsel for United States
700 Grant Street
U.S. Courthouse
Pittsburgh, PA 15219

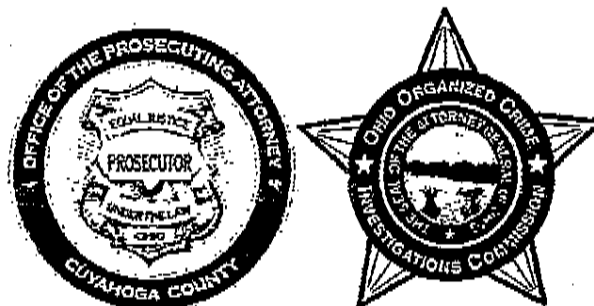
Mr. Charles E. Hannan, Esq.
Counsel for Task Force
1200 Ontario Street
Justice Center - Courts Tower
Cleveland, OH 44113

Kathryn Clover
206 Springwood Drive
Oxford, OH 45056

Respectfully Submitted,



Anthony L. Viola



**For Immediate Release
August 26, 2009**

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

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

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

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

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

EXHIBIT A - P. 1

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

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

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

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

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

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

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

EXHIBIT A- 0-2



Cleveland Division

Home - Cleveland - Press Releases - 2010 - Three Charged in Mortgage Fraud Scheme

Three Charged in Mortgage Fraud Scheme

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

Northern District of Ohio
(216) 622-3600

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

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

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

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

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

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

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EXHIBIT A - P-3

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 04/06/2010

b6
b7c

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

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

b6
b7c

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

[Handwritten initials]
b6
b7c

The documents turned over to the MFTF included [redacted]

b6
b7c

Investigation on 04/06/2010 at Cleveland, Ohio
File # 329E-CV-71645-179 Date dictated
by SA [redacted]

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

Exhibit B
04/06/2010
- 01

Kassouf - Direct/Bennett

1 Road. The third search location was the residence of
2 Mr. Gofman, and the fourth search location was a residence
3 of Naum Simkhovich.

4 Q. And you had mentioned, and I apologize. I cut you
5 off. Who was the affiant for that search warrant, who
6 signed the affidavit?

7 A. That was Special Agent of the Bureau of Criminal
8 Investigations for the State of Ohio, Arvin Clar, C-L-A-R.

9 Q. . So you were not the affiant on that search?

10 A. No, I was not.

11 Q. But, did you participate, did you --

12 A. Yes.

13 Q. What was your role?

14 A. My role at that time was to coordinate the search at
15 the residence of Naum Simkhovich. And basically we went
16 over there and searched that residence.

17 Q. At some point after the search, did you have an
18 understanding of what was taken in the search?

19 A. After the search warrant was conducted -- let me take
20 a step back. When a search is conducted, (basically the
21 evidence that's obtained, that was brought back to the Task
22 Force location. And when the inventory of the search, that
23 basically detailed that there was various records,
24 documentation taken for properties, and computers were
25 seized from the various businesses, and I believe from the

EXHIBIT D - P. 2

1 APPEARANCES:
 2 On behalf of the Government:
 3 OFFICE OF THE U.S. ATTORNEY
 4 BY: MARK S. BENNETT, AUSA
 JOHN SIEGEL, AUSA
 MICAH R. AULT, ESQ.
 5 801 W. Superior Avenue, Suite 400
 Cleveland, OH 44113
 6
 7 On behalf of Defendant Uri Gofman:
 8 GOLDBERG & O'SHEA
 BY: MICHAEL J. GOLDBERG, ESQ.
 9 323 Lakeside Place, Ste. 450
 Cleveland, OH 44113
 10
 11 and
 12 MAREIN & BRADLEY
 BY: MARK B. MAREIN, ESQ.
 13 222 Leader Building
 526 Superior Avenue
 Cleveland, OH 44114
 14 On behalf of Defendant Gennadiy Simkhovich:
 15 CRAIG T. WEINTRAUB, ESQ.
 Ste. 450
 16 323 West Lakeside Avenue
 Cleveland, OH 44113
 17
 18 On behalf of Defendant Anthony L. Viola:
 19 MILANO WEISER
 BY: JEROME A. MILANO, ESQ.
 20 2639 Wooster Road
 Rocky River, OH 44116
 21
 22 and
 23 PASCH MEDICI
 BY: JOSEPH R. MEDICI, ESQ.
 24 2639 WOOSTER ROAD
 25

1 PROCEEDINGS
 2 THE COURT: Be seated folks. Good morning,
 3 ladies and gentlemen.
 4 Mr. Weintraub?
 5 MR. WEINTRAUB: Thank you, Judge. Good
 6 morning, everyone.
 7 JEFF KASSOUF
 8 resumed the witness stand by and on behalf of the
 9 Government, being first duly sworn, was examined and
 10 testified further as follows:
 11 CROSS-EXAMINATION CONTINUED
 12 BY MR. WEINTRAUB:
 13 Q. Special Agent Kassouf I am going to try to get
 14 through the remainder of this. We were stopped yesterday
 15 in August, and as you know, I am focusing on June through
 16 September in terms of the banking that Mr. Simkhovich did
 17 on behalf of Real Asset Fund.
 18 So I wanted to simplify this process to
 19 expedite it, but you would agree with me that from the
 20 materials that we went over as it pertains to June and
 21 July, first, that the checks that were purchased on
 22 behalf of National City and payable to, on behalf of
 23 Real Asset Fund and payable to National City, in those
 24 months, multiple checks were written by Mr. Simkhovich
 25 out of that account. So those weren't the only checks.

1 INDEX

2 WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
3 Jeff Kassouf				
4 by Mr. Weintraub Cont'd		4		
5 by Mr. Milano		69		
6 Richard Bitner	152	222		257
7 by Mr. Goldberg			249	
8 by Mr. Milano			252	
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1 Isn't that true?
 2 A. That is true. There was more checks out of that
 3 account.
 4 Q. Yes. And then, we also know as well that on the
 5 particular dates that the bank checks were redeposited in
 6 June and July, we know that other activities occurred at
 7 the bank as well. He was not there just to redeposit
 8 those specific checks, but they were part of larger
 9 deposits from what we have seen in the records so far.
 10 You would agree with me?
 11 A. Yes. That's what we discussed yesterday.
 12 Q. I am going to move on to August and get through this
 13 pretty quickly as well.
 14 Joe, if you can get me to 14 C 23, please.
 15 We know from the materials in this case -- you don't have
 16 it on?
 17 (Pause.)
 18 Q. Okay. And if you will highlight, first, the portion
 19 which is the date of this statement, that center spot.
 20 Okay.
 21 And so we can see, Agent Kassouf, that you
 22 recognize this as being from the Real Asset Fund
 23 stabilizing account. Is that correct?
 24 A. It appears to be from that.
 25 Q. And we know from your testimony that Mr. Simkhovich

AFFIDAVIT OF KAREN PASELA

STATE OF OHIO
COUNTY OF CUYAHOGA, SS:

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

1. I was the mother of Dawn Pasela, who died on April 25, 2012.

2. For the last three years of her life, Dawn worked for the Cuyahoga County Mortgage Task Force, first as a contract employee and then as a county employee.

3. Dawn served in the capacity of office manager. One of her duties was to maintain the task force's files. After Dawn worked there for a while, she said she was concerned that things were being taken from the files and not returned. She also said some employees had signed her name when they took the files, and she feared they were hiding them from attorneys representing the people the task force was investigating. She particularly expressed concern about the way the cases against Anthony Viola and Susan Alt were being handled. Dawn showed us photos she had taken of file boxes haphazardly stacked in the hallway, which made them easily accessible to almost anyone.

4. Dawn also mentioned that some computers in the office had disappeared, and she couldn't find out why or where they went.

5. Although Dawn was not trained as an investigator, she was asked to go to a fund-raising event for Anthony Viola after he had been indicted and to secretly record what was said. She was also asked to write a check for Viola's defense fund so the prosecutors could determine at which bank the fund was being maintained. Dawn wondered about the propriety of these tactics.

6. Dawn continued to attend events sponsored by Viola's supporters and eventually began to sympathize with him because she felt that prosecutors were withholding documents that could help in his defense.

7. As her disenchantment over what was going on at the task force grew, Dawn began drinking excessively. This finally led to her termination. The task force later asked her to come in to discuss reinstatement, but she declined.

8. After the task force learned that Dawn had been subpoenaed to testify on Viola's behalf, two investigators came to her apartment to pressure her to reveal what Viola wanted her to testify about. She told us that the two men said that it would be wise for her to leave Ohio for a while and that if she testified for Viola she could end up in a federal prison. As a result, Dawn did not testify.

EXH. B. 1 D - P. 1

9. Dawn was so frightened that the investigators might return that she moved into our house for 10 or more days and stopped drinking. She also parked her car in our garage so no one would see it. Dawn eventually began to feel stronger physically and emotionally and moved back to her apartment.

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

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

Further I sayeth naught.

Karen Pasela
Karen Pasela

Sworn and subscribed in my presence this 16th day of December, 20 16

Paul Vargo
NOTARY PUBLIC



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

Exhibit D - P.2

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

440
 700161631

141

c/o H.R. SNOOKMAN STARBUCK 11-12-09

PAY TO THE ORDER OF Toby Vision Dep Fund \$ 25.00

Twenty Five Dollars DOLLARS

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

MEMO Vision Dep. Fund D-M.P.

exhibit D - P 3

822974

DEFENSE SUBPOENA

(Criminal Rule 17)

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

THE STATE OF OHIO

PRECIPE

DS 822974

Cuyahoga County

Case Number: CR-10- 543886 -A

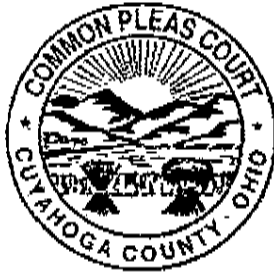
To the Sheriff of Cuyahoga County:
You are hereby commanded to summon:
DAWN PASELA
5676 BROADVIEW ROAD APT. 201
CLEVELAND, OH 44134-0000

JUDGE: DANIEL GAUL
ROOM: JC19D

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

TO THE WITNESS

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



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

GERALD E. FUERST, Clerk

by _____

FOR SHERIFF'S USE ONLY

RETURN OF SUBPOENA:

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

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



THE COURT OF COMMON PLEAS

COUNTY OF CUYAHOGA

JUSTICE CENTER

1200 ONTARIO STREET

CLEVELAND, OHIO 44113

DANIEL GAUL

Judge

(216) 443-8706

February 17, 2017

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

Dear Tony:

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Gaul".

Daniel Gaul
Judge

DG/mtl

Exhibit F

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

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

JUSTIFICATION FOR NONDISCLOSURE UNDER THE PRIVACY ACT

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

Kassouf - Cross/Weintraub

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

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

15:34:23

6 Q. Audio wave?

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

EXHIBIT C-92

the defense prior to the first trial. Since none of the items requested in the FOIA request were ever produced, a public records suit was initiated in the Western District of Pennsylvania. During this litigation, FBI Agent Jeff Kassouf confirmed he listened to tapes made by Ms. Pasela but claims he gave those tapes to the Task Force. Other evidence requested was relocated to the Task Force's location but never produced by the government. In fact, the government refused to search the task force location for records requested, and the government never claimed records were exempt from disclosure. The District Court denied a request to require the government to search the task force location for records and denied a request to ask the Department of Justice's Inspector General investigate Ms. Pasela's death and her illegal intrusion into the defense camp prior to trial but that request was denied and this appeal follows.

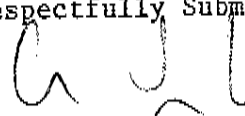
Attached hereto in support of the request for appointment of counsel are (a) Proof that federal prosecutors relocated evidence from their offices to the Task Force's location; and (b) A Letter from Hon. Daniel Gaul, who presided over the second trial and believes the undersigned is wrongfully incarcerated.

MEMORANDUM OF LAW

The Third Circuit has held that federal prosecutors are in constructive possession of evidence located at a Task Force when the government is engaged in a joint effort or where the prosecutors have ready access to the evidence, United States v. Risha, 445 F. 3d 298, 304 (3d Cir. 2006). Tapes made by Ms. Pasela should have been provided to the defense prior to the federal trial, Fed. R. Crim P. 16. The government should no longer be permitted to relocate evidence or public records at a Task Force location they control to prevent the production of these tapes or other evidence that was used at a second trial. Courts have broad discretion to decide if the parties to the litigation and the Court itself would benefit from the appointment of counsel, Jones v. IRS, 216 F. 2d 955 (DC Neb, 2002), affd 60 Fed Appx 642 (8th Cir. 2003). This case involves "exceptional circumstances" and affects many citizens, since this Task Force prosecuted over 1,000 individuals in both state and federal court, further bolstering the request for appointment of counsel, United States v. McQuade, 579 F. 2d 1180 (9th Cir. 1978). Also see 28 U.S.C. § 1915(d).

WHEREFORE, Appellant respectfully requests that this Court appoint counsel so that the issues in this case can be more properly presented to the court.

Respectfully Submitted,



Anthony L. Viola

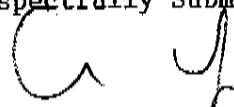
CERTIFICATE OF SERVICE

I, Anthony L. Viola, hereby swear and affirm that I caused a copy of the foregoing pleading to be served upon the following individuals on this 27 day of July, 2018 via regular U.S. mail, postage prepaid:

Mr. Michael Colville, Esq.
Counsel for Department of Justice
700 Grant Street, Suite 4000
Pittsburgh, PA 15219

Mr. Charles E. Hannan, Esq.
Counsel for Mortgage Fraud Task Force
1200 Ontario Street
Justice Center
Cleveland, OH 44113

Respectfully Submitted,



Anthony L. Viola



THE COURT OF COMMON PLEAS

COUNTY OF CUYAHOGA

JUSTICE CENTER

1200 ONTARIO STREET

CLEVELAND, OHIO 44113

DANIEL GAUL
Judge
(216) 443-8706

February 17, 2017

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McKean Federal Correctional Institution
P.O. Box 8000
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In any case, I am writing to inform you that there is a newly elected Cuyahoga County Prosecutor. His name is Mike O'Malley. His office may be willing to take a fresh look at Daniel Kasaris' misconduct in your case. If Kasaris participated in your federal case, O'Malley's office may be able to intervene, or at least support a post-release remedy before Judge Nugent.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Gaul". The signature is fluid and cursive.

Daniel Gaul
Judge

DG/mtl

FEDERAL BUREAU OF INVESTIGATION

Date of transcription: 04/06/2010

b6
b7C

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

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

b6
b7C

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

X/ [redacted] b6
b7

The documents turned over to the MFTF included [redacted]

b6
b7C

Investigation on 04/06/2010 at Cleveland, Ohio

File # 329E-CV-71645-179

Date dictated

by SA [redacted]

b6
b7

0928801.302