ORIGINAL

No. 18-6949

IN THE SUPREME COURT OF THE UNTED STATES

ERIC A. KLEIN- PETITIONER

-against

UNITED STATES OF AMERICA- RESPONDENT

[issues related to those in Turner v. U.S. #18-106]

ON PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEAL
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

QUESTION I

Whether in Federal Felony case because of the 6th Amendment of Bill of Rights where the Defense Arraigment Counsel made a "Limited Appearance", (i.e., one limited to just the Arraignment, so that Defendant would be Pro Se thereafter); and Defendant is Pro Se therefor for the "critical stages" of Plea Negotiations and Discovery/Inspection and the Government admits such; and that there was no Waiver by Defendant of the Right to Counsel whatsoever, the District Court should address the facts rather rather than avoid them ? In sum is the District Court free to ignore the facts showing a violation of the Sixth Amendment Right to Counsel post-Arraignment and for 'critical stages' as a result of a "Limited Appearance" by Arraignment Counsel? or should it follow Johnson v. Zerbst Hearing procedures?

QUESTION II

Whether when the undisputed underlying facts are that the Court accelerated the time for Defendant to obtain Counsel, then a post-Arraignment Involuntary Pro Se, from 40 days to the same day of the accelerated new date, i.e. from January 10, 2005 to December 8, 2004 with first notice of the new accelerated date on 12/8/04; and the Court repeatedly enforced the 12/8/04 due date, that that would constitute a denial of Sixth Amendment "Choice of Counsel" for which the District Court can likewise ignore the underlying facts ? Allied is not the choice of Counsel a voidable one because not only made under extremis but also exercised while Defendant had been an involuntary Pro Se for more than 30 days after the Arraignment and after

after conducting Pro Se Plea Negotiations and having received (possibly misleading) Discovery— so Choice of Counsel influenced by post-Arraignment Pro Se events ?

QUESTION III

When after that Counsel is "chosen" but that Counsel itself elects not to substitute for Defendant Pro Se of Record does not Defendant continue as Pro Se of Record through further 'critical stages' so that Counsel is effectively interfering with Defendant's right to represent himself for: 1) key dispositive motions to dismiss; 2) strategy for trial and conduct of trial; and 3) sentencing inclusive of restitution ? all of which were entirely botched and interfered with by "Counsel not of Record" ??

In short, the above three (3) questions are the issues that ineluctably follow when a Defendants are made to represent themselves because their Arraignment Counsel made a "Limited Appearance", i.e., an Appearance Limited to the Arraignment, so that Defendant in a Federal Felony prosecution is Pro Se after the Arraignment. There seem to be no reported cases where this has occurred previously and where no inquiry was made to Defendant as to whether he/she wanted Counsel from the after Arraignment time period that Defendant would be Pro Se. But all these problems would logically and obviously follow such scenarios. That's why this Court has decided that the procedure in Federal Court to comply with the Sixth Amendment is to have Counsel at all times post-Arraignment. Johnson v. Zerbst, 304 U.S. 458 (1938); F.R.CR.P. §44(a); Von Moltke v. Gillies, 332 U.S. 708 (1948). While there are no reported cases on subject it is believed that these practices are widespread.

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Latest Opinion is Summary Order of the U.S. Court of Appeals, 2nd Cir. dated April 25, 2018, A -A

Prior general Orders of that Court are likewise Short Form and lack content.

The 8/7/07 District Court Memo & Order is at 2007 WL 2274254 (SDNY) which clearly leaves all the facts/issues involved herein to a later to be filed § 2255 Motion.

Summary Order dated 10/15/08 in the direct appeal is at 297 Fed. Apx.19 (2d Cir.) [as same is supposed to have disposed of all these collateral issues somehow].

The Second Circuit Remand Order in 10-4686 is attached as A-B, which should have yielded findings-of-fact in accord with obvious facts in the Record, Testimony, and Admissions, but produced nothing of the sort, except circular reasoning as above. What should have occurred was a Johnson v. Zerbst fact finding Hearing.

The subsequent Order of Judge Jones is at 2012 WL5177493 (SDNY) remains dispositive [but she did not conduct any Johnson v. Zerbst fact finding Hearing].

JURISDICTION

The date wherein the 2nd Circuit refused to have these fact based issues is April 25, 2018. Jurisdiction of this Court is pursuant to 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SIXTH (6th) AMENDMENT TO CONSTITUTION— OF THE BILL OF RIGHTS

Federal Rule of Criminal Procedure 44(a) [which is of U.S. Supreme Court origin]

STATEMENT OF THE CASE

Overview

The Sixth Amendment to the U.S. Constitution provides that in Federal Criminal Prosecutions Defendant shall have the Right To Counsel from Arraignment on. But what if the plain facts show that Defendant did not without even a whiff of Waiver of that Right? Can the District Court simply ignore the facts ?

Likewise Defendant is to have Choice of Counsel for such proceddings. What if the District Court itself interferred with that Choice by accelerating the due date to have Counsel by over a month with the first Notice of the Acceleration being provided on the actual new accelerated due date ? And then the District Court simply ignores those undisputed facts as well ?

Related is because Defendant did not have Counsel from Arraignment on; was given at Arraignment 40 days to obtain Counsel while having no Counsel, et al; then Counsel is obtained but that Counsel chooses not to Substitute in any way for Defendant —so as to not be "of Record" (to be able to make motions via the Clerk of the Court, e.g.)— is there not an interference with the Right to be Pro Se ?

Two main themes are: (1) the genius of the Constitution and simple application of classic guidance from this Court would have prevented all this contumely; (2) the District Court's inability to simply make "findings of fact" (when same are generally admitted) and to solve problems of its own creation. Shouldn't the District Court at least be able to inform for the Record what in fact happened ?

Case is Related to Turner v. U.S. # 18-106 Herein

My understanding is that Mr. Turner is seeking to extend* the 6th Amendment Right to Counsel for Plea Negotiations from the post-Arraignment period to the earlier pre-Arraignment period. This case involves how difficult it is to apply in actual practice doctrine of having such Right post-Arraignment. In short the lower Courts have an inability to apply Fundamental Rights (so it seems to me that before this Court extends the Right to Counsel to pre-Indictment Plea Negotiations that it gets its lower federal court 'house in order' for post-Indictment Plea Negotiations).

STATEMENT OF FACTS

Lloyd Probber Sociopathic Actions Recorded for Posterity/ Defendant Positive Force

CFTC v Probber, 504 F. Supp. 1154 (SDNY 1981, Leval, D.J.) reports Probber's activites from 1978 on. In sum, Probber made it falsely appear that his physician, Shiffman, was in conspiracy with Probber to defraud both the potential purchaser of Probber's business and the CFTC; so much so that the CFTC appointed Receiver sued Shiffman to obtain Shiffman's assets to pay Probber's debts. Judge Leval found that while Probber's own International Accounting Firm and 100 plus Attorney Law Firm assisted Probber in his attempt to defraud, that they were duped by Probber into doing so. Probber being the "super duper" is thusly recorded.

During the same time period Defendant, Eric Klein, was graduating college at age 19 with Honors in Philosophy (1979), founding a Labor Union under the Teamster's sponsorship while being a Shop Steward (1979-1980), completing a year

*seems this case involves precisely the denial of rights that Turner wants to extend

of Law School (1980-1981), and commencing full time employment with the U.S. Court of Appeals for the Second Circuit (1981, in its Civil Appeals Management Plan ("CAMP")[serving the Judiciary] while attending law school at night, A-C.

Probber Kept Up His Fraudulent Activity / Defendant Kept up Positive Activity

Public records show Probber had plenty of Criminal Convictions after. Seems his operation of the business governed by the CFTC resulted in one. Probber was also convicted in 1991 of various federal mala fides. In 1991 Defendant was employed in in a New York Law City Firm as a civil litigator, and had timely authored a Book entitled "Essays Commemorating the Bicentennial of the United States Constitution and the Bill of Rights* — Looking Toward the Third Century" (University Press of America-1991) published within the Bicentennial period, A-D.

Defendant Starts His Own Law Firm / Prosecutor Streeter Collegial Relationship

Around May 1993 Defendant started his own solo law practice. Around 1995 Probber employed Defendant thusly— and started to "pull a Shiffman" on him.

Within Defendant's solo practice a Mr. Keats asked him represent him a violation of Supervised Release case in 2000. AUSA Jonathan Streeter ("Streeter") objected to Defendant's representation of Keats because Probber was being investigated by Probation too and Defendant was involved with Probber; and therefore Defendant was involved in the facts; so he could not represent Keats in the Supervised Release Violation against Keats. See 12/21/00 Letter by Streeter, A-E. Upon Streeter's own Motion in the Keats Case Klein was disqualified from representing Keats.

*This case involves the Bill of Rights (apparently little known in lower Manhattan)

Probber Alone Subject to Criminal Complaint / A Lot of Interviewing of Defendant

A Criminal Complaint was issued against Probber in March 2003 for which Defendant represented Probber at the First Appearance only. After he was replaced by formal Substitution with highly experienced White Collar Defense Counsel.

The FBI interviewed Defendant May 2, 2003. The SEC commenced Discovery Proceedings against Probber and Defendant in June 2003 [but the SEC never brought an action of any type (neither enforcement nor administrative) in regard to the matter]. The FBI and Streeter interviewed Defendant on June 26, 2003. Probber was indicted on July 1, 2003. The SEC deposed Defendant on July 23, 2003.

SEC Deposition/ SEC Attorneys Put Their Opinions into Deposition Record as Facts

The SEC deposition of Defendant was no simple discover what the facts are inquiry. On page 124 the SEC Attorney asks a compound question inclusive of assuming a duty "... as a lawyer, you know, you have a pretty high duty as a lawyer" l. 5-6*; and another assuming there was an omission "Then omission is a factor..." p. 159, l.14. In sum, taking the SEC deposition of Defendant as a whole contains within it accusations by the SEC that Defendant didn't perform a required "duty" and knew about some "omissions" in Probber's client presentation. See A-F.

SUPERSEDING INDICTMENT ADDING DEFENDANT TO PROBBER

On November 29, 2004 Defendant was indicted along with Probber. Because Prosecutor Streeter called Defendant with the Indictment information and advice to come to Court right away the Arraignment was scheduled for December 1, 2004.

* seems like new technique as deposition not to "find truth" to record accusations

ARRAIGNMENT / DEFENDANT LEAVES ARRAIGNMENT AS INVOLUNTARY PRO SE AS RESULT OF "LIMITED APPEARANCE" BY COUNSEL BUT NO WAIVER BY DEFENDANT OF RIGHT TO COUNSEL

Defendant's Counsel at Arraignment made an Appearance Limited to the Arraignment, and for no point in time after the Arraignment ("a Limited Appearance"). The District Judge gave Defendant at Arraignment until January 10, 2005 to obtain Counsel while elaborating the reasons —the intervening Holiday Season— for doing so. The Docketed Minute Entry for the Arraignment however records the date for Defendant to obtain Counsel as just one week from the Arraignment, i.e., to 12/8/04. A copy of the Arraignment Transcript is A-G.

MYSTERY RE WHAT HAPPENED WITHIN KEY PERIOD 12/1/04 and 1/10/05

At this late date there are still NO findings-of-fact by the District Court as to what happened from 12/1/04 to 1/10/05. But there is a showing of some things in the form of documentary evidence, admissions and undisputed allegations of fact. The thrust of this Petition is to get the District Court to make the findings-of-fact.

12/8/04 Phone Call From District Judge's Courtroom Deputy & District Judge

Alleged but never refuted was that the District Judge's Courtroom Deputy called Defendant on 12/8/04 and informed him that he had to obtain Counsel by that very day. In effect the Court was for the first time informing on 12/8/04 Defendant of the Docket Sheet Entry requiring Counsel on 12/8/04. Of course the Docket Sheet was not handed to Defendant at Arraignment; at Arraignment Defendant heard what the Judge said thereat with respect to the 1/10/05 deadline.

Defendant told the Courtroom Deputy that he recalled that the due date to obtain an Attorney given to him at Arraignment was 1/10/05. Whereupon the District Judge got on the phone and informed that the due date was in fact 12/8/04. Defendant called the Arraignment Attorney who had made the Limited Appearance. The Arraignment Attorney informed that the Judge could so accelerate the time to obtain an attorney. Alleged and unrefuted was this episode decided in Defendant's mind that he would get an attorney ASAP and not continue to be Pro Se any longer.

Defendant was going to use the time from 12/1/04 to 1/10/05 to both look for an attorney and learn all he could about federal criminal procedure, so on 1/10/05 he could decide whether to have an attorney. But with the acceleration of the due date from 1/10/05 to 12/8/04 the proceedings seemed so unpredictable —i.e., deadline so accelerated with notice given <u>on</u> the new due date— Defendant believed he could not handle such a wildly unpredictable case. Pages 1-3 from Am. Petition, A-H.

PROSECUTOR INVOLVES DEFENDANT PRO SE IN BOTH
<u>PLEA NEGOTIATIONS AND THE INVESTIGATION/DISCOVERY STAGES</u>

A 12/15/04 letter issued from Prosecutor Streeter <u>directly</u> to Defendant Pro Se both transmitted various "discovery & inspection" material and initiated the Plea Negotiation Stage, A-I. The three delineated Headings in Streeter's Letter #2 are: "Disclosure by the Government", "Disclosure by the Defendant", "Sentence Reduction for Acceptance of Responsibility". Streeter's Letter # 2 ends with:

> "Please contact me at your earliest convenience concerning the possible disposition of this matter or any further discovery which you may request".

A-I. p. 3

Later Streeter in the § 2255 proceeding explained his 2nd Letter, A-I:

> ...with respect to my sending him [Defendant Pro Se] discovery during the period of time when he was unrepresented, when he was looking for counsel. ...he still didn't have a lawyer, I sent it directly to him [Defendant Pro Se],

A-J, 8/17/10 Trans., p. 20

While this would be a clear admission by the Government that Defendant was Pro Se for the Discovery & Inspection and Plea Negotiation Stages there has still been no finding-of-fact by the District Court to that effect. By the letter's literal terms, i.e., "possible disposition of this matter" and offer of a "Sentence Reduction for Acceptance of Responsibility" it is the actual initiation of Plea Negotiation Stage.

In discussing this in Court on 8/17/10:

Defendant: "Streeter wrote me a letter... Call me to discuss settlement..Settlement ...at your earliest convenience.. And I did.

Court: "...what is wrong with that ...Mr. Streeter was trying to resolve this is a manner which unfortunately you did not follow..."

Defendant: "...the fact is we had these negotiations while I was involuntarily pro se. I think if I had a lawyer... [cut off by Court]*

A-J, pages 38-39

FAILED PLEA NEGOTIATIONS AND ACCELERATION OF DATE TO OBTAIN COUNSEL LEAD TO COUNSEL OBTAINED WITHOUT "CHOICE"

Alleged and not refuted was that on 12/15/04 the Courtroom Deputy called Defendant and reminded him that he had to have had Counsel by 12/8/04. The Courtroom Deputy called again on 12/22/04, reiterated that Defendant was in default of having to have Counsel by 12/8/04, expressing that the District Judge

* The Judge's thinking was rejected by this Court's precedents: Lafler v. Cooper and Missouri v. Frye, to wit, that a subsequent trial does NOT cure defects in the Plea Negotiation process. Counsel also required for "critical stages" in all felony cases.

was mad/angry at Defendant for not having Counsel by 12/8/04, and scheduling an in Court proceeding for 12/27/04, which was the first working day after Christmas, for Defendant to explain to the Court why he didn't have Counsel by 12/8/04. Defendant prevailed upon the Courtroom Deputy to move that Hearing to 1/5/10 (largely upon the reasoning the Judge gave originally at Arraignment for giving to 1/10/05 to obtain an Attorney, i.e., the Holiday Season).

Defendant's Choice of Counsel was the Obermaier Morvillo Law Firm (experienced and former Federal Prosecutors) [with whom all terms were worked out] but that Law Firm would do nothing until it cleared a law firm wide conflicts-of-interest check, which it could not do by 1/5/05 [lawyers away on vacation for Christmas vacation and New Years]. Instead Defendant on 1/3/05 hired Talkin Muccigrosso & Roberts (TMR) (inexperienced and former State Prosecutors] who had no need for lengthy conflicts of interest check. The Hearing for 1/5/05, which smacked of Contempt against Defendant, was purged by the hiring of TMR and never held. These facts show a District Court insensivity to having Choice of Counsel as no Defendant should be shoved to obtain Counsel or face Contempt.

TMR DID NOT SUBSTITUTE FOR DEFENDANT PRO SE
(nor Take Action Along those Lines)

The Record shows TMR's only action toward being "of record" was the filing of a Notice of Appearance on 12/17/07 (Docketed Document #123). That is over 2 years AFTER the Trial & Sentencing (and 6 months after it was relieved by Court Order). Given that Defendant was an acting Pro Se for Discovery and Plea Negotiations

before TMR had any involvement "a Substitution" [of Counse] was required to change Defendant's status from "Involuntary Pro Se" to "Counselled". Inasmuch as none such occurred Defendant remained through trial by law "Pro Se" (akin to having Standby Counsel as in McKaskle v. Wiggins, 465 U.S. 168 (1984)).

Judge Jones explained the Notice of Appearance by TMR being filed so late in the game as being due to TMR bringing the Notice of Appearance late to the Court Clerk but 'intending' to do it contempraneously . But Judge Crotty explained this by the Court Clerk having the Notice of Appearance when dated and didn't file it for about 3 years. But neither Judge had any input from either TMR nor the Court Clerk as to what happened. To me, a former Deputy Clerk, I think Judge Crotty's version makes no sense. But TMR's intending to file the Notice of Appearance around January 5, 2005 without actually do so does not change the fact that TMR didn't do anything timely to substitute for Defendant or try to do so.

TMR MISSES OBVIOUS, BLATANT & SIMPLE
SPEEDY TRIAL ACT VIOLATION

The Court set April 6, 2005 for trial of both Defendants, and made an Order excluding all the time between 1/18/05 & 4/6/05 from the Speedy Trial Act time. Probber's attorneys made a motion for Severance.

While that Severance Motion was pending TMR asked for the trial to be rescheduled to the first week of June [all of the first week in June was well within 70 days of 4/6/05]. The Court when granting Probber's Severance Motion set Defendant's trial for June 27, 2005 [which was both after TMR requested and

over 70 days from 4/6/05], A-K But the Court did not exclude the time from 4/6/05 to 6/27/05 rom the Speedy Trial Act time. Therefore by simple math there were 82 days of unexcluded time and thus a Speedy Trial Act time violation. TMR, when asked about the availability of a Motion to Dismiss, in part because his Father died in the interim, TMR wrote that it could spend a year in the library and still find no ground for a motion to dismiss, A-L . In the fulness of time TMR still did not believe there were any STA time violation "issues", A-M.

TMR MISSES OBVIOUS BLATANT "DUE PROCESS" VIOLATION

Contemporaneously with these proceedings were in the 'hinterlands', as opposed to "New York, New York", the Securities Capital of the World, well publicized litigation was ongoing with respect to SEC actions in relation to Criminal prosecutions. See, e.g., U.S. v. Scrushy, 366 F. Supp. 2d 1134 (N.D. Ala. 2005); U.S. v. Stringer, 408 F. Supp. 2d 1083 (D. Oreg. 2006). In sum, this particular case was stronger than both of those but no motion was made: inasmuch as there was no SEC action [neither enforcement nor administrative] and the SEC's first action was in June 2003 where the Justice Department's Investigation began in January 2000. Therefore TMR should have moved pre-trial: A) to dismiss for violation of the STA time limits with 82 unexcluded days and B) with prejudice because of a "due process" violation with respect to the SEC taking discovery from Defendant solely to further the Prosecution's existing Prosecution.

As above, the Prosecution admitted there was an STA time violation and TMR

could have moved to dismiss therefor. The Prosecution's entire response to the rather obvious "due process" violation is the following oral statement given at the 8/17/10 Hearing, where Defendant was again Pro Se [and the Court had repeatedly refused to appoint Counsel for Defendant for same 8/17/10 Hearing]:

STREETER: "I am the prosecutor who was investigating this case at the time, and am happy to say under oath here today that I did not direct the SEC to do anything; they were not a tool of the criminal authorities; I did not tell them what to ask at the deposition; I did not tell them to go find this for me in the deposition. None of that happened, and so none of the factual predicates that would have to be there for...a valid motion on that basis were there..."
8/17/10, Trans., page 21-22.

Judge Sand, who heard that from Streeter didn't even credit it as being true. Later, Judge Jones, when quoted this from the prior Record, found this determinative of the entire issue, although if it was "testimony' would not be creditable because given in violation of Rule 8 (c) of the Rules governing Evidentiary Hearings for § 2255 Motions because Judge Sand repeatedly refused Defendant Counsel

Streeter seems unusually solipsistic [he submitted his own 12/21/00 Letter, A-E, into evidence at the trial despite he was the Lead Trial Prosecutor/Streeter himself called Defendant to inform him he was Indicted as set the Arraignment schedule with him]. There is an entire other Justice Department and FBI that could have been in touch with the SEC in lieu of Streeter's doing so.

The whole point of this inquiry is what the SEC was intending, not what the Lead Prosecutor thinks they are doing. Nothing has been heard from the SEC as to what the SEC's purpose was, and beyond peradventure it could not possibly

have been for an SEC matter that pre-dated the Justice Department's investigation. Moreover an average person, not expert on Justice Department procedures, would believe as of July 23, 2003, since Probber alone was the subject of the Criminal Complaint and it was nearly 4 years after the Justice Department investigation was commenced, Proober was the lone Defendant in the July 1, 2003 Indictment, would not believe the Justice Department was pursuing someone else besides Probber. But TMR did not move to dismiss the Superceding Indictment against Defendant on "due process" nor any grounds [and made no written motions].

TMR PECULIAR BEHAVIOR ASIDE FROM CONDUCTING THE TRIAL & SENTENCING WHILE DEFENDANT PRO SE OF RECORD

To be brief aside from TMR seemed do be totally unaware of what the case was about, it obviously did not locate CFTC v Probber, 504 F. Supp. 1154 (SDNY 1981, Leval, D.J.) which shows that Probber's method does not include "conspiracy" but duping of every person and entity that he possibly could. The themes established in CFTC v Probber, i.e., that Probber not only dupes his own professionals [there it was his Doctor, CPAs, and Lawyers] in order to dupe to obtain money (from his business buyer) and dupe the Government (the CFTC) to allow that deal to close.

Whereas Streeter submitting his very own 12/21/2000 letter into evidence would present the Prosecution with enormous problems [the Lead Prosecutor can't also be a witness in his own case], TMR solved that simply be allowing Streeter to redact his name from the version of 12/21/2000 Letter the Prosecution submitted into evidence. Moreover TMR permitted that Letter to be described by the Prosecution

to the Jury as Prosecution notice to Defendant that Probber was commiting fraud.

Perhaps the key witness for the Prosecution was the 404(b) witness, Holgate. Holgate testified repeatedly that his transaction [with Keats] was for Holgate to get a mortgage. The Prosecution in its closing used this as showing how Holgate was a victim of Defendant because he prevent Holgate from getting a Mortgage.

Just as TMR was unaware of CFTC v Probber, 504 F. Supp. 1154 (SDNY 1981) and Probber's sociopathic tendencies recorded therein, TMR was also unaware of the District Court decision in Holgate v. Baldwin, 425 F. 3rd 67 (9th Cir. 2005) showing that the reality was that Holgate could not possibly to seeking a mortgage because he had already deed the property away in lieu of foreclosure and then sued his mortgagees frivolously as Racketeers pursuant to the RICO. In fact the trial Exhibit that Holgate tesified to as being for "a mortgage" was for a third party to buy the property and then lease it to Holgate with an option to buy.*

In simple terms the reality was that Holgate should have been made by TMR into a witness for Defendant. Holgate himself was "Ex. A" as to why people would go to someone to seek alternative financing and non-traditional means of getting what they want. In Holgate's clear instance it was to try to get his Real Property back. Unfortunately TMR was not aware of Holgate's true predicament. While the whole course of the trial displayed TMR total loss as to what was going on substantively and procedurally when it came to Restitution TMR's special talent for not knowing anything, even that which is right in front of it, was shown off.

*Streeter had to know therefore that Holgate was lying re deal being for a mortgage

TMR Arranges to Have Defendant Pay Probber $177K in Restitution !

Probber put up $100K in Bail. An understanding of Probber's personality as documented in CFTC v Probber would indicate Probber would want to get that money back. Probber obviously hatched a plot to do so by arranging to have that amount of money sent to a Karen Lefall as her "Restitution". So she is in Probber's Restitution for $100K. Lefall was merely Probber's Prison Pastor at his specially arranged Federal Medical Institution. Both CFTC v. Probber and the full record herein show Probber using false "beards" and whatever it takes to obtain moneys.

Had TMR bothered to look at the pre-established Probber Restitution for Lefall before he agreed to same for Defendant he would have noticed a glaring difference. Probber's Restitution for Lefall is $100K, the exact amount of his Bail Money. But TMR agreed to have Defendant pay Lefall $177K in Restitution.

One would think since the Restitution is supposed to be the amount of her loss it would be in just one fixed amount, not two different ones $77K apart. This was, as was TMR's habit, to just go along with whatever fantasy Streeter was pushing without thinking. As it turns out an investigation by Attorney Anthony Abraham interviewing Lefall showed that she never did any business with Probber and hence was not a "victim" and had no loss therefore at all, A-O (she is just Prison Pastor)

This debacle could easily have been avoided if TMR recognized the depth of Probber's psychopathology as shown by CFTC v. Probber but TMR would stoop so low as to visit a library*. Additionally had TMR merely looked at Probber's

* See TMR's e-mail, A-L, refusing to visit the Law Library to get apt information

Restitution for Lefall that was already on the books it would have seen it was just $100K. This again shows how ignorance seems to build on itself exponentially.

TMR Arranges for Defendant to Pay Holgate (and his Creditor $42K)

As above Holgate was merely a non-victim 404 (b) witness. The Prosecutor took pains to so inform the Trial Judge and the Trial Judge took pains to so inform the jury. Yet in Defendant's Restitution Holgate is in for $42K aggregate: $22K for Holgate and $20K for an Edward Vance, whose claim to fame is that Holgate owed Vance money [like all the Mortgagees Holgate stiffed].

The best part though is that Probber, who had plead Guilty (and so had greater liberality to pay whoever he wanted in Restitution) though didn't have to pay this Claim/these Claims. Streeter specifically did not require these in Probber's Restituion. Once again another bouleversement of reality presided over by TMR.

There is no theory on earth that can justify Probber not having these claims in his Restitution Judgment and Defendant having them in his. And TMR never did a thing about it although it had more than ample opportunity. Streeter made it a point to exclude these from Probber's Judgment long before TMR was relieved as Defendant's Counsel. But only theory for paying them would be the "conspiracy".

TMR Agrees to Pay Mercader's Creditors Too Not on Probber's Resitution List

A Prosecution witness was Mercader. Mercader was Probber's actual Partner pursuant to a Written Agreement between them to split the fees that Mercader earned by selling Probber's Services. TMR never made the point of how absurd it

was for Mercader to not be Prosecuted, but did allow the Prosecution to label Mercader a new style "victim", not of the type alleged in the Indictment. The Prosecution without objection from TMR informed the Jury that Mercader too was a "victim", but only because Probber didn't pay Mercader his Commissions.

A comparison of the earlier arrived Probber Restitution Judgment and later made Defendant Restitution Judgment shows that Probber was not required to pay Mercasder's three clients Restitution, but that Defendant was required to per TMR's agreement. On the surface this makes no sense whatever. There was no Probber-Klein-Mercader conspiracy alleged.

Probber was obviously able to thus prevail upon Streeter in his Attorney assisted Plea Negotiations not to have to pay Mercader's three clients, about $36.5K in Restitution (because no such Conspiracy was alleged). There is no possible theory that Defendant would have to pay Mercader's clients and not for Probber to do so as Mercader brought these clients to Probber pursuant to their fee splitting agreement. But TMR agreed to these Resitution arrangements. Essentially TMR's Resitution arrangements mirrored its Trial work: do as little as humanly possible and go along with whatever submitted by the Prosecution no matter how false or senseless—the non-defense defense [by non Attorneys of Record]. Simple calculation shows TMR agreeing for Defendant to pay over a quarter of a million dollars that could not possibly be due [and that Probber wasn't paying; but rather bizarrely <u>was</u> <u>receiving</u> by using his Prison Pastor's name.

BRIEF POST-SENTENCING HISTORY

Defendant himself brought the Sixth Amendment issues to the Court's attention in February 2007. The District Court made no findings-of-fact with regard to the Arraignment rendering Defendant Pro Se nor what transpired thereafter. Rather Judge Sand relegated the entirety of the issues to a later to be filed § 2255 Motion.

The direct appeal had its own procedural problems. The Court Appointed Appeals attorney's entire Brief was stricken by pre-disposition Court Order. It did not include at all any 6th Amendment, or Ineffective Counsel, nor related issues. Yet per the 10/15/18 Short Form Order that stricken Brief was relied upon. Such Short Form Order affirmed the District Court 100%, inclusive of it plan to have the 6th Amendment issues reviewed ab initio in a later to be filed § 2255 Motion.

When that § 2255 Motion was filed the District Court set it for a "Hearing" on 8/17/10. The District Court dismissed the § 2255 Motion for lacking jurisdiction [because the Court simultaneously terminated Defendant's Supervised Release upon the Prosecution's motion]. The Circuit reversed that for a "disposition on the merits" in 10-4686, A-B. Thereafter Judge Jones merely photocopied the Prosecution's papers [so if the Prosecution did not address an issue she did not either]. She adopted the Prosecution's argument (which was rejected at lease twice previously) that the direct appeal also settled collateral to the record § 2255 issues. The Second Circuit declined further review. Efforts to straighten out the proceedings have failed resulting lastly in the April 25, 2018 Order of the Second Circuit, A-A

REASONS FOR GRANTING THE WRIT

FIRST REASON: OPERATIVE FACTS SHOW VIOLATION OF DEFENDANT"S SIXTH AMENDMENT RIGHHT TO COUNSEL AT ALL STAGES POST-ARRAIGNMENT IN FEDERAL FELONY AND FOR THE CRITICAL STAGES OF PLEA NEGOTIATIONS AND DISCOVERY/INVESTIGATIVE STAGES

The 12/1/04 Arraignment Transcript, A-G shows Arraignment Counsel made a "Limited Appearance"— limited to just the Arraignment and not for a moment longer. The Prosecution did not object to that arrangement. The Defendant was not asked at any time whether he agreed to that regime in any way whatsoever.

As far back as Von Moltke v. Gillies, 332 U.S. 708 (1948) this Court frowned on Arraignment Counsel just appearing for the Arraignment and not continuing. It thought for Defendant it made it seem like having Counsel was merely an empty formality and not of valued substance. One would think that this Court would be equally critical of the Arraignment here because Arraignment Counsel just appeared and enterd a "Not Guilty" Plea and then diasappeared entirely from the matter.

Specifically therein this Court made abundantly clear that the Right to Counsel was for "every stage" of the proceedings from Arraignment on. See FRCRP 44(a). This Court informed that Arraignment Counsel is not supposed to do be acting mechanically. It seems from the Arraignment that the Arraignment Counsel's sole function was to enter a mechanical Not Guilty Plea and then make herself as scarce as humanly possible. One would think it would be incumbent on Arraignment Counsel, based upon Von Moltke, to stay on umtil a replacement Counsel was found.

With respect to the Right to Counsel for deciding whether to settle the Court

in Von Moltke said: "Prior to trial acccused is entitled to rely upon his Counsel to make an independent examinsation of the facts, circumstances, pleadings and laws involved, and then to offer his informed opinion as to what plea should be entered". This presaged later precedents extending the Right to Counsel for Plea Negotiations to State proceedings because Plea Negotiations are a "critical stage". See, e.g., Padilla v. Kentucky, 559 U.S, 356 (2010); Lafler v. Cooper; Missouri v. Frye (2012).

The Prosecution's 12/15/04 Letter, A-I, sent directly to the Defendant two (2) weeks after the Arraignment, which by its literal terms, involved Defendant in both Plea Negotiations and Discovery/Inspection. On top of which the Prosecutor who compiled the discovery material contents thereof, wrote and transmitted that Letter to Defendant Pro Se admitted that he did so because Defendant was Pro Se, A-J. The Record is plain that there was no Waiver by Defendant of having Counsel post-Arraignment, and the Prosecution urged none at any time.

The only thing that stands in the way of vacatur of the Judgment and re-trial is for the District Court to make findings of-fact that Defendant was Pro Se after the Arraignment and for Plea Negotiations and Discovery/Inspection, which the Prosecution by Streeter has already admitted in his 8/17/10 Testimony. In Johnson v. Zerbst, 304 U.S. 458 (1938) this Court informed on procedures and it needs to remind the District Court to perform its function required by the Constitution, i.e., to find facts as facts, and if fact finding Hearings are required to conduct same. As far as Petitioner knows these practices are too widespread an evil to ignore.

SECOND REASON: ACCELERATING THE DEADLINE TO OBTAIN AN ATTORNEY FROM 1/10/05 TO 12/8/04 WITH FIRST NOTICE GIVEN TO DEFENDANT ON 12/8/04 HARDLY COMPORTS WITH REASONABLE OPPORTUNITY TO HAVE "CHOICE OF COUNSEL" INCLUDING THE CHOICE TO REPRESENT ONESELF (HEREIN THE CONTINUING TO DO SO)

Here again there has been no findings of fact as to what happened after the Arraignment pursuant to which the clear plan set by the Court was Defendant was to be an Involuntary Pro Se from 12/8/04 to 1/10/05. The only other thing documented beside the 12/1/04 Transcript is the 12/1/04 Minute Entry on the Docket Sheet for the Arraignment showing a different due date than the Transcript.

However Defendant's written recitation of the facts has gone unchallenged by the Prosecution. Common sense indicates this acceleration would result in not having Choice of Counsel and Defendant eliminating the possibility of continuing to represent himself as a Pro Se. Case low recites that Defendant is to have a reasonable opportunity to make that "choice" and a few hours on 12/8/04 could hardly be after a justified expectation of having another month be such time.

If there is a right to such Choice of Counsel under the Constitution the District Court, as with the prior inquiry with respect to Defendant being an Involuntary Pro Se, needs to find as facts thst the acceleration of the time to obtain Counsel from 1/10/05 to 12/8/04,with first notice of the accleration to 12/8/04 given on 12/8/04. As above, there are no such findings— only unrefuted allegations of fact, A-H. This Court needs to remind the District Court that findings-of-fact need to be made to monitor the having a Right to Choice of Counsel (as findings of fact key to process*).

* Respectfully, key to the entire judicial process generally are true findings-of-fact.

THIRD REASON: TO DEFINE SITUATIONS WHEREIN DEFENDANT IS STILL PRO SE OF RECORD AND COUNSEL IS NOT, E.G., MCKASKLE v. WIGGINS

In Mckaskle v. Wiggins, 465 U.S. 168 (1984) this Court made clear that "Stand By" Counsel has a limited role, and a criminal defendant has the primary load to carry. But as the facts and records show herein the Counsel that Involuntary Pro Se Defendant obtained —he being made Pro Se because Arraignment Counsel made an Appearance limited to the Arraignment— did nothing at all to Substitute for Defendant until December 2007 (which was over 2 years after the Trial and Sentencing).

Judge Jones, without having any input from TMR, implicitly found that that was so, but thought TMR failure to do anything by then was "inadvertent". While it would make some sense that TMR did nothing ever to Substitute, same being inadvertent; it makes no sense that TMR put in its Notice of Appearance in December 2007 inadvertently. What could they be thinking (other than to try to interfere with Defendant's efforts to reverse the effects of TMR's negligence).

Regardless the Court can define that when a defendant is in fact an Involuntary Pro Se after Arraignment and obtains an Attorney that that Defendant remains Pro Se until the Attorney does something vis-a-vis the Court to Substitute for Defendant. The presumption is that the Attorney already knows that Defendant remains Pro Se of Record in such circumstances, while Defendant does not. This is unfair to Defendant as he/she might wish to conduct the proceedings with much more energy and attention than the Attorney who assumes his role is limited.

FOURTH REASON: FACTS SHOW DEFENSE COUNSEL DIDN'T TAKE CASE SERIOUSLY BECAUSE COURT ORIGINALLY DID NOT

In Von Moltke this Court noted that if the District Judge takes having Counsel for Defendant lightly it could influence the Defendant likewise into thinking that having Counsel isn't important. But can't the same animating spirit of the District Judge influence Defense Counsel— in this instance, TMR— into thinking their role is unimportant ? Here Defense Counsel could easily interpret the Arraignment Transcript as an expression by the Judge that Defendant having Counsel after Arraignment was not important to the Court. Following that Defense Counsel could easily interpret the Court's acceleration of the due date for Defendant to have Counsel from 1/10/05 to 12/8/04 with notice of that acceleration on 12/8/04 as an expression by the Court that it simply didn't care who represented Defendant, or if anyone at all did since the acceleration made Defendant permanently a Pro Se.

TMR, by just showing up in Court without any Substitution likely might have made a sophisticated calculation. If TMR asked Judge Sand for permission to substitute for me around 1/3/05 Judge Sand might well have declined that. Judge Sand could have simply denied that as being 'too late'; or for another reason. TMR likely figured there was no upside to trying to substitute for Defendant then Pro Se.

But for TMR the just showing up lilely confirmed that Judge Sand was not watching out for Defendant. Judge Sand made no inquiry of TMR of any type as to how it came to be hired by Defendant (e.g., because of pressure from the Court), nor if it could handle a complex white collar case involving the likes of Probber.

TMR'S EFFORTS ARE MOCKERY / DEFENDANT FAR BETTER OFF AS PRO SE

Most Obvious of All Speedy Trial Act TIme Violations Overlooked by TMR

As above, herein the STA time violation was elemental: 82 days of unexcluded time, when 70 is maximum time before automatic dismissal applies. TMR twice wrote that no STA Motions to Dismiss* inhere so this is not situation where Counsel knew about the violation and strategically decided not to pursue same. One would like a privately retained attorney when client asks them to look for a motion to dismiss to be obligated to find such an extremely obvious one— located in 1 Order.

There does seem a split in the Circuits. In U.S. v. Marshall, 669 F. 3d 288 (D.C. Cir. 2011) that Circuit found that overlooking an STA time violation could be ineffective Counsel (regardless of whether the dismissal would be with or without prejudice). Other Circuits seem more restricted as seem to require some showing that the dismissal would be with prejudice. Still another approach seems to be that Defense lawyers are inattentive and just without much fanfare the Court should simply put the Defendant in the position he/she would be in had the Attorney been paying attention. See, e.g., Greenup v. U.S., 401 F. 3d 758 (6th Cir. 2005),

Respectfully I think since dynamics involve the dismissal of an Indictment the proper rule should be if the Attorney is unaware of the STA time violation then the Attorney should be deemed ineffective. In sum, not being aware cannot be a strategic decision on behalf of the Defendant. Defense attorneys should be required by law/by the Courts to be aware of basic easy stuff that goes with the job.

*TMR's communications re this are shocking as though issues were 'beneath it'.

If the Indictment were dismissed without prejudice that would have given Defendant an opportunity to obtain new Counsel if there was another Indictment. In simpler terms TMR interferred with Defendant's right to get the Indictment dismissed based on the Speedy Trial Act because TMR did not know about the STA and didn't even send the 2/24/05 Order to Defendant to figure out the STA violation.

Most Obvious of "Due Process" Violations overlooked by TMR

Because the SEC took Defendant's deposition so 'late in the game'— 3 1/2 years after the Investigation began and after Probber was Indicted— and no SEC proceeding was ever had in the matter there was the most obvious of this type of "due process" violation. The SEC Transcript is 180 pages and was submitted at Trial by the Prosecution so quite hard to ignore. Here again, was TMR influenced by the fact that it was not "of Record" not to move to dismiss (or make any written motions at all) ? At the same time other Attorneys were so moving on weaker facts.

Most Obvious of Trial Defenses Not Pursued by TMR for Lack of Looking for it

CFTC v Probber was in the public domain. Minimally and literally same shows Probber actually duping his own physician, Shiffman; his own international Accounting Firm, Price Waterhouse; his own 100 plus Law Firm, Webster & Sheffield, to actually assist Probber in a Probber multifaceted Fraud Scheme. The jury was never informed that Probber had done this in the past; and Probber even made it appear on the surface that Shiffman was in conspiracy with Probber so much so as it misled the CFTC into pursuing Shiffman's assets.

Yet TMR was not even aware of CFTC v Probber, 504 F. Supp. 1154 (SDNY 1981, Leval, D.J.), so it was impossible for TMR to make any use of its information.

Most Obvious of Defects in Prosecution's Case Not Pursued by TMR

Streeter was Lead Trial Prosecutor and testified he was in charge of the whole investigation. Yet he was Prosecuting a case that he himself designed wherein his very own Letter, A-E, was key central Prosecution evidence. It was used in his Opening Statemnet, during the trial and in the Prosecution's Closing Statement.

Yet TMR's only response to Steeter's high end [obvious to Streeter] ethical problem — that Prosecutor can't design case where he is key witness— was to assist Streeter in redacting his name from Streeter's Letter, A-E for the Trial.

But this is typical TMR. Even if he couldn't on its own spot an obvious issue, i.e., Streeter trying to fill gap in his case of lack of notice to Defendant with a Letter that might possibly show some kind of notice of something, Streeter brought it to TMR's attention when he informed TMR he wanted to redact his name.

TMR had many options: Could have simply said "No", which would have been technically correct since it was not of Record and could do no such Stipulating because it was not of Record. It could have agreed to let Streeter redact his name from his own Letter, and then make Streeeter testify about why he wanted to redact his name. I am sure that the Jury would have been very entertained to hear how the Prosecutor was acting unethically in putting his own letter into evidence to try to fill a big gap is his substantive case and then trying to cover

it up by redacting his name from it. Alternatively TMR, if it had been of Record TMR could have in advance of the Trial moved to disqualify Streeter therefor.

TMR Did Nothing re Holgate Except Arrange to Pay Him $42K in Restitution

Holgate was obviously lying at trial about his transaction being for a Mortgage. See face of Transaction {Lease Option] & Holgate Testimony, A -O &, and District Court case in Holgate v. Baldwin, 425 F. 3rd 67 (9th Cir. 2005). Had TMR been aware that Hoglate was lying [and also Holgate was per public record an embezzler] Holgate should have been made into a Defense witness. This was because Holgate was "Exhibit A" as to why people who could not obtain a simple mortgage [in his case he was certified dead beat who sued his Mortgagees frivolously as "Racket-eers"] might need to resort to alternative financing techniques, i.e., a third party Lease with an option to buy, A-N. While this is what the facts actually showed TRM did not explain it to Jury in any way at all. Rather later for Sentencing he didn't recognize Holgate was just a 404(b) witness and so agreed for me to pay Holgate a $42K witness fee ($20K of which went to Vance) for lying at the trial*.

TMR Comatose re Restititution/Given Restitution Moneys away Frivolously

1) Court records show Probber paying $100K Bail. In Probber's Restitution Judgment Karen Lefall is getting $100K. She was Probber's to-be Prison Pastor At an FMI. Somehow for my later to be calculated Restitution Lefall was in For $177K (and as far as I can tell the only one with two different amounts).

The $77K should have been a tip-off to TMR (and the Prosecution). A later

* TMR should have moved post-trial to dismiss as obviously Holgate was lying

investigation by Attorney Anthony Abraham clarified Lefall did no business at all with Probber and so was not a victim at all, A-O. Seems ridiculous for TMR to have agreed for me to pay $77K more than Probber for already established amount in Probber's Judgment for $77K less. Is TMR's answer: "Ain't my Money" ?

2) Holgate is in my Restitution Judgment for $22K; and his creditor, Vance, is in for $20K (to get Holgate another $20K in value). Probber's Judgment does not include any of this and Prosecution specifically excluded Probber from paying these but these amounts can only be referable to a "Conspiracy". TMR must not have remembered that Holgate was only a 404(b) non-victim witness at trial.

3) Some approximately $36.5K for Mercasder's Clients are in my Restituion Judgment, but not in Probber's earlier made Restitution Judgment. Mercader was Probber's actual Partner. Again this makes no sense whatever.

All of the above was unremarked by TMR. There is nothing in the Record at all from TMR as to why it agreed to these sums. Seems to go back to its not being "of record" as being such imports some responsibility for the proceedings.

In sum I was required by the TMR made Resitution Judgment to pay $155K more than Probber in Restitution while Probber's Judgment was made earlier so all that TMR needed to do was resort to that one to get the amounts right. And then there is another $100K just for Probber under the name of Karen Lefall, who, as has been explained was a phony claim by Probber's to be Prison Pastor created by Probber to make money off of his being Prosecuted herein and pleading

Guilty. In a way all this regarding the Restitution goes to the nature of this whole enterprise, which was not taking Probber's documented history of defrauding, fooling, and attempting to do such to everyone. Resepctfully the entire case against me was the result of Probber duping the Prosecution to pursue me to ameliorate Probber's Sentence and for Probber to get his Bail Money back and to get other moneys. While all these Probber psycho-charaacter traits were captured for all time in CFTC v. Probber, 504 F. Supp. 1154 (SDNY 1981, Leval, D.J.) no one seems to have 'gone to school' on that. It is like Hitler writing Mein Kempf but everyone in the world ignoring it contents as though it couldn't possibly be what Hitler meant. Why not credit Judge Leval with correctly capturing Probber's nature of attempting to defraud every person and every entity he came across; and Probber's succeeding there with Shiffman, Price Waterhouse, Webster & Sheffield and the CFTC' and its Receiver into pursuing Shiffman's assets ?

Obvious 6th Amendment Violations Not Raised by TMR

TMR was surely involved in whatever status it purported to have through May 2007 when there was a Court Order relieving it from such. Then about 6 months later it put in a Notice of Appearance.

But in February 2007 it had explicit notice of the fact that Defendant lacked Counsel from Arraignment, 12/1/04 until at least 1/3/05 when Defendant hired TMR; and that Defendant was trying to get the Judgment vacated therefor.

TMR's actions as "defense attorney" thereafter are nothing less than absentee.

It did nothing to support same. This obviously signaled to the Court that same lacked merit. One would hope that what "Defense Counsel" means is to defend the Defendant, not on Defending why Defense Counsel should be able to keep their fees.

Since the Arraignment Transcript was an open to the public document, and TMR came into the case over a month later isn't it reasonable to expect that TMR would at some point in time address the issue of Defendant's being an Involuntary Pro Se for over a month in violation of the 6th Amendment Right to Counsel. Defendant's own motion on point was even sent to TMR but TMR did nothing to support that attempt to obtain Court enforcement of basic Constitutional Rights. But alas it turns out that TMR was not even of Record so thinking about motions to vacate [and dismiss] would be pointless to it.

One would think this issue being so simple and so basic would be something TMR could have endorsed to get it addressed. Rather it just tried to run away.

CONCLUSION

All these problems would have been solved if at Arraignment all the active parties followed well established Supreme Court and even lower Court precedent. Powell v. Alabama, 287 U.S. 45 (1932) (time after Arraignment is critical stage); Johnson v. Zerbst, (1938), supra, (in federal proceedings as opposed to state proceedings as in Powell v. Alabama, the right to Counsel is for all stages after arraignemnt, not for just critical ones); FRCrP 44(a) enacted by the Supreme Court [right to counsel in federal court for all stages after Arraignment]; Von Moltke

v. Gillies, supra, (1948) (when the Supreme Court says "all stages" the Supreme Court means "all stages" — as these are well thought out formulations).

The Arraigment Counsel was not compelled to make a Limited Appearance at Arraignment. It could have stayed on in the case until Defendant obtained other Counsel. In fact that is what this writer did after Probber's presentment: stayed being Counsel of Record for Probber until an apt replacement was found.

Streeter could have simply objected to Arraignment Counsel making a Limited Appearance but didn't. Perhaps Streeter was such a hurry, see his 12/15/04 Letter, A-I, directly to Defendant, to get Defendant to settle via Plea Negotiations that he figured that process could be expedited if Defendant was Pro Se post-Arraignment. Had Streeter objected to the Arraignment Counsel's limited appearance Judge Sand would have said "That's right", and one way or another Defendant would not have been Involuntarily Pro Se after the Arraingment.

Judge Sand on his own initiative [but the appellate process really places the burden on such issues on the Attorneys present] could have followed the teachings of Von Moltke and sought to obtain from Defendant an interim Waiver of the Right to Counsel post-Arraignment. Defendant would have opted for appointment of Counsel to solve the Constitutional gap of not having Counsel post-Arraignment.

But this was all settled by the U.S. Constitution over 200 years earlier. But clearly Arraignment Counsel and Streeter had other agendas more pressing than following the Constitution. That Pro Se Plea Negotiations and Pro Se

DiscoveryInvestigation followed, see Streeter's 12/15/04 Letter, A-I, sent directly to Defendant, was inevitable by-product of a regimen whereby Defendant was an Involuntary Pro Se after the Arraignment. In the words of Streeter:

> ...with respect to my sending him [Defendant Pro Se] discovery during the period of time when he was unrepresented, when he was looking for counsel. ...he still didn't have a lawyer, I sent it directly to him [Defendant Pro Se], A-J, p. 2 (transcript page 20)

So further unconstitutional proceedings inevitably flow from prior such.

Thia is only amplified by the Attorney due date confusion. The Arraignment Transcript makes it clear that same was 1/10/05 with reasons for doing so placed on the Transcribed Record. But it was recorded on the Docket Sheet as for 12/8/04 for some reason. The likely reason was that the Clerk was inured to making that date a week after Arraignment but this was at the time of year end Holidays. But if instead Counsel was in place for Defendant as the Constitution requires, after the Arraignment none of this confusion would have followed, but inevitably it had to.

But when you get down to the actual undisputed fact that the Court went with the 12/8/04 date instead of the 1/10/05 date with first notice to Defendant on 12/8/04 that has got to be a denial of Choice of Counsel. By almost definition a Court that first gives to 1/10/05 to obtain Counsel and then accelerates that to 12/8/04 with first notice of the new accelerated date on 12/8/04 the Court is saying "I don't care who your Attorney is as long as it is anybody, or it could be nobody at all".

That then "anybody" proceeds to physically appear but not Substitute in any way presents several obvious problems, just the first of which is that Defendant is then

still Involuntary Pro Se of Record. This is particularly important because TMR could not and did not make any submissions directly with the Clerk of the Court. Thus no written motions were made by TMR likely for the reason that it couldn't. But what if at trial after the first witness testified Defendant realized TMR didn't know first thing about the case ? Ordinarily it would be hard at that point to discharge TMR and for Defendant to take over. But because Defendant was in fact still Involuntary Pro Se "of Record" he could have simply taken over the trial. But no one so informed him that he was still Involuntary Pro Se of Record.

No Criminal Defense attorney could possibly have missed this elemental Speedy Trial Act violation and it was even asked to find a motion to dismiss. From this writer's take these STA computations seem often complicated like a complicated Chinese Menu (column A, column B and then mix them up) but this one is straight on by just adding up one period of unexcluded time, A-K. TMR never got it any point (see its 2 communications re no motions and "no Speedy Trial issues"), A-L & AM.

No wonder then only slightly harder but clearly more potent "due process" issue re SEC Discovery solely for furthering the Prosecution was missed by TMR. How much of it missing these motions to dismiss are informed by its not being of Record ? Motions to dismiss at that time for "due process" were in vogue, but TMR did not move to dismiss therefore but the facts were entirely obvious. How much of the decision not to so move was based on TMR's not being "of Record".

How could any trial attorney-defense attorney miss that the Lead Trial Prosecutor designed his substantive trial case around the self same Lead Trial Prosecutor's own Letter, A-E ? Moreover doesn't CFTC v. Probber, 504 F. Supp. 1154 (SDNY 1981, Leval, D.J.) inform that Probber could have duped the Trial Prosecutor into pursuing Defendant ? Alas could Probber when faced with a Sentence have provided Streeter with phony reasons to pursue an innocent person ? Might not Probber have egged Streeter on to act clearly unethically by being a witness to his own trial by using his very own letter in evidence so as to be Probber's dupe to get Streeter to pursue Defendant to pay Probber's debts, etc ?? Again all of this stems from no active participant at the Arraignment from saying: "This Defendant has a Constitutional right to Counsel after the Arraign-ment". Not having same can 'gum up the works' and create exponential problems.

True Genius of a Constitution

The Sixth Amendment has first protections for a Citizen in an action, such as this, by the Federal Government. To date not only has it not been followed with respect to primarily Right to Counsel post-Arraignment, and for clearly critical stages, and whoppingly ineffective counsel, there are no findings of fact by the District Court that any appellate Court could sink its teeth into. Essentially by dilly dallying with one frivolous argument after another the Federal Government is pushing the matter to this Honorable Court. But it is not the general role of this Court to make findings of fact ab intitio. But it is to enforce the Bill of Rights.

There is an old saw by Justice Oliver Wendell Holmes that Judges need education in the obvious. In this instance that is lower Court Judges are looking elsewhere than the basics. Recently in Turner v. U.S., 3/23/18 #15-6060, the Sixth Circuit En Banc was faced with expanding the salutary principles laid out by this Court of Plea Negotiations being a critical post-Arraignment stage requiring Counsel's participation to pre-Arraignment stages. While it declined that expansion all the active Judges of the 6th Circuit agreed that post-Arraignment Plea Negotiations required Counsel's participation to pass constitutional muster.

Yet while all the indicia are that in this case there were such post-Arraignment Pro Se Plea Negotiations there are no findings of fact by the District Court to edify that is what in fact occurred. Just as the "speech" in free speech has potency so do "the facts" in litigation. But if a District Court decides to avoid the the facts on Constitutional issues there is not much of a Constitution left.

While pursuant to the 6th Amendment Defendant has a Right to Counsel after the Arraignment and together the: 1) 12/1/04 Arraignment Transcript showing Arraignment Counsel making a "Limited Appearance", i.e. limited to the Arraignment, A-G; 2) the 12/15/04 Letter — two (2) weeks after Arraignment— from Prosecutor Streeter directly to Defendant Pro Se transmitting discovery materials and containing plea conditions, A-I; 3) Prosecutor Streeter's 8/17/10 Testimony, A-J, explaining he did all that because Defendant was Pro Se and looking for an Attorney, those facts show a violation of those rights, but thus far no Court has

found those to be facts, nor "the facts of the case" nor analyzed same as against the Right to Counsel. The litany of justifications for not doing so are endless, e.g., they were for later § 2255 Motion; that the District Court denuded itself of jurisdiction of the § 2255 Motion and finally it was decided by direct appeal (even after the Appellate Court in 10-4686, A-B, remanded for a resolution on the merits).

It is respectfully suggested that this Court simply remand to the District Court for it make all the findings of fact needed to resolve the issues on their underlying factual merits. Johnson v. Zerbst, supra; U.S. v. Morgan, 346 U.S. 502 (1954). Without that being done Constitutional Rights can be by the simple exercise of ignoring the facts eliminated. In earthy terms the Courts and the Government should "face the facts" rather than evade them. The instant Petition should be granted in all respects so that progess can finally be made.

The initial Court proceeding involving me, the Arraignment, A-G, left me unconstitutionally without Counsel, but for such a Federal Felony Counsel is required at all times after the Arraignment. But that was about 14 years ago and still there has been no Court finding that that is what happened; nor because that in fact happened any consideration by a Court about what to do to remedy that.

I express no opinion re the Turner case. But I had at the Prosecutor's invitation, A-I, Pro Se post-Arraignment Plea Negotiations with Streeter. And that has gotten zero Court attention in nearly 14 years. I think this wrong needs to be solved before solving Turner's pre-Arraignment issues. Respectfully,

Dated: September 24, 2018

ERIC KLEIN