No. #18-6949
Related to Issues in Turner v. U.S., # 18-106

IN THE SUPREME COURT OF THE UNTED STATES

ERIC A. KLEIN- PETITIONER

-against

UNITED STATES OF AMERICA

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

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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New Learning Supplementing Old Learning

After the initial Petition was written the Report of 2015 Ad Hoc Committee to Review the Criminal Justice Act formed by Chief Justice Roberts (written in November but released in September 2018) was made public. The conflicts of interest mentioned therein may explain how it is that I came to be Pro Se after the Arraignment without any Waiver of the Right to Counsel for the post-Arraignment time period. My basic rights seem ignored at least in part because of those conflicts. Also this Court should be apprised of the motions already pending in the District Court (so as not to be operating without that knowledge of other proceedings).

SUMMARY OF ARGUMENT

Any objective reading of the Arraignment Transcript (12/1/04, A-G) shows that I became an involuntary Pro Se for the post-Arraignment period because of a Limited Appearance by Arraignment Counsel. But such Limited Appearance for Arraignment was frowned on by this Court in Von Moltke v. Gillies, 332 U.S. 708 (1948). So why, despite that classic learning from Von Moltke v. Gillies did Arraignment Counsel, make a Limited Appearance and why did the Court accept such without issue ? The answer may lay with Arraignment Counsel being the Federal Defenders Service and having inherent conflicts of interest therefor.

ARGUMENT

Federal Defenders has no mandate to be paid unless assigned/appointed by the Court as Counsel for the entire case. So Federal Defenders had no interest in doing interim post-Arraignment work— so left me to be on my own post-Arraignment.

The District Court might not have wanted to hire Federal Defenders for post-Arraignment piece work. Certainly my own personal Right to Counsel for every stage of the proceedings post-Arraignment was subordinated to some other concern(s) [beyond my own knowledge and control].

Interestingly the independent Federal Agency contemplated by the Ad Hoc Committee to Review the Criminal Justice Act formed by Chief Justice Roberts in 2015 (November 2017 Report released in September 2018) might be particularly well suited for preventing these inherent conflicts. Essentially that Federal Agency could create a regimen where a defendant's basic Constitutional rights predominate

over the Federal Defenders' and District Court's narrow and immediate interests.

See also "The Structure of Federal Public Defense— A Call for Independence", Cornell Law Review Vol. 102, Issue 2, January 2017 Art. 2, by David Patton.

Applications Pending in the District Court (in reverse chronological order)

Date Filed	Brief Description of Motion
12/10/18	Violation of Due Process because Prosecution's Prima Facie Case designed around and predicated upon Lead Trial Prosecutor's Letter (A-E) in another case where Defendant opposed the very same Prosecutor's motion to disqualify him/i.e., Prosecutor's blatant violation of Attorney/Prosecutor can't also be Witness Rule— too intimidating to Defense Trial Counsel. Lead Trial Prosecutor could likewise turn around and prosecute Defense Trial Counsel if they opposed-contested Prosecutor Witness too hard at trial For findings of fact pursuant to Johnson v. Zerbst, 304 U.S. 458 (1938), i.e., whether Defendant was Pro Se after the Arraignment and whether Defendant waived the Right to Counsel for the post-Arraignment time period [findings would clarify everything]
10/3/18	Prosecution's key 404(b) Witness obviously lied at Trial that his transaction was for a "Mortgage" but the Prosecution's own Trial Exhibit [see A-N] showed Transaction was a "Lease with an Option to Buy" (and false narrative advanced Prosecution's theory but truth was exonerating to Defendant)//Prosecution failed to disclose Agreement between 404(b) Witness and Government that in exchange for false testimony Government would arrange for Defendant to pay 404 (b) Witness $42K of values (and even pay 404 (b) Witness' debts to third party creditor)
8/21/18	Vacating Restitution Awards to Mercader's clients / not required Restitution Awards for Probber who pled Guilty so violates both Equal Protection and theories of case [Mercader not in the Conspiracy but a victim insofar as Probber didn't pay Mercader Commisions that Mercader earned]
5/10/18	To process actual admissions of constitutional level violations by Prosecution which have been overlooked, i.e., not judicially processed thus far, e.g. Due Process because the SEC took discovery from Defendant for sole purpose of advancing Prosecution investigation, etc.

3/22/18 To obtain discovery regarding why Restitution to Karen Lefall was $100K for Probber but for me it was $177K, and she is merely Probber's post-Sentencing Prison Pastor, and not a Victim [see A-O]. For general appearances it appears Probber initially duped Prosecution into rebating his $100K Bail back to Probber via Karen Lefall/and after Probber get away with that Probber upped that amount to $177K (was also essential for Probber to keep his original duping of the Prosecution for the $100K hidden because for Probber to ultimately succeed in duping the Prosecution it had to pursue me so I would pay all of Probber's actual victims)

To obtain the Grand Jury Minutes (were sought in prior 2/8/18 application (also pending)). Likely same will show minimally that Prosecutor was also Witness [to his own Letter, A-E, and disqualification proceedings based thereon that Prosecutor actively participated in]; and Prosecutor before Grand Jury promulgating to Grand Jury entirely un-American theory that knowledge of an investigation is equivalent to knowledge of Guilt; and also could show other violations, e.g, use of synopsis from original Grand Jury indicting Probber alone, use of various Hearsay, use of perjury, etc.

CONCLUSION

Having me represent myself after the Arraignment without my seeking to do so nor waiving the Right to Counsel is so obviously unconstitutional per Von Moltke that the District Court had to have other considerations than application of same. Likewise any Arraignment Counsel would have to know about the teachings of Von Moltke so making a Limited Appearance indicates a conflict of interest between Federal Defenders as Arraignment Counsel and Defendant's post-Arraignment Right to Counsel. The recent Ad Hoc Committee Report might shed light on current inherent conflicts; but the only way to prevent this sort of post-Arraignment involuntary Pro Se status in Federal Court is to not only highlight the problem but proactively prevent it from happening going forward. Respectfully,

Dated: December 24, 2018

ERIC A. KLEIN

Proof of Service

Pursuant to 28 U.S.C. §1746 I affirm under penalty of perjury of the laws of the United States that on Decmmber 24, 2018 I served a copy of this 3 page Supplemental Brief upon:

Noel Francisco, Solicitor General
Room 5614-16, Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

by First Class Mail.

December 14, 2018

Eric A. Klein