No. 20-8279

IN THE

SUPREME COURT OF THE UNITED STATES

Kirk Cottom — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kirk Cottom
(Your Name)

248 Wahl Road
(Address)

Rochester, New York 14609
(City, State, Zip Code)

(585)-266-3745
(Phone Number)

QUESTION(S) PRESENTED

1) Is it a due process violation for the government to obtain an indictment based on perjured testimony about fabricated and falsified computer logs?

2) Is it a Brady violation for the government to fabricate and falsify computer logs, then disguise them as "Expert Summary Evidence" for trial?

3) Per this Court's decision in HINTON v. ALABAMA (2014), is it ineffective assistance of counsel to employ incompetent experts over the defendant's numerous objections?

4) Is it ineffective assistance of counsel to not move to exclude material evidence that is inadmissible per FED. R. EVID 803(6) and 803(8)?

5) Is it ineffective assistance of counsel to trick a defendant into taking an invalid conditional plea, after being ordered by the defendant to prepare for trial?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[x] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[x] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 2/1/2019.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 3/13/2019, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have Assistance of Counsel for his defence.

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

F.E.D. R. EVID

803(6) Records of a regularly conducted activity. A record of an act, event, condition, opinion, or diagnosis if (C) macking the record was a regular practice of that activity;

F.E.D. R. EVID

803(8) Public records. A record or statement of a public office if: (A) it sets out: (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

18 U.S.C. §1621 PERJURY GENERALLY

Whoever--

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any **written testimony, declaration, declaration, deposition, or certificate** by him subscribed, is true, willfully and contrary to such oath states or subscrives any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of

title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. this section is applicable whether the statement or subscription is made within or without the United States.

18 U.S.C §1622

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. §1623

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes false material declarations or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

The five questions presented all have the "common sense" answers of yes. Therefore, the only thing this court to decide is if those violations occured.

Petitioner asserts that the objective evidence, including various source code, proves that Keith A. Becker has presided over a malicious prosecution of Mr. Cottom and that all appointed counsel has aided and abetted it via rendering ineffective assistance of counsel as explained thoroughly, in the reasons for granting the petition.

The presumption of innocence, once the bedrock of our justice system, has been replaced by the presumption that the prosecution has been undertaken in good faith, which petitioner believes is the same as a presumption of guilt.

It wasn't supposed to be this way. As contemplated by the 5th Amendment, "the purpose of the grand jury is to remove from prosecutors the power to initiate prosecutions for felonies and instead place that power with a group of citizens acting independently of either prosecuting attorney or judge." U.S. v. ITT (8th Cir. 1987)

Accordingly, to be valid, the 5th Amendment requires that an indictment issue from an independent and unbiased grand jury. Thus, dismissal of an indictment is warranted, for prosecutorial

misconduct "where that misconduct amounts to a violation of those few clear rules which were carfully drafted and approved by this court and congress to ensure the integrity of grand jury functions." U.S. v. Williams (U.S. Supreme Court 1992)

Among those rules are 18 U.S.C. 1622 and 1623. "Due process considerations prohibit the government from obtaining an indictment based on known perjured testimony." U.S. v. Hogan (second Circuit 1983)

As explained in the reasons for granting this petition, Keith A. Becker suborned perjury from an unknown member of his cabal before the Nebraska grand jury in March of 2013. This is indisputable because, according to the record, Dr. Edman's table was the only evidence Mr. Becker had to present to the grand jury and it contained no evidence of a crime, was fabricated, was filled with false information and clearly inadmissible at trial per FED. R. EVID 803(6) & 803(8).

Those facts make the Nebraska indictment, vexatious, frivolous and obtained in bad faith. Therefore, the indictment should have been dismissed with prejudice by either the District Court or the Appellate Court of the 8th Circuit, but they both refused. Thus this petition for a Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

Reason One

This court should exercise its supervisory power to correct the manifest injustice of this case. As the 11th Circuit noted in Aron v. United States in 2002, "[A] petitioner need only allege-- not prove-- reasonably specific, non conclusory facts that, if true would entitle him relief."

It is indisputable that if the allegations in 2255 motion, and its brief in support, are true, petitioner is entitled to relief. The government failed to address any of the factual accusations of misconduct in its response to the motion, instead choosing to argue just the law.

Inexplicably, the District Court took up for the government's deficiency in its Judgement on pages 8 and 9. (Appendix B) on page 8 the court declares "Had Cottom not pleaded guilty and proceeded to trial, he would likely have been convicted... the court is familiar with the government's evidence in these cases and finds the evidence against the defendants was substantial". Later on page 8 the court continues its absurd reasoning with "The defendant's claim of prosecutorial misconduct in connection with perjured testimony also lacks merit....--he simply asserts that witnesses lied to the grand jury in some general and vague capacity". The court concludes its exercise in irrationality

on page 9 with "Cottom has neither argued nor shown that the agents executed the warrant in bad faith."

The district court's assertions are clearly erroneous:

First, Judge Bataillon's own ruling, while sentencing Mr. Huyck, completely destroys his evidentiary assertion about this case, when he declared: "The court finds that if a defendant accesses a website that has a number of images and there is no evidence that the defendant viewed the images, those images cannot be attributable to the defendant." This exactly the petitioner's position. The NIT Report contains no evidence of a crime for exactly the reasoning explained by the court. This is why the government ignored this arguement, because it is irrefutable.

Second, in regards to perjury before the Nebraska grand jury, this crime is self evident because as explained above; the NIT Report doesn't provide any evidence for a crime. Since it was the only evidence Keith A. Becker had in March of 2013, he obviously suborned the perjury of a member of his cabal before the grand jury because they returned a baseless indictment.

Third, Keith A. Becker then passed on the manufactured probable cause his fraudulent indictment imbued to SA Couch, who used it to obtain search and arrest warrants for petitioner from Magistrate Payson, by parroring the language of the intictment.

These facts completely debunk the district Court's contention that the petitioner has not argued bad faith. In fact, it's absurd on its face. Even a cursory read of the motion, or its memo in support, would find it's dedicated to arguing bad faith on the parts of Keith A. Becker, SAC Gordon, SA Smith, SA Tarpinian and Dr. Edman, all of whom are accused of crimes.

So, just to be crystal clear, the petitioner considers the commission of crimes by the government officials, while prosecuting the petitioner, is the epitome of bad faith. Therefore, the court should grant the writ for this reason.

Reason Two

This court should articulate guidance for government sanctioned computer hacking and clarify how FED. R. EVID 803(6) and 803(8) govern the admissibility of computer generated evidence like the Network Investigative Technique (NIT) Report. (Petitioner has accused the Keith A. Becker cabal of concocting a scheme to circumvent these rules by fraudulently presenting this inadmissible evidence as "expert Summary Evidence".)

If not for the obvious anomalies on page 2 of the petitioner's NIT Report, the cabal's crimes would not have been detected. As explained in detail in reason four, Keith A Becker's cabal lied about most aspects of their NIT. This court should ensure the government is never allowed to do that again.

Reason Three

Indigent defendants, indicted for computer crimes, should have access to non-shill, competent computer experts that they trust. Petitioner requests that this court expand its mandate in HINTONN v. ALABAMA (2014) to require attorneys to hire competent computer experts their clients trust.

As explained in Technote 1, petitioner's experts were either incompetent or government shills parroting government nonsense. Had competent, non-shill experts been retained by petitioner's counsel, he would not be incarcerated today. Unfortunately Mr. Cottom is not the only citizen to be imprisoned based on false expert witness testimony in this country, the court should address that fact.

Reason Four

Petitioner's Technotes 1 and 2 are irrefutable and included herein to force the government to debunk or fold, thanks to this Court's RULE 15:

Tech.note 1 PHPBB vs. Tinyboard

Fact#1 – Pedoboard ran on PHPBB Software, TB2 ran on Tinyboard Software

Fact#2 – PHPBB keeps business records about clients, Tinyboard does not

Fact#3 – Mr. Huyck was accused of visiting Pedoboard. (in US v. Huyck 8th Cir.) Mr. Cottom was accused of Visiting TB2 (in US v Cottom 8th Cir.)

Fact#4 – Mr. Huyck's conviction was based solely on the testimony of the government's expert. If an expert testified similarly against Mr. Cottom, that expert would commit perjury.

Analysis

1.) Facts 1 and 2 are the underlying causes for all the malfeasance of the Keith A. Becker cabal in this case. They wanted to prosecute Pedoboard and TB2 visitors with the same narrative and evidence. That goal made their fraud and perjury necessary.

2.) These irrefutable facts form the basis for the logical inference that movant's experts were government shills.

It is in this context, the reason the government shills examined the wrong server (Pedoboard) becomes obvious. It made the NIT appear legitimate, because:

a.) PHPBB's records may contain evidence of a crime, unlike Dr. Edman's Visitors table.

b.) PHPBB's records would be admissible at trial, unlike Dr. Edman's Visitors table, and thus suitable for summary evidence.

c.) And, perhaps most importantly, the NIT code used on PHPBB doesn't generate forgeries like the NIT on Tinyboard. (Session ID, Request_URI, Board ID and Moderator are all forgeries on "Tinytboard's" Visitors Table.)

However, Pedoboard convictions are still dubious. The cabal still lied about what they were searching for and the warrant was also Void ab initio. So, if lying about what you were searching for, in violation of § 1621, constitutes bad faith, Mr. Huyck's conviction is also in jeopardy.

(See Tech.note 2 for more details)

Tech.note 2 The Illegal NIT Warrant

This is a long note because the cabal's NIT warrant was monstrous fraud

1.) The 8th Circuit ruled in US v. Horton that a NIT warrant, like the one issued in this case, was void ab initio and as such can only be saved by good faith. The Keith Becker cabal has none.

2.) The cabal's NIT warrant was also invalid because NIT warrants are anticipatory warrants and as such require a triggering event. The courts found the triggering event for the "playpen" cases (like US v. Horton) to be " logging into playpen while it was under government control" which is inapplicable to TB2 cases. (There are no log-ins.)

The cabal's TB2 NIT warrant fails completely as an anticipatory warrant because even if the government could point to a TB2 triggering event, they couldn't establish a "fair probability that contraband or evidence of a crime would be found" with the

NIT; because, as explained in Section II, Dr. Edman's NIT collects no such evidence. Therefore, Supreme Court Grubbs analysis easily invalidates this warrant. #1 and #2 kill the NIT warrant and effectively ends this case. However, the movant feels a strong bias in this court to believe Keith A. Becker's nonsense. Specifically, when faced with the fact that his NIT warrant was "void ab initio", this court ruled the obviously invalid warrant was still valid because it was supported by probable cause. Movant will now declare, in the most forceful terms, that TB2's NIT warrant was not, in any way, supported by probable cause.

Like the affiant in US v. Jacobs (8th Cir. 1993), the cabal, through SA Tarpinian, misled the magistrate(s) by reporting less than the whole story. They selectively included information bolstering probable cause while intentionally omitting or altering information that did not, thus manipulating the inferences the magistrate(s) made from the affidavit. As discussed in Section IV, the cabal made extensive use of perjury in regards to most aspects of their NIT. They lied about what it was, what it searched for and why they had probable cause to use it.

A.) What the NIT was and what it searched for:

Fact: The NIT was 3 software systems working together.

1.) gallery.php ran on TB2's server. It ran in a hidden iframe, populated the infamous Visitors Table with mostly forgeries and loaded gallery.swf. (The Flash App). It didn't need a warrant.

2.) gallery.swf ran, ostensibly, on clients(visitors) of TB2. Unlike gallery.php, the cabal needed a valid warrant to deploy this part of Dr. Edman's system. (This was also the component about which they committed most

of their perjury. The next section of this note will explore this more thoroughly.)

3.) Cornhusker.py. ran, ostensibly, on a server "under FBI control" or "known of, the FBI". As explained in Tech.note 3, movant doesn't think Cornhusker.py was ever in production, but that is just speculation. Back to the facts, this component would require a wiretap authorization. It is unclear why they didn't get one, but it is immaterial anyway. The fact that this component recorded intercepted electronic communications from clients of TB2 is not debatable and thus, a valid wiretap authorization would be required to proffer the NIT report's page 3 at trial.

This next section is to "cut off" any attempt of the cabal to proffer more nonsense regarding their fraud and perjury and to put them on notice that they are completely "busted". Movant is conveying these facts from memory; therefore, some of the variables may be incorrectly named and are immaterial any way. The NIT, in the case of TB2, was a monstrous fraud. They wanted to be able to prosecute visitors to Pedoboard and TB2 with the same evidence despite disparate software systems making that impossible without fraud and perjury in TB2 cases. (again see Tech, note #1)

<u>How the Fraudulent NIT Worked on TB2</u>

1.) gallery.php was loaded in a hidden iframe with "query strings". In my case they, ostensibly, loaded as follows: ID#1 gallery.php? uri = girls/index.html, id=2, mod=0 ID#2 gallery.php ? uri = girls/res/1481.html, id=2, mod=0 (The ID's (#1 and #2) are different 32 character strings made to look like real PHP session

ID's, but are easily identified as fake because they are different, when they should be the same. Keith A. Becker was caught on 11-7-2014 because of his pathetic attempt to explain why the 2 ID's were different.)

2.) gallery.php accepts these "query strings" (aka forgeries) and places them in variables while simultaneously generating the fake "session Ids" explained above. gallery.php then populates a row of the infamous Visitors Table with all its forgeries.

3.) gallery.php completes tasks 1 and 2 in a fraction of a second; then presents the browser with Java script to load gallery.swf, the much lied about flash app. gallery.swf then downloads to the client and begins to run. First it accepts the CipherText Variable from the Browser; then it asks the computer for its OS name and OS architecture. These actions also occur in a fraction of a second. Gallery.swf then hijacks the client's TCP/IP stack (bypassing TOR) and makes a DNS request for: IP.Ciphertext.cpimagegallery.com. All of the actions gallery,swf makes require a warrant that is valid. This is also the component of Dr. Edman's NIT that has caused so many perjured statements, let us recap: First, the Flash App isn't "The NIT" . (It is just 1/3 of a system.) Second, it doesn't discover or search for the TB2 clients IP address, nor could it. That was done by Cornhusker.py (discussed in #4 below). Third, the flash app doesn't search for a "session ID", it searches for a cipher text that contains a random id, "swf" and "2", none of which was authorized by the NIT warrant, if it was valid, which it clearly was not.

4.) Cornhusker.py, ostensibly running on a computer under FBI control or by "someone known of the FBI" or cryptic words to that effect, intercepts gallery.swf's very long DNS request. It records the IP address the query came from and the information inside the cipher text in a clients table and replies to the DNS request.

5.) gallery.swf gets Cornhusker's response, then requests permission to communicate. Cornhusker then has three seconds to grant permission or gallery.swf terminates. If gallery.swf gets permission, it sends Cornhusker: cipher text, OS name and OS ARCH. Cornhusker then populates a FLASH log with this data. (#4 and #5 would require a valid wiretap warrant, which the cabal didn't acquire.)

The problem with all this is two fold. First, none of it is admissible at trail. Second, most of the data is obviously fraudulent and the communications are unlikely as the delays between loading gallery.swf and its subsequent communications with Cornhusker.py are too long, at 39 and 63 seconds for ID#1 and ID#2. (see tech note 3)

B.) <u>The Cabal's Lies to Mislead the Magistrate</u>

1.) They claimed the actual name of "Hidden Service B" indicated content and illegality. Clearly TB2 does no such thing.

2.) They omitted the name(s) of the link site(s), any description of the site(s) and any screen shots of the site(s). Their omission was intentional because had the magistrate seen the hidden Wiki or TORDIR, they would have rejected the

cabal's contention that someone couldn't accidentally have visited TB2 as completely absurd.

3.) They claimed they were searching for a session ID and that it was evidence of a crime. The source code shows both statements were lies.

4.) They claimed installing TOR was an affirmative step to visiting TB2 knowing it absurd but plausible to computer novice magistrates. It's akin to saying someone installed Google Maps to rob a bank, and the cabal knows it.

TechNote 3 The Implausible NIT Execution Delays

The movant has strived not to speculate or make conclusory statements in this motion, however a major question remains unanswered: Why are there 39 and 63 second delays between gallery.php making its entries in the infamous Visitors Table and Cornhusker.py making its entries in its flash log, pages 2 and 3 of the cabal's "NIT Report"? (Visitors Table=Page 2, flash log = page 3)

The shill's answer, in their second report, is complete nonsense. If the delays were caused by time setting differences between gallery.php's server and Cornhusker's, the delays would be the same, not different. So, what caused them?

Before we attempt to answer that, we must acknowledge 3 facts:

1.) The NSA engages in "Upstream Collection". (See Privacy and Civil Liberties Oversight board, report on the Surveillance Program Operated Pursuant to Section 702 of Fisa)

2.) According to Edward Snowden"s leaked documents, Dr. Edman would have access to this "Upstream Collection" as a contractor at the FBI's Remote Operations Unit.

3.) The cabal did not use their NIT to prosecute US v. Defoggi, however they did obtain a wiretap authorization.

Fact one explains the columns the flash app (gallery.swf) could never populate on page 3 of the cabal's NIT report. They are for entries from a more pervasive, and probably illegal, NSA surveillance system designed to "decloak" all TOR entities: clients (users), servers (hidden services), TOR nodes (computers transmitting TOR network traffic) and TOR Directories (computers tasked with administration of TOR), thus columns for those categories of computers.

Fact two explains Dr, Edman "inadvertently" misplacing the gallery.swf code. He never had it; it is an NSA tool to which he had access. In other words, the cabal's perjury is much worse than alleged in the non-speculative sections of this motion, gallery.php and Cornhusker.py are a total fraud. (This would also explain why gallery.php has professional rem statements and Cornhusker.py does not. The former was coded by Dr. Edman when he was still "on the case". The latter was coded by a novice "reverse engineering" a python script that could plausibly work with the NSA's gallery.swf.)

Fact three explains the delays. The NSA system records begin and end times, not flash communication times. In other words, the NSA TOR Surveillance system can somehow determine page load times, something they probably never used. The NIT system cannot do this.

Reason Five

We must hold the people charged with enforcing our laws to the highest standards. This requires defense lawyers who challenge the prosecutors and their evidence.

The petitioner, instead, got counsel who gave too much deference to Keith A. Becker and his fabricated evidence, as explained in reasons 1 to 4. That is, by definition, ineffective assistance of counsel for failing to protect the petitioner from improper charge and conviction upon incompetent, irrelevant and ultimately inadmissible evidence; in violation of the duties imposed upon them by this court in **Gideon v. Wainwright** in 1963.

When confronted with their constitutional shortcomings in this case, counsel responds as follows:

A. Steven Slawinski, as of May 10th, has ignored my letter of April 1st on the next page;

B. Joe Howard, as of May 10th, acted as if he didn't know what I was talking about in my first letter of April 1st and hasn't responded to my follow-up letter of April 17th on the following three pages;

C. Joe Gross provided the only coherent response. He argues that I wasn't entitled to a rigorous defense because I was indigent -- on the final pages of this petition.

Kirk Cottom
FSL# 22413-055
PO BOX 10
Lisbon OH 44432

Mr. Slawinski:

I'm applying for a Writ of Certiorari based on malicious prosecution and ineffective assistance of counsel - appealing an adverse ruling on my 2255 motion at the appellate level on March 13, 2019.

The questions below are based on my claims against you in my "Memo in Support of 2255 Motion" Docket #45 of Case# 8:15-cr-00239 in Nebraska District Court.

1) You noticed the April 2015 indictment was probably vindictive as it was probably in retaliation for my refusing to drop the Daubert motion, why didn't you file a motion to dismiss it?

2) Did you know the Daubert motion was case dispositive for the Nebraska Indictment?

3) When the government did it's discovery dump for the April indictment, did they omit the NIT Report and the Hidden Service B warrant for "Nebraska and elsewhere"?

4) When we met with your expert, Gerry Grant, to discuss the case, did I provide you with a copy of the suspect warrant and Gerry with a copy of the fraudulent NIT Report?

5) Did Mr. Grant win a suppression motion in 2013 for US v. Raymonda? (Later overturned on Leon ground, nevertheless upholding that there was no probable cause to issue the warrant)

6) Since Mr. Cottom's NIT Report doesn't contain any information about image GET REQUESTS, shouldn't have Mr. Grant agreed that the NIT Report provided no evidence of any crime?

7) Why did you challenge a NIT warrant in US v. Brooks (decided 8-31-2017) but not Mr. Cottom's in 2015?

8) Did you have any evidence that you or Mr. Howard (Nebraska CJA Attorney) had my permission to negotiate a plea deal on July 30, 2015?

Thank you for your quick reply in this pressing matter.

Regards,

Kirk Cottom

Kirk Cottom
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PO BOX 10
Lisbon OH 44432

Mr. Howard:

This missive was sent via prison legal mail, so there is a record of this correspondence.

I'm applying for a Writ of Certiorari based on malicious prosecution and ineffective assistance of counsel - appealing an adverse ruling on my 2255 motion at the appellate level on March 13, 2019.

I wrote Mr. Gross first, asking him for a copy of the shill's January 2015 report for the wrong server. Mr. Gross pointed me in your direction. I feel a "run-around" coming and if you don't provide me of a copy of their report quickly, I will file this letter to you with the SCOTUS as proof of your malfeasance in this matter. You cannot imagine the emotional distress I experience thinking about how you betrayed me in 2015 so this missive will be brief...

I have claimed that my "Memo In Support of 2255 Motion" (Docket #45 Case# 8:15-cr-00239) is irrefutable and the government hasn't even attempted to respond to it. This is because of a plethora of cases that support it. A sample includes:

1) US v. Laurita (Case # 8:13-CR-107) motion to suppress hearing -- Keith A Becker's cabal used a remote access Trojan (RAT) and collected PCAP files with 11-18-2012 wiretap order.

2) US v. Stamper Southern Dist. OH, Western Div. Case # 1:15cr109 Opinion filed 3-9-2018 -- No PCAP files equals no way to rule out nefarious activity.

3) US v. Wheeler Northern Dist. GA Atlanta Case # 1:15-cr-00390 Opinion filed 6-12-2017 -- Dr. Miller now thinks spoofing is possible (claimed it wasn't in my case) and Alfin agrees. Both say short execution times for NIT makes spoofing less likely. Therefore, my ridiculous execution times indicate malfeasance at 39 and 63 seconds.

4) US v. Knowles South Carolina, Charleston case # 2:15-875-RMG Opinion files 9-14-2016 -- Judge Gergel puts nonsense to rest about the NIT being just an exploit with a terse rebuke "The NIT consists of 4 parts".

5) US v. Horton 8th Cir. -- NIT Warrant void ab initio, only saved by good faith. I have a plethora of examples of the Becker Cabal's bad faith.

I posed 8 questions to Mr. Gross and Mr. Slawinski, but I only have one for you:

Why didn't you hire competent experts to expose both the NIT and Keith A. Becker as frauds?

DORNAN TROIA HOWARD,
BREITKREUTZ & CONWAY PC, LLO

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April 9, 2019

Kirk Cottom
FSL #22413 – 055
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Lisbon, OH 44432

RE: Response to letter of April 1, 2019

Dear Mr. Cottom:

Please know that I'm in receipt of your letter, with the postal marking of April 1, 2019. I understand that you are appealing an adverse ruling on your 2255 motion. In your letter, you asked me for a copy of "their report" which you also reference as, "the shill's January 2015 report for the wrong server." And then you threaten that if I don't provide you a copy of "fair report" you feel a "run – around" is coming and that you intend to file this letter with the Supreme Court of the United States as proof of my "malfeasance in this matter."

First, I am sorry that you are experiencing such emotional distress. However, I never "betrayed you in 2015." I fought for you, trying to get you the best deal. And I'm sorry that you are incarcerated now. I'm sure it's of no solace for me to say that had we gone to trial, that the outcome would likely have been much worse. Nevertheless, I'm happy to do what I can to help you, despite your ill tone.

Can you please be a little more specific as to what you're looking for in terms of documentation. I will of course have to confirm with the United States Atty.'s office that I am at liberty to disseminate that material. If I recall, at least at one point it was sealed. I have to be sure that it is something that I am free to send.

Second, you pose the question to me in your letter, "Why didn't you hire competent experts to expose both the NIT and Keith A. Becker as frauds?" Please recall that I employed Shawn Kasal who was able to reconstruct the NIT who demonstrated for me that the NIT was fully operational. If you recall he met with you at length and discussed how the NIT worked. And I'm not sure how Mr. Becker was a fraud. If I recall, he provided you a reverse proffer, wherein he demonstrated to you all of the evidence that would have been used against you at trial. Often times, United States Attorneys don't go that extra step to help defendants understand the magnitude of the case. I'm very sorry that I cannot agree with the underlying supposition of your question. I feel your question is more of an attack, than a real question. And again, I am truly sorry you are incarcerated, but I still agree with your decision to plead instead of taking this case to trial.

In sum, please let me know exactly what documentation you want to review and I will investigate whether said material is free to be disseminated.

Sincerely,

Joseph Howard

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✦ALSO LICENSED IN IA, CA
●ALSO LICENSED IN IA
*ALSO LICENSED IN D.C.

Kirk Cottom
FSL # 22413-055
PO BOX 10
Lisbon, OH 44432

Mr. Howard:

In my first letter I predicted a "run-around" and that's exactly what you're giving me pretending not to know what report I'm after... Since you brought him up, Shawn Kasal didn't do anything but extort me for $1500 in your office after Judge Bataillon rejected his request for re-imbursement. He produced no work product and was nothing but another government shill. But I digress.

Thank you for admitting "I fought for you trying to get you the best deal" as you never had permission to negotiate any deals on my behalf. Look Joe, it would probably be beneficial to you if you read my brief (Docket #45, Case # 8:15-cr-00239) before you make more foolish comments. The Supreme Court can see I referenced it and 5 other cases in my initial letter to you, which you completely ignored.

Had you read anything, you'd know your assertion that I'd be worse off had I gone to trial is refuted by US v. Huyck – who went to trial and also got just 72 months. If anything the question is, why did I get 72 months and the other two visitors to TB2 got 48 months? But again, I don't care about that.

What I care about is getting a copy of the Shill's report for the wrong server. You know that the shills I referenced in the first letter are Dr. Miller (who testified at the Daubert hearing), Dr. Podhradsky and Josh Stroschein. They produced both "reverse engineering" reports for the NIT. I want the first one called something like "reverse engineering the NIT January 2015" and it's an attachment to a e-mail to me from Mr. Gross in January of 2015!

So since it was in an e-mail and widely distributed, the idea that you need to contact the AUSA is absurd. While you're looking at those e-mails, why don't you print out our correspondence on July 30th were I repeatedly reject your requests to negotiate a plea deal, I sure you don't need AUSA permission to send that proof to me.

As you'll see in my brief, I explain Keith A. Becker's crimes in detail, hopefully the supreme court's RULE 15 will finally expose his crimes.

Thank you for your quick reply in this matter...

Kirk Cottom
FSL #22413-055
PO Box 10
Lisbon, OH 44432

March 17, 2019

Kirk,

You need not be concerned about creating a record of correspondence with me. I've read the post conviction briefing and remain reasonably informed on your claims of ineffective assistance of counsel. And, I take no umbrage at your claims even if I disagree with the recitation of facts and the conclusions. You need to do what is in your best interest within the legal system to assert your claims.

As for your request for expert reports, after the district court granted leave for me to withdraw as your counsel I met with Joe Howard and delivered my file to him. Those documents were given to Mr. Howard along with all other relevant documents so address your request to him.

As for your various questions, a simple yes or no would not be complete or accurate so I'll address your questions as best I can below.

Did you know your client was a computer expert?
I am not competent to characterize your skills as expert on any level. You may well have expertise in some area of computer technology, I just don't have qualifications to express that opinion. You certainly seemed very knowledgeable and I know you were employed at the University of Rochester in some capacity with computers.

Did you confer with your client about retaining Rich Hoffman, then after your client agreed with his hire, did you collaborate with them to compose a discovery request for Keith A. Becker?
I contacted Richard Hoffman and had preliminary discussions with him to retain him as a possible expert to investigate the scientific basis for the NIT and to assist me in evaluating a legal basis for a *Daubert* motion challenging the admissibility of the NIT for evidence of identification.

Mr. Hoffman gave me a proposed budget for the work and I went to the district court with a request for his proposal and the district court reluctantly approved it following my extensive justification under the CJA. When I went back to Mr. Hoffman with the approved budget he told me that his superiors would not allow him to consult on a child pornography prosecution. It was a public image issue as he explained it to me and there was no changing that decision. By the way, I informed you of this and all relevant and significant developments on a timely and regular basis over the course of my representation contrary to your claims.

As to composing a discovery request to AUSA Keith Becker, I am sure that I made many requests to Mr. Becker and to AUSA Mike Norris over the course of my representation that could be said to be discovery, both over the phone and in writing.

Did your client and Rich Hoffman tell you Keith A. Becker's response was nonsense?
I recall asking Mr. Becker for information on the NIT but I have no memory that you or Mr. Hoffman characterized any reply by Mr. Becker as "nonsense" and seriously doubt that Mr. Hoffman would have used that or similar language.

Shortly after, did Rich Hoffman remove himself from the case?
As noted, Mr. Hoffman refused to provide consultation because of mandates from his superiors. So, he did not "remove" himself since he was never "on" the case as a consultant. My memory is after Mr. Hoffman refused to consult, I began to search for another expert to evaluate the NIT as part of a possible *Daubert* motion and it was at that point that our communications began a serious break down. You were directing me to retain or not retain certain consultants and believed you had the right to make that decision. I, on the other hand, insisted that I would make that decision keeping in mind what the district court would approve pursuant to the CJA. I also reminded you that you were free to retain a different attorney and to work with privately retained counsel to retain experts of your own choosing. This conflict eventually resulted in your decision to ask the court for different counsel under the CJA.

Did your expert client tell you he was vehemently opposed to reverse engineering the NIT and that it was complete nonsense that the NIT was a Flash Application?
As a preliminary matter, see my answer above as to whether I agree you qualify as an expert. Without reviewing file material, I cannot say you opposed reverse engineering of the NIT and further I am not even certain what you mean by that phrase. I do know that one prong of the *Daubert* standard has to do with reliability and repeatability and I do know that I asked Dr. Podhradsky and her team to consult for me on that prong.

Did you then hire Dr. Podhradsky's team to reverse engineer the NIT, without your client's permission?
As to retaining Dr. Podhradsky, I've commented on that above. You need to understand that I did not need your permission on how to best investigate the scientific basis for the NIT under the CJA. While I consulted with you about my decisions, you were not free to direct my decisions pertaining to legal issues.

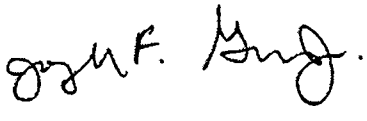
You also need to understand that I did not direct Dr. Podhradsky's team how to investigate the scientific basis for the NIT. Put another way, I did not

direct a "reverse engineering" or any other specific approach to analyzing the NIT. Instead, I briefed Dr. Podhradsky on the legal issues under *Daubert* and asked her to conduct the appropriate inquiry answering specific questions under *Daubert.* Dr. Podhradsky's team concluded that the NIT was repeatable and reliable and I concluded there was no good faith basis to file a *Daubert* motion. You were well informed on these developments and disagreed with certain aspects of the report so I invited you to pose your specific objections to the report in the form of questions. Those questions were posed to Dr. Podhradsky in writing and you were fully informed of her answers.

Did they then produce the January 2015 Report for the wrong server, parroting government nonsense about the NIT being a Flash application?
Dr. Podhradsky's report speaks for itself.

Shortly after your client read their report, did you file a motion to withdraw as counsel citing a complete breakdown of communications?
I have touched upon this aspect of my representation in other answers and incorporate that here. My memory is a conflict developed between us as to whether you or I controlled certain decisions important to my representation including whom to retain as an expert to investigate the scientific basis for the NIT. You insisted that I follow your direction as to an expert and I refused to cede my authority and duty under the CJA. That conflict escalated into a breakdown in our communications and I asked you if you wanted me to file a *motion for you* asking the court to appoint other counsel and you directed me to do so. *You will recall, the motion recited that it was filed at your request.* So, the decision for me to withdraw was as much or more yours than mine when you refused to accept my authority to investigate pursuant to CJA. I do think the decision was in your best interest given your refusal to accept my authority and my responsibility to provide effective representation.

Sincerely,



Joseph F. Gross, Jr.

Conclusion

In sum, what Keith A. Becker did in this case was akin to allowing a DEA agent to testify before a grand jury, claiming a bag of powdered sugar was cocaine and then obtaining an indictment from that grand jury for possession of cocaine. That is how fraudulent his Nebraska indictment is in this case.

For the reasons stated above, the writ of certiorari should be granted.

Respectfully submitted,

Kirk J. Cottom

Date: 5-15-2019