Mr. Jeffrey Ragsdale
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Hon. Letitia James,
Office of the New York State
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1 Empire State Plaza
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Albany, NY 12224-0341

1-1-22

Re: Fabrication of Evidence by Government Officials

The basis for this Complaint stems from fabrication of evidence by government officials, i.e., Federal/New York State Joint Task Force (NYSJTF) comprised of federal and state prosecutors, as well as federal and state law enforcement officers.

The documentary evidence underlying this Complaint supports the strong inference that this Joint Task Force collusively fabricated evidence during the investigative and prosecutorial phases of a federal drug conspiracy case (*U.S. v Derrick Wilson,* 5:14-cv-273 (NDNY)); and a vindictively charged, trumped up New York state cold case homicide-in which Mr. Wilson represented himself pro se and attained a jury's acquittal. (*People v Derrick Wilson*, Ind. No. 2015-0866-1).

Specifically: AUSA Carla Freeman, then-AUSA John Katko, U.S. Magistrate Andrew Baxter, fabricated phone records (in collusion with two (2) Verizon employees) to cover up law enforcement's initial fabrication of evidence, i.e., illegally planting drug evidence during numerous controlled purchases of narcotics; wholly fabricating over 35 controlled purchases of narcotics and the attendant confidential informants.

Furthermore, AUSA Carla Freeman, then- ADA's Matthew Doran, Michael Ferrante and Federal and State Law Enforcement officers fabricated ballistic evidence (in collusion with employees from the Wallie Howard Center for Forensic Sciences) and utilized known false testimony to vindictively charge Mr. Wilson with a trumped up 15-year-old homicide cold case. Mr. Wilson, having been vindicated on the murder charge, has filed a 42 U.S.C §1983 lawsuit against *aforementioned* government officials for conspiring to fabricate evidence during his state murder trial. (*Derrick Wilson v Onondaga County*, et al. 5:20-cv-01489)

Mr. Wilson attempted to challenge the legality of his federal arrest/conviction, to wit, fabrication of evidence by government officials. Deplorably, despite the factual basis of Mr. Wilson's claims (and the fact that the government never produced any evidence or material to conclusively refute Mr. Wilson's claims) the judicial process never afforded him an evidentiary hearing. A flippant disregard of Mr. Wilson's fundamental right to be heard. This is the reason why marginalized Americans have no faith in the criminal justice system and continue to protest for reform.

Respectfully, we request for the U.S. Department of Justice, Office of Professional Responsibility and the NY Attorney General's office to investigate Mr. Wilson's claims that government officials conspired to fabricate evidence during his federal prosecution.

<u>December 14, 2021- New Development:</u>

On January 5th, 2016, one week prior to Complainants Federal Drug Conspiracy Trial, Defense Counsel Moynihan inquired to U.S. District Court Judge

Suddaby, whether he should recuse himself due to his "potential involvement" in the 2000 homicide investigation regarding the Complainant. Judge Suddaby vehemently denied any involvement or knowledge in the homicide case; "With regard to Mr. Wilson and my time in the Onondaga County District Attorney's office, let's be clear… I had no involvement in any investigation of a homicide that Mr. Wilson has been recently indicted on. I have no knowledge, had no involvement in that case." Case 5:14-cr-00273-GTS Document 432, pages 26-29 (See affixed)

Contrarily, four (4) years and eleven (11) months later, there was a recent development on December 14, 2021, when U.S. District Court Judge Suddaby changed his tune regarding his "potential involvement" in the same homicide matter. See affixed Recusal Order stating, "Having reviewed this matter more closely, it has come to my attention that I may have a conflict of interest, and therefore I recuse myself from this case". 5:20-cv-01489, Dkt. No. 14 (Emphasis added)

Respectfully, whatever conflict of interest that may exist now regarding Suddaby's involvement in the 2000 homicide investigation which caused him to recuse himself from the 2020 Federal lawsuit, existed in 2016, which would have warranted the same recusal in the Federal criminal case. Hence, every motion that Mr. Wilson filed regarding fabrication of evidence by government officials has passed through Suddaby's hands and has been summarily denied. Up to this point, there has been no judicial inquiry or executive investigation pertaining to the facts supporting Mr. Wilson's claims of government fabrication

of evidence. The consequences of Suddaby's admitted "potential" conflict of interest needs to be addressed. We humbly seek your intervention!

With Fortitude,
/s/Derrick Wilson, II
Reg. No. 21481-052
Federal Correctional Complex
P.O. Box 5000
Yazoo City, MI 39194

Advocate Contact # 916-670-9007

cc: Hon. Letitia James,
NYS Attorney General

U.S. District Court
Northern District of New York - Main Office (Syracuse)
CIVIL DOCKET FOR CASE #: 5:20-cv-01489-DNH-TWD

12/14/2021	14	TEXT ORDER OF RECUSAL. The undersigned hereby RECUSES himself from this action. Having reviewed this matter more closely, it has come to my attention that I may have a conflict of interest, and therefore I recuse myself from this case. WHEREFORE, it is hereby ORDERED that the Clerk enter this Text Order of Recusal for the undersigned; and it is further ORDERED that the Clerk shall randomly reassign this case to another United States District Judge. (Chief Judge Glenn T. Suddaby recused. Case reassigned to District Judge David N. Hurd for all further proceedings. Magistrate Judge Therese Wiley Dancks remains as the assigned magistrate judge in this action.) SO ORDERED by Chief Judge Glenn T. Suddaby on 12/14/2021. (Copy served upon plaintiff via regular mail) (sal) (Entered: 12/14/2021)

be -- you can certainly cross-examine fully police and the investigators and what they did and what they didn't do with regard to this investigation, but I don't expect to hear or see from you or from anyone else any type of legal argument before this jury. Okay, sir?

MR. MOYNIHAN: I appreciate that, your Honor. The, the issue that that brings to me, and of course you're correct that the decisions you've previously made in this case are reviewable, but the fact that there are credible, I believe after some review of the file, issues of fact concerning the investigation of this case, certainly I could use that to cross-examine agents, but those issues, the legal issues get reviewed by the Second Circuit on a de novo basis, without a hearing, they don't have a full record to make that review, and Mr. Wilson has from the beginning of this case, and I'm in for eight weeks now, or seven as of today, have been to request a review of those facts that he has laid out in great detail, and I want it clear that the court has denied a hearing on those counts.

That being said, there are a couple of other issues that I want to put on the record.

THE COURT: Go ahead, Mr. Moynihan.

MR. MOYNIHAN: I have, as the court's aware, I've been involved in this case for about seven weeks now and what came to my attention recently, I'm also representing

Mr. Wilson regarding a charged homicide that took place on April 23rd, 2000. And in my representation in that matter, I seem to have learned that your Honor was the Chief Assistant District Attorney in the Onondaga County District Attorney's office in 2000 when that homicide investigation began, and were also employed in that position in -- at the time that Mr. Wilson was prosecuted for his drug felony which is the subject of the 404(b) evidence and the 851 information here, you were employed in the District Attorney's office there. I want to make sure that I bring that to the court's attention.

I don't know, I know that previous counsel probably didn't mention that at all, I don't know if the court wants to indicate whether it has any recollection of Mr. Wilson's cases back then, but I'll be clear that my investigation determined that your Honor was not assigned to that homicide case, that was Stephen Dougherty who was the assistant who was assigned to that matter. But being that the -- your Honor was second in charge of the office, I'd ask the court to consider whether or not you're appropriate to sit on the case.

The second issue that I wanted to raise is that because I have been only involved in this case for seven weeks, and I know that when I took this case I indicated that I'd be ready for trial. It appears that now that I've spent well over a hundred hours on this matter, that there's just

so much to this case, and that Mr. Wilson deserves to have effective assistance of counsel, and I don't think that I could provide that at this time, January 11th.

THE COURT: Mr. Moynihan, Mr. Moynihan, at the time that you volunteered and stepped up and said you wanted to take this case, and I think Mr. Wilson was on his -- either his second or third lawyer at that time, and we had a trial date, all right, Ms. Neroni from Albany was fully prepared, had submitted a bill with hundreds and hundreds of hours that she had involved in this case and I asked you, sir, at that time, I cautioned you, I said there would be no more adjournments, this matter needed to get tried, you said you understood that, you were -- you would be prepared, you were prepared to accept it and go forward.

So for you to stand here now and say that you need more time, sir, is completely inappropriate. I gave you an opportunity at that time to defer, you indicated it wouldn't be necessary. I questioned you about it, you know, the extent of the case, the rest of it, you said no problem, you would be ready to go. This case has been scheduled for trial for at least a couple of times at this point, so I took you at your word then. And you had the opportunity to speak with his prior attorney, get all of her work, records, files, everything that she did with regard to Mr. Wilson. She was ready to go to a trial at that point, and it was Mr. Wilson's

express desire to have you, and to go forward on the schedule that had been set by this court. So sir, you know, now to try and say that you need more time is completely inappropriate, and more than a little disingenuous in this court's view.

With regard to Mr. Wilson and my time in the Onondaga County District Attorney's office, let's be clear. We're not trying a murder case here. Has nothing to do with this case, this federal investigation of this drug case, and certainly has nothing to do with me. When I was in the Onondaga County DA's office, I had no connection with any drug cases, I did not prosecute drug cases and as you've indicated, I had no involvement in any investigation of a homicide that Mr. Wilson has been recently indicted on. I have no knowledge, had no involvement in that case. So, and even if I had, that is a separate and distinct matter that has nothing to do with this federal drug indictment. So let's be clear about that on the record. You're still on your feet.

MR. MOYNIHAN: I thank you, your Honor. I apologize that the court feels that my request today or my statement that I'm not prepared for trial is disingenuous. I think that at the time that I took this case, I thought that I would be ready and it just turns out that there's more to this than met the eye.

Complaint to

Office of Professional Responsibility
U.S. Department of Justice

Against Assistant United States Attorneys, U.S. Magistrate Judge, Federal and New York State Law Enforcement Officers and Onondaga County Assistant District Attorneys, Operating within a Collusive NYS/Federal Joint Task Force for Fabrication of Evidence During their 2013-2014 Federal Drug Investigation and Throughout Two (2) Coextensive Criminal Processes, State and Federal.

Attention to Jeffrey Ragsdale,
Office of Professional Responsibility, U.S. Department of Justice

By Derrick Wilson

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Pro Se
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Yazoo City, MS 39194

cc: Hon. Leticia James,
NYS Attorney General

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Complaint to the Office of Professional Responsibility
U.S. Department of Justice

Against Assistant United States Attorneys, U.S. Magistrate Judge, Federal and New York State Law Enforcement Officers and Onondaga County Assistant District Attorneys, Operating within a Collusive NYS/ Federal Joint Task Force for Fabrication of Evidence During their 2013-2014 Federal Drug Investigation and Throughout Two (2) Coextensive Criminal Processes, State and Federal.

RE:

Requesting for the U.S. DOJ, Office of Professional Responsibility to investigate the Assistant United States Attorneys (AUSA's), Federal Agents, NYS law enforcement officers and prosecutorial officials, specifically mentioned herein for fabrication of evidence; and the Syracuse Police Department (SPD), Onondaga County District Attorneys Office (OCDAO), Onondaga County Sheriff's Office (OCSO), and Wallie Howard Center for Forensic Sciences (CFS), for operating with a culture of corruption, including, but not limited to, fabrication of evidence.

The factual evidence underlying this Complaint remains uncontroverted at this juncture and supports the strong inference that:

(I) In a Joint Task Force operation, federal Drug Enforcement Administration (DEA) agents, Syracuse Police Dept. and Onondaga County Sheriff's Office officers illegally planted narcotics during their investigation leading to my arrest;

(II) Federal prosecutor, Assistant United States Attorney (AUSA) Carla Freedman, colluded with two Verizon employees by fabricating Verizon phone records, to cover up NYS/Federal Joint Task Force's initial fabrication of evidence;

(III) NYS/Federal Joint Task Force wholly fabricated thirty-five

(35) controlled purchases of narcotics;

(IV) AUSA Carla Freedman and Joint Task Force fabricated SPD Chain of Custody Reports to cover up the Joint Task Force initial fabrication of controlled purchases of narcotics; and

(V) AUSA Carla Freedman colluded with two then-Onondaga County Assistant District Attorneys (ADA), Matthew Doran and Michael Ferrante, Joint Task Force and CFS officials to fabricate gun photo and ballistic evidence in a vindictively charged state cold case prosecution.

Procedural Posture

- *June 18, 2014* - **Date of Arrest** (*U.S. v. Derrick Wilson, et al.,* 14-cr 273)(NDNY)
- *June 18, 2014* - **Date of Imprisonment**
- June 18, 2014 **- Charges:** Federal non-violent drug crime(s), possession with intent to distribute and conspiracy, 21 U.S.C. §§ 841(a), 846
- *October 12, 2016* - **Sentencing:** District Court imposed sentencing of 336 months (28 years). I was forced to represent myself as a Pro Se litigant during the federal drug trial. All court appointed counsel admitted being unprepared on the record, subjecting me to the Hobson's choice of choosing between unprepared counsel and self-representation.
- *2042* - **Release date: Wrongful Conviction**

- June 17, 2018 - **Denied: Direct Appeal:** - *U.S. v. Derrick Wilson,* 16-3701 (2d Cir. 2017).
- *June 17, 2018* - **Denied: Supplemental Pro Se Brief** with claims of Government Fabrication of Evidence were denied in cursory fashion.
- *October 3, 2018* - **Denied: Writ of Certiorari** to the U.S. Supreme Court *Derrick Wilson v. U.S.,* No. 18-6417.
- *December 9, 2019* -**Filed: Federal Habeas Corpus** (28 U.S.C. §2255 Motion) in the Northern District of New York ("NDNY") relative to, inter alia, the fabrication of evidence delineated infra.
- *July 27, 2020*- **Denied: Federal Habeas Corpus** - *US District Court* Judge Glenn Suddaby denied my §2255 Motion without granting an evidentiary hearing. *United States v. Derrick Wilson, 5:14-cr-273, Dkt. Nos. 506,* 541.
- *April 14,* 2021- **Denied: Certificate of Appealability** filed in United States Second Circuit Court of Appeal-seeking to appeal U.S. District Court's denial of §2255 Motion. *Derrick Wilson vs United States, Dkt.* 20-2965.
- *October 4, 2021* - **Denied: Writ of Certiorari** to the U.S. Supreme Court *Derrick Wilson v. U.S.,* No. 21-5124.
- *Related Case: December 5, 2017* - **Pro Se Acquittal** on Fabricated, Vindictive NYS Cold Case Homicide Charge- stemming from threat of not taking plea in federal drug conspiracy charges. *People v Derrick Wilson,* Ind. No. 2015-0866-1)
- *Related Case:* December 4, 2020 -**Filed: 42 U.S.C. sec. 1983** against the County of

Onondaga, District Attorney William Fitzpatrick, AUSA Carla Freeman, numerous members of the SPD, OCDAO and CFS, for fabricating evidence in the vindictive state cold case prosecution. *Wilson v. County of Onondaga, et al.*, 5:20-cv-01489-GTS-TWD

Constitutional Provision

The Fifth and Fourteenth Amendments of the United States Constitution provide in part:

> No person shall be…deprived of life, liberty, or property, without due process of law.
>
> There is also a co-extensive violation of my United States Constitutional Sixth Amendment Right to effective representation due to the State, and by extension of criminal jurisdiction, the federal government's abandonment of their obligation to guarantee that criminal defendants are provided with constitutionally competent counsel. I am not the only one that has been subjected to such malfeasance, this professional remiss is systemic within our nation's defective criminal justice system. See *Gideon v. Wainwright*, 372 U.S. 335 (1963); see also *Kimberly Hurrell-Harring v. State of New York*, 15 N.Y. 3d 8 (2010)

Statement of Facts

I. **NYS/Federal Joint Task Force Planted Drug Evidence During Three (3) Controlled Purchases of Narcotics with alleged Co-**

conspirator Willie Strong, Jr.[1]; II. Federal Prosecutor Colluded with Two Verizon Employees, by Fabricating Phone Records, to Cover Up Law Enforcement's Initial Fabrication

- **May 28, 2013, Controlled Purchase of Narcotics**

In a DEA-6 report authored by DEA SA Anthony Hart, agents aver that on May 28, 2013, their Joint Task Force utilized an OCSO confidential source (CS) to conduct a controlled purchase of crack cocaine from alleged co-conspirator Willie Strong, Jr.

As detailed in SA Hart's DEA-6 report, this **successful** controlled purchase of narcotics from Strong was **initiated** by the confidential source **calling Strong's cellular phone in the presence of SA Hart.**

SA Hart avers that, **"At approximately 5:16 pm, the CS placed an outgoing call to STRONG at 315-317-3638"** and to have heard the sum and substance of their conversation in which Strong agreed to meet the CS in ten minutes. [See Appendix 1, para. 2]

SA Hart avers that following this conversation law enforcement took

[1] Based upon the theory of the Government's case that Willie Strong, Jr. procured drugs he sold to the confidential informant from the complainant; the Government therefore fabricated criminal activity against me and violated my due process rights.

the necessary steps to effectuate this controlled purchase, resulting in crack cocaine being seized and processed into evidence. [See Appendix 1, para. 3, 4]

- **June 6, 2013, Controlled Purchase of Narcotics**

In a DEA-6 report authored by Task Force Officer (TFO) Robert E. Hayhurst, agents aver that on June 6, 2013, their Joint Task Force utilized OCSO confidential source to conduct a second controlled purchase of crack cocaine from Strong. TFO Hayhurst avers, **"At approximately 4:20 PM TFO Passino, TFO Hayhurst and Det. Metz met with a CS in Syracuse. The CS made a phone call to Willie Strong, Jr. at 315-317-3638, as witnessed by TFO Passino. Strong and the CS agreed to meet in 10 minutes."** [See Appendix 2, para. 1] TFO Hayhurst also avers that after the CS went to the meet location, "The CS knocked on the door, but it was not opened for him.

The CS returned to his vehicle and sent a text to Strong, who replied he would be there shortly." [See Appendix 2, para.2] The crack cocaine was allegedly seized and processed into evidence. [See Appendix 2, para. 3]

- **June 20, 2013, Controlled Purchase of Narcotics**

In a DEA-6 report authored by SA Hart, agents aver that on June 20, 2013, their Joint Task Force utilized OCSO confidential source to conduct a

third controlled purchase of crack cocaine from Strong.

As detailed in SA Hart's DEA-6 report, "At approximately 4:36 PM, the CS placed an outgoing call to STRONG at 315-317-3638. This call was made in the presence of SA Hart. Several attempts were made by the CS to contact Strong, however they all went to voicemail". [See Appendix 3, para.2] Nevertheless, "Agents decided at that point to send the CS over to Strong's business…in order to attempt a controlled purchase of CRACK COCAINE" [See Appendix 3, para.2], which allegedly resulted in crack cocaine being seized and processed into evidence. [See Appendix 3, para.4]

- **Pen Register Application for Verizon phone records relating to Willie Strong, Jr.'s cellular phone 315-317-3638**

Following the alleged aforementioned controlled purchases of narcotics from Strong, then- AUSA John Katko (*now U.S. Congressman*) **purportedly** submitted a Pen Register Application for Verizon phone records on July 11, 2013, in the Northern District of New York, requesting **"the acquisition of certain approximate location information for the target cell phone such as cell site information that may be associated with communications to or from the target cell phone."** (Strong's cellular

number 315-317-3638) (Emphasis Added) [See Appendix 4(a), pg.1]

To establish reasonable grounds for granting his application, then-AUSA Katko chronicled the aforementioned three (3) controlled purchases of narcotics from Strong, and asserted, **"On each instance: (1) he [Strong] used the target telephone to facilitate the deals and (2) the substance the CS purchased from Strong, field tested positive for the presence of cocaine."** [See Appendix 4(a), para.17] Purportedly, based on this information U.S. Magistrate Judge Andrew Baxter granted the Pen Register Application on July 11, 2013. [See Appendix 4(b)]

- **Verizon Phone Records Discrepancy – (2) Responses Certifying that #315- 317-3638 Was Not Active During the Timeframe in Question; and (1) Response Certifying the Number Was Active**

- **FIRST VERIZON RESPONSE: Strong's Cell # Was <u>NOT</u> Active**

On **January 6, 2016**, *five (5) days prior to the January 11, 2016,* commencement of trial, then-counsel Kenneth Moynihan, submitted a defense subpoena to Verizon Wireless, signed by U.S. District Court Judge Glenn T. Suddaby, requesting **"Phone records, incoming and outgoing for number 315-317-3638 for the time period of April 1, 2013, through August**

31, 2013."[2][Appendix 5(a)]

The first defense response from Verizon was received on **January 7, 2016**, via fax, from Custodian of Records, Cristina Careri, certifying **"that number was no active during the time frame requested"** [Appendix 5(b)]

Pursuant to a request made by Moynihan for a more formal response – *beyond a fax* - Cristina Careri furnished the defense with a **"Certification of No Records"** on **January 8, 2016**. [Appendix 5(c)]

Also transpiring on **January 8, 2016** was the government's 11th hour disclosure to the defense of Verizon phone records, i.e., toll information and pen register information (approx. 200 pages). [See Appendix 6]

Complainant contends that these records were deliberately fabricated by the government to cover up the conspicuous implications of the NYS/Federal Joint Task Force's initial fabrication of evidence, i.e., Verizon certifying Strong's cellular number **WAS NOT ACTIVE** when agents aver

[2] This time-period encompasses the time frame in which the government asserts that it called Strong's cellular phone to **initiate** the three (3) aforementioned controlled purchases of narcotics.

to calling it to ***initiate*** successful controlled purchases of narcotics.

Notably, if these phone records actually existed, the government had an obligation to disclose this material back in **August 2014** – when they furnished the defense with a ream of equivalent subject matter, i.e., wiretap phone records/evidence; *not 17 months later*, in an attempt to contradict Verizon's response to a defense subpoena. Federal Rules of Evidence 502(a) provides that **"when [a] disclosure is made in a federal proceeding...and...waives...work product protection, the waiver extends to an undisclosed communication or information" where** "(1) the waiver is intentional"; "(2) the disclosed and undisclosed communication or information concern the same subject matter"; and "(3) they ought in fairness be considered together."

- **SECOND VERIZON RESPONSE: Strong's Cell # WAS Active**

At the behest of AUSA Freedman, on **January 12, 2016**, Verizon – per Custodian of Records Andrew Kirschenbaum - produced a so called "corrected response" certifying that the previous "Certification of No Records" response the defense received was inaccurate. [See Appendix 7(a)]

Specifically, the "corrected response" states:

> A previous "No Records" response to this subpoena was inaccurate – please disregard that response and see attached. **315-317-3638 was with reseller Start Wireless during the requested date range.** Reseller records are typically not maintained and this particular number was **archived**. However, we were able to locate documents responsive to part of this request. No records beyond 06/03/2013 are currently available.

As a threshold matter, the government/Kirschenbaum's "corrected response" contains fatal structural flaws. First, Kirschenbaum certifies, "315-317-3638 was with reseller Start Wireless during the requested date range."

1) If 315-317-3638 was with reseller Start Wireless during the requested date range – *Why then,* did AUSA John Katko purportedly send Pen Register Application to Verizon and not Start Wireless?

Next, on **January 12, 2016**, Verizon/Kirschenbaum furnished the defense with the **same records** produced to the defense by the government on **January 8, 2016** (hence my claims of collusion), based on the following reasoning:

> The typical retention period for the records in question is one year. In order to locate the records provided responsive to your subpoena **an archived system needed to be accessed.** In that **archived system**, only certain records were available (ending on 06/03/2013). All records that could not be located in the **archive** are beyond the standard retention and thus unavailable. [See Appendix **7(b)** – Kirschenbaum email to Moynihan]

2) Again, if 315-317-3638 was with reseller Start Wireless during the requested date range – Wouldn't these records have to be produced by Start Wireless, not Verizon?

3) Furthermore, on or about January 20, 2016, Verizon sent a third response, as a result of a second defense subpoena, certifying "Verizon does not have any records (current or archived) that would show what the Device ID or…(ESN) for the device assigned to phone number 315-317-3638 between April 1, 2013 and Aug. 31, 2013." [See Appendix 8(a); 8(b)]

Thus, it would be **impossible** for the government and/or Verizon to produce ***actual*** phone records **(***which they did)* for this number – when during this time period Verizon records do not show a Device ID or ESN

connected to this cellular number.

- **THIRD VERIZON RESPONSE: Strong's Cell # Was NOT Active**

On or about January 11, 2016, then-counsel Moynihan sent a second defense subpoena to Verizon – adding only the Electronic Serial Number (ESN) to the previous information submitted in the January 6, 2016 subpoena. [See Appendix 8(a)]; then compare with Appendix 5(a)]

On or about **January 20, 2016,** Verizon produced the following **third response:**

> At this point in time Verizon does not have any records (current or **archived**) that would show what the Device ID or Electronic Serial Number (ESN) for the device assigned to phone number 315-317-3638 between April 1, 2013, and Aug 31, 2013. If available call detail records of 315-317-3638 are still required, please advise our office. [See Appendix 8(b)]

Clearly, this **last response** from Verizon regarding this matter, **(i)** contravenes and undermines Kirschenbaum's corrected response/ archived system rationale; and **(ii)** reinforces the results of *Complainant's first Verizon response:* **"Certification of No Records"** because **"that number was no active during the time frame requested."** [See Appendices 5(b), and 8(b)]

The documentary evidence delineated above, supports the strong inference-warranting further investigation:

(a) DEA, SPD and OCSO law enforcement officers illegally planted narcotics during their investigation leading to my federal arrest; and

(b) federal prosecutor, AUSA Freedman (and NYS/Federal Joint Task Force), colluded with two Verizon employees by fabricating Verizon phone records to cover up the NYS/Federal Joint Task Force's initial fabrication of evidence.

III. NYS/Federal Joint Task Force Wholly Fabricated Thirty-Five (35) Controlled Purchases of Narcotics

June 18, 2014 - In his Federal Complaint authorizing my arrest, DEA SA Hart asserts that his Joint Task Force conducted **(48)** controlled purchases of narcotics from myself and five other alleged co-conspirators:

(5) from Derrick Wilson, at para. 9 -
(8) from Jeffrey Dowdell, at para. 25 -
(13) from Tashawn Albert, at para. 34 -
(15) Zephaneea Dowdell, at para. 49 -
(3) from Jamal Harris, at para. 62 -
(4) Willie Strong, Jr, at. Para. 69 -
[See Appendix 9]

July 16, 2014 - I was indicted with twelve alleged co-conspirators for federal drug conspiracy, 2I U.S.C. §§ 841(a), 846

August 4, 2014 - in anticipation of the District Court's issuance of its Criminal Pretrial Scheduling Order (CPO) regarding party's discovery obligations, AUSA Carla Freedman informed the Court:

Additionally, the government is downloading copies of all state and federal search warrant affidavits, applications, and warrants issued in connection with the investigation, along with photographs and reports prepared by law enforcement in connection with the execution of the warrants, as well as other reports prepared in connection with this investigation. [See Appendix 10]

August 13, 2014 - District Court issues district's standard CPO mandating that all parties comply with its discovery obligations pursuant to Fed. R. Crim. P. 16 (a), I2 (b)(4) (*United States v Wilson*, 5:14-cr-273, Dkt. No. 83)

On this same day, the government complied with this court order, furnishing the defense with a voluminous discovery. In accordance with its ***August 4, 2014, correspondence*** to the District Court, the government's discovery consisted of, inter alia, **"all state and federal search warrant**

affidavits, applications and warrants issued in connection with this investigation... and reports prepared by law enforcement in connection with the execution of warrants, as well as other reports prepared in connection with this investigation." [See Appendix 11]

A thorough examination of Attachment 11, ***DEA -6/DEA -7 reports,*** chronicling the drug evidence seized pursuant to this investigation, i.e., *Drug Exhibits 1-65,* evinces the **government's discovery disclosure produced material / reports relating to only (13) of the (48) controlled purchases of narcotics** asserted by SA Hart in his federal complaint, i.e., **Drug Exhibits 4, 5, 6, 7, 8, 10, 11,12, 14, 16, 24, 27, 28.** For example:

Drug Exhibit 48-65 relates to narcotics seized on *June 18, 2014,* pursuant to the execution of federal and state search warrants of coconspirator residences - **None from controlled purchases of narcotics**.

Drug Exhibits 30-47 relates to narcotics seized on *April 15, 2014,* pursuant to the execution of federal state search warrants involving criminal defendants from a different indictment - **None from controlled**

purchases of narcotics.

Drug Exhibits 21, 22, 23 were seized from the search of Latoya Knighton's residence (never arrested or indicted as a member of alleged conspiracy) on *January 30, 2014* - **None from controlled purchases of narcotics.**

Drug Exhibits 9, 13, 15, 17, 18, 19, 20 were chronologically missing. There were no material / reports *whatsoever* in the government's discovery relating to these missing drug exhibits.

Drug Exhibits 25, 26, 29 are ***excluded*** from this assessment because they relate to controlled purchases of narcotics from Dwayne Handy. Handy was not mentioned in the calculations of the (48) controlled purchases asserted by SA Hart in his federal complaint.

Drug Exhibits 1, 2, 3 are also ***excluded*** from this assessment because *they relate to three (3) controlled purchases of crack cocaine from Willie Strong Jr* **and are not the four (4) controlled purchases of heroin from Willie Strong Jr**, that SA asserted in his federal complaint.

Drug Exhibits 4, 5, 6, 7, 8, 10, 11, 12, 14, 16, 24, 27, 28 are the only

exhibits in the government's discovery relating to the controlled purchases of narcotics asserted by SA Hart in his federal complaint.

June 8, 2015 - Due to the absence of any drug evidence for the asserted (35) controlled purchases of narcotics, defense counsel Danielle Neroni, ***initiated a email conference with AUSA Freedman requesting the production and/or inspection of this missing drug evidence***; and AUSA Freedman assured her **"All discovery was [already] provided on DVD's."** [See Appendix 12]

July 20, 2015 - was "the deadline for completion of discovery by the United States." (*United States v. Wilson*, 5:14-cr-273, Dkt. No. 168), *and this date elapsed without the government producing any material / reports relating to the (35) asserted controlled purchases of narcotics.*

The Government's affirmation that "**All Discovery was provided on DVD's**" *coupled* with its failure to produce any material *whatsoever* relating to the (35) asserted controlled purchases *before* "the deadline for completion of Discovery" ***creates the factual inference*** that the government fabricated (35) controlled purchases of narcotics.

The documentary evidence delineated above, supports the strong inference-warranting further investigation.

IV. Fabrications of SPD Chain of Custody Reports

August 3, 2015 - Based upon the aforementioned chain of events counselor Neroni filed an Omnibus Motion, arguing, inter alia, the government fabricated the existence of (35) controlled purchases and the existence of confidential informants. (Id., Dkt. No. 186-1)

August 24, 2015 - the government filed its omnibus response arguing the defense claims of fabrication were baseless and without merit. (Id., Dkt. No. 199) However, ***speciously*** on or about **August 18, 2015 - *six (6) days prior to its omnibus response*,** the government furnished the defense with:

> 2. Syracuse Police Department Chain of Custody Reports for drug exhibits seized following controlled purchases from co-defendants Willie Strong Jr., Zephaneea Dowdell, Tashawn Albert, and Jamal Harris. Once the laboratory reports for those exhibits are completed by the forensic chemist(s) from the Willie Howard Jr Center for Forensic Science, I will forward those to you. [See Appendix 13]

It is my contention that the government furnished the defense with the **SPD Chain of Custody Reports as a false and belated attempt** to produce material/reports to substantiate the assertion of (35) controlled purchases of narcotics, and refute the defense claims of fabrication.

Moreover, it should be duly noted that these reports were produced **(1)** ***after*** the government already assured counselor Neroni that such material did not exist [See Appendix 12]; **(2)** ***after*** the **July 20, 2015** deadline for completion of the government's discovery (Id., Dkt. No. 168); and **(3)** ***only after*** the defense filed a timely motion to have the indictment dismissed due to fabrication of evidence, i.e., (35) controlled purchases of narcotics.

Nevertheless, in its **August 24, 2015,** omnibus response, the government avers that it furnished the defense with the *SPD Chain of Custody Reports* in compliance with its discovery obligations. (Id., Dkt. No. 199 at 37-38)

a. Government Produces Fabricated Evidence to Correspond with Attorney Neroni's Typo in Omnibus Motion

- In his Federal Complaint SA Hart avers, **"During the course of the investigation, there have been three (3) controlled purchases of heroin from Harris."** [See Appendix 14(a)]

- When typing my affidavit in support of my Omnibus Motion (*in which I delineated the number of controlled purchases of narcotics attributed by SA Hart to co-conspirators in his federal complaint)* Counselor Neroni ***inadvertently*** **submitted the number five (5) next to Jamal Harris' number of controlled purchases, and not the three (3) asserted by SA Hart.** [Id., Dkt. No. 186-2, pg. 1); [See also Appendix 14(b)]

- When the government produced the ***belated*** *SPD Chain of Custody Reports* in its attempt to show that the (35) asserted controlled purchases were not fabricated - **the government produced enough material/evidence to correspond with counselor Neroni's erroneous five (5) typo-controlled purchases for Jamal Harris.** [See Appendix 14(c)]

The documentary evidence delineated above, supports the strong inference-warranting further investigation: AUSA Freedman and NYS/Federal Joint Task Force fabricated SPD Chain of Custody Reports.

V. Vindictively Related & Fabricated NYS Cold Case Homicide

The federal and state collusion at work in my federal prosecution traversed into a vindictive, fabricated cold case homicide prosecution in state court; and I would be remiss in my pursuit for justice, if I did not apprise you of the full breadth of the actual collusion at hand.

In **April 2015** – 10 months after my federal arrest – my lawyer at the time, Ms. Danielle Neroni, informed me that AUSA Freedman stated, "If I filed my omnibus motions in federal court, I would be charged with a homicide in state court."[3]

On **August 3, 2015**, I filed my omnibus motions in federal court; and on **October 22, 2015**, I was arraigned on a sealed indictment in Onondaga County Court (Syracuse, NY) for a cold case homicide from the year 2000.

The egregious nature of this state prosecution derives from (i) federal prosecutors colluding with – actually usurping the independent charging authority of – state prosecutors to vindictively charge me with this

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[3] Neroni speciously changed her account –in Sept. 2017 –to AUSA Freedman told her, *"If [I] entered a plea of guilty in Federal Court [I] wouldn't be charged with a homicide [in state court]"* [See Appendix 15] Despite Neroni's vacillation, both accounts show that the subsequent state prosecution was contingent on me exercising my right(s), i.e., to file motions and/or go to trial in federal matter.

homicide; and (ii) their knowing fabrication of ballistic evidence and witness testimony to bring the state homicide charge. For instance:

(a) on **August 4, 2015** – *one day after I filed Omnibus Motions in the federal case* – AUSA Freedman, then Assistant District Attorney (ADA) Matthew Doran, SPD John Nolan, Attorney William Sullivan and my alleged co-conspirator, his client, Jamal Harris **ALL** convened in AUSA Freedman's office regarding a *"final meeting was conducted…concerning his [Harris] cooperation in association with [state cold case homicide]"*. [**See Appendix 16**]

(b) then ADA's for Onondaga County (Matthew Doran and Michael Ferrante) allowed CFS, Forensic Analyst, **Matthew Kurimsky to testify that the gun in the photo** (Lab # 00-3932-1) **may be the murder weapon**; and for **Jamal Harris to testify that it was the murder weapon**- even though the *prosecution's case file* **contained evidence showing that in the year of 2000 this weapon was already *forensically excluded* as the murder weapon when compared with cartridge casings from the homicide scene; and the weapon was later destroyed. ("Negative Results")**. [See Appendix 17]

I was never arrested with this gun or in possession of it. The only evidence of this gun's involvement in the 2000 homicide comes from Jamal Harris (*facing a life sentence in federal prison*) identifying it as the murder weapon – *via photo-* fifteen (15) years later, in 2015.

It is my contention that this Joint Task Force fabricated the gun photo and ballistic evidence (in collusion with Forensic Analyst from the CFS) in an attempt to have a shred of evidence to corroborate Harris' knowingly false testimony.

The SPD actually possessed this weapon in 2000 and destroyed it in 2005 after concluding it had no connection to any crimes.

As a result of the effects of the *Kimberly Hurrell-Harring* syndrome (*Kimberly Hurrell-Harring* v. *State of N.Y.,* 15 NY3d 8 (2010)), once again, I had to choose between unprepared counsel and Pro Se representation. Facing a twenty-five (25) years to life sentence, after making a calculated choice to represent myself, I was rightfully acquitted by a jury on December

5, 2017.[4]

Any rejoice that I would have in this Herculean victory upon receiving a "NOT GUILTY" verdict on the fabricated murder charge, is quelled by the fact that I remain unjustly incarcerated by the same pervasive collusion that brought about the vindictive state charge in the first place.

Again, I feel like The *Man* v. *The Machine*. Power Corrupts, Absolute Power Corrupts Absolutely!

Based upon the documentary evidence delineated above, it is resoundingly clear - **or at least supports the strong inference warranting further investigation**: **(a)** NYS/Federal Joint Task Force illegally planted narcotics during their investigation leading to my arrest; **(b)** federal prosecutor AUSA Carla Freedman (and Joint Task Force), colluded with two Verizon employees, by fabricating Verizon phone records to cover up the Joint Task Force's initial fabrication of evidence; **(c)** NYS/Federal Joint Task Force wholly fabricated (35) controlled purchases of narcotic; **(d)**

[4] https://www.syracuse.com "How Syracuse inmate won his murder trial without a lawyer: 'That dummy showed us'" article

AUSA Freedman and NYS/Federal Joint Task Force fabricated SPD Chain of Custody Reports to cover up the Joint Task Force's fabrication of controlled purchases; and **(e)** AUSA Freedman colluded with Onondaga County ADAs, then ADA Matthew Doran and Michael Ferrante, their Joint Task Force and CFS officials to fabricate the gun photo and ballistic evidence and then charged me with the vindictive cold case homicide.

Respectfully, I request the DOJ Office of Professional Responsibility to investigate my claims of government fabrication, corruption and collusion.

I declare under **penalty of perjury** under the laws of the United States of America that the foregoing is true and correct.

With Fortitude,
/s/ Derrick Wilson
Federal Correctional Complex
P.O. Box 5000
Yazoo City, MS 39194

cc: Hon. Leticia James
NYS Attorney General Office

Role Of Co-Conspirators in Government Collusion Index

- **Joint Task Force Officers (Federal/State) Illegally Planted Drug Evidence:**

  SPD David Proud
  DEA SA Anthony Hart;
  TFO Sean Clere (OCSO);
  TFO Jeff Passino (OCSO);
  TFO Robert E. Hayhurst;
  SPD David Metz;
  SPD Dan Babbage;
  DEA SA Alicia Scanlon;
  TFO David Jones;
  TFO Brian Blanchfield.

- **Fabrication of Pen Register Application/Order:**

  U.S. Congressman John Katko (then – AUSA)
  U.S. Magistrate Judge, Andrew Baxter

At this juncture, all we know is that then -AUSA Katko and U.S. Magistrate Judge Baxter have apparently signed a Pen Register Application and Order, respectively, for cellular number (315)-317- 3638 that Verizon certified:

(i) "was no active" during the time frame the application/order was purportedly signed; and

(ii) it did not have a Device ID or ESN for the device assigned to

this number during this time frame [See Appendices 5(b), 8(b)] Upon review of Appendix 8(b), it is very possible that the application and order are backdated, because Verizon did have "available call detail records [for] 315-317-3638", just not for the time period agents aver to calling this number to ***initiate*** successful controlled purchases of narcotics, and the government claims to have had an active pen register.

- **Fabrication of Verizon Phone Records:**
  AUSA Carla Freedman

Upon receiving evidence that Strong's cellular number "**was no active"** during the time frame in question – *establishing a factual inference that officers illegally planted drug evidence in relation to three (3) controlled purchases* – AUSA Freedman fabricated phone records to cover up law enforcement's fabrication of evidence.

- **Verizon Employees:**
  Andrew Kirschenbaum and Joseph Newman

It is obvious that these two Verizon employees, Kirschenbaum and Newman, were complicit in this corrupt endeavor at the behest of the federal government. Both furnished statements contradicting and undermining Cristina Careri, the first Verizon Custodian of Records to issue her subpoena response that "**phone was no active/Certification of No Records**". Both Kirschenbaum and Newman, at the government's late-night request, worked to discredit Careri's unbiased subpoena response as

"inaccurate".

A week after Kirschenbaum and Newman's fabricated statements, Verizon answered a second subpoena from my attorney, reinforcing Cristina Careri's original response, that the phone was not active during the requested dates. [See Appendix 8(b)]

- **Fabrication of (35) Controlled Purchases of Narcotics, and SPD Chain of Custody Reports**

  NYS/Federal Joint Task Force
  SPD David Proud
  SPD David Metz
  SPD Daniel Babbage
  AUSA Carla Freedman
  DEA SA Anthony Hart

- **Fabricated Gun Photo & Ballistic Evidence**

  NYS/Federal Joint Task Force
  DA William Fitzpatrick
  ADA Matthew Doran
  ADA Michael Ferrante
  AUSA Carla Freedman
  SPD David Proud
  SPD David Metz
  SPD Daniel Babbage
  SPD Timothy Galineu
  SPD Don Hilton
  SPD Randy Collins

SPD John Nolan
CFS Dr. Kathleen Corrado
CFS Justine Kreso
CFS Matthew Kurimsky
OCDAO Inv James Quatrone

- **Pettifogger**
  Kenneth Moynihan
  Plain and simple, my fifth Criminal Justice Act (CJA) counsel, Patrick Moynihan, **SOLD ME OUT;** just like the previous four (4) CJA attorneys before him were doing. The basis for me meandering through five (5) different lawyers before ultimately having to proceed Pro Se (*the Hobson's choice is a practicality in law for the indigent)* lies in the fact that "Defendants are typically denied meaningful legal representation." (Michelle Alexander, *The New Jim Crow*, pg. 84; see also *Kimberly Hurrell-Harring*, *supra*)

The first four (4) counselors' remiss more than likely derived from an overworked caseload, lack of resources and lack of time needed to **actually fight** a charge of federal drug conspiracy. Most court appointed attorneys depend on defendants to just take a plea deal. My court appointed attorneys displayed a persistent disdain for me [a black defendant] holding them accountable to the standard of representation guaranteed by the Sixth

Amendment of the United States Constitution. I could feel the discontent festering during each consultation! Moynihan's remiss however, had more sinister, collusive origins.

For example: When Verizon's first defense response returned certifying Strong's phone "**was no active"** [See Appendices 5(a), (b), (c)], Moynihan was so bewildered he procured a second defense subpoena on **January 11, 2016**, *adding only the ESN number* to the information in the previous subpoena. [See Appendices 8(a)] Moynihan also procured a subpoena for Start Wireless and Tracfone Wireless on **January 11, 2016**. [See Appendix 18]

I did know about Moynihan's second defense subpoena to Verizon; **but he lied to me and told me he never received a response from Verizon regarding this second defense subpoena**. It was not until eighteen (18) months later – by asking my then appointed appellate counsel to check the file – that I actually became aware of Verizon's response to the second defense subpoena. [Appendix 8(b)]

Furthermore, **Moynihan never informed me of subpoenas being**

sent to Start Wireless and Tracfone Wireless. I did not become aware of the Start/Tracfone Wireless subpoenas until over three (3) years later in March of 2019.

While I still do not possess a complete response from the Start/Tracfone Wireless subpoenas, my extrapolations are: **(i)** the only reason Moynihan did not inform me of the Start/Tracfone Wireless subpoena(s) is for the same reason he never informed me of Verizon's response to the second defense subpoena: **Their evidentiary value supports my contention that law enforcement illegally planted drugs, and the federal prosecutor fabricated phone records to cover it up; or (ii) Moynihan never completed his inquiry with Start/Tracfone Wireless**, which is still equivalent to *intentionally sabotaging* my defense investigation, thus SELLING ME OUT.

U. S. District Court Judge Glenn T. Suddaby (Complicit Bias) Despite clear evidence of a genuine factual dispute regarding an underlying constitutional infringement, i.e., fabrication of evidence. [See Appendices 5(a), (b), (c) and **compare with** Appendices 6, 7(a), (b)],

Suddaby refused to grant me an evidentiary hearing. For context, and to dispel any notion that Suddaby is a novel character in this collusive effort, Suddaby is close friends with then-AUSA Katko, AUSA Freedman and DEA SA Hart; and **in 2000**, when members of the SPD and Onondaga County District Attorney's Office made their initial attempt to frame me with homicide charges (from 2000), **Suddaby was second -in-command in the District Attorney's Office.**

This was also during the time I was successfully suing the City of Syracuse for conducting an illegal cavity search against me by five (5) SPD officers when I was still a teenager. (*See, Wilson v. Aquino, 233 Fed Appx 72 (2d Cir. 2007*))