

MISCONDUCT BY
ALASKA PROSECUTORS
WORSE THAN PREVIOUSLY
BELIEVED,
new found evidence suggests.

A D.C. Court is being asked to
reopen an investigation of the Alaskan
prosecutors responsible for the botched
case against long time Alaska Senator
Ted Stevens after evidence of continued
misconduct surfaces, including use of FBI
Agents to sabotage Joe Miller's Senate
campaign and jail grassroots organizers.

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Francis Schaeffer Cox
Reg. No. 16179-006
USP Marion
P.O. Box 1000
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May 27, 2014

Hon. Clerk of Court
May , 2014
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Hon. Clerk of Court
United States District Court
For the District of Columbia
333 Constitution Avenue, NW
Prettyman Bldg., Room 1225
Washington, DC 20001

Re: In Re Special Proceedings, Misc No. 9-0198 (EGS)

Dear Clerk of Court:

Please find enclosed an original of my Motion For Access To "Report To the Hon. Emmet G. Sullivan Of Investigation Pursuant To the Court's April 7, 2009 Order" and/or Interested-Affected and Injured Non-Party Petitioner's Motion To Reopen Special Proceedings Under FRCP Rule 60B(3) & (d) "For Fraud Upon the Court By Certain Parties Of Interest." Please file said Motion on my behalf using the ECF system to serve a true copy on all interested parties, those parties including, but not limited to, the following:

Brian Christopher Baldrate
Francis Joseph Warin
Gibson, Dunn & Crutcher, L.L.P.
Washington, DC

David Penn Burns
Gibson, Dunn & Crutcher, L.L.P.
Washington, DC

Brendan V. Sullivan, Jr.
Craig D. Singer
Alex Giscard Romain
Beth A. Stewart
Williams & Connolly LLP
Washington, DC

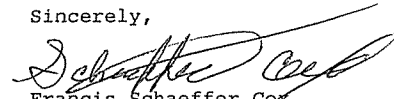
Joseph Marshall Terry, Jr.
Robert Madison Cary
Williams & Connolly LLP
Washington, DC

Edward P. Sullivan
Nicholas A. Marsh
Patty Merkamp Stemler
William J. Stuckwisch
Brenda K. Morris
David L. Jaffe
U.S. Department of Justice
Washington, DC

James A. Goeke
Joseph W. Bottini
U.S. Attorneys Office
District of Alaska
Anchorage, AK

Paul M. O'Brien
United States Department of Justice
Narcotic & Dangerous Drug Section
Criminal Division
Washington, DC

Sincerely,


Francis Schaeffer Cox
Reg. No. 16179-006
U.S. Penitentiary -- Marion
P.O. Box 1000
Marion, IL 62959

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Francis Schaeffer Cox,) Misc. No. 9-0198 (EGS)
)
Interested-Affected and)
Injured Party, a) Hon Emmet G. Sullivan
Non-Party Movant, Petitioner;) U.S. District Judge
)
In the Matter of:)
In Re: Special Proceedings) Filed: 5-26-14

MOTION TO WAIVE FILING FEE AND PROCEED
IN FORMA PAUPERIS, AND MOTION TO
APPOINT COUNSEL TO PROTECT INJURED PARTY'S INTEREST

COMES NOW Francis Schaeffer Cox, and under penalty of perjury pursuant to 28 USC §1746, as an injured, non-party, but party of interest, and respectfully MOVES this Honorable Court to waive any filing fee and allow Movant to proceed pro se.

Movant swears and affirms he is incarcerated indigent, over the age of majority, and a citizen of the United States and State of Alaska. And that further, he has been declared indigent and had counsel appointed in his behalf in the U.S. District Court for the District of Alaska and on appeal in the United States Court of Appeals for the Ninth Circuit where he is currently on direct appeal under 18 USC §3006A.

Further, Movant MOVES this Honorable Court to appoint counsel to protect the interest of Movant as an injured, interested non-party, if the Court finds Movant's Motion To Reopen Proceedings Under Fed. Rule Civ. P. 60(b)(3) and (d)(3) For Fraud Upon the Court is well taken.

Movant asserts it is in the public interest to determine if Movant's allegations can be factually supported and to determine the extent of the egregious misconduct, deceit and fraud on the Court that occurred and for the Court to craft appropriate remedy.

So swear I under penalty of perjury under 28 USC §1746.

Respectfully Submitted,

Francis Schaeffer Cox, pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRANCIS SCHAEFFER COX,)
)
Interested-Affected and) Misc. No. 9-0198 (EGS)
Injured Person, a)
Non-Party Petitioner-Movant,) Hon. Emmet G. Sullivan
) U.S. District Judge
In the Matter of:)
In Re Special Proceeding) Filed: 5-23-14

MOTION FOR ACCESS TO "REPORT TO THE HON.
EMMET G. SULLIVAN OF INVESTIGATION PURSUANT
TO THE COURT'S APRIL 7, 2009 ORDER"

-- AND/OR --

"INTERESTED-AFFECTED AND INJURED NON-PARTY
PETITIONER'S MOTION TO REOPEN SPECIAL
PROCEEDINGS UNDER FRCP RULE 60B(3) & (d)
"FOR FRAUD UPON THE COURT" BY CERTAIN
PARTIES OF INTEREST"

COMES NOW Francis Schaeffer Cox, proceeding in propria persona, as an incarcerated indigent Natural Citizen of the United States, over the age of majority and respectfully MOVES this Honorable United States District Court to grant Movant access to the "REPORT TO THE HON. EMMET G. SULLIVAN OF INVESTIGATION PURSUANT TO THE COURT'S ORDER OF APRIL 7, 2009" [hereafter Mr. Schulke's Report];

And/or also MOVES this Honorable United States District Court to reopen the above named, numbered, and styled cause of action to wit: IN THE MATTER OF IN RE SPECIAL PROCEEDINGS on the basis of fraud upon the court pursuant to FRCP Rule 60(B)(3) and (d) committed by certain previously sanctioned and unsanctioned parties, and unknown or unnamed parties who participated in continuing Brady, Giglio, Kyles, infra, violations and/or continued prosecutorial and investigative misconduct against other targets of Operation Polar Pen (including your Movant, who was injured and is being injured).

Movant, a State House candidate and successful grass roots organizer, was one of several victims of the Anchorage U.S. Attorney's politically motivated prosecutions, code named "Operation Polar Pen."

The Polar Pen team made sensational accusations against Movant. Documents have recently surfaced that indicate that they knew these accusations were false all along.

This Court is already familiar with the fraud and deception that characterized Operation Polar Pen. What this Court may not be aware of is that through even greater acts of fraud and deception, the parties in question were able to prevent the investigation ordered by this Court from discovering the full extent and seriousness of their prosecutorial misconduct.

Movant now seeks to bring to this Honorable Court's attention previously concealed misconduct which, because it was not revealed at the time, prevented Mr. Schulke from making a fully informed recommendation as to appropriate sanctions, deprived this Court of information vital to its decision making, and most importantly, is allowing injustices to be continued and expanded. In the interests of justice, Movant Petitions this Court to re-open its Polar Pen investigation.

In support thereof, Movant proffers the following good presents:

It is at least a reasonable inference, if not beyond peradventure that the Polar Pen Task Force, ergo: the Alaskan U.S. Attorney's Office, the Alaskan State Troopers/Police and the Anchorage Police Department's upper echelon joined in an effort to manipulate, not only the political landscape in Alaska, but in the Nation by use of Polar Pen Task Force's resources to defeat, discredit, or incarcerate political figures. Not the least of which was United States Senator Ted Stevens, head of the Senate Finance Committee; Don Young, long time U.S. Congressman; and other GOP political figures or office holders in the State able to influence elections.

Your Movant herein was once one such up and coming political activist/candidate and fund raiser who was able to enroll thousands of young new libertarian/GOP voters.

Alaska is a state with only 713,000 or so citizens. State-wide elections have perhaps in a Presidential election 315,000 voters. A normal election turns out around 250,000 voters state-wide.

5,200 votes made the difference in whether Joe Miller or Lisa Murkowski became U.S. Senator. The already judicially determined misconduct of the Polar Pen Task Force defeated long time Senator Ted Stevens and changed the control of the Senate to the Democratic Nebraskan Senator Ben Nelson. Democrats already controlled the House of Representatives.

For better or worse the Polar Pen Task Force set the stage for passage of the Affordable Care Act. Without comment by your Movant as to whether that will bode ill or well for the country, it changed drastically the direction of this Nation socially as to health care, and it was done via prosecutorial misconduct-abuse of prosecutorial power, not by a fair vote of the people.

Your Movant in his Libertarian activism was registering thousands of new conservative young voters capable of changing the political landscape in Alaska and in particular challenging the Democratic President and his Administration's push for new gun control laws and firearms registration. Movant was drawing thousands of supporters to his rallies. He was raising funds, enrolling voters very successfully, and pushing State legislation including passage of the Alaskan Firearms Freedom Act.

Movant believes it was because of this he was targeted by the Polar Pen Task Force Members.

Movant has documentation within a hard drive containing some of his discovery (that he is not allowed to print out) that states that the A.U.S.A. assigned to his case was/is Joseph Bottini and there were three (3) F.B.I. co-case officers, Sandi Klein, Richard Sutherland, and Bruce Milene, as well as other F.B.I. agents known and unknown to Movant.

These federal agents/attorneys were running the Polar Pen Sting in conjunction with Alaskan State Police, over the objections

of the AUSA from Fairbanks, Alaska where Movant lived. Your Honor, during the very time these prosecutors were being investigated at your direction this is what they were doing behind your back.

Movant was/is not a criminal, had no criminal associations, or predisposition towards the types of crimes the Polar Pen team tried to bully him into committing.

Your Movant was raised in Colorado where he was home schooled by his parents, both teachers. His father, a West Pointer, and Uncle, former Chief of Staff to U.S. Senator David Boren, owned and operated assisted living homes for seniors. The Cox family became very well off as a result. When Movant was 16 his father took a pastoral position at a large Baptist Church in Fairbanks, Alaska. Having been introduced to backpacking, fishing, mountaineering, and the great outdoors by his father in Colorado, your Movant was enthralled with Alaska. At 17 he set a goal to climb 20,320 foot Mt. McKinley within a year, which he did in a 48 day expedition.

Movant worked in the Alaskan fishing industry, in construction on the Army's Ft. Wainwright Military Base learning CAD (Computer Aided Design) in construction, operating heavy equipment, and ultimately had his own successful residential construction, design, and landscaping business. At 18 he married his wife Marti, and he again climbed Mt. McKinley with his father in 2003.

In 2005, he climbed Mt. McKinley for the 3rd time with his wife. They taught Sunday School, were certified foster care parents, volunteered in the community, and were the quintessential upstanding wilderness loving Alaskan family.

Movant became involved in Congressman Ron Paul's Presidential campaign and was recognized as an effective campaign organizer. At the next GOP convention, the Lt. Gov. asked Movant to run for State Representative from the convention podium, which he ultimately did. He garnered 38% of the vote at age 24 in a 3 man race against an entrenched incumbent. At that same convention he was first approached by a Polar Pen informant, Bill Fulton, who asked him to help rig an internal party election which Movant declined to do.

After losing his race for State Representative, Movant Cox

began a 2nd Amendment campaign against the Obama Administration's gun control efforts, honing his public speaking skills, holding rallies, gaining name recognition and a political base of conservative, constitutionalist Ron Paul style of Libertarians who were for less government, more freedom, and less regulation, especially in the area of the Bill of Rights.

Some of these supporters-followers had extreme views. Movant had a politician's habit of giving soft answers. When asked to support a position, cause, or idea that was unacceptable, he would listen, appear to give it thoughtful consideration, reassure the speaker that he understood the merits of the speaker's idea, then gently point out the flaws and shortcomings of the proposal so as not to alienate his potential political supporters or create political enemies unnecessarily.

During these speeches, Movant came to the attention of the investigators and prosecutors, federal officials, and Alaskan State or Local Police who composed the "Polar Pen Task Force" responsible for the dubious investigation and prosecutions of U.S. Sen. Ted Stevens, former Alaskan House Speaker Peter Kott, and also former Alaskan State Representatives Victor H. Kohring and Bruce B. Weyhrauch. As this Court well knows, all were convicted by the Joint State-Federal Polar Pen Task Force, and all were reversed for failure to disclose Brady-Giglio-Kyles materials.*fN1

Movant then continued to fund raise and build his political base by holding rallies for 2nd Amendment rights and any other issues that were popular at the time, including local police corruption.

Movant asserts by reasonable inference that the Polar Pen players, whose true agenda was to influence Alaskan elections and in turn influence the administration's national agenda, realised

*fN1/ U.S. v. Weyhrauch, U.S. Dist LEXIS 27827, 3:07-CR-056-JWS-JDR, March 15, 2011 (Court grants government's Motion to Dismiss, DOC. NO. 492); U.S. v. Peter Kott, U.S. Dist. LEXIS 62620, 3:07-CR-056-JWS-JDR, June 13, 2011 (Court grants government's Motion to Dismiss); U.S. v. Kohring, 637 F.3d 895 (9th Cir. 2011)(vacating Kohring's conviction, remanding for new trial); U.S. v. Stevens, 2009 U.S. Dist. LEXIS 39046, April 7, 2009 (granting government's Motion to Dismiss).

that Movant's Second Amendment movement and rallies and his voter registration success was a threat to their overall goals. They then ran numerous attempts to entice Movant to commit crimes. These undercover agents repeatedly told their FBI handlers Movant was not willing to possess illegal weapons, or commit acts of violence for over 2 years and through at least 3 operatives. AUSA Bottini continued to insert less & less credible/ethical undercover operatives who were willing to do anything to threaten, scare, induce Movant to commit illegalities. Operatives who would lie, steal, and violate laws. AUSA Joseph Bottini's prosecutorial philosophy that the "ends justify any means" is seen throughout the Polar Pen Sting Operation against Movant, just as it was against Senator Ted Stevens, Victor Kohring, Peter Kott, and Bruce Weyhrauch. The multiple and escalating attempts at Movant are as follows:

-- ATTEMPT 1, Simple Offer --

Movant believes the first Polar Pen undercover effort was when he was approached by a man named Criss Minino who bragged of the sophisticated weaponry he possessed, including explosives. Mr. Minino voiced his support for Movant's campaign and made modest donations. Mr. Minino later offered to supply Movant with high explosives "to kick some shit off," at which point Movant distanced himself from MR. Minino. After trial, Mr. Minino was found to have been an informant, though the "Polar Pen" prosecutors refused to make formal disclosure or supply additional discovery regarding Mr. Minino.

-- ATTEMPT 2, Monetary Incentive --

After Minino, a man named Aaron Bennett came on the scene. Bennett represented himself as the leader of a large Militia with lots of money and the ability to raise a lot more, which he did. Bennett hosted multiple fundraisers and donated thousands of dollars to support Movant's rallies and campaigning. Bennett also started giving Movant expensive gifts on a regular basis including: rifle scopes, smoke canisters, outdoor clothing and equipment, winter survival gear, body armor, 37mm flare launchers and smoke fuses for practice grenades. Most of the time Movant would turn around and

sell these gifts and just keep the money.

Bennett convinced Movant that the best way to increase donations was to start a Militia. Seeing that Bennett had what appeared to be an almost unlimited ability to raise money, Movant tried to organize a Militia of his own.

Movant now reasonably believes that ATF, Fairbanks Police, and other state and federal actors used surplus shops/gun shops in Alaska as undercover listening posts to gather information on conservative or constitutional rights groups. For example, "Far North Tactical" was run by Aaron Bennett, who the government refused to disclose as an informant but merely stated that they "could neither confirm nor deny" his involvement.

Aaron Bennett was perfectly positioned to infiltrate militia, sovereign citizen movements, Tea Party conservative, 2nd Amendment/Constitutional Rights movements, and probably still is. This explains the government attorneys refusal to confirm or deny whether or not he is their informant. Bennett approached Movant making offers to provide illegal weapons and "gave" Movant, without cost, body armor, smokefuses, dummy grenade shells, Hornet Nest cannisters, 37mm flare guns, as well as donations to Movant's political causes.

Bennett was aggressive in urging Movant to abandon his passive non-violent political 2nd Amendment approaches to change and instead use offensive violent type tactics or force. Aaron Bennett told Movant to "Lead of Bleed," that if he wasn't going to attack the government, Bennett would kill Movant and blame it on the federal government to incite Movant's supporters to "rise up." Movant began to distance himself from Bennett and warned others to do so as well.

While Movant was able to draw thousands of people to political rallies, organizing them into a viable Militia turned out to be impossible and it certainly was not a gold mine of donations as promised. By June 2010, the actual Militia part was defunct and nothing more than a failed experiment. The FBI noted this:

(Sentencing Memorandum, page 24)

From: Espelandr Derek D.
Sent: Monday, June 14, 2010 8:10 PM
To: Locascio Lisa A.; Kleinr Sandra L.; Milner Bruce W.;
Johnsonr Sam L.
Subject: Re: SC-Fairbanks
... SC has gone from a cadre of 24 down to 2 (Him and his
#2r Les Derby).

Over time, Bennett became very pushy and insisted that violent acts against government officials were needed. When Movant wouldn't go along with this thinking, Bennett started making subtle threats to harm Movant. Movant subsequently avoided Bennett and advised others to do the same. After trial, Bennett was found to have been an informant, though the "Polar Pen" prosecutors refused to make formal disclosure or supply additional discovery, despite the fact he was allowed to testify at trial.

(Sentencing Memorandum, page 17 referencing FBI's covert recordings) ...in another portion that was not included in government Ex. 14, at p. 152-153 (the Government Ex. 14 jumped from p. 120-155) Mr. Cox stated:

But then I'm not - he's [Aaron Bennett] constantly pushing me, "you've got to just fight and start the killing," you know, "and figure it out later," you know, and I'm being very temperate and, "no, hold back, let's not be premature," you know, "that's just retaliation, that's just vindictive," you know, "oh, Nelly, whoa, Nelly, pump your brakes," you know?

MR. OLSON: Put the reins on.

MR. COX: And he [Aaron Bennett] gets sick of me [Cox] saying pump your brakes too much and now I think where he's at is he's trying to destroy me because I'm a cork in a bottleneck. (Feb. 12 2011 pp 152-153)

Morning of February 19th

Audio File No. 021911-CHS-COX-VERNON-BARNEY 08.58.16 (19.02.11)
1:22:33°

KEN: What about Lonnie you told me a couple of days ago when you said that Aaron (FBI) was.

LONNIE: He's going to kill all of us, ya. We're all fucking dead, we're all fucking dead.

KAREN: That was his exact words.

KEN: And that was ah?

LONNIE: And you got to see a taste of it down there too.

J.R. (FBI): Oh ya.

LONNIE: Last weekend.

KEN: But that was real recent like the last time you (inaudible)?

KAREN: It was before that. It was the weekend before that. Because when Lonnie and Aaron (FBI) went to the summit.

(Ken gets ready to leave. He offers a prayer of protection)

1:54:36°

KEN: Yahweh, I just pray for the complete protection we need right now. Help us remain in honor before you. Because of your promises, if we do not engage in iniquity and lawlessness, that you would feed us. And to just not engage in the evil, that of the evil people that comes against us. And to work evil on us, and to wait on you and that you would take care of it. And we just pray...

1:51:14°

SCHAEFFER: A lot of those folks like Bill (FBI) and Norm, I mean like Bill (FBI) and Aaron (FBI) I think are better to just let lie.

2:36:43°

SCHAEFFER: I think that we just need to have a policy of, of avoiding Aaron (FBI) and his pack, because that is just, that is just a bunch of hedonistic, scrappy, um, directionless brawlers. [These tapes were not played for the jury.]

-- ATTEMPT 3, Threaten Children/Knife to Throat --

After Minino and Bennett, a man named Bill Fulton was inserted into the sting by the FBI and Polar Pen Task Force. Unlike Minino who simply offered the opportunity to commit a crime, or Bennett who used monetary incentives and subtle forms of coercion, Fulton capitalized upon a threat to Movant's family, then resorted to using actual physical violence to try to induce the commission of a crime.

On Feb. 25th 2010 Movant was charged with 1 misdemeanor count of reckless endangerment after an argument that involved his wife and mother-in-law. The following June, the Alaska Office of Child Services showed up at Movant's home and informed Movant that there was a complaint of child neglect. While it is routine for OCS to make a house call after an incident of domestic violence, such child welfare checks take place within hours, or at the most, days, of an incident. Additionally, "reckless endangerment" is specifically a nonviolent offense.

The complaint OCS acted on was a separate complaint made by police that alleged "an unsafe environment" based off of Facebook photos. This allegation was found to be "unsubstantiated" after an investigation by OCS, but not before Bill Fulton incorporated it into his attempted sting.

While Movant and his Wife, through their attorney, were trying to make arrangements for OCS to conduct their inspection without giving up custody of their baby during the pendency of the investigation, Fulton, who Movant had met only once or twice before, drove 350 miles from Anchorage to Fairbanks and requested a meeting with Movant. Movant agreed, but when he arrived with his baby son and his elderly friend, Mr. Zerbe, he was met not only by Fulton but also by Bennett and several other thugs.

The "Polar Pen" prosecutors did not turn over recordings of this meeting but on other recordings Fulton himself describes what happened.

(From Sentencing Memorandum, pp 22-23)

As Fulton told Vernon on February 2, 2011:

MR. FULTON: The only reason I didn't break it off with Schaeffer's group was because of Schaeffer after that thing with Les.

MR. OLSON: Yeah.

MR. VERNON: Yeah.

MR. OLSON: So, it must have been pretty bad -- pretty tense with Les, huh?

MR. FULTON: Oh, I was seriously going to kill him.

MR. OLSON: Is that right?

MR. FULTON: I was going to fucking end his existence on this planet. Yeah, I was not fucking around at all. What happened was -- that was last summer when Schaeffer didn't know which way it was going to go with the cops, whether or not they were going to come try to take his kid. And essentially he said Schaeffer (inaudible) hotel and they were sitting there and they were talking and they said look, this is what's going to happen. And when Les said this is what's going to happen after they'd left I started making (inaudible). I had fucking trucks coming to pick up our appliances and fucking (inaudible), because they said it's go, it's going to happen. So, we had a meeting over at Aaron's shop the next day. We're all standing around and there's people coming in, you know. I mean, I was in, like, 5, 6 grand at the time, and I'm, like, okay if it's going to happen, you know, let's do it.

MR. OLSON: We're ready, yeah.

MR. FULTON: Yeah. And, uh, so we're standing there and Schaeffer's supposed to be there but he had something else to do, so he's like an hour late, so I was drinking some beers, not that I normally drink during the day -- I'm just saying. And the meeting finally starts, and we're talking and he -- look, Les, what is the plan here? We have people in motion. We have things -- events --

MR. OLSON: Happening.

MR. FULTON: -- unfolding. This is your guy's show. What's your plan? And he's, like, well, we don't have a plan. I

just fucking lost it. I literally grabbed a knife, started coming over the counter, and I was, like, I'll fucking slit your throat open (inaudible) you fucking piece of shit. What do you mean you don't have a fucking plan? I was, like, that's all you guys do is fucking plan. What the fuck is your plan? Well, we thought you guys would have one. (emphasis added) 2.4.11 pp 43-45).

[This tape was not played for the jury.]

(From Sentencing Memorandum, pp. 21-22, Trial Testimony of Michael Anderson, May 15/12 Day 6, pp. 36-37)

A: Bill Fulton wants to know, What's the plan? How are we going to do this? And then all of a sudden Les Zerbe pipes up and he says, "There's no plan. We don't have a plan to do this." And Bill Fulton, at that point -- and my memory's a little vague and I -- I don't remember if he actually pulled out a knife or -- or not. I would say my memory's like 50 percent on that. I want to say he did, but I can't say it firmly. What I distinctly remember is him kind of lunging toward Les Zerbe and saying, "No plan? What do you mean, you have no plan? You're supposed to have a plan, you fucking piece of shit. I'm going to slit your throat. I'm going to kill you, Les." And he kept going on and on and on. And Les Zerbe and Schaeffer were very calm and finally things calmed down a little bit after several minutes of this nonsense. And, you know, Schaeffer says, you know, "We just don't have a plan. We don't have logistics for this. We can't do it." "What do you mean we don't have logistics, Schaeffer? I spent \$30,000 bringing men and equipment up here. You want me to send them all back?" And Bill Fulton, you know, Bill Fulton was continuing with this. Schaeffer finally just says, you know, "Bill, look, I've -- I've never been in a fight in my life. I've never even punched someone in the nose and I don't want to start now." And then Fulton says, "What do you want me to do, Schaeffer? You want me to call it off?" And Schaeffer says, "Yeah, call it off." And so from that point on, it cooled down. It looked like Schaeffer had convinced Fulton to call it off.

After these events Movant became fearful for his life. Movant avoided both Fulton and Bennett at all costs and was very cautious not to say or do anything that would upset either of them.

(From Sentencing Memorandum, page 20)

Mr. Cox also expressed his fear of being killed to people who did not testify at the trial including his father Gary Cox ("He thought his life was threatened by these informants. One day he and Marti came to our home and sat down to tell me he thought they would kill him and make it look like a murder/suicide.")

-- Movant Looks For Help --

Movant sought help from several law enforcement agencies and officials. Movant called Rex Leath of the State Troopers, who offered no help and declined to question Movant about the dangerous

people he referred to. Movant and his wife went to the home of acquaintance and State Trooper Ron Wall who also declined to question Movant and offered no help. The "Polar Pen" prosecutors have furnished no discovery in relation to these interactions with nonfederal agencies; however, Movant notes that under U.S. v. Tillman, 2010 U.S. Dist. LEXIS 78814 July 9, 2010 (DC Nev); U.S. v. Blanco, 392 F.3d 382, 388 (9th Cir. 2004), they are obligated to.

Having received no help from local police (who were previously the object of Movant's anti-corruption initiative), Movant and his wife sought help from the Military Police on Ft. Wainwright, where Movant had been employed. What they told Movant and his wife was chilling.

(From Testimony of Gibson, Military Police, Tr. 15-253, 15-254, 15-255)

A: And his exact words were that with some of the issues that -- been going on with Schaeffer Cox, that the OCS issue actually may fix -- may resolve the -- the problem that they had...And so the U.S. Marshal said based off of that statement, that when OCS would go to Schaeffer Cox's house to get his son, law enforcement would be present. He also stated that they believed, based off of his statement, that Schaeffer Cox would probably use force to prevent them from taking his child, and that if he did so, then he would most likely be shot and killed in this scenario. That was basically --

Q: Okay.

A: I gave him the disk and the federal marshal --

Q: What did you mean by with -- he said that it would fix the problem?

A: I don't know what the problem was. ...

Q: What was it that you thought he was referring to when he said fix the pro -- you may not know the problem, but what was he referring to when he said fix the problem?

A: Whatever the problem was with Schaeffer Cox, if he was killed with OCS attempting to take his son, then obviously anything that had to do with him wouldn't matter anymore.

Q: At some point after that -- How did you respond to that? What did you do?

A: After the U.S. Marshal left, my supervisor was present. And so I consulted with him about it. He didn't want to get involved. He said he wasn't going to get involved. So I -- I worked a 12-hour shift. I work in an office, I have a computer, stuff like that. So I got on the Internet, I started to do some research about Schaeffer Cox. And I started to pull up information, you know, read -- read about him, how he'd run for public office, stuff like that. I didn't see any reason -- I couldn't tell that he was under

any kind of criminal investigation or that there were any -- necessarily investigations going on at that time. So I looked him up on Facebook to see if he had a Facebook account and he did. So I sent him a message. I told him I would like to meet with him. And he got back with me pretty quickly and told me that he would be willing to meet with me. And so we did.

Q: Why did you feel that you had to do that?

A: My goal was to resolve an issue. ...

Hearing this frightened Movant and his wife so much that they moved out of their house for their safety.

(From Sentencing Memorandum page 20)

...his friend Richard Neff ("On more than one occasion, before he was counted as a fugitive, Schaeffer, Marti and Seth took refuge in our home because Schaeffer feared the government was going to launch some intrusion to harm his family.") Myra Ness told the probation officer that Mr. Cox repeatedly said that the government was "out to get him."

Fortunately, OCS agreed to simply follow their policies and an ordinary inspection was conducted and the case closed. This somewhat relieved Movant's fears; however, Movant continued to ask for help dealing with the remaining threats posed by Fulton and Bennett (both under Polar Pen's direction).

Movant told everyone who would listen about the situation and became more and more paranoid about the Agents the Military Police had warned him about, who were now rumored to be "Team 6." Movant eventually went so far as to give a television interview on a local station in an effort to expose what was happening.

Movant shared his concerns with his friend whom he deeply respects, Mr. Steve Cooper, who has been the sole AUSA in Fairbanks for 30 years.

(From Trial Transcript, pp. 19-9 and 19-10) AUSA Cooper recalled:

A: In the -- what I think was probably the last time I had lunch with Mr. Cox, not sure, but I think it was in the middle of 2010 at some time, so I am not more accurate on dates. But at that time Mr. Cox conveyed his belief that there were people in his group that were of a different mindset or set of opinions than those that were consistent with the rest of the group.

-- ATTEMPT 4, A Death-Threat Ultimatum --

After Minino, Bennett, and Fulton, a man named Gerald Olson came on the scene. Olson stoked the fears that the previous informants had created.

Morning of February 19th
Audio File No. 021911-CHS-COX-VERNON-BARNEY 08.58.16 (19.02.11)
2:23:34

J.R. (FBI): What, what, what happens? Say, say, say I, I, I want to, I want to be able to know in my mind what's going to happen. You know, worst case scenario now. I want to go through this. Say, say, say they, they come for you tonight. And, and beat doors down. How, how are we gonna, how are we going to know to get out there and defend you? You know, cause a, they, if they shut down the Liberty Bell somehow, and if we don't have that now, then what, what do we do in that situation, you know, worst case scenario? [This tape was not played for the jury.]

Olson, after being instructed by Fulton to do so, renewed Fulton's death-threat ultimatum:

(From Sentencing Memorandum, page 23)

Fulton: Okay, so when you guys get back, what you need to do is have a talk with Schaeffer. And remind Schaeffer about what happened last time when I almost killed Les.

Olson: Yeah, he remembers that.

Fulton: Well, I'm sure he does, but I want you to re-remember him.

(2/5/12 transcript p. 130)(this portion of this meeting was not played for the jury)

After successfully keeping out the aforementioned evidence, the "Polar Pen" prosecutors made these knowingly false statements to the jury:

And Bill Fulton's going to be down there, right? "But Bill Fulton I'm afraid is trying to kill me. Aaron Bennett is going to be down there, the Aaron Bennett I'm afraid is trying to kill me."

I submit to you, folks, you've got five hours of audio, okay. You try to find a statement anywhere about "Bill Fulton's trying to kill me, Aaron Bennett's trying to kill me." You're not going to find it. You can look through all the documents you want. You can go through all 900 of them. You're not going to find it. ...

But the deal is, you're not going to find any evidence except what this guy [Cox] said on the stand last week, that Bill Fulton and Aaron Bennett were out to kill him. "And that's why I've got these big concerns, and that's why I told the court this and that's why I told the court that." There is nothing in there -- in this case. He didn't tell this to AUSA Cooper, he didn't tell anybody that these two guys were coming after him and that's why he did what he did. That's part of the "blame the government" thing. Right, it's the government's fault that we're all here. It's the investigator's fault that we're all here. It's Bill Fulton's fault we're all here and Gerald Olson, et cetera. You're not going to hear that. You're going to hear it, but it's not going to be substantiated. ...

And you heard the man testify to you, after four weeks of trial, and he comes up with this story about the Fulton conspiracy.

It's going to take another step after this. We'll get to that, too. Because, frankly, folks, he lied to you. ...
(Trial Transcript pp. 22-69, 22-70, and 22-76)

For two years leading up to this point, Movant had flatly rejected the proposals of violence with which the informants relentlessly bonbarded him. Even when faced with the threats of a knife wielding Bill Fulton and/or threats to his children, Movant still held that violence was not the answer.

(Sentencing Memorandum, pp 16-17)

Cox also emphasized that the plan would never actually work.
MR. COX: Even if we followed the two for one scenario out what I see -- and this is from what I've seen with even our guys and stuff like that -- everybody that, you know, the idea of Patriotism and the idea of what we're doing -- they love the idea but what -- what I see will happen if they grab you and we go for a two for one it's going to be --
MR. OLSON: Us three. Well, we have Vernon.
MR. COX: And you guys won't want to be involved with it until they fail to see enough sufficient force even on them to justify, you know, they'll just stand and it will be the three of us.
MR. OLSON: Well, we'd have Vernon, we'd have four. Lonnie. Because I think Lonnie'd be right with --
MR. COX: Yeah, there'd be four of us and it will be real quick and it will be over and they will -- and all this -- and all it's been doing will just be gone away and they'll say, "Well, I guess that was that. And you know, he was a wacko just like, you know, the media painted him out to be." And I think that'll be the end of it. I don't think that -- our war will just be over like that. (Govt. Ex. 14-2.12.11 pp 100-101).

On February 12, 2011 after a long discussion about the 2-4-1 "plan" Cox said:

MR. COX: So we're all on the same page, um, uh -- the plan, as far as 241 is to bluff it, pray, and work towards it not being a bluff, and then at the moment my plan is to hide, to avoid, if I get busted -- if I get captured, I'm not going to do a Rambo, I'm going to do a Gandhi. So, I'm not going to carry an ID, I'm not going to anything. (emphasis added)

The recording of the February 19 meeting reveals that Mr. Cox ultimately rejected the 2-4-1 plan. This particular segment was not included in government exhibit 24 of the February 19 meeting but does appear in the transcripts at 140:

MR. BARNEY: Yeah, we're all in this together. But I know right now, the atmosphere, I don't feel it's right to -- if we -- if we take up arms, it's going to be -- I -- I wonder if anything would really even come out of it other than we'll be dead and our wives and children will be left to themselves. I don't think that any -- that people around us won't see us as martyrs.
MS. VERNON: Mm-mm.

SPEAKER #: No.

MR. COX: It'll be a fruitless gesture. (emphasis added)
[These tapes were not played for the jury.]

-- Movant Flees Country To Escape Informants --

On February 4th 2011 a beautiful baby girl was born to Schaeffer and Marti (Movant and his wife). She was their second child and first girl. Less than 24 hours later, Movant received Fulton's renewed death threat:

Fulton: ... remind Schaeffer about what happened last time when I almost killed Les. [Sentencing Memorandum, p. 23. This tape was not played for the jury.]

Two years of coercive intimidation from informants had driven Movant and his wife to their breaking point. The birth of a child coupled with the latest threat from Fulton put them over the edge and they decided to move out of the country.

[Sentencing Memorandum, p. 26]

Cox also made it clear he planned to leave Alaska to avoid a confrontation with the government.

MR. COX: I lost my house, my business, my whole fortune because that's okay, you know. And I could, if I was looking for a fight and I was feeling vengeful -- which what's wrong with feeling vengeful, man? We've been wronged -- I could go out and I could sock it to them, and that would satisfy my animalistic reaction to their, their wrong doing -- righteous wrath though it may be.

MR. OLSON: Mm-hmm.

MR. COX: But it would -- it would be a detriment to the war, and so, because I believe you, that me losing everything and just walking away from it, get me your -- back to your friend's container and get smuggled through Canada with nothing but a gym bag and a rifle, and we lose everything and let the scales keep tipping, that's what I -- that's what I think has the brightest future for my -- for my family.

MR. OLSON: Mm-hmm.

MR. COX: Because only when there is no future and there is no hope for my wife and for my children can I then spend myself. Only in costing --

MR. OLSON: Mm-hmm.

MR. COX: -- the enemy.

MR. BARNEY: Mm-hmm.

MR. COX: Because costing the enemy is not my objective.

MR. OLSON: Yeah.

MR. COX: I would forgive them and have all sorts of redemption and go to a picnic with them if they'd leave me alone.

MR. OLSON: Yeah.

MR. COX: You know, I don't have hatred towards them.

[This tape was not played for the jury.]

However, this decision did not alleviate the immediate danger that Fulton presented. Movant had been sternly warned of the consequences he faced if he continued to refuse to plot violent crimes.

Movant was aware of Fulton's violent reputation and had indeed experienced it first hand. The last time Movant said no to Fulton's violent proposals, Fulton flew into a rage and started attacking people with a hunting knife.

Fulton's threat was credible and caused Movant to reasonably believe that he would be killed if he rejected Fulton's proposals.

Movant needed to get out of the country without letting word get to Fulton that Movant was still unwilling to act out violently. The FBI noted this:

(From Sentencing Memorandum, p. 23)

Sutherland, Richard A. Jr.

Klein, Sandra L.; Locascio, Lisa A.

Plan

Friday, March 04, 2011 5:33:00 PM

SC is not willing to meet with CHS-2 [Fulton]. Does not want him to know he is still in Fairbanks. Wants CHS-1 to broker deal. SC willing to meet "trucker" to discuss transport.

Rick Sutherland

It was during this time that Movant regrettably, but perhaps understandably, switched from just saying no to giving qualified denials and other openended or noncommittal answers. Movant wasn't about to agree to commit a crime, but now he couldn't say no either. Olson pushed all the more.

(From Addendum to the Presentence Report

Document 535-1 *Sealed* Page 79 of 96 and 80 of 96

Francis Schaeffer Cox, 3:11-cr-00022-RJB-1)

From: Skrocki, Steven (USAAC)

Sent: Sunday, February 13, 2011 4:13 PM

To: Loeffler, Karen (USAAC)

Subject: Cox-(long email--sorry)

Listened to conversation from last night. In summary, they are kicking around ideas. My advice, do not arrest if him he doesn't show [sic], but issue the warrant and let it sit. ... they discuss not being strong enough to impose their views on the rule of law. They discuss everything from 2 4 1, to fleeing, to the rapture coming and waiting for that. In my view, the FBI source is pushing Cox a bit too hard on not getting arrested, and the source agrees too much in moving their plans forward which would generate a response, whether violent or not. The source adds, "why don't

we make it 5 4 1" (not a good idea, FBI has to fix this) After some discussion of "2 4 1," Cox says, "we're just speculating here and I want to hear where you stand. ... Cox's stated thoughts are "we are not strong enough to execute or follow through" and says they should do everything we can to avoid it. ... the source says, "we can get other militia's to support us"-another example of pushing. Cox says, "we want to bluff them, and play and train". ... And asks, "what do you guys think about this then" and after getting various responses, none saying let's go grab or harm people tomorrow -- he ends it with "bluff it, play and dream"... He says "at the moment his plan tomorrow is to lay low, and if he gets caught to play Ghandi, not Rambo" ... (again, he qualifies almost everything-it's very obvious he wants wiggle room.)

Movant was due in court for a low level misdemeanor that had resulted from an arrest that occurred during an anti-corruption protest the year before. Fulton stated that he and his friends intended to use this charge as an excuse to act out violently.

Audio File No. 021211-CHS-AND-COX 10.06.17 (12.02.11)

1:23:55°

SCHAEFFER: And then you got to worry about loose cannons like Aaron (FBI).

J.R. (FBI): Well, well, Bill (FBI) and Aaron (FBI) are ready to go.

1:24:25°

SCHAEFFER: I think they are too hedonistic.

3:35:00°

J.R. (FBI): (J.R. (FBI) said that Bill (FBI) had talked to him about) getting ready to come up and that he would be ready. He needs a two day notice to, to a, to come to a, to get all his men up to Fairbanks to defend, defend you on, on this, ya know, on this February 14th on your court date. Um, he said they're ready, they're ready to go. He can have his guys rallied and rounded in two days. And, and, um, ya know, "Just let Schaeffer know. Get the word, get the word to him somehow."

2:25:10°

SCHAEFFER: I guess that's kind of the thing. I'm getting out of here. [This tape was not played for the jury.]

-- ATTEMPT 5, Disable Vehicle --

At this, Movant expressed his intent to leave the country for his safety, packed up his wife and children, and drove toward Canada. Olson caught up to Movant the next day and disabled Movant's vehicle.

(From a letter from Attorney Robert John to Attorney Suzanne Elliott)

LAW OFFICE OF ROBERT JOHN
P.O. Box 73570
Fairbanks, Alaska 99707

One thing that surprised me about the government's response to the motion to suppress and to dismiss was that the government made little effort to dispute the facts. There was no affidavit from J.R. Olson or anyone else to dispute what Schaeffer said. Perhaps that is not surprising since the government's own records evidenced the trucker ruse and Schaeffer's exhausted state at the time. In any event, because the government bears the burden of proof (at least as to the warrantless-search-and-seizure issues) and Schaeffer had thoroughly articulated his actual and reasonable expectations of privacy in his affidavit, and there did not appear to be a dispute about the underlying facts, we did not request an evidentiary hearing. As I recall, when we argued the motion to the Court, AUSA Skrocki did not address the issues in the motion, but instead went on and on about what a dangerous man Schaeffer was.

Having now updated the research, I continue to be struck by the fact that the action of J.R. Olson in restraining Schaeffer to Fairbanks are above and beyond anything I found an "invited informer" or other government agent being allowed to do. Olson certainly must have panicked when Schaeffer announced he was leaving on February 19, 2011, but Olson's desire to save himself from punishment cannot justify Olson removing the battery from Schaeffer's vehicle and perpatrating the trucker ruse to keep Schaeffer in Fairbanks till March 10. ...

Now stranded and having been led to believe that Fulton would act out violently given the slightest excuse, Movant accepted Olson's offer to arrange a ride out of Alaska with a "trucker." There was no trucker, it was simply a ruse to keep Movant from finding some other way to leave the country.

The "trucker" was "delayed" for several made up reasons. During this time Olson told Movant that he needed to compile a list of officials. Movant, however, was only interested in getting out of the country. The FBI acknowledged this:

(From Sentencing Memorandum, page 19)

In an e-mail dated March 3, 2011 -- a mere 7 days before the arrest of Mr. Cox, SA Sutherland wrote:

Any idea of Cox's intention with the "list," especially in light of the fact that he is leaving? Is this the target list of LE and judges? Yes, the list of LEO's and targets. No known intention other than more potential deterrents. (emphasis added)

-- ATTEMPT 6, Weapons in Truck --

Olson also tried to get Movant to agree to purchase weapons. While it was talked about, no agreement was reached as meeting the

"trucker" and leaving was still Movant's singular objective. The "Polar Pen" team arranged a "take down" that accommodated this. Olson was to give Movant a ride to meet the "tricker" then offer him a silenced pistol and a hand grenade to purchase.

In audios kept out of trial, Olson is heard calling his FBI handler prior to the "take down" and explaining that the subjects haven't agreed to purchase the weapons and inquiring as to what he should do with them if they are rejected. In the minutes leading up to arrest Movant still had not agreed.

(From Trial Exhibit 38-01, pages 5 and 6)

MR. OLSON: Well, it's a -- these are pretty cool, though. I mean, they're pretty sexy. Wait till you see this. Um, but -- if he doesn't, uh -- if we don't like them, you know, I -- I told him, I said, well, I'll take them. I said, I don't -- I don't know if they're going to go over. He says to make, uh, you know, what -- basically he doesn't want to go back to -- or back to Anchorage with them, so he'll -- he'll kind of take whatever we give him.

MR. COX: Hmmm! [skeptical]

MR. OLSON: ... he does have grenades. And they're 50 bucks apiece. He'll come down on those and they're the, uh -- what are they? The M74s?

MR. COX: I don't know.

Once they arrived at the idling 18 wheeler that Movant believed was his ride, Olson placed the weapons in the vehicle to be inspected. But before they could be accepted or rejected Olson exited the vehicle and crawled underneath it. Moments later the FBI swarmed Olson's pick-up and Movant was arrested.

In sum, the Polar Pen Task Force, repeatedly inserted undercover informer/operatives giving Movant funds, gifts, attending his rallies, trying to induce Movant to make any agreement to violate State or Federal law, enter into any conspiracy to violate any Federal or State laws, or agree to or plan any acts of violence.

These efforts were hugely unsuccessful even after using fear, threats, and duress to try to induce Movant to agree with operatives and join the proffered conspiracy.

When Movant would distance himself from those agent provocateurs, and after he declined various offers, new undercovers were brought in. Bill Fulton was under the direct control of a female FBI Agent

assigned to Polar Pen and working closely with AUSA's including Joseph Bottini, Nick Marsh, and others.

It is inconceivable that while being closely supervised by this female agent undercover operative Bill Fulton would have wandered off range and target to join United States Senatorial Candidate Joe Miller's campaign staff, become his chief of security for the campaign and promptly arrest, handcuff and throw to the ground prominent member(s) of the Alaskan Anchorage press and by so doing destroy Candidate Miller's huge lead resulting in a 10,000 vote loss to Lisa Murkowski. This happened and will be explained a little later.

When Movant rejected all offers to possess or buy illegal firearms or attack state or federal officials, he was first charged in state court by the Alaskan State Police Polar Pen Task Force. When Movant was able to have these outrageous charges dismissed and decided to leave the State, Federal FBI agents then devised a scheme to prevent Movant from leaving and set up the following situation.

Movant was told by J.R. Olson (a person offered over 300,000 dollars and immunity from numerous state and federal offenses) that he had a driver to take him out of state and that they needed to go meet the driver.

Olson was told to bring illegal weapons to that meeting even after telling his FBI handlers that he did not believe Movant would accept the weapons. As soon as Olson was in the truck with Movant, and handed them weapons, he jumped out of the truck and hit the ground as agents arrested Movant on those firearms charges.

Olson stole over 30,000 in gold from Movant and his wife while helping Movant move from his home. Agents did nothing to investigate this theft. Movant made numerous efforts to tell state and federal officials that his life was in danger and that there were people pushing him to violence. This fell on deaf ears, because the same police and U.S. Attorneys and others from whom he sought help were involved in the Polar Pen push to coerce and induce Movant to commit illegal acts. The AUSA's and FBI agents continued to violate Brady, Giglio, Kyles mandates, continued to conceal their misconduct and deny Movant due process of law leading to a manifest miscarriage

of justice and an illegal conviction during the very time this Court was investigating their related misconduct.

-- "Polar Pen" Patterns of Misconduct --

It is the position of Movant, as well as several attorneys familiar with the case that the "Polar Pen" team impermissibly used coercion, death threats, and actual physical violence in an attempt to induce the commission of a crime. Movant, having no criminal past or association with the rougher elements of society, and having been raised in a loving and law abiding home, naturally was overwhelmed with fear. Frankly put, Movant may have fared better had he not been such a square.

The Polar Pen team kept out the recordings of the death threats being made, failed to comply with their Brady, Kyles, Giglio obligations regarding the first two informants as well as Movant's interactions with nonfederal agencies, kept out all state of mind evidence and barred any argument about their motive for bringing the charge. They then made knowingly false statements to the Court in motions practice and to the jury in opening and closing arguments. All of which deprived Movant of a fair trial.

Were it not for Movant's inability to print files from the case files and discovery, this Statement of Facts would have contained a far greater number of corroborative exhibits.

The state of mind evidence was especially crucial to defend against the conspiracy to murder federal officials charge as there were no overt acts or specific object to support that count, only an alleged hypothetical willingness to do something to somebody someday. Had the jury been able to review even just the little bit of evidence presented in this motion, they would have known that Movant was scared and running for his safety, specifically because he WOULD NOT agree to commit a crime. Movant believes this would have changed the outcome of the trial.

Movant also believes that the government and its undercover CI's/operatives used illegal coercion, threats of violence, and an actual violent knife wielding confrontation to induce fear in an attempt to cause Movant to commit federal crimes. Moreover, the

government orchestrated a scenario where Movant believed a special government team or "squad six" would create a confrontation where he and/or his family could be killed. This government squad did not exist, but government actors made Movant reasonably believe that it did, and he became more fearful of the government and certain undercover operatives. Meanwhile, another government operative was preying on the fear to induce Movant to violate federal laws. Had the government made proper Brady, Giglio disclosures as to the extent of these threats, acts of violence, potential threats against Movant, he would have had a duress - justification defense. See: Lam v. Kelchner, 304 F.3d 256 (3d Cir. 2002)(Threats by undercover operatives to induce illegalities by threats of violence to defendant); U.S. v. Gomez, 92 F.3d 770 (9th Cir. 1995) and U.S. v. Contento-Pachon, 723 F.2d 691 (9th Cir. 1983)(Duress and Justification defenses closely related); Arizona v. Fulminate, 492 US at 287 ("Coercion need not depend on actual violence by a government agent; a credible threat is sufficient."); Schneckloth v. Bustamonte, 412 US 218 (1973) (defendant's confession involuntary if the government's conduct causes the defendant's will to be overborne and his capacity for self-determination critically impaired) at 226.

Movant will not be alleging outrageous governmental misconduct during the Polar Pen entrapment reverse sting operation because, like "Big Foot," a finding of outrageous conduct appears to be a rare animal. See U.S. v. Dyke, 718 F.3d 1282 (10th Cir. 2013) citing U.S. v. Russell, 411 US 423, 429 (1973) and Hampton v. U.S., 425 US 484, 489 (1976); and see U.S. v. Payner, 447 US 727 (1976). However, Movant does contend that governmental misconduct, use of coercion, Brady, Giglio supra violations, knowing use of uncorrected perjury, false statements to the jury in opening and closing arguments, and mischaracterizations to the trial court in suppression hearings and motions in limine deprived Movant of fair defenses and violated other protected rights of your Movant. See Payner, at Id. at 737 N.9, "...[T]he limitations of the Due Process Clause...come into play only when the government activity in question violates some protected right of the defendant."

Had the government made proper Brady-Giglio disclosures, had

it not engaged in knowing use of perjury or false statements, then Movant would not have been deprived of viable defenses, where even if there was the necessary mens rea or actus rea for these offenses (which Movant denies), the government's conduct forced the Movant to engage in said conduct or induced him to commit a crime he was not predisposed to commit.

In Sorrells v. U.S., 282 U.S. 435 at 442 (1932), cited in Sherman v. U.S., 356 U.S. 369 (1958):

However, a different question is presented when the criminal design originates with officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute.

Thus, Movant will show that said governmental misconduct deprived him of his due process rights to present viable entrapment, duress-justification defenses, and an imperfect entrapment defense at sentencing. See: U.S. v. Staufer, 38 F.3d 1103 (9th Cir. 1994) (doctrine of sentencing entrapment applied); and U.S. v. McClelland, 72 F.3d 717 (9th Cir. 1995) (Remand for resentencing based on witness [undercover agent] conduct gave rise to imperfect entrapment defense and a proper sentence reduction).

Movant will assert Brady, supra, Giglio, supra, Kyles v. Whitley, 514 U.S. 419 (1995); Napue v. Illinois, 360 U.S. 264 (1959); Miller v. Pale, 386 U.S. 1 (1967); U.S. v. Agurs, 427 U.S. 97 (1976); and U.S. v. Bagley, 473 U.S. 667, violations where use of known false evidence, false statements presented by the government to the jury in opening and closing arguments and to the trial court prevented Movant from presenting an effective defense. Without said cumulative violations Movant asserts the outcome would have been different.

For example, AUSA Lamoureux told the jury in opening argument, "You'll hear that Schaeffer Cox told people that he believed there was a plot by the federal government to kill him and his family... We're going to prove to you that's nonsense." Tr. Tran. 2-4 Lines 12-18. Yet FBI Agent Sutherland testified when Movant was arrested, the first thing he did was assure Movant his wife and children were safe and would not be harmed because he had heard Movant state on numerous occasions that he thought there was some type of federal

assassin team looking to kill him, and Agent Sutherland knew he (Movant) had said he believed federal agents wanted to do harm to him and his family.

(From Trial Transcript, pp. 13-213 and 13-214)

Q What did you tell Schaeffer Cox right at the beginning of the interview with him?

A The two things that I remember telling him at the beginning were that his family was safe and we would work very hard to make sure that they stayed safe. And then after that, I told him that I heard him state on numerous occasions that he thought there was some type of federal assassin team that was looking to kill him...I -- I knew that he had said before that he believed federal agents wanted to do harm to him and his family...we understood that at the Barney house there were several women and -- and numerous children and that we would respond accordingly. And I used that as a caveat to let him know that I was being very cautious about treating his family and that they would be safe...

Had the government properly met its Brady-Giglio, supra, obligations and not made use of known false evidence -- testimony Movant could have shown that this fear of federal agents wanting to harm him and his family was a scenario created by the Polar Pen Reverse Sting Team, and said fear was continually bolstered and reinforced by FBI undercover agents in an attempt to induce, through fear and coercion, illegal acts by Movant. However, it actually induced fear-flight instead of fear-fight.

The same is true of the use of threats of violence and actual violence with a knife when Fulton attacked Movant and his associate Les Zerbe, though in closing and throughout trial the prosecution completely denied this, claiming it was a lie made up by Movant on the stand.

There were no crimes committed. Instead, the government piles inference upon inference based on foolish but protected 1st Amendment speech that was induced by threat, fear, and coercion. See: Ingram v. U.S., 361 U.S. 672 (1959); U.S. v. Kerley, 838 F.2d 932, 939 (7th Cir. 1988).

Indeed, even the District Court was confused at the conclusion of the Polar Pen team's case.

(From Trial Transcript, pp. 15-31 and 15-32)

THE COURT: Well, here's the thing, that I guess is a little troubling to me. There were no federal agents that we know of. There might as well have been little green men from Mars. And so if it's -- is the existence of federal agents or the likelihood of federal agents coming to arrest Mr. Cox -- is that a condition precedent that has to be met here with some evidence in order to get to a conspiracy --

MR. SKROCKI: We don't --

THE COURT: -- that's realistic -- you know, realistic conspiracy?

The District Court was confused because, just like judges in all 4 related political cases, he had been misled by the "Polar Pen" AUSAs. If the court was confused by the Polar Pen team's misrepresentations, it is quite reasonable to infer that the jury may also have been confused.

Movant was not allowed to present state of mind or motive evidence as an exception to hearsay due to the government's successful motions in limine. There were 200 hours of covert recordings, 3 to 90 second clips were used at trial. There were hours of Movant repeatedly rejecting the government's agents' pushes to induce Movant to engage in purchases of illegal weapons or conspiracy to harm federal officials; even after said agents created the illusion, which Movant reasonably believed, that there were federal actors who wished to harm Movant and his family.

Movant was not allowed to present state of mind -- motive statements he made in an uncounseled 8½ hour debriefing by FBI Agent Sutherland and a state police, Scott Johnson.

How unusual is it, that the government did not want to allow the recordings between under cover operatives and Movant to go to the jury? How unusual is it that the government did not want an 8½ hour uncounseled interrogation between the FBI and your Movant to go to the jury?

CI J.R. Olson's theft of \$30,000 worth of gold coins belonging to the Cox family is an example of ongoing Polar Pen misconduct. Mr. Rolly Port's investigative reports on the theft compiled much evidence. The theft itself was captured by J.R. Olson's own recorder on the morning of February 19, 2011 as he was helping the Cox's move out of the country. J.R. Olson is heard picking up a box and saying, "Wow, this is heavy. What is it?" Mr. Cox replies, "It is

pennies" and that "It is a shame when inflation has the copper in a penny worth more than one cent." Then you hear Olson set the box in the bed of his truck, open the taped lid, and rifle through its contents. While he is doing this you hear Mr. and Mrs. Vernon approach Olson and ask him what he is doing. Olson replies that he is just helping these guys load up, as Mr. and Mrs. Vernon observe him putting several rolls of coins in his pockets. After arriving at their destination several minutes later, Olson is heard removing the box from his truck and handing it to Mr. Barney, who comments that the box is heavy. Olson replies, "Yeah, it's gold coins." Later, when the coins were counted, four rolls (or 24 coins worth \$30,000) were missing. The silver coins had been left, there never having been any pennies in the box.

Investigator Rolly Port put together audios, affidavits from witnesses, with receipts for the coins and other evidence which he then attached to a complaint that he filed with the Alaska State Troopers.

The Troopers went to speak to Appellant's wife, Marti Cox, about the theft. Mrs. Cox told them she wanted to talk to them but would like to have her attorney present. The officers told her they would not speak to her with her attorney or investigator present, then left.

The Troopers then told Mr. Rolly Port that if they were unable to prove that Olson stole the gold, that they would file charges against Marti Cox. Given the gravity of this threat and the fact that Marti Cox was now the sole provider for her and Mr. Cox's two young children, she agreed to not press the complaint.

Normally police do not decline to speak to a theft victim if counsel is present. Moreover, police do not tell a complaining victim that they will be prosecuted if the police are unable to prove the allegations after an investigation. This is the conduct of police who want to kill an investigation, not conduct one.

Olson's FBI handlers should have wanted to know if he had in fact stolen the gold while under their supervision. Ordinarily a polygraph would have been required and an investigation conducted.

Such was not the case here.

Once the police had succeeded in getting Marti Cox to drop the complaint, the "Polar Pen" prosecutors filed a motion in limine to bar the defense from questioning Olson about his profitable theft, thus depriving the accused of highly relevant impeachment material that would have reflected not only on Olson but on the FBI's ability to control him.

If someone had filed a theft complaint against one of Movant's key witnesses, and Movant had threatened that "someone" in order to get them to drop the theft complaint, Movant would have been charged with obstruction of justice.

Also, if Movant was ethical, he would have reviewed the facts and confronted the witness about the theft. Had he found that his witness had in fact engaged in theft, he would have withdrawn the witness or at least advised the Court and adverse parties.

Movant has found partially redacted texts and emails that appear to show an inappropriate sexual banter between CI-Bill Fulton and his handler S/A Sandi Klein. It is, however, the redacted portions which are of greater concern. The defense was denied access to unredacted versions under the guise of "immateriality" as determined by the "Polar Pen" prosecution team. Remember that these very prosecutors were caught concealing their wrongdoing in related cases during this same time by claiming "immateriality" on discoverable material. (See this Court's [Judge Sullivan's] opinions, 715 F.Supp.2d 1 (USDCWash.D.C. 2009); 842 F.Supp.2d 232 USDCWash.D.C. 2012.)

It is reasonable to suspect that the unredacted texts and emails would reveal further inappropriate behavior by CI-Bill Fulton and/or the failure of S/A-Sandi Klein to properly supervise him. Bill Fulton is the operative who made death threats against Movant for refusing to plot a crime, even going so far as to hold a knife to Les Zerbe's throat and threatening to kill him if Movant continued to refuse to plot a crime with CI-Fulton. (See Defense Sentencing Memorandum page 23 et seq.)

Interestingly enough, during this "Polar Pen" time frame, CI-Bill Fulton "volunteered" to assist U.S. Senatorial candidate Joe Miller

who had just won the GOP primary. CI-Bill Fulton, provided "security" for the Miller campaign. Then, at an event in Anchorage, CI-Bill Fulton proceeded to tackle members of the press and handcuffed them. This turned the press against Miller in such a powerful way that his campaign took a nose dive and he lost the general election to moderate candidate Lisa Murkowski, who won on a write-in campaign. Movant asserts that a close examination of communique's between members of the Polar Pen Task Force and the Alaskan U.S. Attorney's Office and its members and the Justice Department would reveal what many have previously said: That the Polar Pen Task Force's agenda is political.

The Polar Pen Task Force has changed control of the United States Senate and course of the nation and the Polar Pen Task Force has thus elected both of Alaska's United States Senators. AUSA Bottini and the Polar Pen Task Force were never fighting political corruption. As this Court has noted, the government, its prosecutors and investigative agents are corrupt. They did not follow the law, statutes, agency policy or court rules in their quest for their own political objectives. This Court gave what many felt was a less than adequate sanction-punishment. This Court never knew the extent of the misconduct of the government and its agents.

If the redacted or otherwise undisclosed material contains evidence of the "Polar Pen Team" using CI-Bill Fulton as an agent provocateur to sabotage a U.S. Senatorial race, the prosecution may well claim that this is "not material." However, under Giglio this would be discoverable impeachment material as it would demonstrate that this prosecution team was concerned not with investigating and prosecuting criminal violations but rather with controlling the political landscape. This would have reflected on the integrity of the entire Anchorage U.S. Attorney's Office as well as their prosecution of Movant, who had been a political candidate and had won 38% of the vote in the last election. In further keeping with the "Polar Pen" prosecution team's pattern of pre-emptively blocking revelation of their misconduct, a motion in limine was filed which prevented the defense from asking any questions or making any argument with

respect to the prosecution's motives for bringing this case.

Perhaps of greater interest still is the fact that CI-Bill Fulton surreptitiously recorded several of his debriefing sessions with the "Polar Pen" team, FBI handlers, and others. In light of this, it is reasonable to infer that he may have also recorded his phone conversations.

As thoroughly detailed in Mr. Port's investigative reports, when the "Polar Pen" prosecutors learned that Fulton had recorded the debriefings, they demanded that he hand over all of the tapes to the U.S. Attorney's Office immediately. But, when the defense team demanded that the tapes in the government's possession be turned over as part of discovery, the "Polar Pen" attorneys returned the tapes to CI-Bill Fulton, who they claim destroyed them, leaving no copies or other means by which to satisfy the defense's discovery requests.

Reasonable inferences from these facts point to even more issues worth consideration. Had the prosecution complied with their constitutionally mandated discovery obligations these issues and more would have been much more specifically and fully developed for both the defense and the public to make use of.

In this way, Movant became a targeted Republican/Libertarian political activist by the Polar Pen Strike Force attempting to build cases for prosecution on U.S. Senator Ted Stevens, U.S. Congressman Don Young, Tea Party Senatorial Candidate Joe Miller (who nearly defeated moderate GOP Senator Lisa Murkowski), Victor Kohring, Speaker of the Alaskan House of Representatives, and Peter Kott, former State Representative. All this was the work of AUSA's Nick Marsh and Joseph Bottini, with the same FBI agents, and many of the same confidential informants who were and are tainted by Polar Pen.

In fact, Movant was the last case developed and prosecuted, well after FBI Agent Chad Joy's complaint to OPR gained attention and caused the extensive investigation of Operation Polar Pen, leading to Senator Stevens' conviction being ultimately overturned.

Once it became apparent that the misconduct would be made public, AUSA Joseph Bottini removed his and Marsh's names from Movant's case. The Court was still under the impression Bottini was trying the case

movant's case, ~~on the first day of trial~~ The Court was still under the impression Battini was trying the case until, on the first day of trial, ~~Movant's case. This was a few weeks before the trial.~~ Movant's ~~Battini withdrew and proceeded to sit~~ ^{right} behind Mr. Skracki and direct the arrest was just one day before the 9th Circuit Court's opinion ^{prosecution re-} order in United States v. Kohring, 637 F.3d 895, 2011 U.S.App. ^{the galler} LEXIS 4763, on March 11, 2011. (AUSA Marsh committed suicide ^{for the} shortly after learning that the Polar Pen team was going to be ^{remainder} investigated by OPR.) ^{of the tr.}

For the AUSA's directing the FBI agent-controllers and confidential informants in Senator Stevens' case, in U.S. v. Victor Kohring's case, infra, in Peter Kott's case, 423 Fed.Appx. 736, 2011 U.S.App. LEXIS 6058, if impeaching and/or exculpatory Brady-Giglio-Kyles materials were generated during those investigations, it was common practice that such evidence would be (1) suppressed, (2) concealed, or (3) deceptive fabrications used to prevent such evidence from use or disclosure, this allowing known use of uncorrected perjury or false evidence to be used and even vouched for and bolstered by prosecutors. This misconduct has been found to "systematically permeate the work of this prosecution team" by the Special Attorney Henry F. Schulke, III, Esq., appointed by this Court in the Stevens case and is detailed in his 686 page report issued thereafter (see In re Special Proceedings, U.S.D.C. for Dist. of Columbia, 842 F.Supp. 2d 232, 2012 U.S. Dist. LEXIS 15656).

Since Movant's case was developed during the same time and by the same "Polar Pen" prosecution, FBI Agents, and some of the same Confidential Informant actors, the tactics used in regard to the Brady-Giglio-Kyles favorable evidence or impeachment evidence were the same. Suppression, concealment, false statements, and use of known perjured testimony are the hallmarks of this prosecution team and of this present case.

Evidently, once it was apparent that their investigative, prosecutorial, and police misconduct was being either investigated or publicly disclosed, subjecting said officials to sanctions, they doubled down. This case, which was primarily litigated AFTER they were caught, contained more, not less, egregious, willful, flagrant bad faith misconduct, as it was then all the more important that said bad faith actions not come to light in Movant's case as well.

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It is this misconduct which brings Movant's case under the same Polar Pen investigation and, coupled with evidence that suggests substantial Brady-Giglio-Kyles violations, requires action by this Honorable Court.

Movant was not charged with fraud, theft, robbery, tax evasion, or drug violations. He was charged with simple weapons possession offenses. Only after rejecting plea negotiations was he charged with a conditional future conspiracy to kill unknown Federal Officials. No acts of violence or attempted violence were proven or even alleged. The conviction was based on the prosecution's theory that "someday when he's strong enough," Movant would commit a crime. Movant was not even arrested until he tried to flee the country with his wife and two young children after receiving death-threat-ultimatums from CI Bill Fulton. For over two years leading up to his arrest, Movant had refused the overtures of undercover informants and had distanced himself from one agent provocateur after another, until their efforts eventually escalated to expressed threats to kill him if he continued to refuse their advances. The government spent millions of dollars on failed attempts to induce Movant to plot a crime in the years leading up to his attempted departure and subsequent arrest.

Movant has spent his entire net worth, over \$400,000, defending himself from these charges. He has lost all he has including his home, business, rental properties, and all other hard and liquid assets. His parents and extended family are also on the verge of bankruptcy from trying to help exonerate their son, brother, husband, and father. Movant unequivocally maintains his actual innocence in this case, especially with regard to the conspiracy charges or any intent to harm others.

Movant is in dire need of Mr. Schulke's Report to convince the 9th Circuit of the egregious nature of the government's misconduct, and further, to file a complaint to the DOJ's Office of Professional Responsibility, and to confirm, if able, his allegations of Brady-Giglio-Kyles violations warranting dismissal of his convictions.

WHEREFORE, based on the following allegations of suppressions of favorable evidence, and governmental misconduct by the Polar Pen Strike Force, as described and asserted, but not limited to below, to wit:

1. The government's refusal to disclose Aaron Bennett's role as a CI when asked to, even though he had worked the case for over a year. The government's refusal to disclose Christopher Minino, who was their original undercover informant.

2. The government's refusal to turn over any 302's, audio recordings, or other evidence generated by Bennett though he was a key figure in the case and was even called as a witness by the defense.

3. The government's failure to properly supervise Bill Fulton resulting in what was apparently an inappropriate sexual relationship between Fulton and his female FBI handler Sandi Klein.

4. The government's redaction of text messages between Fulton and Agent Klein that evidenced their sexual interaction.

5. The government misleading the District Court as to the materiality and relevance of these sexually explicit messages between CI and handling agent.

6. The government's failure to properly supervise CI J.R. Olson (who has prior convictions for evidence tampering) by allowing him to switch his recording device on and off during interactions with the subjects of investigation.

7. The government's refusal to officially disclose the type of recorder used and that it could be switched on/off or paused by the CHS/CI while in the field.

8. The government editing out exculpatory sections of audio recordings and then copying the edited files into a different format so as to prevent the defense team's expert from identifying the digital seams forensically.

9. The government refusing to hand over the un-cut original audio files when asked to.

10. The government misleading the District Court as to the difference between the altered audio files the defense team already

had and the un-cut originals, in original format, that the government refused to hand over.

11. The government's failure to properly supervise CI J.R. Olson by allowing him to steal \$30,000 worth of gold coins from Marti Cox on 2-19-11.

12. The government threatening to cause Marti Cox "trouble" if she pressed the police to look into the matter of the stolen gold.

13. The government's witness tampering by relaying "facts" about "the real Schaeffer Cox" that were not true or supported by evidence to several witnesses prior to their testimony.

14. The government's witness tampering by threatening the Ft. Wainwright Military Police with legal retaliation if they testified for the defense.

15. The government's refusal to turn over the police reports from when Movant reported the violent intentions of some members of the community (who turned out to be CI's) to Alaska State Trooper Rex Leath.

16. The government's refusal to turn over the police reports from when Movant inquired of Alaska State Trooper Burk Barak (sic) about the Federal Agents wanting to kill Movant. (Movant had been warned by the Ft. Wainwright Military Police that Federal Agents had expressed an intent to shoot Movant when they got the opportunity in order to "fix the Schaeffer Cox problem.")

17. The failure of the government to properly supervise CI Bill Fulton by allowing him to actually physically attack Les Zerbe with a hunting knife because he and Movant refused to join him in plotting a crime. And then to hold the knife to Les Zerbe's throat while demanding that Movant agree to commit a crime. (Movant and Mr. Zerbe still refused to agree but after this assault Movant was in fear for his life from Fulton.)

18. The government's refusal to properly supervise Fulton by allowing him to make continued death threats against Movant in an effort to motivate Movant to plot a crime, such as the threat recorded on Feb. 5th, 2011.

19. The government's failure to properly supervise CI J.R. Olson by allowing him to remove the battery from Movant's vehicle and promise a ride from a fictitious trucker so as to leave Movant stranded, thus preventing him from following through with his express plan to leave the country because of Movant's fear of Bill Fulton and out of a desire to avoid any sort of trouble.

20. The government's bad faith deception of the jury by emphatically claiming in closing arguments that "I submit to you, folks, you've got five hours of audio, okay. You try to find a statement anywhere about 'Bill Fulton's trying to kill me, Aaron Bennett's trying to kill me.' You're not going to find it. You can look through all the documents you want. You can go through all 900 of them. You're not going to find it." This after using deception, lies, and fraud upon the Court to hide their own recorded evidence.

21. The government's misleading the trial court as to the need for motions in limine that precluded questioning of the government's motive for bringing this case or informant J.R. Olson's gold theft and evidence tampering.

Conclusion and Prayer For Relief

While being investigated and sanctioned for their egregious prosecutorial misconduct, AUSAs Joseph Bottini, Nicholas Marsh, and others working at their direction displayed utter contempt for this Court and its leniency when, in addition to refusing to accept responsibility for their wrong doing once they were caught, they managed to conceal the majority of their criminal acts from this Court and from Mr. Schulke's investigation, thus allowing them to expand the scope and severity of their habitual fraud and deceit in violation of Federal Rule of Civil Procedure 60(b)(3) & (d)(3) Fraud on the Court.


Their conduct can be likened to a bank robber who was let out on bail only to rob more banks. But instead of just stealing money they are stealing people's lives and reputations, destroying families, and depriving the voters of their right to free and fair elections.

The reopening of this investigation is warranted because, by fraud and deceit, Mr. Schulke was deprived of the information he needed to make an informed recommendation as to what corrective and/or punitive actions should be taken. And likewise this Court was deprived of information it needed to make just and equitable decisions. As a result, the Polar Pen misconduct is being allowed to continue, more crimes are being committed, and additional parties are being harmed (including your Movant).

In light of this your Movant respectfully requests that this Honorable Court:

- 1) ORDER the Clerk of Court to provide Movant with a copy of Mr. Schulke's report (with whatever provisos the Court deems necessary).
- 2) REOPEN In Re: Special Proceedings, after finding that Movant has shown a reasonable probability that Joseph Bottini and others foisted fraud on the Court during the pendency of the previous investigation.
- 3) GRANT LEAVE of Court for Movant to submit additional evidence as it is discovered and after reviewing Mr. Schulke's report. And such other relief as this Court finds needful.

Respectfully Submitted,


 Francis Schaeffer Cox, #46179-006
 USP Marion
 PO Box 1000
 Marion, IL 62959

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

Francis Schaeffer Cox,) Misc. No. 9-0198 (EGS)
)
Interested-Affected and) Hon. Emmet G. Sullivan
Injured Person, a) U.S. District Judge
Non-Party Petitioner-Movant,)
)
In the Matter of:)
In Re Special Proceeding) Filed: <u>5-26-14</u>

CERTIFICATE OF SERVICE AND VERIFICATION OF FACTS


COMES NOW Francis Schaeffer Cox, being a natural citizen of the United States, over the age of majority, and subject to penalty of perjury under 28 USC §1746, and as an incarcerated indigent prisoner, proceeding in propria persona, pursuant to F.R.A.P. 4(c), Houston v. Lack, 108 S.Ct. 2379 (1998) and so certify that the facts presented in my attached Motion For Access To "Report To the Hon. Emmet G. Sullivan Of Investigation Pursuant To the Court's April 7, 2009 Order" and/or Interested-Affected and Injured Non-Party Petitioner's Motion To Reopen Special Proceedings Under FRCP Rule 60B(3) & (d) "For Fraud Upon the Court By Certain Parties of Interest" are true and correct to the best of my knowledge and beliefs;

FURTHER, I so certify I have sent an original to the Clerk of Court for this U.S. District Court for the District of Columbia, correctly addressed with proper U.S. First Class Postage duly affixed thereto for posting in the U.S. First Class mail: by personally delivering same to Henry Rivas or Mr. Burgess for proper Legal Mail posting as per federal BOP Policy, that same is filed once delivered to proper FBOP officials on this 26th Day of May 2014, and the same shall be served on all interested parties electronically by the Clerk of Court.

So swear I, under penalty of perjury.

Sworn & Attested below
 to be my thumb print
 in absence of a notary.

Thumb print of
 Schaeffer Cox


 Francis Schaeffer Cox, pro se
 FBOP Reg. No. 16179-006
 U.S. Penitentiary -- Marion
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 Marion, Illinois 62959