

Donald Stone, FOIA requester appeals the Decision of the DOJ in

Subject: Lynne Battaglia (Former U.S. Attorney for Maryland)
Case No: EOUSA-2018-004761

August 12, 2018

The FOIA requester Donald Stone (Stone) is using FOIA for the very reason it was created and the DOJ claims of any Exemptions under FOIA are forfeited because of the DOJ's prior misconduct:

It is simply disingenuous that the alleged misconduct of Lynne Battaglia, U.S. Attorney for Maryland (1993-2001) is protected by any FOIA Exemptions.

FOIA “was enacted to facilitate public access to Government documents” and “was designed to ‘pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.’” Dep’t of State v. Ray, 502 U.S. 164, 173 (1991) (quoting Dep’t of Air Force v. Rose, 425 U.S. 352, 361 (1976)). Because of FOIA’s “goal of broad disclosure,” the Supreme Court has “insisted that the exemptions be ‘given a narrow compass.’” Milner v. Dep’t of Navy, 131 S. Ct. 1259, 1265 (2011) (quoting Dep’t of Justice v. Tax Analysts, 492 U.S. 136, 151 (1989)); accord FBI v. Abramson, 456 U.S. 615, 630 (1982) (“FOIA exemptions are to be narrowly construed.”). FOIA’s “limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.” Dep’t of Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 8 (2001) (quoting Rose, 425 U.S. at 361).

Stone's FOIA request and this appeal attempts to examine the very suspicious relationship between Lynne Battaglia, U.S. Attorney and Gilbert Sapperstein and his known associate Charles Richard Longo Sr. two white collar criminals and/or alleged organized crime syndicate figures. *In Bennett v. DEA, 155 F. Supp. 2d 36 (D.D.C. 1999), the court ruled that persuasive evidence of a suspicious relationship between the source and the agency provided a public interest in disclosing records about him.*

The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed; U.S. Supreme Court in *NLRB v. Robbins Tire Co.* 437 U.S. 214, 242 (1978).

737 F.2d 84 237 U.S.App.D.C. 302 Carl STERN v. FEDERAL BUREAU OF INVESTIGATION, et al., Appellants. No. 83-1861.

The central purpose of FOIA is to "open[] up the workings of government to public scrutiny" through the disclosure of government records. *McGehee v. CIA*, 697 F.2d 1095, 1108 (D.C.Cir.1983). Congress passed this legislation in the belief that "an informed electorate is vital to the proper operation of a democracy." *Id.* at 1108-09. See *FBI v. Abramson*, 456 U.S. 615, 621, 102 S.Ct. 2054, 2059, 72 L.Ed.2d 376 (1982); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242, 98 S.Ct. 2311, 2327, 57 L.Ed.2d 159 (1978).

The higher the rank of the public official alleged to have engaged in misconduct, the greater the legitimate public interest in disclosure is likely to be.” *Providence Journal Co. v. Dep’t of Army*, 981

F.2d 552, 568 (1st Cir. 1992).

This FOIA request is focused on Lynne Battaglia, U.S. Attorney for Maryland (1993-2001) and her alleged corrupt practice of misusing DOJ resources to protect, promote, pander, and cover-up the alleged multiple federal felony offenses of a Gilbert Sapperstein (Deceased 2016) and his known associate Charles Richard Longo Sr. (Deceased 2011)

Lynne Battaglia as U.S. Attorney for Maryland, was one of the 93 U.S. Attorneys appointed by Clinton in 1993.

As U.S. Attorney for Maryland, Battaglia would be the most powerful federal law enforcement official in the State of Maryland and only a couple notches down from the more powerful upper level executive DOJ lawyers at DOJ headquarters in D.C. and the most powerful federal law enforcement officer in the USA, U.S. Attorney General, Janet Reno.

Reno, as head of the DOJ would possibly be the most powerful law enforcement official on planet earth, with unrestricted use of the FBI resources and under special circumstances the possible use of the U.S. military.

A sampling of Longo's alleged federal felony offenses were built around multiple federal bankruptcy fraud schemes and Longo's fleecing of the U.S. Dept. of Education and other entities out of an estimated \$12 million in student loans and victimizing approx. 2000 students in Maryland and/or Virginia and/or D.C. with impunity from prosecution while at times under investigation by both federal and state prosecutors. Attached is a sampling of Longo's alleged federal felony offenses dated Sept. 1994 (**(See ATTACHMENT 1 EXHIBIT A red annotations are the personal notes of Donald Stone)**)

Gilbert Sapperstein, Longo's known associate managed to steal and launder an estimated \$3.5 million from the Baltimore School Board from early 1990's to 2003 while both he and Longo and/or known associates at times were the alleged targets of DOJ and/or FBI investigations in Maryland and/or Virginia, and/or D.C. and/or Florida.

At some time in the early 1990's Sapperstein and Longo and certain associates joined forces and escalated their alleged criminal activities into more sophisticated and profitable criminal activities , such as alleged "Fraud on the Court" schemes, fraud on the U.S. Patent and Trademark Office, intellectual property fraud, securities fraud involving public offerings, and bank fraud across interstate lines under the alleged patronage and protection of Battaglia.

* Of Special Note: the requester Stone (as part of a FOIA request) was recently informed by the DOJ that the DOJ file on Gilbert Sapperstein went missing in 2001, the same year Battaglia left the U.S. Attorney for Maryland office.

In Stone vs. Warfield Sr. 98-14069-CIV-RYSKAMP, Stone provides clear and convincing evidence that the top DOJ lawyers in Maryland, Battaglia, her Chief of White Collar Crimes, Dale Kelberman and Thomas E. Scott Jr. U.S. Attorney for Southern District of Florida and other DOJ lawyers were caught lying and engaging in an alleged criminal conspiracy to conceal and to white wash the alleged multiple federal felony offenses of Charles Richard Longo Sr. (and simultaneously those of Longo associate, Gilbert Sapperstein and others known & unknown) as a " business dispute or civil matter" between Longo and Stone, which was a clear violation of their law enforcement statutory duty. (**See**

Attachment I Exhibit B red annotations are the personal notes of Donald Stone)

Additionally, this was an alleged “Fraud on the Court” scheme by officers of the court, the top level DOJ lawyers Lynne Battaglia and Thomas E. Scott Jr. U.S. Attorney for Maryland/Southern District of Florida and other DOJ lawyers from Maryland and Florida.

Thank God for FOIA, without the documents Stone obtained through a FOIA request, that were used to expose the alleged Fraud on the Court scheme by the DOJ in Florida, Stone would have been left twisting in the wind by the corrupt DOJ lawyers from Maryland and Florida.

Aoude v. Mobil Oil Corp., 892 F.2d 1115, 15 Fed. R. Serv. 3d 482 (1st Cir. 1989) (**“Because corrupt intent knows no stylistic boundaries, fraud on the court can take many forms.”**)

The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989)

In Stone vs. Warfield in 1998 all the DOJ lawyers Battaglia, Scott, Kelberman and the others were all “Officers of the Court”.

The misconduct of the DOJ lawyers Stone vs. Warfield Sr. 98-14069-CIV-RYSKAMP clearly and easily meets the five elements that comprise “Fraud on the Court”.

And The United States Court of Appeals for the Sixth Circuit has set forth five elements of fraud upon the court which consist of conduct: “1. On the part of an officer of the court; 2. That is directed to the ‘judicial machinery’ itself; 3. That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; 4. That is a positive averment or is concealment when one is under a duty to disclose; 5. That deceives the court.” Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993).

This FOIA request also raises additional questions concerning possible other “Fraud on the Court” schemes by the “Officers of the Court”, Battaglia and other DOJ lawyers and the alleged DOJ Bankruptcy Trustee misconduct in the handling of Longo's personal bankruptcy and two bankrupt entities allegedly controlled by Longo, National Training Systems and Shippers Choice and possibly interfering in the Maryland State Worcester County Circuit Court in Snow Hill, MD. lawsuit of Charles Richard Longo Sr. and Donald Stone Industries Inc. vs. Donald Stone CIV Action # 94CV0182 Docket No. SP 59/117.

Of special note in this particular Maryland State case, the two Maryland State judges involved in this case Thomas Groton and Theodore Eschenburg repeatedly refused to sign and exemplify their own court documents as requested by defendant Stone until the Chief Judge for the State of Maryland, Robert Bell intervened on behalf of Florida resident, defendant Donald Stone and forced Judge Eschenburg to sign and exemplify the documents as Stone had requested while the trial judge Thomas Groton continued to refuse to sign or exemplify his on court work product.

The Public Interest in this matter is great

As a general rule, demonstrated wrongdoing of a serious and intentional nature by a high-level government official is of sufficient public interest to outweigh almost any privacy interest of that official.

The higher the rank of the public official alleged to have engaged in misconduct, the greater the legitimate public interest in disclosure is likely to be.” *Providence Journal Co. v. Dep’t of Army*, 981 F.2d 552, 568 (1st Cir. 1992).

The Public Interest is great in this matter, this constitutes an alleged “Absolute Betrayal of the Public Trust” by top level DOJ lawyers and because of their misconduct the DOJ lawyers have forfeited any rights to privacy.

The allegations are that the top DOJ lawyers from Maryland and Southern District of Florida were allegedly conspiring with alleged white criminals and/or known members of organized crime to allegedly perpetrate fraud on the federal and state courts and on U.S. citizens, the 2000 documented victims of Longo in Maryland, and/or D.C., and/or Virginia and the unknown number of Maryland school children that were indirectly victimized by Gilbert Sapperstein's theft of approx. \$3.5 million from the Baltimore School Board early 1990's to 2003. The impact of Sapperstein's crimes against the Baltimore School Board are allegedly still being felt, 15 years after they were discovered.
<https://www.wbalv.com/article/i-team-city-schools-reviewing-older-records-linked-to-corruption-case/14928861>

Excerpted from: <https://www.justice.gov/oip/foia-guide-2004-edition-exemption-6>

One purpose that FOIA was designed for is to "check against corruption and to hold the governors accountable to the governed." (137) *Multnomah County Med. Soc'y*, 825 F.2d at 1415 (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978))

Indeed, information that would inform the public of violations of the public trust has a strong public interest and is accorded great weight in the balancing process. (138) See *Favish*, 124 S. Ct. at 1581 (stressing that there should be a "necessary nexus between the requested information and the asserted public interest that would be advanced by disclosure"); see also FOIA Post, "Supreme Court Rules for 'Survivor Privacy' in *Favish*" (posted 4/9/04) (discussing the importance of establishing an "actual connection" between the particular information at issue and the qualifying public interest articulated by the requester).

As a general rule, demonstrated wrongdoing of a serious and intentional nature by a high-level government official is of sufficient public interest to outweigh almost any privacy interest of that official. (139) See, e.g., *Cochran v. United States*, 770 F.2d 949, 956-57 (11th Cir. 1985) (nonjudicial punishment findings and discipline imposed on Army major general for misuse of government personnel and facilities) (Privacy Act "wrongful disclosure" suit); *Stern v. FBI*, 737 F.2d 84, 93-94 (D.C. Cir. 1984) (name of high-level FBI official censured for deliberate and knowing misrepresentation) (Exemption 7(C)); *Columbia Packing Co. v. USDA*, 563 F.2d 495, 499 (1st Cir. 1977) (information about federal employees found guilty of accepting bribes); *Chang v. Dep't of the Navy*, No. 00-0783, 2004 U.S. Dist. LEXIS 7021, at **21-24 (D.D.C. Apr. 22, 2004) (information about Naval Commander's nonjudicial punishment for involvement in accident at sea) (Privacy Act "wrongful disclosure" suit); *Wood v. FBI*, No. 3:02cv2058, 2004 U.S. Dist. LEXIS 5525, at **49-52 (D. Conn. Mar. 31, 2004) (identifying information linking FBI Supervisory Special Agent's name with specific findings and disciplinary action taken against him); *Lurie v. Dep't of the Army*, 970 F. Supp. 19, 39-40 (D.D.C. 1997) (information concerning "mid-to high-level" Army medical researcher whose apparent misrepresentation and misconduct contributed to appropriation of \$20,000,000 for particular form of AIDS research), appeal dismissed voluntarily, No. 97-5248 (D.C. Cir. Oct. 22, 1997); *Sullivan*

v. VA, 617 F. Supp. 258, 260-61 (D.D.C. 1985) (reprimand of senior official for misuse of government vehicle and failure to report accident) (Privacy Act "wrongful disclosure" suit/Exemption 7(C)); Cong. News Syndicate v. United States Dep't of Justice, 438 F. Supp. 538, 544 (D.D.C. 1977) (misconduct by White House staffers); cf. Perlman v. United States Dep't of Justice, 312 F.3d 100, 107-08 (2d Cir. 2002) (finding public interest, even though misconduct was not proven, because "a substantial amount of evidence shows [that former INS General Counsel] allowed former INS officials . . . to exercise improper influence" and "the degree of wrongdoing alleged is fairly serious") (Exemptions 6 and 7(C)), vacated & remanded, 124 S. Ct. 1874 (2004); Ferri v. Bell, 645 F.2d 1213, 1218 (3d Cir. 1981) (finding attempt to expose alleged deal between prosecutor and witness to be in public interest) (Exemption 7(C)), vacated & reinstated in part on reh'g, 671 F.2d 769 (3d Cir. 1982).

In *Cochran v. U.S.*, 770 F.2d 949, 956 (11th Cir. 1985), the court ruled that "the balance struck under FOIA exemption 6 overwhelmingly favors the disclosure of information relating to a violation of the public trust by a government official, which certainly includes the situation of a misuse of public funds or facilities by a Major General of the United States Army."

Additional information supporting Stone's claims of great public interest are as follows:

Rather, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred." Favish, 541 U.S. at 174.

Mere allegations of governmental misconduct places a heavy burden on a FOIA requester, Stone has met and overcome that burden when he caught the U.S. Attorney for Maryland and Southern District of Florida and other DOJ lawyers trying to allegedly perpetrate "Fraud on the Court" in Stone vs. Warfield Sr. in 1998 **(See Attachment I Exhibit B red annotations are the personal notes of Donald Stone)**

On the other hand, claims of a public interest in disclosure premised on unsubstantiated allegations of governmental misconduct are often given little weight. *See, e.g., Computer Prof'ls for Soc. Responsibility v. Secret Serv.*, 72 F.3d 897, 905 (D.C. Cir. 1996) (Exemption 7(C)) ("[W]hen governmental misconduct is alleged as the justification for disclosure, the public interest is insubstantial unless the requester puts forward compelling evidence that the agency denying the FOIA request is engaged in illegal activity and shows that the information sought is necessary in order to confirm or refute that evidence.").

A pre-Reporters Committee decision by the 11th Circuit followed Stern's analysis in giving great weight to the need to expose perceived violations of the public trust. In ordering disclosure of the identity of a high-ranking military officer involved in a scandal, the court observed that "court favors disclosure under the FOIA balancing test when a government official's actions constitute a violation of the public trust. . . We agree that the balance struck under FOIA Exemption 6 overwhelmingly favors the disclosure of information relating to a version of the public trust by a government official." *Cochran v. United States*, 770 F.2d 949, 956 (11th Cir. 1985).

Some other courts however, have been more willing to order disclosure of allegations about government misconduct. "In virtually all cases. . . disclosure of the information adduced in an agency investigation [of alleged employee misconduct] serves the public interest at least to the extent that it sheds light on the agency's performance of its official duties. . .

The higher the rank of the public official alleged to have engaged in misconduct, the greater the legitimate public interest in disclosure is likely to be." *Providence Journal Co. v. Dep't of Army*, 981

F.2d 552, 568 (1st Cir. 1992).

In a thorough examination of the issue, the Sixth Circuit concluded, in *Jones v. FBI*, 41 F.3d 238 (6th Cir. 1994), that “even where there is no evidence that the agency acted in bad faith with regard to the FOIA action itself there may be evidence of bad faith or illegality with regard to the underlying activities which generated the documents at issue. Where such evidence is strong, it would be an abdication of the court’s responsibility to treat the case in the standard way and grant summary judgment on the basis of Vaughn affidavits alone.” *Id.* at 242-43. The court further concluded that the threshold language of Exemption 7—that records be compiled for law enforcement purposes—was not meant to be the initial determinant as to whether records were truly protected by the exemption. Rather, the court pointed out that “Congress considered the enumeration of the specific bases for withholding material to be the principal means for narrowing the law enforcement exemption.” *Id.* at 246. The concern about over broad withholding should therefore be addressed by proper scrutiny of the claimed exemptions themselves and not by use of a blunt instrument at the threshold that could harm the other policies Congress deemed important.

The Second Circuit ruled that a former INS general counsel could not expect the same level of privacy in his senior level position that a lower level employee might enjoy. The court also found the counsel had been accused of serious wrongdoing. *Perlman v. Dep’t of Justice*, 312 F.3d 100 (2d Cir. 2002), *vacated and remanded*, 541 U.S. 970 (2004), *reaff’d*, 380 F.3d 110 (2d Cir. 2004).

Judge Gladys Kessler also ruled that a supervisory FOIA attorney at the Justice Department did not have an expectation of privacy in her alleged mishandling of a request. *Jefferson v. Dep’t of Justice*, No. 01-1418 (GK), 2003 U.S. Dist. LEXIS 26780 (D.D.C. Mar. 29, 2003). However, when Kessler was subsequently given information that the attorney was not at supervisory level when the alleged infraction occurred, she rescinded her earlier ruling. *Jefferson v. Dep’t of Justice*, No. 01-1418 (GK), 2003 U.S. Dist. LEXIS 26782 (D.D.C. Nov. 14, 2003).

Excerpted from: *Citizens For Responsibility and Ethics in Washington v. United States Dept. of Justice*, Appellee – Appeal from US District of Columbia (No. 1:11-cv-00592) Decided April 1, 2014

FOIA provides that every government agency, “upon any request for records which (i) reasonably describes such records 3 and (ii) is made in accordance with published rules . . . , shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A). Certain information is exempt from disclosure. Of primary relevance here, “records or information compiled for law enforcement purposes” are exempt but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, . . . [or] (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy

Two of the primary actors Gilbert Sapperstein (deceased 2016) and Charles Richard Longo Sr. (deceased 2011) are dead and to the best of Stone's knowledge there are no pending enforcement proceedings as the statute of limitations has probably been run out by the DOJ and FBI nor would the DOJ/FBI want to risk having their alleged misconduct become the subject of any federal trial and Battaglia because of her high ranking status as U.S. Attorney for Maryland, she has forfeited any of her privacy rights.

Additionally, Stone incorporates by reference the following:

1. The entire DOJ/FBI file on Charles Richard Longo Sr. (deceased 2011)

2. The entire DOJ/FBI file on Gilbert Sapperstein (deceased 2016)
3. The entire DOJ/FBI file on known associates of Gilbert Sapperstein and Charles Richard Longo Sr.
4. The entire DOJ/FBI file on the Donald Stone, Donald Stone Industries Inc., and Donald Stone Investments Inc. (a mysterious entity unknown to Stone until it surfaced in the pleadings of James R. Johnson, a known associate of Longo and alleged associate of Sapperstein).
5. All communications between Battaglia and/or Kelberman and the Maryland Attorney General, Joseph Curran Jr. and a William Howard pertaining either directly to Gilbert Sapperstein and/or Charles Richard Longo Sr.
6. The entire DOJ/FBI file into Anne Arundel Economic Development Council (Annapolis, MD.) by FBI agents Marina Murphy and Dave Midura and specifically the relationship between Jay Winer, Charles Delevan, and Mark Cary Sapperstein (Gilbert Sapperstein's son and proxy). The FBI released a portion of this file and Stone's opinion is that it looked like the two agents, Murphy and Midura sat in their office and cut out newspaper clippings and pasted them into a file and called it an investigation. There are no 302 reports or telephone records with or without redactions.
7. All Appeals filed by Donald Stone with the DOJ/FBI since 2015.
8. Particularly this Appeal, **Donald D. Stone FOIPA APPEAL vs. DOJ/FBI Exemption Claims (July 5, 2015) FOIPA Request No. : 1327565-000 Subject: Sapperstein, Mark C. et al**

Stone also alleges that the actions of the DOJ/FBI in these matters are both “arbitrary and capricious” under the Administrative Procedure Act, 5 U.S.C. § 551. APA claims are particularly useful to challenge the extent to which an agency follows internal rules and policies. *See e.g. Snyder v. CIA*, 230 F. Supp. 2d 17, 24-25 (D.D.C. 2002)(attempt to challenge CIA’s referral process through APA).

And for these reasons and others Stone Appeals the decision of the DOJ in this particular matter.

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Jensen Beach, FL. 34957
772 834 6175

Stone in May/June 1995 discovers that Longo crime syndicate associates Gilbert & Mark Sapperstein have a lot of friends in the MD. AG. Office (specifically Joseph Curran Jr.).

**ATTACHMENT 1
EXHIBIT A**

In May/June 1995 in a brief conversation with MD. Assistant AG. William Howard, Howard told Stone that the Sapperstein's were well known at the MD. Attorney General's Office. Stone thinking that Gilbert & Mark Sapperstein were also under investigation by the MD. AG. like Longo & Procter. Stone then asked Howard what he meant. Howard responded " They have lots of friends at the Maryland Attorney General's Office".

These documents are internal USDOJ documents describing numerous criminal activities of Charles R. Longo and Bruff J. Procter that Stone had obtained in late 1995 with a FOIA request.

Unknown to me, until later, Stone realized these agencies were trying to block my access to these documents because they would be detrimental to Longo and Sapperstein's sham lawsuit to steal Stone's patents and invaluable to Stone in fending off this sham lawsuit.

Prior to this, Stone in May/June 1995 had served or tried to serve a Subpoena Duece Tecum on three of these agencies.

1. The US Attorneys office USDOJ, Baltimore,MD.

US Attorney for Maryland, Lynne Battaglia simply quashed Stone's subpoena (Battaglia was MD. AG. Curran's head of his Criminal Div. at the MD. AG. Office prior to becoming US Attorney for MD)

This was done to conceal her **Chief of White Collar Crimes, Dale Kelberman** from disclosing any information that would be detrimental to Longo's sham lawsuit against Stone and beneficial to Curran's personal friends Gilbert & Mark Sapperstein

2. The US DOJ Bankruptcy Trustee Baltimore,MD.

Lori Simpson USDOJ Bankruptcy Trustee attorney repeatedly evaded Stone's process server with help from her boss US Bankruptcy Trustee Karen Moore

3. The Maryland Attorney Generals Office Baltimore

William (Bill) Howard simply falsified an affidavit filed with the Worcester County Circuit Court ridiculing me and smearing me claiming he had no knowledge

Lori Simpson US
DOJ Bankruptcy
Trustee lawyer

Dale Kelberman
Chief of White
Collar Crimes
Maryland US DOJ

Mike Beck,
Investigator,
Maryland Dept. of
Higher Education

Bill Howard
Maryland Attorney
General lawyer
MD. Higher
Education Division

9-26-94

Longo -
Meeting with US, Bill Howard, Dale Kelberman, Mike - →

Operating private career school - MD since late 20s - truck
driving - then opened other training centers in MD + VA -
correspondence course - truck driver home study then
3 weeks of on-site training - very few people made
it to the resident training -

In one year he pulled down more federal aid in
MD than College Park

was legitimate enterprise - certain features the
state didn't like.

He was licensed by state - as vocational school -
he sued to get that license - because his trucks
were failing the MVA standards - he said they
were only being used as student vehicles - then
after he was licensed as providing vocational training
he was eligible for federal aid.

Inspector General of Dept. of Education - looked
at Pell grants - investigation was completed in Feb-1994
started in 1990-1991. Senate Select Committee wanted
to look into NTS but were told that IG had the
matter under investigation.

IG report was issued - said NTS followed all
the proper procedures & if anything the government
owed them \$ -

NTS 11-1 hired special consultant for assistance

their paperwork - Earl Grovat + Associates - Florida Co - that
 Howard says employees ^{specializing in this} told them that dates had
 been changed - he told OIG - doesn't know if that
 was ever looked into.

Supervisor of OIG said they are looking into it again -
 (John Taylor) - said they were doing a review -

NB files 10-21-90 - case dismissed 7-92 - on motion of Inp
 Longo filed 11-13-90 Longolet under confirmed
plan -

Total refunds owed to students of \$8 million - of NB

Crochal represents Charles Longo -
 Howard Rubenstein represents ex-wife
 Mel Paul represented Creditors' Committee

Sellinger - was personal attorney

bodykeeper -
 outside Charles Fagan - Pikeville

Charles R. Longo
(National Training Systems, Inc./Shippers' Choice, Inc.)

I. Background

1. Notice of Deficiencies from MHEC to NTS (6/28/90)
2. Recommended Decision from ALJ Tranen (8/15/91)
3. Notice of Deficiencies from MHEC to NTS (8/10/90)
4. Proposed Order from ALJ Lewis-Frazer (6/28/91)
- X MHEC's Proposed Findings of Fact and Conclusions of Law (4/11/94) *NTS + Longo -*
6. MHEC's Complaint Objecting to Discharge of Debtor (9/16/93)
7. MHEC's Motion to Convert to Chapter 7 (11/23/93)
8. MHEC's Amended Counterclaim against Shippers' Choice, Inc. (7/21/94)

II. Possible Bankruptcy Fraud

A. Basic Information

9. NTS Bankruptcy Schedules
10. Longos' Bankruptcy Schedules
11. Longos' Check Register

B. \$51,368.44 taken from NTS in last week before bankruptcy

12. NTS Credit Line Account computer summary
13. NTS Credit Line bank account statements
14. Charles Longo Chevy Chase bank account statements and letter from Martin Snider

(first meeting with Alan Grochal, NTS bankruptcy counsel, took place on 9/18/90; petition was filed on 9/21/90)

C. Postpetition conversion of \$7,000 Cougar proceeds to own use

1. See findings pp. 42-43, 76, 85-86

D. Postpetition transfers from NTS to Shippers' Choice: (a) at least \$85,422.04 included on May - Sept. 1991 monthly reports, never approved by Court, and (b) at least \$66,932.96 totally

unaccounted for

15. NTS Monthly Reports (May-Sept. 1991)
16. Tydings & Rosenberg ledgers and bank statements
- E. Postpetition conversion of NTS computer and other personal property
 - See June 1991 monthly report (above) - \$7,300 computer purchase
17. Gary Boardwine deposition (5/23/94) (re computer, phones and fax machine)
- F. Failure to disclose, and unknown use of, separate bank account for Charles Longo, with a balance of \$9,203.22 on date of his petition
 - See Longos' Schedules (above), pp. 1, 10
18. Citizens Bank account statements
- G. Many examples of false statements - see Complaint Objecting to Discharge for some

III. Possible Securities or Mail Fraud Concerns

- A. Private Offerings by Shippers' Choice/American Credit Co. totaling approximately \$500,000 in Sept. '92, Dec. '92 and Mar. '93, guaranteed by Charles R. Longo

-with no disclosure of the financial status of Mr. Longo, the fact that he was in bankruptcy, and with the guarantee of questionable legality in the bankruptcy proceedings

-warranties to investment broker that company was authorized to conduct its business in accordance with law and that no actions or proceedings had been filed or threatened against it, contrary to cease and desist letters from MHEC

-possible misuse of proceeds by Charles R. Longo individually, rather than for corporate purposes

-possibly not registered as exempt in all necessary states

19. Confidential Term Sheets (Depo. Exs. 1 and 2)
20. Agency Agreements dated 11/25/92 and 3/1/93

B. Private Offering of up to \$1,000,000 on or after July '93

-possible misuse of proceeds by Charles R. Longo individually, rather than for corporate purposes as stated in placement memorandum

-similar representation that company was not a party to any litigation, nor had any been threatened against it

-financial information differs drastically from info on tax return and internal financial statement for same period

21. Confidential Private Placement Memorandum, 7/14/93

22. 1992 Federal Income Tax Return for Shippers' Choice
see p. 4

23. Shippers' Choice internal financial statements as of Dec. 31, 1992 (run 3/24/93)

B. Donald Stone Industries/Investors/Bruff Procter -- complaints by Donald Stone

24. E.g., Complaint and Answer in Charles R. Longo and Donald Stone Industries, Inc. v. Donald J. Stone

IV. Possible Income Tax Concerns

A. 1989 Joint Personal Return

-failure to report \$300,000 dividend. See Proposed Findings above, pp. 48-49

-possible unreported officer loan, vending machine and Lamborghini income. See Proposed Findings above, pp. 66-70, 49-52 and 39-40.

-questionable "personal interest" claim of \$35,000 (\$7,000 deduction)

-failure to report \$28,873 Nissan income claimed later

B. 1990 Individual Return

-possible unreported officer loan income/questionable deductions for \$704,317 in claimed "business losses" for loans# pp. 29-31, 49-52 and 39-40.

-mysterious transfers from NTS probably not reported or

accounted for on income tax return

C. 1991 and later returns

-allegedly receiving no salary from Shippers' Choice, but showing huge amounts of income/cash flow on monthly bankruptcy reports and in checking account; unknown how much income reported

25. Summary of Bank Deposits and Other Cash Payments

-See Charles Longo monthly bankruptcy reports through 12/93

26. Charles Longo deposition extracts and officer loan account summary

V. Possible Federal Aid Concerns

A. Approximately \$700,000 in aid drawn down by NTS for ineligible ACT program in early 1989 - possible flaw in system-

was approved 6 months later - student now have to repay financial aid -

B. Individual allegations of fraud in cashing student loan checks by NTS

180 students
probably high %
↑ loans are in default

9814069.cmlMD04

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

98 MAR 27 AM 9:11

CLERK
S.D.F.

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DONALD D. STONE,

Plaintiff,

v.

ROBERT E. WARFIELD, SR.,
CHARLES R. LONGO, MARK
SAPPERSTEIN, et al

Defendants.

Case No. 98-14069-CIV-MOORE

Magistrate Judge Lynch

ATTACHMENT 1
EXHIBIT B

DEFENDANTS' MOTION FOR
ENLARGEMENT OF TIME

The Defendants, Lynne Battaglia, Dale Kelberman, George Russell III, and Lori Simpson, move pursuant to Fed.R.Civ.Proc. 6(b) for an enlargement of time in which to respond to the Complaint in the case at bar. Lynne Battaglia, Dale Kelberman, and George Russell III were served on March 6, 1998 and Lori Simpson was served on March 3, 1998. These defendants request an enlargement of time until May 5, 1998 in which to respond to Plaintiff's Complaint.

The Defendant Lynne Battaglia is the United States Attorney for Maryland. Defendant Dale Kelberman is the Chief, White Collar Crimes, for the United States Attorney's office in Baltimore, Maryland and Defendant George Russell III is an Assistant United States Attorney in Baltimore, Maryland. The fourth federal

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defendant, Lori Simpson, was an attorney-advisor in the United States Trustee's office in Baltimore, Maryland at the time of the allegations in Plaintiff's Complaint.

The federal defendants are in the process of requesting authorization from the Department of Justice for legal representation by the United States Attorney's office in this case. The United States Attorney for the Southern District of Florida appears conditionally at this time on behalf of the federal defendants until the procedures set forth in 28 C.F.R. § 50.15 are completed. The federal defendants reserve the right to raise all defenses available to them in their responsive pleading.

Fed.R.Civ.Proc. 12(a)(1) requires that an individual defendant respond to a Complaint within twenty (20) days after service of the Complaint. However, the United States or an officer of the United States has sixty (60) days after service of the Complaint in which to respond pursuant to Fed.R.Civ.Proc. 12(a)(3). The federal defendants therefore request an enlargement of time until May 5, 1998 in which to respond to Plaintiff's Complaint.

This motion is not submitted for the purpose of delay and the enlargement of time requested will not prejudice Plaintiff.

Wherefore, the Defendants, Lynne Battaglia, Dale Kelberman, George Russell III and Lori Simpson request an enlargement of time until May 5, 1998 in which to respond to the Complaint in the case at bar.

Thomas E. Scott was a Federal Judge in the Southern District of Florida from 1985-1990

Scott was named as possible Director of the FBI under GW Bush (to replace Freeh)

Scott would be named as a Defendant in my MD RICO for his misconduct in this case

Respectfully submitted,

THOMAS E. SCOTT
UNITED STATES ATTORNEY

By:

Maureen Donlan
MAUREEN DONLAN
Assistant U.S. Attorney
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant's Motion for Enlargement of Time was mailed on this 23rd day of March, 1998 to:

DONALD D. STONE, PRO SE
895 N.E. Dixie Highway
Suite 9
Jensen Beach, Florida 34957

Maureen Donlan
MAUREEN DONLAN
Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

US Attorney for Maryland, US Attorney for Southern District of Florida, Chief of White Collar Crimes Maryland DOJ, and 3 other USDOJ attorneys all caught trying to "white wash criminal activities" as a "business dispute" by Stone, a guy with a high school education & no legal or financial resources

DONALD D. STONE,

Plaintiff,

v.

ROBERT E. WARFIELD, SR.,
CHARLES R. LONGO, MARK
SAPPERSTEIN, et al.

Defendants.

Case No. 98-14069-CIV-RYSKAMP

Magistrate Judge Lynch

DEFENDANTS' MOTION TO
DISMISS COMPLAINT AND
MEMORANDUM OF LAW IN
SUPPORT THEREOF

The Defendants, Lynne Battaglia, Dale Kelberman, George Russell III, and Lori Simpson (federal defendants), in their individual capacities, move to dismiss the Complaint in the case at bar pursuant to Fed.R.Civ.Proc. 12(b)(2) and 12(b)(6). As grounds therefor, the federal defendants state:

1. The Court lacks personal jurisdiction over the federal defendants since they are residents of the State of Maryland and Plaintiff's cause of action, if any, as to the federal defendants, arose in Maryland.

2. Count 25 of the Complaint (p. 60) fails to state a claim upon which relief can be granted since Plaintiff's claim under the RICO statute is legally insufficient.

3. The Complaint fails to state a claim upon which relief can be granted as to Count 39 (p. 64) and Count 102 (p. 86) since the statutes relied upon by Plaintiff do not have a private

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right of action and Plaintiff's allegations are legally insufficient.

4. The Complaint fails to state a claim upon which relief can be granted as to Defendant Lori Simpson since there are no specific allegations of wrongdoing by Defendant Simpson.

5. The Complaint fails to state a claim upon which relief can be granted since the federal prosecutors, Lynne Battaglia, Dale Kelberman and George Russell III, are entitled to absolute immunity as a matter of law.

Battaglia et al tries to White-wash the criminal activities of her corrupt cronies Sappersteins & Longo as a BUSINESS DISPUTE

FACTUAL BACKGROUND

The Plaintiff, Donald D. Stone, has filed a 125 page Complaint against more than 90 individuals and companies in connection with an ongoing business dispute between the Plaintiff and one of the Defendants, Charles R. Longo. Plaintiff alleges that Mr. Longo and his attorneys conspired to deprive Plaintiff of a product that he had patented and a business that he had formed to market his product. In this case, Plaintiff has sued, in their individual capacities, the United States Attorney for Maryland, two (2) Assistant United States Attorneys, the Attorney General for Maryland, Maryland State Attorneys, Maryland judges, Maryland court clerks, Maryland sheriffs, and Maryland State police officers, as well as numerous other individuals.

Four (4) of the defendants in this case are current or former employees of the federal government. The Defendant Lynne Battaglia is the United States Attorney for Maryland. Defendant Dale Kelberman is the Chief, White Collar Crimes, for the United States Attorney's Office in Baltimore, Maryland and Defendant George

Russell III is an Assistant United States Attorney in the Civil Division in Baltimore, Maryland. The fourth federal defendant, Lori Simpson, was an attorney-advisor in the United States Trustee's Office in Baltimore, Maryland during the time period set forth in Plaintiff's Complaint.

United States Attorney Lynne Battaglia was served, on Plaintiff's behalf, with a subpoena duces tecum, in connection with a civil lawsuit brought by Charles Longo against Plaintiff in Maryland state court. On May 25, 1995, United States Attorney Lynne Battaglia filed a petition for removal of the subpoena to the United States District Court and a motion to quash the subpoena issued on behalf of Plaintiff. On June 16, 1995, the District Court entered an Order granting the United States Attorney's motion to quash the subpoena.

Plaintiff alleges that the federal prosecutors, Lynne Battaglia, Dale Kelberman and George Russell III conspired to withhold documents from Plaintiff, which Plaintiff needed for his defense, in the lawsuit brought by Charles Longo against Plaintiff in Maryland state court. Plaintiff also alleges that Assistant United States Attorney George Russell III mailed a letter from Baltimore, Maryland to Plaintiff's residence in Jensen Beach, Florida, and that Dale Kelberman attended a meeting in September 1994 in which two (2) companies, in which Charles Longo was involved, were discussed.

Plaintiff alleges, as to the fourth federal defendant, Lori Simpson, that Plaintiff attempted to have Lori Simpson served with a subpoena duces tecum in connection with the Maryland state

lawsuit between Charles Longo and Plaintiff, but was not able to have Ms. Simpson served. The only other allegation concerning Lori Simpson is that she attended the September 1994 meeting in which two (2) companies controlled by Charles Longo were discussed.

There are six (6) Counts in the Complaint which involve the federal defendants. Count 25 (p. 60) alleges that the federal prosecutors participated in a conspiracy against Plaintiff in violation of the RICO statute, 18 U.S.C. § 1962(d). Count 39 (p. 64) alleges that the federal prosecutors conspired to obstruct justice in violation of the criminal statute, 18 U.S.C. § 1503. Plaintiff alleges in Count 102 (p. 86) that Assistant United States Attorney George Russell III committed mail fraud in violation of criminal statute 18 U.S.C. § 1341. In Counts 149, 150 and 157 (pp. 104, 105 and 112), Plaintiff alleges that the federal prosecutors violated his constitutional rights.

I. COURT LACKS PERSONAL JURISDICTION OVER THE FEDERAL DEFENDANTS

The Court lacks personal jurisdiction over the four (4) federal defendants, who are sued in their individual capacities, in this case. The federal defendants are all residents of the State of Maryland and work in the State of Maryland. The Defendant Lynne Battaglia is the United States Attorney for Maryland and her office is located in Baltimore, Maryland. Defendant Dale Kelberman is the Chief, White Collar Crimes, for the United States Attorney's Office in Baltimore, Maryland and Defendant George Russell III is an Assistant United States Attorney in the Civil Division in Baltimore, Maryland. The fourth federal defendant, Lori Simpson, was an attorney-advisor in the United States Trustee's office in

Baltimore, Maryland at the time of the allegations in Plaintiff's Complaint.

Plaintiff has the burden of establishing that the Court has personal jurisdiction over the federal defendants. See McNutt v. General Motors Acceptance Corporation, 298 U.S. 178, 182 (1936); Coca-Cola Foods v. Empresa Comercial Internacional De Frutas S.A., 941 F.Supp. 1175, 1178-79 (M.D. Fla. 1996). Plaintiff has failed to show that the federal defendants have sufficient contacts with the State of Florida to allow this Court to exercise personal jurisdiction over them.

Plaintiff's blanket statement that "all defendants transacted business in, committed a tort in, or had an agent in this district at all times material to this complaint" is simply untrue. See Complaint at 3. The federal defendants, in their individual capacities, were not transacting business in Florida and did not have agents in the State of Florida. Additionally, Plaintiff does not allege that the federal defendants committed any tortious acts in the State of Florida. The Court therefore does not have personal jurisdiction over the federal defendants under the Florida long-arm statute. See Fla. Stat. § 48.193.

The allegations as to Defendants, Lynne Battaglia, George Russell III, Dale Kelberman and Lori Simpson deal solely with matters which occurred in Maryland. Specifically, the allegations regarding Lynne Battaglia, George Russell III and Dale Kelberman arise out of a subpoena duces tecum, which was served upon United States Attorney Lynne Battaglia in Maryland. The subpoena was served in connection with a state lawsuit between Plaintiff and

Charles Longo brought in Maryland. The allegations as to Defendant Lori Simpson also relate to a subpoena duces tecum which Plaintiff attempted to serve upon Defendant Simpson in Baltimore in connection with the Maryland lawsuit brought by Charles Longo against Plaintiff.

The only allegation involving the federal defendants, which involves Florida, is that correspondence was allegedly sent by George Russell III to the Plaintiff, who resides in Florida. However, the mailing of a letter to Florida is not sufficient to confer jurisdiction over the federal defendants in this Court. See Florida Statutes § 48.193; International Shoe Co. v. State of Washington, 326 U.S. 310 (1945).

In the alternative, Plaintiff alleges that the defendants, who do not reside in the Southern District of Florida, should be brought before this Court pursuant to 18 U.S.C. § 1965(b). 18 U.S.C. § 1965(b) provides for a nationwide service of process under the RICO statute. However, Plaintiff must still show that this Court's exercise of personal jurisdiction over the non-resident federal defendants would comply with due process. See Republic of Panama v. BCCI Holdings (Luxembourg) S.A., 119 F.3d 935, 941-945 (11th Cir. 1997).

In this case, it would be a violation of due process to require the federal defendants, who reside and work in Maryland, to defend themselves in a Florida court. All of the allegations concerning the federal defendants relate to their activities in Maryland, in connection with a Maryland state lawsuit in which the Plaintiff was a party. A review of Plaintiff's Complaint also

reveals that most, if not all, of the more than 90 Defendants, reside or do business in Maryland and that the allegations in the Complaint arose out of Plaintiff's activities in Maryland. For these reasons, this Court lacks personal jurisdiction over the federal defendants. The federal defendants should therefore be dismissed from the case at bar.

II. COUNT 25 FAILS TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED

Plaintiff's allegation, in Count 25 of the Complaint, that the federal prosecutors conspired against the Plaintiff in violation of the RICO statute, 18 U.S.C. § 1962(d), fails to state a claim upon which relief can be granted. The Complaint does not allege that the federal prosecutors committed or conspired to commit two or more illegal actions constituting a "pattern of racketeering activity" as defined in 18 U.S.C. § 1961(1) and (5). There are also no allegations that the federal prosecutors conspired to receive any income from racketeering activity or through collection of an unlawful debt as required by the RICO statute. See 18 U.S.C. § 1962. Plaintiff's claim under the RICO statute therefore fails as a matter of law and Count 25 of the Complaint should be dismissed.

III. COUNTS 39 and 102 FAIL TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED

Counts 39 (p.64) and 102 (p.86) also fail to state a claim upon which relief can be granted as to the federal defendants. Count 39, which alleges a conspiracy to obstruct justice in violation of 18 U.S.C. § 1503, and Count 102, which alleges mail fraud in violation of 18 U.S.C. § 1341, are criminal statutes.

There is no private right of action under either 18 U.S.C. § 1503 or 18 U.S.C. § 1341. See Phillips v. Goodyear Tire & Rubber Co., 651 F.d. 1051 (5th Cir. 1981); Hanna v. Home Insurance Co., 281 F.d. 298 (5th Cir. 1960) cert. den. 365 U.S. 838 (1961); Odell v. Humble Oil & Refining Co., 201 F.d. 123 (10th Cir. 1953), cert. den. 345 U.S. 941 (1953); Bell v. Health Mor-Inc., 549 F.d. 342 (5th Cir. 1977); Raffaele v. Designers Break, Inc., 750 F.Supp. 611 (S.D.N.Y. 1990). These criminal statutes give the government, not private citizens, the right to bring actions for violation of these criminal laws.

Additionally, Count 102 (p. 86), which alleges mail fraud in violation of 18 U.S.C. § 1341, fails to state a claim upon which relief can be granted since there are no specific allegations of wrongdoing by the Defendant George Russell III. Plaintiff alleges in Count 102 only that Defendant Russell used the United States Postal Service to mail a letter from Baltimore, Maryland to Plaintiff's residence in Jensen Beach, Florida. This allegation as to Defendant Russell fails to state a claim upon which relief can be granted.

The allegations in Count 39 (p. 64) also fail to state a claim upon which relief can be granted since 18 U.S.C. § 1503 applies to obstruction of justice charges involving a juror or an officer of the Court. Count 39 alleges that United States Attorney Lynne Battaglia and Assistant United States Attorneys, Dale Kelberman and George Russell III, obstructed the administration of justice, in violation of 18 U.S.C. § 1503, by failing to disclose to Plaintiff documents which he needed for his defense in the Maryland state

civil lawsuit. Since Plaintiff neither was nor is a juror or an officer of the Court, Count 39 of the Complaint fails to state a cause of action. There are no allegations in Count 39 that the federal defendants corruptly influenced or injured any juror or officer of the Court. Count 39 of the Complaint therefore fails to state a claim upon which relief can be granted.

IV. COMPLAINT FAILS TO ALLEGE WRONGDOING BY DEFENDANT SIMPSON

As to Defendant Lori Simpson, the Complaint fails to allege any specific wrongdoing by Defendant Simpson. At the time of the allegations in Plaintiff's Complaint, Lori Simpson was an attorney-advisor in the United States Trustee's office in Baltimore, Maryland. The only allegations in the Complaint concerning Lori Simpson are that (1) Plaintiff unsuccessfully attempted to have Lori Simpson served (incorrectly as the United States Bankruptcy Trustee) with a subpoena duces tecum in connection with the Maryland state civil lawsuit; and (2) Defendant Lori Simpson was present at a meeting at which the activities of two corporations, SCI and NTS, were discussed. There are no allegations concerning Lori Simpson in the Counts of the Complaint. These preliminary statements as to Lori Simpson do not allege the violation of a statute or the Constitution of the United States. Defendant Lori Simpson should therefore be dismissed from the Complaint in the case at bar.

V. FEDERAL PROSECUTORS ARE ENTITLED TO ABSOLUTE IMMUNITY

The federal prosecutors, Lynne Battaglia, George Russell III and Dale Kelberman, are entitled to absolute immunity as a matter of law in the case at bar. Plaintiff alleges that the federal

prosecutors failed to disclose to Plaintiff documents that Plaintiff needed for his defense in the Maryland state court case involving Charles Longo and Plaintiff. However, federal prosecutors are absolutely immune for actions taken in their roles as advocates for the government. See Imbler v. Pachtman, 424 U.S. 409 (1976).

In Imbler, the Supreme Court held that a prosecutor is absolutely immune from a civil rights suit alleging unlawful or malicious prosecution in connection with plaintiff's prosecution for first degree murder. The immunity extends to any activities of the prosecutor that are an integral part of the judicial process. Id. at 430. When the prosecutor functions in his role as an advocate for the government, his activities are associated with the judicial process. Id. at 430-431. See, also, Fullman v. Graddick, 739 F.d. 553, 559 (11th Cir. 1984)(prosecutor entitled to Imbler immunity for conspiracy to withhold evidence and for creating and proffering perjured testimony); Allen v. Thompson, 815 F.d. 1433 (11th Cir. 1987)(AUSA immune for letter written to parole commission); and Henzel v. Gerstein, 608 F.d. 654, 657 (5th Cir. 1979)(absolute immunity for filing criminal charges without jurisdiction, offering perjured testimony, Brady violations, and threatening the criminal defendant with additional charges).

In the case at bar, the actions taken by the federal prosecutors in responding to the subpoena duces tecum directed to United States Attorney Lynne Battaglia are entitled to absolute immunity. Plaintiff's allegations that the federal prosecutors failed or refused to disclose information to Plaintiff, which was

needed in Plaintiff's defense of the Maryland state civil lawsuit, are therefore barred as a matter of law by the doctrine of absolute immunity.

Wherefore, for the reasons set forth above, the federal defendants, Lynne Battaglia, Dale Kelberman, George Russell III, and Lori Simpson move to be dismissed from the Complaint in the case at bar.

Respectfully submitted,

THOMAS E. SCOTT
UNITED STATES ATTORNEY

By:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant's Motion to Dismiss Complaint and Memorandum of Law in Support Thereof was mailed on this 1st day of May, 1998 to:

DONALD D. STONE, PRO SE
895 N.E. Dixie Highway
Suite 9
Jensen Beach, Florida 34957

ALAN M. GROCHAL, ESQUIRE
LYNN A. KOHEN, ESQUIRE
TYDING & ROSENBERG, P.A.
100 East Pratt St., 26th Floor
Baltimore, Maryland 21202

MARGARET WITHERUP TINDALL, ESQUIRE
200 St. Paul Place
Baltimore, Maryland 21202

This is the court motion with documentary evidence used to catch the US Attorney for Maryland, Lynne Battaglia, US Attorney for the Southern District of Florida, Thomas E. Scott (former Miami federal judge), Chief of White Collar Crime USDOJ Maryland, Dale Kelberman and 3 other USDOJ Lawyers lying to the court. In their previous motion they tried to white wash the criminal activities of their co-conspirators as a "business dispute". (FL RICO DOJ Civil Dispute 2)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Maryland. All defendants are being sued in their individual capacity.

2.No type of immunity is available for Defendants,Battaglia, Kelberman,Russell,or Simpson as co-conspirators involved in violations of Federal Criminal Statutes,civil rights,and Constitutional rights violations.

3.This Court does have personal jurisdiction of defendants Battaglia,Kelberman,Russell,and Simpson as lack of personal jurisdiction,is not a defense for non-resident Florida co-conspirators.Plaintiffs cause of action arose in Florida.Plaintiff permanently domiciled in Florida was purposefully targeted as a victim of the criminal activities and tortious conduct of defendants Battaglia,Kelberman,Russell,and Simpson.

4.Defendants Battaglia,Kelberman,Russell,and Simpson are being sued in their individual capacity and are subject to personal liability for damages under 42 USCS § 1983 and Bivens Act based on official acts.

5. For these and such other reasons as or set forth more fully in the accompanying Memorandum in support of this Motion.

BACKGROUND

Plaintiff had invented technology and shortly thereafter formed corporation to commercialize invention.Unknown to plaintiff corporate secretary,corporate attorney,and alleged investor were involved in bankruptcy fraud and money laundering of money into legitimate corporations.On or about October 15,1993 on the eve of possible commercial sucess of the invention, secretary of corporation,corporate attorney and alleged investor along with other co-conspirators seized control of corporation.

This was the first extortion attempt on or about October 15, 1993 by defendants Warfield, Longo, Mark Sapperstein, Gilbert Sapperstein, Procter, Glick and Moore seizing control of Donald Stone Industries Inc. (DSII) and threatening to have plaintiff arrested on unspecified criminal charges. Defendant Longo and Procter then induced defendants Warfield, Glick, and Moore to invest another \$52,500.00 into Donald Stone Industries Inc. Defendants Longo and Procter immediately began embezzling approximately \$30,000.00 of this money to finance an approximately \$1.35 million student loan securities fraud scheme they were involved in. Plaintiff would not uncover details, bits and pieces of these fraudulent schemes until early 1995 and continuing through 1997 as part of plaintiff's privately financed investigation into defendant Battaglia, Kelberman, Russell, Simpsons activities acting in concert with their co-conspirators defendants Longo, Procter, Warfield, Glick, Moore, Mitchell.

On or about February 1994 plaintiff was named as a (defendant) in a Sham lawsuit filed in Worcester County, Maryland by defendants Charles R. Longo, DSII and alleged shareholders of DSII defendants Robert E. Warfield Sr, Gilbert Sapperstein, Mark Sapperstein, Hal P. Glick,

Beginning on or about November 1993 plaintiff would begin a privately financed investigation into defendant Battaglia's co-conspirator defendant Longo's background. On or about June 1994 plaintiff discovered Longo had been indicted on 45 counts of Grand Theft in Virginia and arrested in Maryland and considered a flight risk was held without bond. Due to a technicality charges were dropped and record was expunged. Additionally, plaintiff would discover that defendant Longo and Procter had been under

investigation by the Maryland Attorney Generals Office for several years involving federal bankruptcy fraud, concerning Longos personal bankruptcy and Longos bankrupt corporation National Training Systems, alleged fraud concerning \$8 million in US Dept. of Education student loan money and approximately 2000 documented victims. By early 1995 Longo was taking his corporation Shippers Choice Inc. into bankruptcy to avoid liability for the approximately \$1.35 million in fraudulent student loan securities Longo and his co-conspirators had sold. Unknown to plaintiff these numerous fraudulent criminal activities were being conducted under the political protection and patronage of defendants Battaglia, Kelberman, Russell, and Simpson to protect Democratic political cronies and personal agendas.

THE "MARYLAND DEMOCRATIC MACHINE"
AN IMPENETRABLE WALL OF CORRUPTION AT THE FEDERAL AND
STATE LEVEL

1. **Defendant** Lynne Battaglia, US Attorney for Maryland, Democratic party appointee to this position, providing the ultimate protection for Marylands' corrupt, prominent and politically well connected Democratic White Collar Criminals under the under the patronage and political protection of the US Dept. of Justice.

2. **Defendant** Joseph Curran Jr. Maryland Attorney General, a 30 year career Democrat, defendants Mark and Gilbert Sapperstein are alleged to have numerous personal and political cronies at the Maryland Attorney Generals Office.

3. **Defendant** David B. Mitchell, head of the Maryland State Police alleged to have been appointed to a high ranking FBI position in the Fall of 1998 by Vice President of the United States Al Gore, (Democrat).

4. Defendant Theodore Eschenberg, chief judge First Judicial Circuit, Worcester County, Maryland purchased property valued at approximately \$600,000.00 from former Maryland Democratic Governor, Donald Schafer.

Defendants Battaglia, Kelberman, Russell, and Simpson represent a new and dangerous type of White Collar Criminal element in the U.S. law enforcement agencies created by Janet Renos' US Dept. of Justice. With Renos murder of innocent women and children at Waco and then the heinous sniper killing of a mother and child at Ruby Ridge, high ranking Democrat US Dept of Justice officials under color of law, acting above the law.

Battaglia represents the highest form of criminal Reno has yet to produce. Battaglia a Democratic appointee to the U.S. Attorneys office by Reno is more interested in protecting the Maryland Democratic Machine status quo than enforcing the Federal Felony laws. Rather than conduct legitimate investigations into citizens complaints, Battaglia, Kelberman, Russell, and Simpson are more interested in protecting the impenetrable wall of corruption that exists at all levels of Maryland Government at the Federal and state level. Battaglia, and her employees by protecting by protecting the Democratic criminal element, Battaglia and her selected employees are insured of well paying jobs in the private sector when she leaves the US Attorneys job or the Republicans remove her.

THE MOTIVATION FACTOR

Battaglia represents Renos' new breed of white collar criminal, Battaglia, first and foremost an attorney or commonly referred to as a "professional liar" by the American public at large, secondly she has at her beck and call the power to cover-up

and quash any type of corruption investigation into the Maryland Democratic Machine that would require her political patronage and protection. If the FBI wanted to investigate Battaglias' personal and political cronies for any type of criminal activity including multiple Federal Felony offenses she simply has the investigation quashed at the Federal level and her cronies at the State level, Maryland Attorney General, Maryland State Police, and whatever Federal or State agency is required to provides protection for Marylands politically prominent and corrupt Federal and state law enforcemnet agencies act in concert to protect these criminal activities. Battaglia knows full well that when she wants to enter the private sector there will be lucrative jobs available to her for faithfully protecting Marylands wealthy and politically corrupt Democrats.

As the Republican party continues to drive the Democratic party into bankruptcy, it is important that Battaglia act in concert with Marylands Democratic Machine to refinance their political coffers at the expense of criminal activities directed at private citizens such as plaintiff. Battaglia and her co-conspirators can defraud plaintiff of his intellectual property under color of law, and then repeatedly call it a business dispute while concealing exculpatory evidence from plaintiff of the criminal acivity of Battaglia and co-conspirators. Defrauding plaintiff of his intellectual indirectly enriches the Democratic Party.

DEFENDANTS BATTAGLIA, KELBERMAN, RUSSELL, AND SIMPSON ACTING
IN CONCERT WITH CO-CONSPIRATORS WARFIELD, LONGO,
MARK SAPPERSTEIN et al

On or about May 1995, plaintiff in preparation for his defense

in the Sham lawsuit filed against him by defendants Warfield, Longo, Procter, Mark Sapperstein, Gilbert Sapperstein, Glick, and Moore scheduled for trial June 19, 1995 plaintiff had served on defendant Battaglia a subpoena duces tecum. This was an effort by plaintiff, to confirm a statement made to plaintiff by defendant William Howard, Maryland Assistant Attorney General (Howard was later caught acting in concert with Longo, committing fraud on the court) who was in charge of the extensive Maryland State investigation into defendants Longo and Procter. Howard had explained to plaintiff that he had been in meeting(s) with the U.S. Attorneys Office concerning plaintiffs securities fraud complaints against defendants, Warfield, Glick, Moore, Longo, Procter, Mark Sapperstein, and Gilbert Sapperstein. This was an additional effort by plaintiff to try and collect as much documentation as possible and to piece together the multitude of fraudulent schemes defendants Warfield, Moore, Glick, Longo and their co-conspirators were engaged in concerning efforts to extort from plaintiff his valuable patent and intellectual property. Shortly after this subpoena was served on Battaglia, plaintiff was contacted by telephone in Florida by US Assistant Attorney, George Russell III, an employee of Battaglias'. In this lengthy telephone conversation plaintiff described what he knew of the fraudulent schemes of defendants at that point. Russell made numerous conflicting and false statements to plaintiff such as plaintiff was only involved in a business dispute with Longo and that they, meaning the US Attorneys Office knew what was going on. Russell never mentioned anything about the meetings between Kelberman, Howard, Simpson, and a Michael Beck, from the Maryland Higher Education Commission that took place in September 1994 (EXHIBIT A) nor about any correspondence that transpired from

that meeting. From this telephone conversation the false and misleading statements made by Russell to plaintiff, plaintiff was led to believe there was no documentation or evidence that would be useful to him in his defense. Plaintiff then allowed the subpoena served on Battaglia to be quashed on this false premise without any further questioning.

On or about May or June 1995 plaintiff repeatedly had process server, Daniel Bowler try and serve a subpoena duce tecum on defendant Lori Simpson, employee at the United States Bankruptcy Trustee Office in Baltimore, Maryland and believed by plaintiff to have extensive personal knowledge and documentation of defendant Longo's numerous fraudulent bankruptcy fraud activities. Bowler tried numerous times to serve plaintiffs' subpoena even when it was believed that Simpson was in her office she was still evading the process server. Eventually, plaintiff had the Bowler discontinue his service attempts. Plaintiff remained unaware of the meeting between Simpson, Kelberman, Howard, and Beck that is alleged to have taken place in the U.S. Bankruptcy Trustee Office in Baltimore on or about October 1994.

IF IN FACT IT WAS A BUSINESS DISPUTE PLAINTIFF WAS INVOLVED IN WITH LONGO AND HIS CO-CONSPIRATORS, BATTAGLIA, KELBERMAN, RUSSELL, AND SIMPSON, WHY DID THEY TRY AND CONCEAL EXCULPATORY EVIDENCE FROM PLAINTIFF, AND MAKE FALSE AND MISLEADING STATEMENTS TO PLAINTIFF.

(EXHIBIT A)

If in fact it was a business dispute plaintiff was involved in with defendant Battaglia's co-conspirators Warfield, Glick, Moore, Procter, Longo, Mark Sapperstein, and Gilbert Sapperstein why did Battaglia, Kelberman, and Russell devise a scheme to conceal the

documents from plaintiff that he had requested and why did Battaglia not disclose to plaintiff, Kelbermans' personal knowledge of this meeting and have Russell make false and misleading statements to plaintiff and conceal Kelbermans' personal knowledge.

On or about November 1, 1996 as part of plaintiffs on-going investigation into Maryland's extensive political corruption through a FOIA request to the U.S. Dept. of Justice, Executive Office for United States Trustee accidentally obtained copies of the documents that defendants Battaglia, Kelberman, Russell, and Simpson were trying fraudulently conceal from plaintiff. These documents would have been extremely beneficial to plaintiff's defense at the trial June 19th and 20th, 1995 when plaintiff was forced to capitulate to defendant Battaglia's co-conspirators Warfield, Glick, Moore, Longo, Procter, Mark Sapperstein, and Gilbert Sapperstein.

These documents would have been detrimental to Battaglia and her co-conspirators and or political cronies Warfield, Glick, Moore, Longo, Procter, Mark Sapperstein, and Gilbert Sapperstein's Sham Judicial proceedings to extort from plaintiff his intellectual property under color of law.

Defendants Battaglia, Kelberman, and Russell, as federal prosecutors are claiming absolute immunity. Defendants acknowledge they are prosecutors from Maryland so that ignorance of the law is not a valid defense for defendants Battaglia, Kelberman, and Russell, additionally would be aware of the Brady violations as Maryland is where that particular case originated.

Law enforcement officers are held to higher standard of conduct than other federal employee. *Watson v Dept. of Justice* 64 F3d 1524 (Fed. Cir. 1995)

Suppression of favorable evidence violates Due Process, (Granddaddy Case) *Brady v Maryland*, 373 US 83, 10 LEd2d 215, 83 S.Ct. 1194 (1963). Prosecutions failure to disclose material and favorable evidence to defendant will violate Due Process under *Brady*, even when defendant makes no request for such evidence. *Bartholomew v Wood*, 34 F3d 870 (9th Cir. 1994) "BRADY material" is any evidence material either to guilt or punishment which is favorable to accused, irrespective of good faith or bad faith of prosecution, Prosecutor's duty to reveal BRADY materials does not depend on request by defense. *US v Hanna*, 55 F3d 1456 (9th Cir. 1995). New trial is warranted under *Brady* when government failed to disclose favorable evidence and evidence it suppressed was material. *US v Wong*, 78 F3d 73 (2nd Cir. 1996). A less diligent plaintiff would never have uncovered the criminal activities of the defendants Battaglia, Kelberman, Russell and Simpson acting in concert with other co-conspirators directed at plaintiff and plaintiffs intellectual property.

A. Even If Plaintiff Has Failed To State A Claim For Relief

Plaintiff, Pro Se, high school educated and lacking in formal legal training is entitled to certain privileges when drafting pleadings, Complaint should not be dismissed even for failing to state a claim. Pro se litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigants unfamiliarity with pleading requirements. *Haines v Kerner*, 404 US 519, 30 LEd2d 652, 92 S.Ct. 594 (1972), *Boag v*

MacDougall, 454 US, 364, 70 LEd2d 551, 102 Sct. 700 (1982), *Simmons v Abruzzo*, 49 F3d 83 (2nd Cir 1995), *Green v Branson*, 108 F3d 1296 (10th Cir 1997). Right to proceed pro se is a fundamental statutory right that is afforded highest degree of protection. *Devine v Indian River County School Board*, 121 F3d 576 (11th Cir. 1997). Courts will go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result. *US v Sanchez*, 88 F3d 1243 (D.C.). Civil rights complaints are to be liberally construed. *Buckley v County of Los Angeles*, 957 F2d 652 (9th Cir. 1992). *Moore v McDonald*, 30 F3d 616 (1994).

Dismissal is harsh penalty, and should be imposed only in extreme circumstances. *Johnson v US Dept. of Treasury*, 939 820 (9th Cir 1991). Motion to dismiss complaint for failure to state claim is viewed with disfavor and is rarely granted. *Lowrey v Texas A & M University System*, 117 F3d 242 (5th Cir. 1997). "Standing" is granted if "The person seeking redress has suffered, or is threatened with, some distinct and palpable injury" the personal stake requirement is satisfied....and, if there is some casual connection and the conduct being challenged." *Allen v Wright*, 468 US 737, 82 LEd2d 556, 104 Sct. 3315 (1984).

B. DEFENDANT BATTAGLIA, KELBERMAN, RUSSELL, AND SIMPSON ARE
BEING SUED IN THEIR INDIVIDUAL CAPACITY
ARE NOT ENTITLED TO IMMUNITY

Defendants cite numerous outdated cites for their defense. Supreme Court held that government agents may be held liable for violating constitutional rights. *Bivens v Six Unknown Agents*, 403 US

388,29 LEd2d 619,91 SCt 1999(1970).The Attorney General and I.R.S. agents do not have absolute immunity.*Mitchell v Forsyth*,472 US 511,86 LEd2d 411,105 SCt 2806(1985). *Cameron v I.R.S.*,773 F2d 126(1985).For purposes of immunity analysis,federal officials are indistinguishable from state officials and receive no greater degree of protection from constitutional claims.*Mendenhall v Goldsmith*,59 F3d 685(7th Cir.1995).

THIS COURT DOES HAVE PERSONAL JURISDICTION OVER
DEFENDANTS BATTAGLIA,KELBERMAN,RUSSELL,AND SIMPSON

Defendants Battaglia,Kelberman,Russell,and Simpson purposefully targeted plaintiff permanently domiciled in Florida and plaintiffs' intellectual property located in situ in Florida by acting in concert with co-conspirators Longo,Warfield,and other co-conspirators in futherance of a conspiracy,scheme and artifice to defraud plaintiff of his patent and intellectual property in violation of the RICO ACT and plaintiffs civil rights,42 USC § 1983,§1985,§1986 and §1988 and constitutional rights to Due Process.

Lack of personal jurisdiction is not a defense for non-resident co-conspirator.If any member of a conspriracy commits tortious acts in Florida in furtherance of the conspiracy,all members of the conspiracy are subject to the jurisdiction of the Florida courts under the long-arm statute.Thsi is because each conspirator is liable for and bound by the acts and declarations of each and all of the conspirators done or made in furtherance of the conspiracy.*Wilcox v Stout* 637 So.335,336-337(Fla.2d DCA 1994)

It was under the protection of defendants Battaglia,Kelberman,Russell and Simpson acting in concert with defendants Longo,Warfield,and other co-conspirators that issued a fraudulent

stock certificate to plaintiff valued at approximately \$360,000 in June of 1996 and then converted plaintiffs intellectual property to their personal assets.

It was under the political patronage and protection of defendants Battaglia, Kelberman, Russell, and Simpson acting in concert with Longo and other co-conspirators that Longo has continually committed Federal Bankruptcy fraud over a period of 8 years involving 3 federal bankruptcy cases with complete immunity.

Defendants Battaglia, Kelberman, and Russell are employed by the US Dept. of Justice at the US Attorneys Office, Baltimore, Maryland. The US Dept. of Justice maintains US Attorney Offices in all 50 of the United States, therefore defendants Battaglia, Kelberman, and Russell did have agents in Florida at the US Attorneys Offices located in Florida, of which defendants easily obtained legal defense counsel even though they were being sued in their individual capacity.

Defendants Battaglia, Kelberman, Russell, and Simpson are being sued in their individual capacity are not entitled to any type of immunity. Public official who performs act clearly beyond scope of his or her discretionary authority is not entitled to claim qualified immunity. *In re Allen*, 106 F3d 582 (4th Cir. 1997).

Qualified immunity doctrine gives ample room for mistaken judgements, but does not protect the plainly incompetent or those who knowingly violate the law. *Bagby v Brondhaver* 98 F3d 1096 (8th Cir. 1996). Qualified immunity defense fails if public officer violates clearly established right because a reasonably competent official should know law governing this conduct. *Benitz v Wolff*, 985 F2d 662 (2nd Cir. 1993), *Jones v Counce*, 7 F3d 1359 (8th Cir. 1993).

Government officials may be held liable for constitutional wrongs

caused by their failure to adequately train or supervise subordinates. *White v Farrier*, 849 F2d 322 (8th Cir. 1988), *Cole v Bone*, 993 F2d 1328 (8th Cir. 1993).

Federal courts will discharge their duties to protect constitutional rights. *Procunier v Martinez*, 416 US 396, 40 Led2d 224, 94 SCt. 1800.

"Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. *Bell v Hood* 327 US at 684. In such cases there is no safety for the citizen except in the judicial tribunals, for rights which have been invaded by officers of the government professing to act in its name. *US v Lee* 106 US 196 219 (1882). It is well settled that where legal rights have been invaded, and a federal statute provides for general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done. *Bell v Hood* 327 US at 684. The very essence of civil liberties consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. *Marbury v Madison*, 1 Cranch 137, 163 (1803).

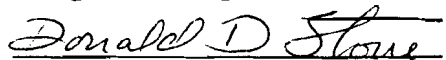
Plaintiff bringing constitutional action against government official for damages, for which officials improper motive is necessary element, need not adduce clear and convincing evidence of improper motive in order to defeat official's motion for summary judgment and trial judge should give priority to discovery concerning issues that bear upon qualified immunity defense asserted by government official, such as actions that official actually took, since that defense should be resolved as soon as possible. That cases applying the affirmative defense of qualified

immunity provide no basis for placing "a thumb on the defendant's side of the scales when the merits of a claim that the defendant knowingly violated the law are being resolved. *Crawford El v Britton* 96-827 US SCt.(1998)

CONCLUSION

For the foregoing reasons, the plaintiff respectfully request that Plaintiffs Motion for Opposition to Defendant Battaglia, Kelberman, Russell and Simpson Motion to Dismiss be granted.

Respectfully submitted,


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Fax.(561) 334-0117

CERTIFICATE OF SERVICE

I hereby certify this 19th day of May 1998, that copies of the foregoing Plaintiffs Opposition to Defendants Battaglia, Kelberman, Russell III and Simpsons' Motion to Dismiss on were mailed on May 19th, 1998 via first class, postage, prepaid to:

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EXHIBIT

A

William Howard
MD Assistant AG
MD Higher
Education Div.
Howard falsified
affidavit filed in MD
State Court Longo
v. Stone to protect
Longo

Dale Kelberman
USDOJ Chief of
White Collar
Crimes for MD.

Mike Beck
investigator MD
Higher Education
Div.

9-26-94

Longo -

Meeting with US, Bill Howard, Dale Kelberman, Mike -

Lori Simpson USDOJ
Bankruptcy Trustee Atty.

Kelberman is now employed by the firm of
Miles & Stockbridge

Operating private career school - MD since late 40s - truck
driving - then opened other training centers in MD + Va -
correspondence courses - truck driver home study then
3 weeks of on-site training - very few people made
it to the resident training -

In one year he pulled down more federal aid in
MD than College Park

was legitimate enterprise - certain features the
state didn't like.

He was licensed by state - as vocational school -
he sued to get that license - because his trucks
were failing the MVA standards - he said they
were only being used as student vehicles - then
after he was licensed as providing vocational training
he was eligible for federal aid.

Inspector General of Dept. of Education - looked
at Pell grants - investigation was completed in Feb-1994 -
started in 1990-1991. Senate Select Committee wanted
to look into NTS but were told that it had the
matter under investigation.

Its report was issued - said NTS followed all
the proper procedures - if anything the government
owed them \$ -

IG (Inspector General) report was issued - said NTS followed all the proper procedures and if anything the government owed them \$ -

②

(This is the bad copy in the above page)

their paperwork - Earl Grovat + Associates - Florida Co - that
Howard says employees ^{specializing in this} told them that dates had
been changed - he told OIG - doesn't know if that
was ever looked into.

Supervisor of OIG said they are looking into it again -
(John Taylor) - said they were doing a review -

NTS files 10-21-90 - case dismissed 7-92 - on motion of Ins
Longo filed 11-13-90 document under confirmed
plan -

Total refunds owed to students of \$8 million - of NTS -

Grochal represents Charles Longo -
Howard Rubenstein represents ex-wife
Mel Paul represented Creditors Committee

Sellinger - was personal attorney

bookkeeper -

outside Charles Fagan - Pikeville

NTS

Lori Simpson US DOJ Bankruptcy Trustee
Attorney who repeatedly evaded my
process server in MD. State litigation
Longo vs. Stone

Lori Simpson

Charles R. Longo
(National Training Systems, Inc./Shippers' Choice, Inc.)

I. Background

1. Notice of Deficiencies from MHEC to NTS (6/28/90)
2. Recommended Decision from ALJ Tranen (8/15/91)
3. Notice of Deficiencies from MHEC to NTS (8/10/92)
4. Proposed Order from ALJ Lewis-Frazee (6/28/91)
- ~~X~~ MHEC's Proposed Findings of Fact and Conclusions of Law (4/11/94) *NTS + Longo -*
6. MHEC's Complaint Objecting to Discharge of Debtor (9/16/93)
7. MHEC's Motion to Convert to Chapter 7 (11/23/93)
8. MHEC's Amended Counterclaim against Shippers' Choice, Inc. (7/21/94)

II. Possible Bankruptcy Fraud

A. Basic Information

9. NTS Bankruptcy Schedules
10. Longos' Bankruptcy Schedules
11. Longos' Check Register

B. \$51,368.44 taken from NTS in last week before bankruptcy

12. NTS Credit Line Account computer summary
13. NTS Credit Line bank account statements
14. Charles Longo Chevy Chase bank account statements and letter from Martin Snider

(first meeting with Alan Grochal, NTS bankruptcy counsel, took place on 9/18/90; petition was filed on 9/21/90)

C. Postpetition conversion of \$7,000 Cougar proceeds to own use

1. See findings pp. 42-43, 76, 85-86

D. Postpetition transfers from NTS to Shippers' Choice: (a) at least \$85,422.04 included on May - Sept. 1991 monthly reports, never approved by Court, and (b) at least \$66,932.96 totally

unaccounted for

15. NTS Monthly Reports (May-Sept. 1991)
16. Tydings & Rosenberg ledgers and bank statements
- E. Postpetition conversion of NTS computer and other personal property
 - See June 1991 monthly report (above) - \$7,300 computer purchase
17. Gary Boardwine deposition (5/23/94) (re computer, phones and fax machine)
- F. Failure to disclose, and unknown use of, separate bank account for Charles Longo, with a balance of \$9,203.22 on date of his petition
 - See Longos' Schedules (above), pp. 1, 10
18. Citizens Bank account statements
- G. Many examples of false statements - see Complaint Objecting to Discharge for some

III. Possible Securities or Mail Fraud Concerns

A. Private Offerings by Shippers' Choice/American Credit Co. totaling approximately \$500,000 in Sept. '92, Dec. '92 and Mar. '93, guaranteed by Charles R. Longo

-with no disclosure of the financial status of Mr. Longo, the fact that he was in bankruptcy, and with the guarantee of questionable legality in the bankruptcy proceedings

-warranties to investment broker that company was authorized to conduct its business in accordance with law and that no actions or proceedings had been filed or threatened against it, contrary to cease and desist letters from MHEC

-possible misuse of proceeds by Charles R. Longo individually, rather than for corporate purposes

-possibly not registered as exempt in all necessary states

19. Confidential Term Sheets (Depo. Exs. 1 and 2)
20. Agency Agreements dated 11/25/92 and 3/1/93

B. Private Offering of up to \$1,000,000 on or after July '93

-possible misuse of proceeds by Charles R. Longo individually, rather than for corporate purposes as stated in placement memorandum

-similar representation that company was not a party to any litigation, nor had any been threatened against it

-financial information differs drastically from info on tax return and internal financial statement for same period

21. Confidential Private Placement Memorandum, 7/14/93
22. 1992 Federal Income Tax Return for Shippers' Choice
see p. 4
23. Shippers' Choice internal financial statements as of Dec. 31, 1992 (run 3/24/93)

**B. Donald Stone Industries/Investors/Bruff Procter --
complaints by Donald Stone**

24. E.g., Complaint and Answer in Charles R. Longo and Donald Stone Industries, Inc. v. Donald J. Stone

IV. Possible Income Tax Concerns

A. 1989 Joint Personal Return

-failure to report \$300,000 dividend. See Proposed Findings above, pp. 48-49

-possible unreported officer loan, vending machine and Lamborghini income. See Proposed Findings above, pp. 66-70, 49-52 and 39-40.

-questionable "personal interest" claim of \$35,000 (\$7,000 deduction)

-failure to report \$28,873 Nissan income claimed later

B. 1990 Individual Return

-possible unreported officer loan income/questionable deductions for \$704,317 in claimed "business losses" for loans# pp. 29-31, 49-52 and 39-40.

-mysterious transfers from NTS probably not reported or

accounted for on income tax return

C. 1991 and later returns

-allegedly receiving no salary from Shippers' Choice, but showing huge amounts of income/cash flow on monthly bankruptcy reports and in checking account; unknown how much income reported

25. Summary of Bank Deposits and Other Cash Payments

-See Charles Longo monthly bankruptcy reports through 12/93

26. Charles Longo deposition extracts and officer loan account summary

V. Possible Federal Aid Concerns

A. Approximately \$700,000 in aid drawn down by NTS for ineligible ACT program in early 1989

possible flaw in system - was approved 6 months later - student now have to repay financial aid -

B. Individual allegations of fraud in cashing student loan checks by NTS

*150 students
probably high %
↑ loans are in default*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Now the 6 DOJ employees (4 from Maryland, 2 from South Florida) having been caught lying to the court and trying to whitewash the criminal activities of their co-conspirators "as a business dispute" are now acknowledging the criminal activities of their co-conspirators

DONALD D. STONE,)
)
 Plaintiff,)
)
 v.)
)
 ROBERT E. WARFIELD, SR.,)
 CHARLES R. LONGO, MARK)
 SAPPERSTEIN, et al.)
)
 Defendants.)
)
)

Case No. 98-14069-CIV-RYSKAMP

Magistrate Judge Lynch

DEFENDANTS' REPLY TO
PLAINTIFF'S OPPOSITION
TO DEFENDANTS' MOTION
TO DISMISS COMPLAINT

The Defendants, Lynne Battaglia, Dale Kelberman, George Russell III, and Lori Simpson (federal defendants), reply to Plaintiff's Opposition to Defendants' Motion to Dismiss Complaint and reiterate that Plaintiff's cause of action, if any, against the federal defendants arose in Maryland. Plaintiff's allegations as to the federal defendants involve certain subpoenas that were issued by a state court in Maryland. Plaintiff does not dispute that the federal defendants live and reside in the state of Maryland. Plaintiff's cause of action, if any, arising out of the issuance of the Maryland state court subpoenas arose in Maryland.

The fact that there are United States Attorneys offices in each of the fifty (50) states does not mean that a United States Attorney or an Assistant United States Attorney, who resides and works in Maryland, may be sued in his or her individual capacity in any of the fifty (50) states. In this case, it would be a

Now the 6 DOJ employees have been caught lying to the court they change their story from Stone being involved in a " business dispute " to admitting that Stones former business associates are engaged in " Criminal Activities "

violation of due process to require the federal defendants, who reside and work in Maryland, to defend themselves in a Florida court. For these reasons, the Court lacks personal jurisdiction over the federal defendants.

Plaintiff's attempt to link the activities of the federal defendants with the alleged criminal activities of Plaintiff's former business associates must fail. There is absolutely no evidence or support for Plaintiff's assertion that the federal defendants were in any way involved with Plaintiff's former business associates. Plaintiff's statements that the federal defendants were co-conspirators in alleged criminal activity is scandalous, totally without factual support, and should be stricken from Plaintiff's pleading.

Plaintiff's allegations that the federal defendants also failed to disclose "Brady" materials to him are misplaced. Brady simply does not apply to the subpoenas that were issued to Lynne Battaglia and Lori Simpson in connection with the Maryland civil lawsuit. "Brady" materials, and the disclosure thereof, only relate to criminal prosecutions. See Brady v. Maryland, 373 U.S. 83 (1963). The rules concerning the disclosure of "Brady" materials would not apply to the civil lawsuit brought by Longo against the Plaintiff in Maryland state court.

Plaintiff's opposition fails to address several of the issues raised in the federal defendants' motion to dismiss the Complaint. As set forth in Defendants' Motion to Dismiss Complaint, Counts 25, 39 and 102 of the Complaint fail to state a claim upon which relief can be granted. Count 25, which alleges a violation of the RICO

statute, 18 U.S.C. § 1962(d), is insufficient as a matter of law. There are no allegations that the federal defendants conspired to receive any income from racketeering activity or through collection of an unlawful debt as required by the RICO statute. See 18 U.S.C. § 1962.

Count 39, which alleges a conspiracy to obstruct justice in violation of 18 U.S.C. § 1503 and Count 102, which alleges mail fraud in violation of 18 U.S.C. § 1341, are criminal statutes. There is no private right of action, which would allow a private citizen to bring an action, for violation of these statutes. See Phillips v. Goodyear Tire & Rubber Co., 651 F.2d 1051 (5th Cir. 1981); Hanna v. Home Insurance Co., 281 F.2d 298 (5th Cir. 1960) cert. den. 365 U.S. 838 (1961); Odell v. Humble Oil & Refining Co., 201 F.2d 123 (10th Cir. 1953), cert. den. 345 U.S. 941 (1953); Bell v. Health Mor-Inc., 549 F.2d 342 (5th Cir. 1977); Raffaele v. Designers Break, Inc., 750 F.Supp. 611 (S.D.N.Y. 1990). Counts 25, 39 and 102 of the Complaint therefore fail to state a claim upon which relief can be granted.

Plaintiff's attempt, in his opposition, to link Lori Simpson to the alleged actions of Plaintiff's former business partners is without any factual support. The only allegations in the Complaint concerning Lori Simpson are that (1) Plaintiff unsuccessfully tried to have Lori Simpson served with a subpoena duces tecum in connection with the Maryland state civil lawsuit and (2) Lori Simpson was present at a meeting at which the activities of two corporations, SCI and NTS, were discussed. There are no specific allegations of wrongdoing by Defendant Lori Simpson. Lori Simpson

should therefore be dismissed from the Complaint in the case at bar.

Plaintiff also fails to refute the proposition that federal prosecutors are absolutely immune for actions taken in their roles as advocates for the government. See Imbler v. Pachtman, 424 U.S. 409 (1976). The cases cited by Plaintiff, in which it was held that the Attorney General and IRS agents were entitled to only qualified immunity, are distinguishable from the case at bar. See Mitchell v. Forsyth, 472 U.S. 511 (1985); Cameron v. IRS, 773 F.2d 126 (7th Cir. 1985). The issue in Mitchell, *supra*, was whether the Attorney General is absolutely immune from suits for actions performed in connection with his national security functions. The Supreme Court in Mitchell, while acknowledging that the doctrine of absolute immunity applies to prosecutorial decisions, held that the Attorney General was not entitled to absolute prosecutorial immunity in connection with his national security duties. In Cameron, *supra*, the court held that IRS agents are only entitled to qualified immunity since they are not prosecutors. The court in Cameron specifically recognized that "judges and other adjudicators, and prosecutors, have absolute immunity...." 773 F.2d at 128.

In the case at bar, the actions taken by the federal prosecutors in responding to the subpoena duces tecum directed to United States Attorney Lynne Battaglia are entitled to absolute immunity. The immunity of the prosecutor extends to any activities that are an integral part of the judicial process. See Imbler, *supra* at 430; Fullman v. Graddick, 739 F.2d 553, 559 (11th Cir.


1984)(prosecutor entitled to Imbler immunity for conspiracy to withhold evidence and for creating and proffering perjured testimony); Allen v. Thompson, 815 F.2d 1433 (11th Cir. 1987)(AUSA immune for letter written to parole commission); and Henzel v. Gerstein, 608 F.2d 654, 657 (5th Cir. 1979)(absolute immunity for filing criminal charges without jurisdiction, offering perjured testimony, Brady violations, and threatening the criminal defendant with additional charges). Plaintiff's allegations as to the federal prosecutors are therefore barred by the doctrine of absolute immunity.

For these reasons, the federal defendants, Lynne Battaglia, Dale Kelberman, George Russell III, and Lori Simpson, move to be dismissed from the Complaint in the case at bar.

Respectfully submitted,

THOMAS E. SCOTT
UNITED STATES ATTORNEY

By:


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendants' Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss Complaint was mailed on this 29th day of May, 1998 to:

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DONALD D.STONE,

*

Plaintiff

* Civil Action No. 98-14069

v.

*

ROBERT E.WARFIELD,SR., et al

* Civ-Ryskamp

Defendants

*

* * * * *

PLAINTIFFS RESPONSE TO DEFENDANT BATTAGLIA, KELBERMAN, AND
RUSSELLS REPLY TO PLAINTIFFS OPPOSITION
TO MOTION TO DISMISS COMPLAINT

The plaintiff, Donald D. Stone, Pro Se, reply to defendants being sued individually, Lynne Battaglia, Dale Kelberman, George Russell III, and Lori Simpson (federal defendants) to Plaintiff's Opposition to Defendants Motion to Dismiss.

This court does have personal jurisdiction over the defendants in that they acted in concert with private and state actors in futherance of unlawful criminal activities and a conspiracy targeting and defrauding plaintiff as a victim. The primary objective of the conspiracy was to wrest from plaintiff/ inventor domiciled in Florida his valuable patent and intellectual property located in situ of inventor in Florida. After the primary objective of the conspiracy was accomplished on or about June 1996

[Handwritten signature]

[Handwritten signature]

when plaintiff assigned his intellectual property to a forfeited corporation. The co-conspirators of the federal defendants, then under color of law, unlawfully converted plaintiffs intellectual property to their personal assets. This conspiracy would be ongoing and continuous in the collaboration and fraudulent concealment of the numerous fraudulent schemes that had targeted plaintiff and plaintiffs' intellectual property. The federal defendants would continue to act in concert with the private and state actors to conceal and frustrate plaintiffs efforts to uncover and to expose the extensive corruption at all levels of government in the State of Maryland, the criminal activities, civil rights violations and constitutional rights violations. The federal defendants were actively engaged in criminal activities as co-conspirators for their personal, political enrichment and the protection of the Maryland Democratic machine.

The issue before this court is not that defendants failed to act, but acted in an unlawful and fraudulent manner to discredit and conceal from plaintiff, exculpatory evidence that plaintiff sought for his defense in a sham judicial proceeding. The federal defendants acted unlawfully to protect their personal and political agendas and their co-conspirators from possible exposure of their criminal activities and possible adverse judicial decisions based on the exculpatory evidence plaintiff was seeking to obtain that was in the possession of the federal defendants.

Defendants have offered no evidence to refute plaintiffs allegations. Plaintiff has already provided evidence to this court May 19, 1998, EXHIBIT A of documentary evidence. On or about May or June 1995, plaintiff tried in a legal, lawful, and reasonable manner to obtain this evidence with a subpoena Duce Tecum served on

Battaglia that plaintiff needed for his defense in a Sham lawsuit that federal defendants co-conspirators had filed against plaintiff.

Approximately 1 1/2 years later on or about November 1996 plaintiff/victim accidentally obtained these documents, EXHIBIT A from a FOIA request placed with the US Dept.of Justice,Executive Office for United States Trustee. These documents provide details and outline of a multitude of numerous fraudulent schemes/and or felony offenses, some of which the plaintiff was the targeted victim of the numerous federal felonies.

The plaintiff a targeted victim had sought the assistance from the federal defendants as protection against the criminal activities of which he was the target,instead the federal defendants conspired to conceal from the victim exculpatory evidence. "The law supports the use of litigation as a social means for resolving disputes,and it encourages honest citizens to bring criminals to justice".Prosser & Keeton,On Torts.

**DEFENDANTS BATTAGLIA,KELBERMAN,RUSSELL AND SIMPSON DID
ACT IN CONCERT WITH CO-CONSPIRATORS TO FURTHER THE
VICTIMIZATION OF PLAINTIFF**

The defendants,Federal Prosecutors Battaglia,Kelberman,Russell and US Bankruptcy Trustee Simpson did act in concert in furtherance of the conspiracy with Maryland State law enforcement actors and agencies acting in concert with private actors who had targeted plaintiff to become the victim of multiple federal felony offenses. Defendants Battaglia,Kelberman,Russell and Simpson through their actions repeatedly tried to frustrate,discredit,and conceal from plaintiff exculpatory documentary evidence of their co-conspirators multitude of fraudulent schemes and criminal

activities. Plaintiffs efforts were directed at trying to stop the criminal activities of Battaglia, Kelberman, Russell, and Simpsons co-conspirators, but the federal defendants were actively trying to frustrate and block plaintiffs efforts to bring their co-conspirators to justice. (EXHIBITS 1 & 2)

Defendants are employed by the US Dept. of Justice in the highest level of Law enforcement in the United States. These defendants are well compensated to protect the citizens of the United States from the criminal element, they are not paid to act in concert and furtherance of criminal conspiracies with the white collar criminal element in the State of Maryland for their political and personal enrichment, trading justice for lucrative attorney positions in the private sector when they leave DOJ government employment.

DEFENDANTS BATTAGLIA, KELBERMAN, AND RUSSELL ARE STRIPPED OF THEIR ABSOLUTE & QUALIFIED IMMUNITY

Defendants, Battaglia, Kelberman, and Russell are charged with the following offenses:

1. Conspiracy in violation of 18 USC §1962
(Complaint page 60/Count 25)
2. Conspiracy to Obstruct Justice in violation of 18 USC §1503
(Complaint page 64/Count 39)
3. Conspiracy to commit Mail Fraud in violation of 18 USC §1341
(Complaint page 86/count 102)
4. Conspiracy in violation of Civil Rights and Due Process in violation of 42 USC § 1983, 1985, 1986, 1988 and Constitutional rights to Due Process.
(Complaint pages 104-113)
5. Violations of Constitutional rights, Fourth, Fifth, & Fourteenth

(Complaint pages 104-113)

Defendants Battaglia, Kelberman, and Russell as Federal prosecutors are stripped of their shield of *Absolute Immunity*.

Plaintiffs cause of action against the federal defendants, individually, is based on their conduct arising from the process of a subpoena duce tecum concerning a civil complaint that plaintiff had been named as defendant, in the State of Maryland, Circuit Court for Worcester County. Plaintiff had defendant Battaglia, served on or about May or June 1995. Battaglia was served with this subpoena because plaintiff had reason to believe that Battaglia, as US Attorney for Maryland may have personal knowledge and/or documentation that would be beneficial to plaintiffs defense in this civil matter.

Plaintiff never spoke to Battaglia concerning this matter, but was contacted instead by Assistant US Attorney, Russell. Russell had only been employed with the US Attorneys Office approximately six months. Russell telephoned plaintiff in Florida from Maryland and engaged in an extensive conversation with plaintiff. Russell never mentioned defendant Kelberman nor Battaglia nor was there any disclosure to plaintiff about any documentary evidence that might be in the possession of the US Attorneys Office. Russell never mentioned any meeting between Kelberman, Howard, Beck, and Simpson concerning the multitude of fraudulent schemes and possible federal felony offenses that Longo and his co-conspirators were involved in and some that had possibly targeted plaintiff as victim. Russell made false statements to mislead plaintiff by declaring plaintiff was only involved in a business dispute with Longo and his co-conspirators and then stated that

they knew what was going on. On or about May or June 1995 plaintiff made a final telephone call to Russell and in an aggravated manner, Russell told plaintiff never to call the US Attorneys Office again. Having been mislead by Russells fraudulent statements plaintiff allowed the subpoena duce tecum served on Battaglia to be quashed. It was not until November 1996 that plaintiff discovered the exculpatory evidence the Federal Defendants were fraudulently trying to conceal from plaintiff.

ARGUMENT

For the defendants, Federal Prosecutors, claiming "absolute immunity " this defense fails. The official seeking *absolute immunity* bears the burden of showing that such immunity is justified for the function in question, *Burns v Reed* 500 US at 486 *Imbler v Patchman*, 424 US 409, 410, 430-430-431, and subsequent cases recognize that a criminal prosecutor is fully protected by absolute immunity, when performing the traditional functions of an advocate, see, e.g., *Buckley v Fitzsimmons*, 509 US 259, 273, (1993) but is protected only by qualified immunity when he is not acting as an advocate, as where he functions as a complaining witness in presenting a judge with a complaint and supporting affidavit to establish probable cause for an arrest, see *Malley v. Briggs*, 475 US 335, 340-341. From *Buckley v Fitzsimmons et al* 509 us 259 (1993), the Court reaffirms that the defendant official bears the burden of showing that the conduct for which he seeks immunity would have been privileged at common law in 1871. see ante at 269, 275, 277-278. Thus if application of the principle is unclear, the defendant simply loses.

1. In determining absolute immunity we examine the "nature of the function performed, not the identity of the actor who performed

it." *Forrester v. White*, 484 US 219, 229 (1988). This point is perhaps best illustrated by the determination that the senior law enforcement official in the Nation - the Attorney General of the United States - is protected only by qualified rather than absolute immunity when engaged in the performance of national defense functions rather than prosecutorial functions. *Mitchell v. Forsyth*, 472 US 511 (1985).

a. Defendants Battaglia, Kelberman, and Russell were not acting in any type of advocacy or prosecutorial function but, were acting individually in furtherance of a conspiracy targeting plaintiff as victim, through fraudulent concealment of exculpatory evidence plaintiff was attempting to obtain. Battaglia was acting merely as an administrator ordering defendants Kelberman and Russell to fraudulently mislead and conceal exculpatory evidence from plaintiff in which defendants were acting in concert with co-conspirators in furtherance of a conspiracy. The motivation was for their self serving personal and political agendas.

2. Additionally, absolute immunity, is available for conduct of prosecutors that is "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 US 409, 430, Pp 267-271. And the prosecutor is fully protected by absolute immunity when performing the traditional functions of the advocate. *Burns* made explicit the point that we (the court) had reserved in *Imbler*, 424 US at 430-431, and n.33: a prosecutors administrative duties and those investigatory functions that do not relate to an advocate's preparation for the initiation of prosecution or for judicial proceedings are not entitled to absolute immunity, See *Burns* 500 US at 494-496. *Imbler v. Pachtman* 424 US at 431. As the function test of *Imbler* recognizes, the

actions of a prosecutor are not immune merely because they are performed by a prosecutor. *Qualified Immunity* "represents the norm" for executive officers, *Malley v Briggs*, 475, US at 340, quoting *Harlow v Fitzgerald*, 457 US at 807, so when a prosecutor "functions as an administrator, rather than as an officer of the court," he is entitled only to qualified immunity" *Imbler*, 424 US at 431, n.33.

b. Plaintiff's actions against defendants Battaglia, Kelberman, and Russell did not arise from any "intimate association with the judicial phase of the criminal process" but, from plaintiffs process service of a subpoena Duce Tecum served on Battaglia involving a Civil Complaint from a Maryland State Circuit Court. Plaintiff believed that Battaglia was alleged to have personal knowledge and possible evidence in her possession and control as the US Attorney for Maryland that would be helpful to plaintiffs defense. Ultimately Battaglia, Kelberman, and Russell conspired to conceal exculpatory evidence from plaintiff, not as prosecutors or officers of the court but, acting as private citizens under the cloak of absolute immunity. Defendants were far removed from the judicial phase of a criminal proceeding.

Defendants being sued in their individual capacity are not entitled to the defense of *qualified immunity*. From *Buckley v Fitzimmons* 509 US 259 (1993) most public officials are entitled only to *qualified immunity*, *Harlow v Fitzgerald* 457 US 800, 807 (1982). Under this form of immunity, government officials are not subject to damages liability for the performance of their discretionary functions when "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known," *Harlow v Fitzgerald*, 457 US at

818. For the federal defendants, as federal prosecutors whose very job is enforcing the federal statutes and constitutional rights "ignorance of the law" is not a valid defense. For purposes of immunity analysis, federal officials are indistinguishable from state officials and receive no greater degree of protection from constitutional claims. *Mendenhall v. Goldsmith* 59 F3d 685 (7th Cir. 1995). Defense of qualified immunity does not protect those officials who are plainly incompetent or those who knowingly violate the law. *Bagby v. Okst*, F3d 845 (2nd Cir. 1996)

**COMPLAINT SHOULD NOT BE DISMISSED FOR
FAILING TO STATE A CLAIM**

Exhibit 3 describes approximately 65 different reasons plaintiffs complaint should not be dismissed for failure to state a claim in the Florida 11th Federal Jurisdiction.

In *National Organization for Women Inc. v Scheidler* 92-780 S Ct. (1994) we (Court) held that "at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim. *Lujan v. Defenders of Wildlife*, 504 US (1992). The District Court dismissed petitioners claim at the pleading stage pursuant to Federal Rules of Civil Procedure 12(b)(6), so their complaint must be sustained if relief could be granted "under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 US 69, 73 (1984)

Pickings v. Pennsylvania Railway, (151 F2d. 240) 3rd Cir. In *Picking* the plaintiff's civil rights was 150 pages and described by a federal judge as "inept".

Nevertheless, it was held:

Where a plaintiff pleads pro-se in a suit for protection of civil rights, the court should endeavor to construe plaintiff's pleadings without regard to technicalities.

Justice Black in *Conley v Gibson* 355 US 41 at 48 (1957) "The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of the pleading is to facilitate a proper decision on the merits." The Court also cited Rule 8(f) FRCP, which holds that all pleadings shall be construed to do "substantial justice."

Additionally, to dismiss plaintiff's pro se complaint which defines serious factual patterns and allegations involving extensive public corruption of Federal actors, conspiring with State and private actors in the State of Maryland, it would be violative of procedural due process to deprive pro-se plaintiff of equal protection of the law versus a party who is represented by counsel.

CONCLUSION

Battaglia, Kelberman, Russell, and Simpson represent the most dangerous type of white collar criminal in the United States, the predatory and unlawful use of Federal Authority to enable large syndicates of white collar criminals to target victims, such as plaintiff "under color of law."

The Federal defendants wield virtually unlimited powers of corruption with absolute immunity and the ability to selectively control federal criminal investigations to protect personal and political agendas. Plaintiff has suffered extensively and will continue to suffer. If it were in the purview of

plaintiff, plaintiff would seek federal
indictments, incarceration, and permanent disbarment of defendants
Battaglia, Kelberman, Russell, and Simpson.

As stated by Chief Justice, Warren Burger, United States
Supreme Court:

"75 to 90 percent of American Trial Lawyers
are incompetent, dishonest, or both."

For these reasons, the defendants Battaglia, Kelberman, and
Russell being sued in their individual capacity, as federal
prosecutors should not be dismissed from this Complaint.

Respectfully submitted,

Donald D. Stone

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895 N.E. Dixie Hwy.
Unit # 9
Jensen Beach, FL. 34957

Tel. (561) 334-5909
Fax. (561) 334-0117



Washington, D.C. 20530

March 10, 1995

Mr. Donald D. Stone
Stone Technologies
1820 NE Jensen Beach Boulevard
Jensen Beach, Florida 34957

Dear Mr. Stone:

Your correspondence to President Clinton concerning Charles R. Longo was referred to this office for response. Specifically, you contend that Mr. Longo has committed bankruptcy fraud, that the evidence of this fraud is a matter of public record and that he should be prosecuted in connection with this alleged fraud.

The United States Trustee Program is a component of the Department of Justice that is responsible for supervising the administration of bankruptcy cases and trustees. In order to respond to your inquiry, we contacted the United States Trustee for the District of Maryland, where Mr. Longo's chapter 11 bankruptcy case was filed. We learned that Charles and Linda Longo filed a joint voluntary petition under chapter 11 of the Bankruptcy Code on November 13, 1990. At or about the same time, Mr. Longo's corporation, National Training Systems, also filed for protection under chapter 11. National Training Systems bankruptcy case was dismissed in July 1993. Charles and Linda Longo had their joint petition severed in July 1992. Although Linda Longo's chapter 11 plan was confirmed in July 1994, Charles Longo's plan has not yet been confirmed.

On December 9, 1994, another corporation controlled by Charles Longo, Shipper's Choice, Inc. ("Shipper's") filed a voluntary petition under chapter 7 of the Bankruptcy Code. The United States Trustee appointed Joel Sher to serve as the chapter 7 trustee in the Shipper's case. Mr. Sher believes that the Shipper's case may have assets and has been conducting an extensive investigation in that regard.

Longo had fleeced the US Dept. of Education out of approx. \$8 million in Pell Grants involving 2000 documented victims in Maryland & Virginia. Longo and 2 entities controlled by him would declare bankruptcy in early 1990s. Longo was continually involved in bankruptcy fraud moving and hiding assets between the 3 bankrupt entities.

Longos personal bankruptcy lasted almost 9 years.

EXHIBIT

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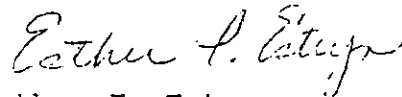
Mr. Donald D. Stone - 2

Mr. Longo's individual chapter 11 case has been the source of much controversy since it was filed. Mr. Longo, through corporations owned by him, has been in the business of offering courses for persons training to be long-distance truck drivers. Apparently, many students paid Mr. Longo for training but never received it. Most of the money these students paid to Mr. Longo represented proceeds from government-backed education loans. The Maryland Higher Education Commission ("MHEC") has been very active in this matter and is attempting to assert a class action on behalf of students/consumer creditors against Mr. Longo. The MHEC is also seeking to have Mr. Longo held individually liable to his numerous creditors. These matters are currently under consideration by the bankruptcy court.

The United States Trustee has closely monitored these matters; but the ultimate decision to bring a federal prosecution rests with the United States Attorney. The United States Attorney has been apprised of the case but has declined to prosecute at this point. If you believe that you have sufficient proof to show that a crime has been committed, we would suggest that you contact the United States Attorney's office in your area or you may submit further documentation to the office of the United States Trustee, 300 West Pratt Street, Suite 350, Baltimore, Maryland, 21201. Keep in mind that evidence of any crime should be as specific as possible and must be evaluated on the basis of whether it can meet the high standard of proof imposed on the government in a criminal case. Mere information or allegations do not suffice. Added to these factors is the need to evaluate a case in view of available resources and what the most efficient and effective use of those limited resources are.

Thank you for your letter.

Sincerely,



Esther I. Estryn
Deputy General Counsel

U.S. Department of Justice



Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Post Office Box 28060
Richmond, Virginia 23228
August 24, 1995

Mr. Donald Stone
1820 N.E. Jensen Beach Boulevard
Suite 648
Jensen Beach, Florida 34957

RE: CHARLES R. LONGO


Dear Mr. Stone:

By letter dated August 1, 1995, A. E. Hantwerker, Division of Consumer Affairs, advised the Richmond Office of the Federal Bureau of Investigation (FBI) of your belief that Charles R. Longo is involved in a ponzie scheme. After reviewing the enclosed materials, I have forwarded your letter with its enclosures to both the Baltimore and the Washington Metropolitan Field Offices of the FBI, as that appears to be where any potential criminal activity has occurred.

Any future contact you have regarding this matter should be directed to those offices. Thank you for bringing this matter to our attention.

Sincerely yours,

Stanley Klein
Special Agent in Charge

By: 
Paul E. Storer
Supervisory Special Agent

cc: Chief A. E. Hantwerker
Chief of Investigations and Compliance
Department of Agriculture and Consumer Affairs
Division of Consumer Affairs
Post Office Box 1163
Richmond, Virginia 23209

EXHIBIT

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notice of what plaintiff's claims are and grounds upon which they rest. Fed.Rules Civ.Proc.Rule 8(a)(2), 28 U.S.C.A.—Veltmann v. Walpole Pharmacy, Inc., 928 F.Supp. 1161.

Fact that plaintiff's complaint made general allegations against all named defendants and failed to separate each alleged act by each defendant into individually numbered paragraphs would be sufficient to grant either motion to dismiss with leave to amend or motion for more definite statement. Fed.Rules Civ.Proc.Rules 10(b), 12(e), 28 U.S.C.A.—*Id.*

M.D.Fla. 1995. Complaint should be dismissed for failure to state claim when, on basis of dispositive issue of law, no construction of factual allegations of complaint will support cause of action. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Harris v. McDonald's Corp., 901 F.Supp. 1552.

M.D.Fla. 1995. Threshold of sufficiency that complaint must meet to survive motion to dismiss for failure to state claim is exceedingly low; plaintiff need not set forth all facts upon which claim is based, and short and plain statement is sufficient if it gives defendant fair notice of what claim is and grounds upon which it rests. Fed.Rules Civ.Proc.Rules 8(a), 12(b)(6), 28 U.S.C.A.—Krehling v. Barton, 900 F.Supp. 1574.

M.D.Fla. 1995. On motions to dismiss, defendants must demonstrate that plaintiff cannot prove any set of facts consistent with pleadings that would entitle him to relief.—National R.R. Passenger Corp. v. Rountree Transport and Rigging, Inc., 896 F.Supp. 1204.

M.D.Fla. 1995. On motions to dismiss for failure to state claim on which relief can be granted, defendants must demonstrate that plaintiff can prove no set of facts which would entitle her to relief. Fed.Rules Civ.Proc.Rule 12, 28 U.S.C.A.—Marshall v. Miller, 873 F.Supp. 628.

Court may dismiss claim only if it is beyond doubt that plaintiff can prove no set of facts in support of claim which would entitle him to relief. Fed.Rules Civ.Proc.Rule 12, 28 U.S.C.A.—*Id.*

M.D.Fla. 1994. To prevail on motion to dismiss, moving party must demonstrate beyond a doubt that plaintiff can prove no set of facts in support of claim which would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b), 28 U.S.C.A.—Sawinski v. Bill Currie Ford, Inc., 866 F.Supp. 1383.

M.D.Fla. 1994. A complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that plaintiff can prove no set of facts that support a claim for relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Patterson v. Downtown Medical and Diagnostic Center, Inc., 866 F.Supp. 1379.

M.D.Fla. 1994. Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—In re Checkers Securities Litigation, 858 F.Supp. 1168.

M.D.Fla. 1994. Complaint should not be dismissed for failure to state claim unless it appears beyond reasonable doubt that plaintiff can prove no set of facts that would entitle plaintiff to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Fletcher v. State of Fla., 858 F.Supp. 169.

M.D.Fla. 1994. District court will dismiss for failure to state claim only if it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Friedman v. South Florida Ins. Co., 855 F.Supp. 348.

M.D.Fla. 1994. Complaint should not be dis-

M.D.Fla. 1994. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—NCR Credit Corp. v. Repron Electronics, Inc., 155 F.R.D. 690.

M.D.Fla. 1994. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt plaintiff can prove no set of facts that would entitle him to relief. Fed.Rules Civ.Proc. Rule 12, 28 U.S.C.A.—Eidson v. Arenas, 15 F.R.D. 215.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief.—Colodny v. Iverson, Yoakum, Papiano & Hatch, 838 F.Supp. 572.

Plaintiff's claims should not be dismissed or lack of in personam jurisdiction unless it appears beyond doubt that plaintiff can prove no set of facts that would establish personal jurisdiction over defendants.—*Id.*

M.D.Fla. 1993. Plaintiff's common law tort claims against defendant should not be dismissed unless it appears beyond doubt that plaintiff could prove no set of facts in support of her claim which would entitle her to relief. Fed.Rules Civ.Proc. Rule 12, 28 U.S.C.A.—Dibernardo v. Wast Management, Inc. of Florida, 838 F.Supp. 567.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that plaintiff can prove no set of facts in support of claim which would entitle him to relief.—Scarver v. Wells, 837 F.Supp. 1198.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Eidson v. Arenas, 837 F.Supp. 1158.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff could prove no set of facts that would entitle him to relief, viewing complaint in light most favorable to plaintiff and considering plaintiff's allegations as true. Fed.Rules Civ.Proc.Rule 8(a), 28 U.S.C.A.—Patrick Group, Inc. v. City of Clearwater, 836 F.Supp. 823.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that plaintiff can prove no set of facts that would entitle plaintiff to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Underwood v. City of Fort Myers, 836 F.Supp. 823.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state claim on which relief can be granted unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Nierenberg v. Heart Center of Southwest Florida, P.A., 835 F.Supp. 1404.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief.—Jacobs v. Blue Cross and Blue Shield of Iowa, 835 F.Supp. 1378.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief. Fed.Rules Civ.Proc.Rule 8(a), 28 U.S.C.A.—L.S.T. Inc. v. Crow, 834 F.Supp. 1255, reversed 49 F.3d 679.

M.D.Fla. 1993. Motion to dismiss should not be granted unless plaintiff would not be able to prove any set of facts in support of claim that would

EXHIBIT
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beyond doubt that plaintiff can prove no set of facts that would entitle him to relief, viewing complaint in light most favorable to plaintiff.—Olsen v. Lane, 832 F.Supp. 1525.

M.D.Fla. 1993. Motion to dismiss should not be granted unless plaintiff would not be able to prove any set of facts in support of his claim which would entitle him to relief. Fed.Rules Civ.Proc.Rule 12, 28 U.S.C.A.—Venero v. City of Tampa, Fla., 830 F.Supp. 1457, affirmed 40 F.3d 389.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Mahon v. City of Largo, Fla., 829 F.Supp. 377.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him or her to relief.—Gilbert v. Sears, Roebuck and Co., 826 F.Supp. 433.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that plaintiff can prove no set of facts that would entitle him to relief.—Morris v. Crow, 825 F.Supp. 295.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state cause of action unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.—Ippolito v. State of Fla., 824 F.Supp. 1562.

M.D.Fla. 1993. Because court must accept well pled allegations of complaint as true and all ambiguities or doubts concerning sufficiency of claim must be resolved in name of pleader, court cannot dismiss complaint unless it appears beyond doubt that under no set of facts can plaintiff state cause of action which would entitle it to relief.—Perez v. City of Key West, Fla., 823 F.Supp. 934.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts which would entitle him to relief.—Golden v. Complete Holdings, Inc., 818 F.Supp. 1495.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle plaintiff to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Hercules, Inc. v. Pages, 814 F.Supp. 79.

M.D.Fla. 1993. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of claim which would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Woodbury v. Sears, Roebuck & Co., 152 F.R.D. 229.

Pro se complaints, however inartfully pleaded, may only be dismissed for failure to state claim if it appears beyond doubt that plaintiff can prove no set of facts in support of cause of action.—Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Id.

M.D.Fla. 1992. Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief.—Ak v. City of Clearwater, 807 F.Supp. 701.

M.D.Fla. 1992. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief.—Ayres v. Housing Authority of City of Sarasota, 805 F.Supp. 938, vacated in part on rehearing 147 F.R.D. 255, affirmed 99 F.3d 124.

Inc. v. Greyhound Financial Corp., 801 F.Supp. 614.

M.D.Fla. 1992. Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him or her to relief.—Rondolino v. Northwestern Mut. Life Ins. Co., 788 F.Supp. 553.

M.D.Fla. 1992. Court should not dismiss complaint unless it appears beyond doubt that plaintiff can prove no set of facts in support of his or her claim which would entitle him or her to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Marcus v. Carrasquillo, 782 F.Supp. 593.

M.D.Fla. 1992. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief.—Swerhun v. General Motors Corp., 141 F.R.D. 342.

M.D.Fla. 1991. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts that would entitle him to relief.—Prentice v. Prentice Colour, Inc., 779 F.Supp. 578.

M.D.Fla. 1991. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiffs can prove no set of facts that would entitle them to relief.—California Int'l Chemical Co. v. Neptune Pool Service, Inc., 770 F.Supp. 1530.

M.D.Fla. 1990. Hibbing v. Sofarelli, 733 F.Supp. 1470, affirmed in part, vacated in part Sofarelli v. Pinellas County, 931 F.2d 718.

N.D.Fla. 1995. Rule on failure to state claim on which relief can be granted authorizes dismissal of complaint on dispositive issue of law. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—In re Miner, 185 B.R. 362, affirmed Miner v. Bay Bank & Trust Co., 83 F.3d 436.

N.D.Fla. 1995. Regardless of alleged facts, rule dealing with dismissal for failure to state claim does not authorize court to dismiss complaint on dispositive issue of law. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—T.W.M. v. American Medical Systems, Inc., 886 F.Supp. 842.

N.D.Fla. 1995. Motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that plaintiff can prove no set of facts that would entitle him to relief. Fed. Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Zombori v. Digital Equipment Corp., 878 F.Supp. 207, affirmed 103 F.3d 147.

N.D.Fla. 1993. Motion to dismiss for failure to state claim should not be granted unless it appears to a certainty that plaintiff can prove no set of facts that would entitle him to relief. Fed.Rules Civ.Proc.Rule 11, 12(b)(6), 28 U.S.C.A.—Cooper v. Gulf Breeze Hosp., Inc., 839 F.Supp. 1538.

S.D.Fla. 1996. For purposes of motion to dismiss complaint in antitrust litigation, district courts must insist upon some specificity in pleading before allowing potentially massive factual controversy to proceed. Fed.Rules Civ.Proc.Rule 8(a), 28 U.S.C.A.—Aventura Cable Corp. v. Rifkin/Narragansett South Florida CATV Ltd. Partnership, 941 F.Supp. 1189.

S.D.Fla. 1996. Complaint may not be dismissed for failure to state a claim because plaintiff's claims fail to support legal theory plaintiff relies on since court must determine if allegations provide for relief on any possible theory. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Vernon v. Medical Management Associates of Marjorie, Inc., 912 F.Supp. 1549.

S.D.Fla. 1995. Threefold of sufficiency that complaint must make to survive motion to dismiss

S.D.Fla. 1995. Complaint may not be dismissed because plaintiff's claims do not support the legal theory he relies upon since court must determine if allegations provide for relief or any possible theory. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Trustees of Hotel Industry Pension Fund v. Carol Management Corp., 880 F.Supp. 1548.

S.D.Fla. 1995. Court will not grant motion to dismiss unless plaintiff fails to prove any set of facts that would entitle plaintiff to relief, viewing complaint in light most favorable to plaintiff and accepting plaintiff's well-pleaded facts as true. Fed.Rules Civ.Proc.Rule 12, 28 U.S.C.A.—Lugones v. Sandals Resorts, Inc., 875 F.Supp. 821.

S.D.Fla. 1994. On a motion to dismiss for failure to state a claim, district court must view complaint in light most favorable to plaintiff and may only grant motion where it appears beyond a doubt that plaintiff can prove no set of facts in support of claim which could entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Albert v. National Cash Register Co., 874 F.Supp. 1328.

S.D.Fla. 1994. Claim is subject to dismissal on pleadings only if it is clear that no relief could be granted under any set of facts that could be proved consistent with allegations. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Smith v. Avino, 866 F.Supp. 1399, affirmed 91 F.3d 105.

S.D.Fla. 1994. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of claim which would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Boyd v. Brookstone Corp. of New Hampshire, Inc., 857 F.Supp. 1568.

S.D.Fla. 1994. Complaint must not be dismissed unless it is shown that plaintiff can prove no set of facts in support of claim which would entitle him to relief. Fed.Rules Civ.Proc.Rule 12, 28 U.S.C.A.—In re Southeast Banking Corp., 855 F.Supp. 353, affirmed 69 F.3d 1539.

S.D.Fla. 1994. Court shall not grant motion to dismiss unless it appears beyond doubt that claimant can prove no set of facts in support of claim that would entitle him to relief, and in determining whether dismissal is warranted, material allegations of plaintiff's claims are taken as true and are liberally construed in favor of plaintiff. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Bensch v. Metropolitan Dade County, 855 F.Supp. 351.

S.D.Fla. 1994. Preanswer motions, such as motion to dismiss for failure to state claim or motion for more definite statement, may raise two distinct issues: whether plaintiff has stated his purported claim with sufficient detail and whether claim as stated is recognized by law.—Bunger v. Hartman, 851 F.Supp. 461.

S.D.Fla. 1994. Courts do not grant motions to dismiss unless they are convinced that plaintiffs cannot prove a set of facts that would entitle them to relief under the claim. In analyzing motions to dismiss, courts assume that allegations in the complaint and incorporated exhibits are true, and construe the complaint in favor of plaintiffs.—Mann v. Air Line Pilots Ass'n, 848 F.Supp. 990.

S.D.Fla. 1993. A motion to dismiss should not be granted unless plaintiff can prove no set of facts in support of its claim entitling it to relief.—Borges v. City of West Palm Beach, 858 F.Supp. 174.

S.D.Fla. 1993. Claim may be dismissed for failure to state a claim only if it is clear that no relief could be granted under any set of facts consistent with allegations. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Burger King Corp. v. Holder, 844 F.Supp. 1521.

to relief.—Airlines Reporting Corp. v. Atlantic Travel Service, Inc., 841 F.Supp. 1166.

S.D.Fla. 1993. Court will not grant motion to dismiss unless, without a doubt, plaintiffs can prove no set of facts which would entitle relief under the claim.—Dunn v. Air Line Pilots Ass'n, 836 F.Supp. 1574.

S.D.Fla. 1993. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Fed.Rules Civ.Proc.Rule 12(b), 28 U.S.C.A.—Deamas v. Av-Med, Inc., 814 F.Supp. 103.

S.D.Fla. 1992. Complaint may not be dismissed on ground that plaintiff's claims do not support legal theory he relies upon, as court must determine if allegations provide for relief upon any possible theory. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Bender v. Centrust Mortg. Corp., 133 F.Supp. 1525, appeal dismissed 51 F.3d 1127 opinion modified on denial of rehearing 60 F.3d 1507.

S.D.Fla. 1992. For purposes of determining whether claim as stated is recognized by law, court accepts all plaintiff's allegations as true and will not dismiss action unless plaintiff could prove no set of facts in support of claim entitling him to relief. Fed.Rules Civ.Proc.Rule 8(a), 28 U.S.C.A.—City of Fort Lauderdale v. Ross, Saarinen, Bolon & Wilder, Inc., 815 F.Supp. 444.

S.D.Fla. 1992. Claim is subject to dismissal under Rule 12(b)(6) only if it is clear that no relief could be granted under any set of facts that could be proved consistent with allegations. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Colonial Penn Ins. Co. v. Value Rent-A-Car Inc., 814 F.Supp. 1084.

S.D.Fla. 1992. District court shall not grant motion to dismiss unless it appears beyond doubt that claimant can prove no set of facts in support of claim that would entitle him to relief.—Burker King Corp. v. Austin, 805 F.Supp. 1007.

S.D.Fla. 1992. Court cannot dismiss complaint for failure to state a claim unless it appears beyond doubt that plaintiffs can prove no set of facts in support of their claim.—Lake Lucerne Civic Ass'n, Inc. v. Dolphin Stadium Corp., 801 F.Supp. 614.

S.D.Fla. 1992. Motion to dismiss should not be granted unless plaintiff can prove no set of facts in support of his claim entitling him to relief, and claims do not support legal theories on which he relies.—Solano v. Southeast Bank, N.A., 796 F.Supp. 506.

S.D.Fla. 1992. On motion to dismiss for failure to state a claim upon which relief may be granted, court must view complaint in light most favorable to plaintiff, and may only grant motion where it appears beyond doubt that plaintiff can prove no set of facts in support of his or her claim which could entitle him or her to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.—Stern v. Espirito Santo Bank of Florida, 791 F.Supp. 865.

S.D.Fla. 1992. Complaint should not be dismissed for failure to state claim unless it appears beyond doubt that under no set of facts can plaintiff state cause of action that would entitle them to relief.—City of Miami Firefighters' and Police Officers' Retirement Trust v. Invesco MIM, Inc., 739 F.Supp. 392.

S.D.Fla. 1991. Complaint may not be dismissed because plaintiff's claims do not support legal theories on which he relies because court must determine if allegations form basis for relief on any possible theory.—Thomas v. Burlington Industries, Inc., 769 F.Supp. 368.

S.D.Fla. 1991. Complaint should not be dismissed

CERTIFICATE OF SERVICE

I hereby certify this 8th day of JUNE 1998, that copies of the foregoing Plaintiffs Response to Defendant Battaglia, Kelberman, and Russells Reply to Plaintiffs Opposition to Motion to Dismiss Complaint were mailed on June 8th, 1998 via first class, postage, prepaid to:

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9814069.strMD05

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DONALD D. STONE,
Plaintiff,

v.

ROBERT E. WARFIELD, SR.,
CHARLES R. LONGO, MARK
SAPPERSTEIN, et al.

Defendants.

Case No. 98-14069-CIV-RYSKAMP
Magistrate Judge Lynch

DEFENDANTS' MOTION TO
STRIKE PLAINTIFF'S RESPONSE

The Defendants, Lynne Battaglia, Dale Kelberman, George Russell III, and Lori Simpson (federal defendants), move to strike Plaintiff's Response to Defendants' Reply to Plaintiff's Opposition to Motion to Dismiss Complaint dated June 8, 1998. The federal defendants filed a motion to dismiss Plaintiff's Complaint on May 4, 1998. Plaintiff filed his opposition to the federal defendants' motion to dismiss on or about May 19, 1998. The federal defendants filed a reply to Plaintiff's opposition on May 29, 1998. Plaintiff has now filed a response to the reply filed by the federal defendants. The federal defendants submit that Plaintiff's response to the federal defendants' reply is not authorized by the Local Rules for the Southern District of Florida.

The Local Rules for the Southern District of Florida provide for the filing of a motion, a response thereto, and a reply. See Local Rule 7.1 C. These documents have previously been filed in

10/3/98

connection with the federal defendants' motion to dismiss. Local Rule 7.1 C specifically provides that "no further or additional memoranda of law shall be filed without prior leave of Court." Plaintiff has not sought permission of the Court to file an additional pleading. Plaintiff's response dated June 8, 1998 is therefore improper and should be stricken.

Wherefore, the federal defendants move to strike Plaintiff's Response to Defendants' Reply to Plaintiff's Opposition to Motion to Dismiss Complaint.

Respectfully submitted,

THOMAS E. SCOTT
UNITED STATES ATTORNEY

By: 

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Assistant U.S. Attorney
Florida Bar No. 298034
United States Attorneys Office
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendants' Motion to Strike Plaintiff's Response was mailed on this 12th day of June, 1998 to:

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MAUREEN DONLAN

Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DONALD D.STONE,

*

Plaintiff

* Civil Action No. 98-14069

v.

*

ROBERT E.WARFIELD, SR., et al

* Civ-Ryskamp

Defendants

*

* * * * *

PLAINTIFFS' MOTION TO QUASH DEFENDANTS'
MOTION TO STRIKE PLAINTIFFS' RESPONSE

Plaintiff, Donald D. Stone, Pro Se, moves to Quash Defendant Battaglia, Kelberman, Russell and Simpsons' Motion to Strike Plaintiffs' Response to Defendants' Reply to Plaintiffs' Opposition to Motion to Dismiss Complaint dated June 12, 1998.

Plaintiff was compelled to file a response to prevent the ongoing victimization of plaintiff, obstruction of justice, and fraud on the court by the defendants and defense counsel.

The defendants filed a motion to dismiss Plaintiffs Complaint on May 4, 1998. Plaintiff filed his opposition on May 19, 1998. Defendants filed a reply to plaintiffs opposition May 29, 1998. Plaintiff filed a response to defendants reply June 8, 1998 contrary to the Local rules for the Southern District of Florida,



Local Rule 7.1 C.

The Federal Rules of Civil Procedure are subordinate to Plaintiffs Constitutional rights to due process.

**DEFENDANTS BATTAGLIA, KELBERMAN, RUSSELL, & SIMPSON AND
DEFENSE COUNSEL DONLAN AND SCOTT ARE SUBORNING
PERJURY AND FRAUD ON THIS COURT**

Defendants' and defense counsel, Assistant US Attorney, Maureen Donlan and US Attorney for Florida, Thomas E. Scott are suborning perjury and committing fraud on this Court.

The defendants, Battaglia, Kelberman, Russell and Simpson, employees' of the US Department of Justice are being sued in their individual capacity.

On May 1, 1998 Defendants filed a MOTION TO DISMISS COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT THEREOF. Defendants and defense counsel knowingly and fraudulently misrepresented to this Court that plaintiffs Federal Complaint was in connection with an on-going business dispute between plaintiff and other defendants, (Page 2, paragraph 1, FACTUAL BACKGROUND).

Defendants Battaglia, Kelberman, Russell and Simpson beginning in early 1995 have continuously conspired with co-conspirators through fraudulent concealment of exculpatory evidence and false statements to plaintiff and this Court, that plaintiffs complaint involves only a business dispute.

Only when plaintiff provided this Court with documentary evidence May 19, 1998 that defendants Battaglia, Kelberman, Russell and Simpson had extensive personal knowledge and documentation of a multitude of FEDERAL FELONY OFFENSES involving other defendants and their co-conspirators, did Battaglia, Kelberman, Russell, Simpson and defense counsel change their position. Battaglia,

Kelberman, Russell, and Simpson are using their Federal law enforcement authority in furtherance of a conspiracy to protect their political and/or personal agendas that have targeted plaintiff and plaintiffs valuable intellectual property as a victim of a multitude of Federal felony offenses.

With the disclosure of documentary evidence by plaintiff to this Court, on May 29, 1998 Defendants Battaglia, Kelberman, Russell, and Simpson have now fraudulently changed their position from alleging a business dispute by plaintiff involving other defendants, (after approximately four years), to alleging criminal activities by other defendants and co-conspirators of Battaglia, Kelberman, Russell and Simpson, (pg.2, paragraph 1/line 1).

If Plaintiff had not accidentally obtained a copy of this documentary evidence (EXHIBIT A, Plaintiffs Opposition to Defendants Motion to Dismiss, May 19, 1998) with a Freedom of Information Act Request of a meeting on or about September 26, 1994 between, Defendants Kelberman, Simpson and another defendant Howard involving discussions of multiple federal felony offenses by other defendants and co-conspirators, defendants Battaglia, Kelberman, Russell, Simpson and their counsel would have been able to perpetuate their ongoing fraudulent concealment of exculpatory evidence and fraud on plaintiff and this Court completely unrestricted.

Defendants and defense counsel were allowed sixty (60) days to respond to plaintiffs Complaint. Defendants and defense counsel had sufficient time to disclose to this Court evidence that was adverse to their position. Instead of lawful disclosure defendants and defense counsel chose fraudulent concealment of exculpatory evidence that would reinforce plaintiffs allegations against

defendants.

DEFENDANTS AND DEFENSE COUNSEL HAVE VIOLATED

RULE 3.3 CANDOR TOWARD THE TRIBUNAL

Defendants and defense counsel have violated the Rules of Professional Conduct, Rule 3.3 Candor toward the Tribunal(a)(1)(2):

(a) A lawyer shall not knowingly:

(1) make a false statement or material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

Additionally, defense counsel under Rule 3.3 (a)(3) (an advocate has a duty to disclose adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

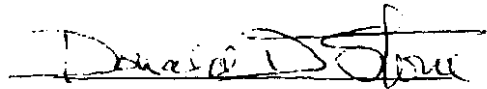
CODE OF ETHICS FOR UNITED STATES GOVERNMENT SERVICE

Defendants Battaglia, Kelberman, Russell being sued in their individual capacity are employees of the US Dept. of Justice. Simpson being sued in her individual capacity was employed by the US Dept. of Justice, Bankruptcy Trustee Program in May/June 1995 and is now employed in the private sector. Defense counsel Scott and Donlan are employees of the US Dept. of Justice. The Code of Ethics for United States Government Service, approved by Congress to govern the conduct of federal civil servants, says "Any person in Government service should: Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department Expose corruption wherever discovered."

CONCLUSION

For the foregoing reasons, the plaintiff respectfully request that Plaintiffs Motion to Quash Defendants Motion To Strike Plaintiffs Response be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald D. Stone", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify this 21st day of June 1998, that copies of the foregoing Plaintiffs Motion To Quash Defendants Motion To Strike Plaintiffs Response were mailed on June 21, 1998 via first class, postage, prepaid to:

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