Joint Appendix 1

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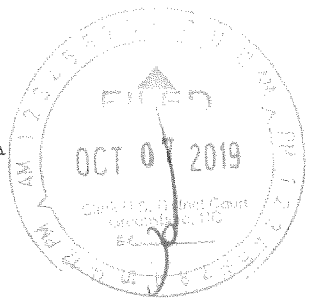
UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Joint Appendix in attachment to "PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MOTION FOR STAY OF DISTRICT COURT JUDGMENT PENDING MANDAMUS"



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	)	
	)	
v.	)	1:13CR435-1
	)	
BRIAN DAVID HILL	)	

JUDGMENT AND COMMITMENT
Supervised Release Violation Hearing

On September 12, 2019, a hearing was held on a charge that the Defendant had violated the terms and conditions of supervised release as set forth in the Court's Order filed July 24, 2015 and the Judgment filed November 12, 2014 in the above-entitled case, copies of which are attached hereto and incorporated by reference into this Judgment and Commitment.

The Defendant was represented by Renorda E. Pryor, Attorney.

The Defendant was found to have violated the terms and conditions of his supervised release. The violation(s) as follow were willful and without lawful excuse.

Violation 1. On September 21, 2018, the Defendant was arrested for the commission of a crime.

IT IS ORDERED that the Defendant's supervised release be revoked. The Court has considered the U.S. Sentencing Guidelines and the policy statements, which are advisory, and the Court has considered the applicable factors of 18 U.S.C. §§ 3553(a) and 3583(e).

IT IS ORDERED that the Defendant be committed to the custody

of the Bureau of Prisons for imprisonment for a period of nine (9

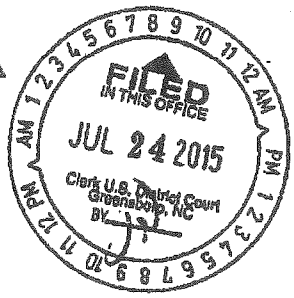
IT IS FURTHER ORDERED that supervised release of nine (9 ,ears is re-imposed under the same terms and conditions as previously imposed.

The Defendant shall surrender to the United States Marshal for the Middle District of North Carolina or to the institution designated by the Bureau of Prisons by 12:00 p.m. on December 6, 2019.

United States District Judge

October 4, 2019.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA	)	
	)	
v.	)	1:13CR435-1
	)	
BRIAN DAVID HILL	)	

ORDER
Supervised Release Violation Hearing

On June 30, 2015, a hearing was held on a charge that the Defendant had violated the terms and conditions of supervised release as set forth in the Court's Judgment filed in the above-entitled case on November 12, 2014, a copy of which is attached hereto and incorporated by reference into this Order.

The Defendant was represented by Renorda Pryor, Attorney.

The Defendant was found to have violated the terms and conditions of his supervised release. The violations were willful and without lawful excuse.

IT IS ORDERED that the Defendant's supervised release shall

[illegible]

release. The Defendant shall participate in a cognitive behavioral treatment program as directed by the probation officer, and pay for treatment services, as directed by the probation officer. Such programs may include group sessions led by a qualified counselor

or participation in a program administered by the probation office. The choice of counselor rests in the discretion of probation.

IT IS ORDERED that the Defendant shall abide by all conditions and terms of the location monitoring home detention program for a period of six (6) months. At the direction of the probation officer, Defendant shall wear a location monitoring device which may include Global Positioning System (GPS) or other monitoring technology and follow all program procedures specified by the probation officer. Defendant shall pay for the location monitoring services as directed by the probation officer.

IT IS FURTHER ORDERED that all other terms and conditions of [illegible] as previously imposed remain in full force and effect.

United States District Judge

July 23, 2015.

AO 245B (NCMD Rev. 09/11) Sheet 1 - Judgment in a Criminal Case

ENTERED ON DOCKET
R. 55
NOV 12 2014
BY [redacted]

United States District Court
Middle District of North Carolina

UNITED STATES OF AMERICA

v.

BRIAN DAVID HILL

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:13CR435-1

USM Number: 29947-057

John Scott Coalter
Defendant's Attorney

FILED
NOV 12 2014
IN THIS OFFICE
Clerk, U.S. District Court
Greensboro, NC
By

THE DEFENDANT:

☒ pleaded guilty to count 1.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:2252A(a)(5)(B) and (b)(2)	Possession of Child Pornography	August 29, 2012	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

November 10, 2014
Date of Imposition of Judgment

William L. Osteen, Jr.
Signature of Judge

William L. Osteen, Jr., Chief United States District Judge
Name & Title of Judge

NOV 12 2014
Date

DEFENDANT: BRIAN DAVID HILL
CASE NUMBER: 1:13CR435-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of ten (10) months and twenty (20) days, but not less than time served.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district.

☐ at _____ am/pm on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 pm on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

BY _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: BRIAN DAVID HILL
CASE NUMBER: 1:13CR435-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of ten (10) years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☒ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☒ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the

contraband observed in plain view of the probation officer;

DEFENDANT: BRIAN DAVID HILL

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in an evaluation and a mental health treatment program with emphasis on sex offender treatment.

The defendant shall not possess or use a computer or any other means to access any "on-line computer service" at any location (including employment) without the prior approval of the probation officer. This includes any Internet service provider, bulletin board system, or any other

If granted access to an "on-line computer service," the defendant shall consent to the probation officer conducting periodic unannounced

removal of such equipment, when necessary, for the purpose of conducting a more thorough examination.

The defendant shall provide his personal and business telephone records to the probation officer upon request and consent to the release of certain information from any on-line, telephone, or similar account.

The defendant shall not have any contact, other than incidental contact in a public forum such as ordering in a restaurant, grocery shopping,

be supervised by an adult at all times. The contact addressed in this condition includes, but is not limited to,

The defendant shall not frequent places where children congregate, such as parks, playgrounds, schools, video arcades, daycare centers, swimming pools, or other places primarily used by children under the age of 18, without the prior approval of the probation officer.

video tapes, movies, or any material obtained through access to any

data storage devices or media, and effects at any time, with or without a warrant, by any law enforcement officer or probation officer with

vocation, or is a student.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ _____	$ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: BRIAN DAVID HILL
CASE NUMBER: 1:13CR435-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or

☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (*e.g. weekly, monthly, quarterly*) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (*e.g. weekly, monthly, quarterly*) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several Defendant Names, Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

related to the offense of this investigation, the United States is authorized to return those items to Mr. Hill at the conclusion of any appeals period.

AO 245B (NCMD Rev. 09/11) Sheet 1 - Judgment in a Criminal Case

United States District Court
Middle District of North Carolina

UNITED STATES OF AMERICA

v.

BRIAN DAVID HILL

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:13CR435-1

USM Number: 29947-057

John Scott Coalter
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count 1.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:2252A(a)(5)(B) and (b)(2)	Possession of Child Pornography	August 29, 2012	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

November 10, 2014
Date of Imposition of Judgment

William L. Osteen, Jr.
Signature of Judge

William L. Osteen, Jr., Chief United States District Judge
Name & Title of Judge

NOV 12 2014
Date

DEFENDANT: BRIAN DAVID HILL
CASE NUMBER: 1:13CR435-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of ten (10) months and twenty (20) days, but not less than time served.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district.

☐ at _____ am/pm on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 pm on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

BY _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: BRIAN DAVID HILL
CASE NUMBER: 1:13CR435-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of ten (10) years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☒ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☒ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the

The defendant must comply with the standard conditions that have been adopted by this court as well as with any

2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any

DEFENDANT: BRIAN DAVID HILL
CASE NUMBER: 1:13CR435-1

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall cooperatively participate in an evaluation and a mental health treatment program with emphasis on sex offender treatment, and pay for those treatment services, as directed by the probation officer. Treatment may include physiological testing, such as the polygraph and penile plethysmograph, and the use of prescribed medications.

The defendant shall not possess or use a computer or any other means to access any "on-line computer service" at any location (including employment) without the prior approval of the probation officer. This includes any Internet service provider, bulletin board system, or any other public or private computer network.

If granted access to an "on-line computer service," the defendant shall consent to the probation officer conducting periodic unannounced examinations of his computer equipment, which may include hardware, software, and copying all data from his computer. This may include the removal of such equipment, when necessary, for the purpose of conducting

The defendant shall consent to third-party disclosure to any employer or potential employer concerning any computer-related restrictions that have been imposed upon him.

The defendant shall provide his personal and business telephone records to the probation officer upon request and consent to the release of certain information from any on-line, telephone, or similar account.

ate with any person under the age of 18, except his own children, without prior permission of the probation officer. Any approved contact shall be supervised by an adult at all times. The contact addressed in this condition includes, but is not limited to, direct or indirect, personal, telephonic, written, or through a third party. If the defendant has any contact with any child, that is a person under the age of 18, not otherwise addressed in this condition, the defendant is required to immediately remove himself from the situation and notify the probation office within 24

The defendant shall not frequent places where children congregate, such as parks, playgrounds, schools, video arcades, daycare centers, swimming pools, or other places primarily used by children under the age of 18, without the prior approval of the probation officer.

DEFENDANT: BRIAN DAVID HILL
CASE NUMBER: 1:13CR435-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: BRIAN DAVID HILL

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ [illegible]

☐ not later than _____ , or

☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below;

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ [illegible] _____ over a period of _____ (e.g.,

D ☐ [illegible] over a period of _____ (e.g., supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. **Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.**

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names, Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ [illegible] the United States to the extent any personal items not related to the offense of this investigation, the United States is authorized to return those items to Mr. Hill at the conclusion of any appeals period.

Payments shall be applied in the following order: (1) assessment; (2) restitution principal; (3) [illegible]

Joint Appendix 2

USWGO
QANON // DRAIN THE SWAMP
MAKE AMERICA GREAT AGAIN

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Joint Appendix in attachment to "PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MOTION FOR STAY OF DISTRICT COURT JUDGMENT PENDING MANDAMUS"

In the United States District Court
For the Middle District of North Carolina

Brian David Hill, **Petitioner/Defendant**	
v.	**Criminal Action No. 1:13-CR-435-1**
United States of America, **Respondent/Plaintiff**	**Civil Action No. 1:17-CV-1036**

MOTION FOR SANCTIONS AND TO VACATE JUDGMENT IN PLAINTIFF'S/RESPONDENT'S FAVOR

MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS

NOTICE: Due to the Motion to "Disqualify/Recuse Judge — Document #195" in regards to the Hon. Judge Thomas D. Schroeder, this motion should not be decided by that Judge but should be tried by another Judge of the bench. Due to the facts and allegations inside of this motion, it would be a conflict of interest for Judge Schroeder to render any decision on this motion.

Pursuant to the inherit power or implied power of the U.S. District Court (Courts § 18 - inherent or implied powers, Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991), Courts § 225.1; Equity § 47 - power to vacate fraudulent judgment) (See **Supplement 1**, document printed from LexisNexis law library while at FCI-1 Butner in 2019), the Defendant/Petitioner Brian David Hill ("Brian D. Hill", "Hill", "Brian", "Defendant"), proceeding Pro Se in this action, respectfully requests that the Honorable U.S. District Court vacate a fraudulently begotten judgment, the Document #122, filed: July 24, 2015, and the oral judgment on June

30, 2015 finding the Defendant/Petitioner in violation of Supervised Release conditions. On the basis of fraud upon the court, such judgment should be vacated.

The U.S. Probation Office in Greensboro (the petitioner for revocation) and through the United States Attorney Office for the Middle District of North Carolina had petitioned for revocation back in 2015 on a fraudulent basis and that such a basis had lacked merit.

Because the Hon. Judge Schroeder had used this June 30, 2015 fraudulently begotten judgment of violation in calculating a worse punishment of the Defendant/Petitioner in a future revocation hearing, Defendant/Petitioner can no longer stand by and allow the fraudulent begotten judgment of Document #122 and is requesting that the fraud be addressed, vacated as a matter of right of the Court through its inherit powers, and punish those who had engaged in the fraud against the Court and sanction them for the fraud or frauds against Defendant/Petitioner.

Defendant/Petitioner would like to request sanctions against the Government/Respondent/Plaintiff counsel Assistant U.S. Attorney ("AUSA") Anand Prakash Ramaswamy at the Greensboro NC Office, Lisa P. Palombo (deputy Chief U.S. Probation Officer), and Edward R. Cameron (Supervisory U.S. Probation Officer). The sanctions are on the basis of the fraud upon the court. The fraud is the perjury of U.S. Probation Officer ("USPO") Kristy L. Burton ("Burton") while testifying on the stand at the final revocation hearing of June 30, 2015 (See Transcript under Document #123). Also the false statements of USPO Burton that ended up as statements carried under penalty of perjury as stated in the Petition for revocation under Order for Warrant — Document #88, pushed by Edward R. Cameron.

FACTS THAT REPRESENT THAT THE JUDGMENT ENTERED ON JUNE 30, 2019, AND THE WRITTEN JUDGMENT OF DOCUMENT #122 WAS BASED UPON A FRAUD UPON THE COURT BY BOTH THE U.S. PROBATION OFFICE AND THE UNITED STATES ATTORNEY

There is no basis to support the fact of judgment that "*Defendant did make threatening gestures toward the probation officer, Ms. Burton.*".

First of all, Defendant/Petitioner had apologized for having an autistic meltdown. Any behavioral expert would disagree with this analysis that an autistic meltdown is the same as making a willful and knowing threatening gesture and is incorrect. (See **Exhibit 1**, a report sourced from The Missouri Department of Mental Health).

This judgment criminalizes Autism Spectrum Disorder ("autism") and treats an autistic behavior the same as a willful criminal behavior of a person who does not exhibit any neurological or mental defect. Brian's autism is a neurological disorder, an impairment of the brain. See **Exhibit 2**, "Autism Spectrum Disorder Fact Sheet"; Prepared by: Office of Communications and Public Liaison, National Institute of Neurological Disorders and Stroke, National Institutes of Health in Bethesda, MD 20892.

From the record of that hearing on Page 26 of the transcript (Document #123) counsel Renorda Pryor's cross examination of witness Kristy L. Burton stated that "*he suffers from autism -- he has Autism Spectrum Disorder, and that there is difficulty -- he has difficulty understanding other people in social interactions which interferes with his ability to establish and maintain relationships. "Some individuals with Autism Spectrum Disorders have histories of aggressive behavior, particularly in situations where they are emotionally overwhelmed, feel threatened, or do not have the language and social skills to respond more appropriately.*"'"

USPO Burton's response was "*I read that statement, yes, but I don't feel that that's a guideline as to how to deal with it*."

So the real truth of the matter was that USPO Burton was not trained in how to deal with behaviors in Autism Spectrum Disorder, assuming that she is not lying over that matter. She did not understand how Autism works and clearly did not know how to properly supervise a criminal Defendant with Autism. This clearly shows incompetence and possibly unethical misconduct and a deficiency in the federal judicial system and its agencies. The need for judges and probation officers to criminalize and punish those with autism and throwing those with Autism into federal prisons without an understanding of how Autism works and what it is about. Congress may need to mandate Autism training for Federal Probation Officers and Federal Judges, or USPO Burton was making excuses for her incompetence by insisting on violating and punishing Petitioner/Defendant for a medical condition that he cannot help but having since his childhood.

Searching up the keywords "threat" or "threatening" inside of the Transcript ordered by family, Defendant/Petitioner cannot find that USPO Burton ever acknowledged orally or in writing of allegedly being threatened.

Defendant/Petitioner did not threaten to harm or kill USPO Burton. He was having a meltdown which would calm down once it normally ran its course. The meltdowns can be partially caused by overwhelming stress/anxiety caused from the wrongful conviction of Brian David Hill and being deprived of justice by the corrupt United States Attorney office who has been resisting Brian's effort to proving his actual innocence since he was originally charged. They violated Rule 3.8 and yet they never got in trouble and never faced consequences for their

corrupt actions because of the CORRUPTION of the United States Department of Justice (Justice Department, DOJ).

The frauds upon the court are simple, there was no mentioning of a "threat" or "threatening gesture" against USPO Kristy L. Burton from Danville, Virginia, except by the Hon. Judge Schroeder. That was an assumption and a conclusory allegation against Brian by the Chief Judge Thomas D. Schroeder, and is not grounded in fact. The fact that after Brian's meltdown, he did apologize to his Probation Officer and at least followed through with her conditions also proved there was no intent under "mens rea" to threaten the USPO Burton over an autistic meltdown caused by a neurological disorder. The "threat" fact cannot be established without any testimony or clear and convincing evidence proving such. An autistic meltdown is not evidence of an intentional threat.

Because the original judge had jumped to conclusions of a baseless claim of a "threatening gesture" over Brian's autism, it is not grounded in fact and is a fraud upon the court. Has no basis in fact. It is an incorrect assumption.

Transcript cited from Page 30 of 84, Document #123:

Q Did you -- okay. I just want to make sure I understand why you feel that he failed to follow your instruction. I believe that you also said that you were in fear of your life on that day?
A I felt unsafe.
Q You felt unsafe. Did he throw something at you?
A He did not throw anything at me, no.
Q Did he jump towards you?
A No.
Q Did he stand up and maybe, you know, bolt toward you and do anything that could have been aggressive to make you feel that he was going strike you in any kind of way?
A He did not come towards me, no.

Q Okay. And you're saying that you felt unsafe or -- unsafe that day because he called you a jerk?
A No, that's not what I am saying.

If her life was really in danger at all, she would have called the police instead of walking away. She blew his autistic meltdown out of proportion and exaggerated the situation in her benefit to protect herself from having to have been found to being incompetent and not able to do her job properly without the training needed to handle an autistic client. As for example, USPO Jason McMurray handles Brian's autism and other disabilities differently than with Kristy Burton, and tries to work with Brian and his family in making sure that he understands the compliance with Supervised Release conditions. Jason McMurray had been treated with respect and there had been no issues other than the infraction over the matter of Brian's actual innocence statements to the treatment provider and the technical state law violation that is still in the appeal process. USPO McMurray conducts his supervision in a respectful, understanding, and compassionate manner.

The perjury of Kristy L. Burton, especially when it was three times, shows that the witness may not have even been credible. It establishes that if two or three lies can be told under oath, then what truths did Kristy L. Burton tell the court? Was there any merit at all for the revocation hearing to even come to a judgment of violation at all?

Read Declaration — Document #137, Memorandum — Document #145 (refer to all issues involving Kristy L. Burton perjury), and Document #145-1, Filed 03/07/18 Pages 32 to 76.

The fact that USPO Burton would openly make false claims on the stand during the hearing on June 30, 2015, is clearly an example of fraud upon the court. The

only witness of AUSA Anand Prakash Ramaswamy had gone and lied multiple times under oath. Yet she would lie enough to be taken on the record as a credible witness when she clearly demonstrated that she was incompetent and had felt or acted childish and had felt disrespected by Brian's words of "jerk" and "asshole" and may had decided to make up that she had felt unsafe, and then the judge had been deceived to believe that Brian had made threatening gestures towards his Probation Officer. That is not true and needs to be corrected on the record, respectfully.

There is a difference between a regular Probationer making threatening gestures towards an officer out of a disagreement and a Probationer that has had an autistic meltdown out of fear and anxiety. A panic attack is not threatening a Probation Officer? Being given immediate demands and then the Probationer with autism being subject to quick radical change causing him to sit on the chair and have a meltdown is not any intent to threaten the Probation Officer. It is entirely not factual at all to make assumptions about the "threatening gesture" conduct when autistic people are known not to socialize properly in society and may not make the appropriate gestures. There is intent when being accused of a crime or misconduct. Brian had no intent to threaten USPO Burton, and Brian has long-term or permanent medical conditions that exacerbate these issues. There is no reason at all to find that Brian was in any way, shape, or form, threatened his Probation Officer and is a fraud upon the court by the Government and its witness Kristy L. Burton.

When witnesses lie on the stand multiple times, they have no credibility in a court of law. In-fact the Defendant/Petitioner has the right to argue to this Court that the Government's entire position may lack merit "[r]egardless of the relevance of these [fraudulent] materials to the substantive legal issue in the case," this is enough to

"completely taint [the party's] entire litigation strategy from the date on which the abuse actually began").

"*if you catch the other side engaged in falsification, you can use it to argue that its entire position lacks merit.*"

See **Supplement 2**, "Responding to Falsification of Evidence" By Jonathan K. Tycko.

The facts is that Kristy L. Burton was behaving childishly and was incompetent, and she had attempted to cover up her incompetence by lying on the stand and lying as to the real reason why Brian had an autistic meltdown.

The "Petition for Warrant or Summons for Offender under Supervision" Document #88 had fraudulently asserted that the entire issue of what led to Brian supposedly becoming unhinged was over the Clerk's office directing him to cease texting the court officials and that he did not comply, and that when USPO Burton supposedly lectured Brian about ceasing that behavior he became visibly upset. All of that was a distortion of the facts of what had really happened. Brian was upset because he was told that he could not text his lawyer or anybody, and this was demanded without a court order stating that Brian was not allowed to text message. Communication is important to somebody with Autism Spectrum Disorder because they already have a deficiency in being able to socialize properly. What USPO Burton had attempted to do is similar to throwing a prisoner in solitary confinement, the same conditions of being excommunicated from the flock, excommunicated and separated from society. To tell somebody not to text message anybody anymore all for making the mistake of wrongfully texting the court, is a form of cruel and unusual punishment to somebody with Autism. Imagine you make a little mistake and you're thrown in solitary confinement and not be able to

socialize with others, some are driven insane, some eat feces/poo-poo and smear it all over the walls, some strip naked and yell or act crazy. It is like telling a mentally deficient person that he will not be allowed to socialize with anybody anymore and be treated the same as solitary confinement with the sole purpose of blocking the person from communication with others in society. The opposite of rehabilitation.

The purpose of the U.S. Probation Act of 1925, was meant to be rehabilitative to those released from prison. The purpose was to ensure that people live productive and good social lives, a life away from crime. USPO Burton was ordering that an already mentally deficient autistic person be further barred from the world of communication without setting a new condition and without allowing Brian to have a lawyer present to challenge such order, and then when USPO Burton demanded that Brian not be allowed to even text his lawyer, that could be construed as interfering with Brian's legal and constitutional right to effective assistance of counsel in the Sixth Amendment of the U.S. Constitution further adding constitutional deprivations to what Brian had already suffered throughout this case under severe structural defects of a Constitutional nature. The original law on Federal Probation should not be twisted and misinterpreted to become a prison without bars, a cheaper way to imprison somebody while calling it "Supervised Release" or "Probation" but is really a tool to instill control and fear upon the Probationer, fear that any little issue or screw-up can lead to a severe prison sentence or repercussions. Some may be deserved and some may not. Depends on circumstances and facts.

Brian did try to comply despite his Autistic meltdown. There is no intent to threaten his Probation Officer back in 2015, and she clearly lied to cover up her incompetency. She was clearly not equipped to handle Autistic behaviors and she

should have petitioned her boss to have a new Probation Officer assigned to Brian's case to supervise him (like Jason McMurray who has been supervising Brian without any personal issues for years, no conflicts of interest). Whatever her issue was, she clearly should not have lied three times under oath. That is perjury in violation of 18 U.S. Code § 1621. She was never arrested and indicted for her proven perjury. That problem comes from AUSA Anand Prakash Ramaswamy who was warned of her perjury and yet did nothing about it. He was warned a second time about her proven perjury and his response was filing a motion for pre-filing injunction to shut Brian up and aid to bar him from proving his innocence, another form of attempted excommunication or blockade from being able to express any legal issues or concerns involving the case while U.S. Probation Office in the future can try attempting to revoke his Supervised Release over and over again on any little allegation of "non-compliance".

Another fraud upon the court was that Document #88 stated and I quote that "*USPO Burton and Mr. Hill continued to discuss his issue with sending documents to the Court*". That never even happened. Brian, Roberta Hill, Stella Forinash, and Kenneth Forinash all knew that the issue had nothing to do with the issue of "*sending documents to the court*" which is his legal right when filing them properly through the postal service or hand delivery. The claims made under Document #88 had false statements and that itself is a fraud upon the court.

The fraud upon the court by the U.S. Probation Office is the statement in Document #88 giving the Court the impression that Brian was barred from any means of being allowed to file which would include but not limited to mailing documents to the Court and did not comply. That is a load of garbage and is a fraud upon the court.

Document #88: "*According to information provided by USPO Burton, on April 28, 2015, she visited Mr. Hill's residence to address his sending numerous documents to the Court to be filed in his case. The U.S. District Court Clerk's Office had directed Mr. Hill to cease this behavior, however, he had not complied. When USPO Burton attempted to address this issue with Mr. Hill, he became visibly upset. He began wringing his hands together and shaking his head. After USPO Burton instructed Mr. Hill to stop sending documents to the Court, he hit a plate off of a table beside a couch sending it to the floor.*"

That is a distortion of the facts and differs from the facts on the record.

See Letter — Document #78: "Letter to BRIAN DAVID HILL regarding proper filing of court documents. (Daniel, J) (Entered: 04/24/2015)"

Stated on record that "*Please be advised that pursuant to the Court's Administrative and Policies Procedures, litigants not represented by counsel for a particular matter shall file pleadings on paper. In the future, please submit any documents you wish to have filed via hand delivery or by the U.S. Postal mail addressed to the Clerk of Court at 324 West Market Street, Greensboro, North Carolina 27401-2544.*"

"*After USPO Burton instructed Mr. Hill to stop sending documents to the Court, he hit a plate off of a table beside a couch sending it to the floor.*"

That statement is another fraud upon the court. The truth was brought out that it was over the issue of text messaging then Kristy L. Burton knew she had gone too far and covered up her original instruction that she verbally ordered Brian David Hill not to text message his lawyer, not to text message his friends or family, and that he couldn't text message anybody. This fraud upon the court is perjury and all

perjury statements by both Kristy L. Burton and her mirrored perjury to Edward R. Cameron who submitted the "Petition for Warrant" with false information and twisting the story to hide her incompetence, all of them need to face a reprimand for violation of United States criminal code.

That very letter from the Clerk's office had stated that Brian David Hill can still send documents to the court as long as it is properly filed by mailing or hand delivery. Document #88 made it sound as though Brian was getting upset with USPO Kristy L. Burton because she and the Clerk directed Brian not to file any documents at all with the Court (without a restriction order on filing, no filing injunctions at the time). That is the opposite of the facts in this case.

In fact Supervisory U.S. Probation Officer Edward R. Cameron was faxed one or more documents concerning the lies of Kristy L. Burton but were ignored. Edward Cameron was okay with lies and fraudulent information being typed up in government documents for the record at the U.S. Probation Office in Greensboro, NC. That may also violate the Obstruction of Justice federal law. At the Court's request, Brian is ready to expand the record by showing the extrinsic evidence of the fact that Edward Cameron was okay with the fraud upon the Court and okay with the perjury. That in itself is extrinsic evidence that Edward R. Cameron was informed of the fraud upon the court and permitted it. He should be held accountable too for this blatant abuse of supervisory power.

Even Renorda Pryor had conclusively by circumstance jumped on the fraud upon the court and went along with it by stating "*The only -- I think the only issue, as you heard on the stand from his mom, is that I explained to him he can't send any more letters to the Court, that he needs to use his attorney on that basis*"

That is a lie too that Attorney Renorda Pryor had reiterated. She basically went along with depriving Brian of his due process rights. Only a private attorney or Pro Se filer is able to file a 2255 Motion. If a private attorney does not want to file a 2255 Motion without charging a pile of money, then Brian's only option was filing Pro Se such as Document #125 and Document #128.

However Renorda also brought up truths that had needed to be reiterated, such as "*And when he did have the opportunity to calm down, he understood -- not only did he write it to the Court to apologize to Officer Burton, he also apologized to her by fax, I believe, as well as by phone.*"

That shows that Brian's autistic meltdown was not intentional but was a behavioral meltdown that is difficult to control once an emotional meltdown begins. Kristy L. Burton never said Brian made "threatening gestures" towards her. Brian stayed on the chair the whole time. Brian apologizing shows no intent of threat and no intent on non-compliance.

Another issue was that "*he missed one only because of transportation matters, but he's made every appointment.*" So Brian had a lawful excuse why he had missed an appointment at Piedmont Community Services.

It is erroneous that Judge Shroeder stated that "*I am going to find that the Defendant did make threatening gestures toward the probation officer, Ms. Burton. Now, there may be reasons that explain all of this, but the probation officers have to be able to meet with their clients, with the defendants, and be able to enforce the conditions of supervised release*". Brian apologizing after having an autistic behavioral meltdown should have been sufficient for USPO Burton to continue visiting Brian. If she did not want to handle supervising somebody with autism,

then she should have requested that another supervising officer conduct supervision of Brian Hill. Jason McMurray has had no issues with Brian telling his sex offender treatment provider that he is innocent and was wrongfully convicted due to ineffective counsel. Brian has every constitutional right to prove his actual innocence and should not be punished by the court for that. USPO Jason McMurray has handled the supervision a whole lot better than Kristy L. Burton. Her attitude and lies makes it quite clear that she disliked Brian and wanted to make his life a living hell to make an example out of him. USPO McMurray does not try to make Brian's life a living hell and enforces only the conditions he is required to enforce but respects Brian's right and ability to file a 2255 Motion and asking the Court to acknowledge his actual innocence. It is clear that Kristy L. Burton was incompetent and had made errors on her profession, unprofessional errors and misconduct, and that should have been noted on the record in this case.

Judge Schroeder's comment on "*Ms. Burton is credible*" is a fraud upon the court. Her multiple false statements on the stand under oath should subject Schroeder's factual finding that "*Ms. Burton is credible*" to collateral attack on the basis that she was not a credible witness, was incompetent and had attempted to hide her unprofessional misconduct by telling lies. That is not a correct statement of fact.

Judge Schroeder also put another controversial statement stating that "*I am not going to tolerate that kind of conduct. The probation officers don't deserve to be treated like that, and they can't work with the defendants who treat them like that.*"

Judge Schroeder didn't make that kind of comment on the September 12, 2019 final revocation hearing. Once the transcript comes out, it proves that U.S. Probation Officer Jason McMurray from Roanoke, Virginia wasn't given the same respect as with Kristy L. Burton. Judge Schroeder makes assumptions and gives

respect to those who testify against Brian and in favor of the Government. All totally one-sided. These issues of fraud, error, and assumptions, is exactly why Brian had filed the motion to "Disqualify/Recuse Judge — Document #195". It is clear that respect is shown to one officer over another. Assumptions were made and asserted as factual findings. It is an error of law. Kristy L. Burton was treated more respectfully by Judge Thomas D. Schroeder than Jason McMurray.

Judge Schroeder again asserts another false fact by stating "*Now, I credit Ms. Burton when she says she felt threatened enough that she was going to leave.*" She never said she had felt threatened and the words "threat" searched on the Transcript only reveals that Renorda Pryor had argued that Brian had felt threatened.

Page 26, Document #123: "*Some individuals with Autism Spectrum Disorders have histories of aggressive behavior, particularly in situations where they are emotionally overwhelmed, feel threatened, or do not have the language and social skills to respond more appropriately.*"

So the "threat conduct" was that if Brian was feeling "threatened" or emotionally overwhelmed (stressed, anxiety, thoughts of suicide) then it can trigger a meltdown or even self-harm. Kristy L. Burton never said she had felt threatened, never stated that Brian had threatened her. It is an error and a fraud upon the court. It is an error of the record regarding the facts in this case.

"*Okay. And based on your reading of the PSR, did you notice that it also stated that any time that there is an emotionally overwhelming situation or when Mr. Hill has felt --feel any threat -- threatened or anything like that, that he does tend to*

have some aggressive behavior and not only him, but others in his type of -- that has the type of autism that he has also also has those type of things as well?"

Again the only "feeling" of being "threatened" is in regards to Brian David Hill and not uttered by Kristy L. Burton and is not in regards to Kristy L. Burton.

Making facts based on raw assumptions instead of affidavits, testimony, expert witnesses, and other tangible credible evidence is in itself is false facts perpetuated on court record and is a fraud upon the court.

ANALYSIS OF THE CASE LAW INVOLVING FRAUD UPON THE COURT

Various specific types of falsification violate federal criminal laws. See, e.g., 18 U.S.C. § 1621 (perjury punishable by up to five years' imprisonment); 18 U.S. Code § 1622 (subornation of perjury punishable up to five years' imprisonment); 18 U.S.C. § 1519 (knowing falsification or destruction of documents or other tangible objects punishable by up to 20 years' imprisonment); 18 U.S.C. § 1520 (destruction of certain corporate audit records punishable by up to 10 years of imprisonment). And knowing destruction or falsification of documents in an attempt to influence the outcome of a judicial proceeding also violates the general "obstruction of justice" law. 18 U.S.C. § 1503. See, e.g., U.S. v. Craft, 105 F.3d 1123, 1128 (6th Cir. 1997) ("Acts that distort the evidence to be presented or otherwise impede the administration of justice are violations of 18 U.S.C. § 1503. The act of altering or fabricating documents used or to be used in a judicial proceeding would fall within the obstruction of justice statute if the intent is to deceive the court."). All states have similar laws.

Citing: 501 U.S. 32, 44 (1991), G. RUSSELL CHAMBERS vs. NASCO, INC., 501 US 32, 115 L Ed 2d 27, 111 S Ct 2123, reh den 501 US 1269, 115 L Ed 2d, 1097, 112 S Ct 12, [No. 90-256], Argued February 27, 1991., Decided June 6, 1991.

"501 U.S. at 56–57; see also Synanon Found., Inc. v. Bernstein, 517 A.2d 28, 43(D.C. 1986) (once a party embarks on a "pattern of fraud," and "[r]egardless of the relevance of these [fraudulent] materials to the substantive legal issue in the case," this is enough to "completely taint [the party's] entire litigation strategy from the date on which the abuse actually began")."

The perjury of Kristy L. Burton and the subornation of perjury by Anand Prakash Ramaswamy shows that they are willing to deceive the Court in an attempt to punish and revoke the Supervised Release of Defendant/Petitioner and be able to use that violation as leverage to push for the maximum imprisonment if the Defendant/Petitioner is ever accused of another violation of Supervised Release condition. AUSA Ramaswamy is willing to do whatever it takes to win every case, whether it is by persuading every criminal defendant to accept a plea agreement and accepting the basis of questionable evidence submitted to the Grand Jury, or even by twisting the facts and/or distorting the truth and/or outright lying. He continues to ignore N.C. State Bar Rule 3.8.

There is no established fact that Brian's autistic meltdown can be construed as to being a willful and intent of a threatening gesture against Brian's Probation Officer when the truth is that Kristy L. Burton had perjured herself to protect herself from appearing incompetent and ignorant in any kind of training to be able to deal with an autistic probationer. It is not Brian's fault, but it is the Probation Officer's fault for lack of training on Autism, Congresses lack of legal statutory authority to

mandate that the U.S. Probation Office receive autism training, and the lack of the Government's ability to understand Autism to the extent where situations can be handled better or differently. It is not Brian who failed the Probation Office back in 2015, but the Probation Office who had failed Brian.

The Court has the authority to reverse the judgments that are based upon frauds upon the court. Fact frauds, testimony frauds (perjury, lying, false statements) and document frauds such as submitting any official government or court documents with false information. It must be corrected to protect the integrity of the judiciary.

See Breezevale Ltd. v. Dickinson, 879 A.2d 957, 964 (D.C. 2005)(affirming sanction of dismissal where top executives of plaintiff company engaged in scheme to forge documents and subsequently denied the forgery in pleadings and sworn testimony); Synanon Found., Inc. v. Bernstein, 503 A.2d 1254, 1263 (D.C. 1986)(affirming sanction of dismissal where plaintiff, inter alia, destroyed audiotapes and made false statements to the court "that no responsive documents could be found" in order "to deceive the court, and to improperly influence the court in its decision on the defendants' motions to compel, with the ultimate aim of preventing the judicial process from operating in an impartial fashion"); Cox v. Burke, 706 So. 2d 43 (Fla. Dist. Ct. App. 1998) (affirming sanction of dismissal where plaintiff gave false answers to interrogatories and deceptive deposition testimony); Pope v. Fed. Express Corp., 974 F.2d982, 984 (8th Cir. 1992) (affirming sanction of dismissal for plaintiff's forgery of, and reliance on, a single document); Aoude v. Mobil Oil Corp., 892 F.2d 1115 (1st Cir.1989) (affirming dismissal where plaintiff concocted a single document); Tramel v. Bass, 672 So. 2d 78, 82 (Fla. Dist. Ct. App.1996) (affirming default judgment against defendant who excised damaging six-second portion of videotape before producing it during discovery).

A court also may impose additional monetary sanctions—in the form of fines or punitive damages—above and beyond the specific amount of the innocent party's fees and expenses.

Jemison v. Nat'l Baptist Convention, 720 A.2d 275, 285 (D.C. 1998) (punitive damages may be imposed if court finds that bad faith litigator acted with malice).

AUSA Ramaswamy did not want to address or refused to address the substantial evidential issues of Kristy L. Burton committing perjury but instead moved to suppress Defendant's/Petitioner's right to file pleadings with the pre-filing injunction motion.

Again citing: Declaration — Document #137, Memorandum — Document #145 (refer to all issues involving Kristy L. Burton perjury), and Document #145-1, Filed 03/07/18 Pages 32 to 76.

Ramaswamy had refused to address the allegations themselves of the perjury and did not want to correct the falsehoods but instead had pushed for a pre-filing injunction to prevent Brian from further exposing his misconduct (Documents #148 and #149). That makes Ramaswamy liable for subornation of perjury under 18 U.S. Code § 1622 (subornation of perjury punishable up to five years' imprisonment), the fact that he is okay with the very perjury he was made aware of. So AUSA Ramaswamy may had decided to commit one or more violations of United States law in order to deceive the Court into violating Brian's Supervised Release conditions.

It doesn't matter what the "relevance of these [fraudulent] materials to the substantive legal issue in the case" are because the Plaintiff/Respondent had allowed these lies to be used and abused on court record in order to make Brian's

probation at higher risk of a higher prison sentence if the Defendant/Petitioner is ever accused of a violation in the future (including technical violations in nature). The lies should have been corrected after Ramaswamy and the Court was made aware of the lies of Kristy L. Burton, U.S. Probation Officer of the U.S. Probation Office in Danville, Virginia. Because they were not corrected after being conducted over the substantive issue, but instead had pushed for a pre-filing injunction last year, shows a malicious prosecutor's intent upon wrongfully incarcerating Defendant/Petitioner, evidence and witnesses don't even matter.

More frauds upon the court will be brought up from the September 12, 2019 final revocation hearing after receipt of the Transcript. Defendant/Petitioner shall push for vacating that Judgment at a later time, and will also push for default judgment of the 2255 Motion on the ground of actual innocence as a matter of law or matter of constitutional right and based upon the Government's repeated pattern of frauds upon the court. The 2255 statutory filing deadlines do not block a Defendant's/Petitioner's ability to petition a court to vacate a fraudulent begotten Judgment. A Judgment is not subject to finality where there is any evidence of a fraud upon the court that led to such judgment.

Defendant asks that the Honorable Court consider vacating the fraud begotten oral judgment of June 30, 2015, and vacating the fraud begotten written judgment under Document #122, filed: Jul 24, 2015, "ORDER Supervised Release Violation Hearing signed by JUDGE THOMAS D. SCHROEDER on 7/23/2015. Defendant's supervised release is not revoked and the Defendant is to remain on supervised release. The Defendant shall participate in a cognitive behavioral treatment program and location monitoring home detention program as set out herein. All other terms and conditions of supervised release as previously imposed remain in full force and effect in case as to BRIAN DAVID HILL (1). (Daniel, J)".

WHEREFORE, Brian prays for relief that the fraudulent begotten Judgments concerning the Supervised Release Violation of 2015 be vacated or set aside, and be stricken from the record unless such evidence must remain on the record to further prove a repeated pattern of fraud upon the court by the Government for the 2255 case when Brian pushes for default judgment.

WHEREFORE, Brian prays that any judgments adverse to Defendant/Petitioner and favorable to the Government in the future that had cited the violation charge from 2015 to also be modified, corrected, or reconsidered to address the frauds upon the court and not use them against Defendant/Petitioner who is a victim of such frauds by the adversary.

The sanctions Defendant/Petitioner are requesting are as followers:

WHEREFORE, Defendant/Petitioner prays that the Court vacate and reverse the fraudulent begotten judgment entered under Document #122;

WHEREFORE, Defendant/Petitioner prays that the Court consider reversing, vacating, nullifying, setting aside, or even striking any other Judgments in favor of the United States of America (Respondent/Plaintiff) when they had used any frauds upon the court to obtain favorable judgment;

WHEREORE, Defendant/Petitioner prays that he be reimbursed for any or all legal expenses that was necessary to defend against such frauds and the expenses can be simple things such as postage for legal mailings and paper and printer ink and/or any other resources necessary, and be reimbursed for any emotional damages caused by the adverse party.

WHEREORE, Defendant/Petitioner prays that the Court hold Lisa P. Palombo (deputy Chief U.S. Probation Office), and Edward R. Cameron (Supervisory U.S. Probation Officer) accountable for perjury (or subornation of perjury), unethical or unprofessional misconduct, and fraud or frauds being pushed through the Petition for revocation under Document #88.

WHEREFORE, Defendant/Petitioner prays that Kristy L. Burton be charged with perjury and that the judge recommend that she be charged with perjury.

WHEREFORE, Defendant/Petitioner prays that the Court sanction AUSA Ramaswamy for misconduct including violation of state bar Rule 3.8.

WHEREFORE, Brian prays that he receives any other relief that the Court deems as necessary and proper.

Attached evidence

Supplement 1: Document printed from LexisNexis law library while at FCI-1 Butner in 2019, in regards to the inherit powers of the Court and the issues of fraud upon the court. **Total of 4 pages.**

Supplement 2: "Responding to Falsification of Evidence" By Jonathan K. Tycko. Research article by a lawyer in regards to the issues of perjury, falsification of evidence, destruction of evidence, and fraud upon the court by a party in a case. **Total of 5 pages.**

Total is 11 pages of attachment including Supplement marker pages.

Declaration of Brian David Hill on attached evidence

I, Brian David Hill, declare pursuant to Title 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. Attached hereto as Exhibit 1, is a true and correct photocopy of a report titled "Autism Spectrum Disorders" sourced from The Missouri Department of Mental Health. **Total of 38 pages.**

2. Attached hereto as Exhibit 2, is a true and correct photocopy of a printout of "Autism Spectrum Disorder Fact Sheet"; Prepared by: Office of Communications and Public Liaison, National Institute of Neurological Disorders and Stroke, National Institutes of Health in Bethesda, MD 20892. "All NINDS-prepared information is in the public domain and may be freely copied. Credit to the NINDS or the NIH is appreciated." This did not come from Wikipedia. **Total of 9 pages.**

Total is 49 pages of attachment including Exhibit marker pages.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 2, 2019.

Respectfully submitted,

Brian D. Hill
Signed

Signed
Brian D. Hill (Pro Se)
310 Forest Street, Apartment 1
Martinsville, Virginia 24112
Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter
I stand with QANON/Donald-Trump – Drain the Swamp
I ask Qanon and Donald John Trump for Assistance (S.O.S.)
Make America Great Again

Respectfully filed with the Court, this the 2nd day of October, 2019.

New World Order - Checkmate!
Ramaswamy - Checkmate!
Q WWG1WGA
Drain The Swamp

Respectfully submitted,

Brian D. Hill
Signed

Signed
Brian D. Hill (Pro Se)
310 Forest Street, Apartment 1
Martinsville, Virginia 24112
Phone #: (276) 790-3505

U.S.W.G.O.

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I stand with QANON/Donald-Trump – Drain the Swamp
I ask Qanon and Donald John Trump for Assistance (S.O.S.)
Make America Great Again

Petitioner also requests with the Court that a copy of this pleading be served upon the Government as stated in 28 U.S.C. § 1915(d), that "The officers of the court shall issue and serve all process, and preform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases". Petitioner requests that copies be served with the U.S. Attorney office of Greensboro, NC via CM/ECF Notice of Electronic Filing ("NEF") email, by facsimile if the Government consents, or upon U.S. Mail. Thank You!

CERTIFICATE OF SERVICE

Petitioner hereby certifies that on October 2, 2019, service was made by mailing the original of the foregoing:

"MOTION FOR SANCTIONS AND TO VACATE JUDGMENT IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

by deposit in the United States Post Office, in an envelope (certified mail), Postage prepaid, on October 2, 2019 addressed to the Clerk of the Court in the U.S. District Court, for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401.

Then pursuant to 28 U.S.C. §1915(d), Petitioner requests that the Clerk of the Court move to electronically file the foregoing using the CMIECF system which will send notification of such filing to the following parties to be served in this action:

Anand Prakash Ramaswamy U.S. Attorney Office Civil Case # 1:17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 Anand.Ramaswamy@usdoj.gov	Angela Hewlett Miller U.S. Attorney Office Civil Case # 1: 17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 angela.miller@usdoj.gov
JOHN M. ALSUP U.S. Attorney Office 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 john.alsup@usdoj.gov	

This is pursuant to Petitioner's "In forma Pauperis" ("IFP") status, 28 U.S.C. §1915(d) that "The officers of the court shall issue and serve all process, and perform all duties in such cases ... "the Clerk shall serve process via CM/ECF to serve process with all parties.

Date of signing: October 2, 2019	Respectfully submitted, Brian D. Hill Signed Signed

October 2, 2019	Brian D. Hill (Pro Se) 310 Forest Street, Apartment 1 Martinsville, Virginia 24112 Phone #: (276) 790-3505 U.S.W.G.O. I stand with QANON/Donald-Trump – Drain the Swamp I ask Qanon and Donald John Trump for Assistance (S.O.S.) Make America Great Again

I ask Department of Defense ("DOD") military Constitutional oath keepers, alliance, Qanon for help in protecting me from corruption and criminal behavior of Government.

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No New World Order!
No Phil Berger Dictator!

Supplement 1

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U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Supplement in attachment to "MOTION FOR SANCTIONS AND TO VACATE JUDGMENT IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

115 LED2D 27, 501 US 32 CHAMBERS v NASCO, INC.

G. RUSSELL CHAMBERS, Petitioner

vs.

NASCO, INC.

501 US 32, 115 L Ed 2d 27, 111 S Ct 2123, reh den 501 US 1269, 115 L Ed 2d 1097, 112 S Ct 12

[No. 90-256]

Argued February 27, 1991.

Decided June 6, 1991.

DECISION

Federal District Court, in diversity case, held to have properly invoked its inherent power in assessing attorneys' fees as sanction for party's bad-faith conduct in course of litigation.

SUMMARY

The owner of a television station in Louisiana agreed to sell the station's facilities and broadcast license to a corporation, but he later refused to consummate the sale. The corporation notified the owner's attorney of the corporation's intention to file a diversity suit in the United States District Court for the Western District of Louisiana to seek specific performance of the agreement and a temporary restraining order to prevent the alienation or encumbrance of the properties at issue. On the day before the suit was to be filed, the owner and his attorney attempted to place the properties beyond the District Court's reach by creating a trust, of which the trustee and beneficiaries were the owner's family members, and causing the properties to be conveyed to the trust. The attorney withheld this information from the District Court, which subsequently granted a preliminary injunction against the owner and warned the owner and the attorney that their conduct had been unethical. However, the owner proceeded to defy the preliminary injunction, file meritless motions and pleadings, and engage in delaying actions. After

the trial in the District Court but before the entry of judgment, the owner-acting in direct contravention of the District Court's orders to maintain the status quo pending the outcome of the litigation-attempted to gain the Federal Communications Commission's permission to build a new transmission tower and to relocate the transmission facilities to that site. The owner withdrew the application after the corporation sought contempt sanctions. The District Court, finding that the transfer of the properties to the trust was a simulated sale and that the deeds purporting <*pg. 28> to convey the property were of no effect, entered judgment in favor of the corporation (623 F Supp 1372). The United States Court of Appeals for the Fifth Circuit, affirming the District Court's judgment, found the owner's appeal frivolous, imposed appellate sanctions, and remanded the case to the District Court with orders to fix the amount of appellate sanctions and to determine whether further sanctions should be imposed for the manner in which the litigation had been conducted (797 F.2d 975). On remand, the District Court (1) determined that further sanctions were appropriate; (2) declined to impose sanctions under Rule 11 of the Federal Rules of Civil Procedure-which provides for the imposition of attorneys' fees as a sanction for the improper filing of papers with a court-on the grounds that Rule 11 did not reach the owner's out-of-court conduct, and that it would have been impossible to assess sanctions at the time of the owner's improper filing of papers because the falsity of the pleadings was not yet apparent at that time; (3) declined to impose sanctions under 28 USCS § 1927-under which an attorney who multiplies the proceedings in any case unreasonably and vexatiously may be required to satisfy personally the attorneys' fees reasonably incurred because of such conduct-on the ground that the statute did not apply to the owner himself and was not broad enough to reach all the misconduct; (4) invoked the District Court's own inherent power in imposing sanctions; and (5) assessed the owner for the entire amount of the corporation's litigation costs paid to its attorneys (124 FRD 120). The Court of Appeals, affirming, (1) held that the District Court had not abused its discretion in awarding the attorneys' fees to the corporation, and (2) rejected the argument that a federal court sitting in a diversity case must look to state law, not the court's inherent power, to assess attorneys' fees as a sanction for bad-faith conduct in litigation (894 F.2d 696).

On certiorari, the United States Supreme Court affirmed. In an opinion by White, J., joined by Marshall, Blackmun, Stevens, and O'Connor, JJ., it was held that (1) a federal court has inherent power to assess attorneys' fees as a sanction for a party's bad-faith conduct in the course of litigation; (2) this inherent power is not displaced by the sanctioning scheme of 28 USCS § 1927 and the various sanctioning provisions in the Federal Rules of Civil Procedure; (3) under the circumstances presented, the District Court did not abuse its discretion in resorting to its inherent power without first invoking the federal sanctioning provisions; (4) the District Court, sitting in a diversity case, properly used its inherent power, notwithstanding that the law of Louisiana provided, as a general rule, that attorneys' fees were not to be awarded to a successful litigant, given that (a) Louisiana's general rule did not embody a substantive policy, but rather focused on the award of attorneys' fees due to a party's success on the underlying claim, (b) the District

Court, in assessing attorneys' fees against the owner for fraud and bad-faith conduct, did not attempt to sanction the owner for breach of contract, and thus the fee-shifting was not a matter of substantive remedy, but rather was a matter of vindicating judicial authority, and (c) under such circumstances, the District Court's inherent power could not be made subservient to any state policy without transgressing the boundaries set out in Erie R. Co. v Tompkins (1938) 304 US 64, 82 L Ed 1188, 58 S Ct 817,<*pg. 29> and subsequent United States Supreme Court decisions with respect to the applicability of state law in federal diversity cases; and (5) under the circumstances, the District Court acted within its discretion in assessing as a sanction the entire amount of the corporation's attorneys' fees at the conclusion of the litigation.

Scalia, J., dissenting, expressed the view that (1) a Federal District Court's inherent power does not reach conduct beyond the court's confines that does not interfere with the conduct of the trial, (2) the District Court appeared to have imposed sanctions for the owner's breach of contract, and (3) the District Court had no power to do so.

Kennedy, J., joined by Rehnquist, Ch. J., and Souter, J., dissenting, expressed the view that (1) a federal court must rely, where possible, on express federal sanctioning provisions rather than on its inherent power to sanction bad-faith misconduct, and (2) the District Court acted improperly in (a) failing to rely on the federal sanctioning provisions, and (b) allowing sanctions to be awarded for the owner's prelitigation breach of contract.<*pg. 30>

RESEARCH REFERENCES

20 Am Jur 2d, Costs §§ 74, 75, 78; 20 Am Jur 2d, Courts §§ 78, 79

8 Federal Procedure, L Ed, Courts and Judicial System §§ 20:324-20:326, 20:337, 20:339, 20:347

2 Am Jur Proof of Facts 233, Attorneys' Fees

28 USCS § 1927; USCS Court Rules, Federal Rules of Civil Procedure, Rule 11

L Ed Digest, Appeal § 1424; Costs and Fees § 33; Courts § 549.5

L Ed Index, Attorneys' Fees; Discretion of Court; District Courts and Judges; Erie Doctrine; Fee Shifting; Frivolous Matters; Rules of Civil Procedure

Index to Annotations, Attorneys' Fees; Civil Procedure Rules; Discretion of Court; District Courts; Erie Doctrine; Vexatious Litigation

Courts § 18 - inherent or implied powers

5. Certain implied powers must necessarily result to courts of justice from the nature of their institution, powers which cannot be dispensed with in a court because they are necessary to the exercise of all others; such powers are governed not by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases; courts of justice are vested, by their very creation, with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates.

Attorneys § 6 - power of courts

6. Although a court's power to control admission to its bar and to discipline attorneys who appear before it ought to be exercised with great caution, such power is incidental to all courts.

Contempt § 26 - court's power to punish

7. The power to punish for contempt is inherent in all courts; this power reaches both conduct before the court and that beyond the court's confines, for the underlying concern that gives rise to the contempt power is not merely the disruption of court proceedings, but rather disobedience to the orders of the judiciary, regardless of whether such disobedience interferes with the conduct of trial. (Scalia, J., dissented in part from this holding.)

Courts § 225.1; Equity § 47 - power to vacate fraudulent judgment

8. A federal court has the inherent power to vacate its own judgment upon proof that a fraud has been perpetrated upon the court; this historic power of equity to set aside fraudulently begotten judgments is necessary to the integrity of the courts; moreover, a federal court has the power to conduct an independent investigation in order to determine whether the court has been the victim of fraud.

Supplement 2

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UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Supplement in attachment to "MOTION FOR SANCTIONS AND TO VACATE JUDGMENT IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

Responding to Falsification of Evidence

By Jonathan K. Tycko

Courts often describe the litigation process as having a truth-seeking function. Under duress, however, most lawyers experienced in litigation will concede that the litigation process serves that function only imperfectly. Although trials are intended to recreate for the judge and jury the historical events at issue in the case, numerous very serious obstacles to achieving that goal exist. Some of those obstacles are the result of the passage of time: memories fade, witnesses die, evidence is lost or discarded. Some of those obstacles are the result of rules or procedures intended to serve competing interests: relevant information is hidden behind privileges and other evidentiary rules, witnesses are beyond the subpoena power of the court, only finite amounts of evidence can be presented in the time allotted for the trial. And some of those obstacles are a function of the human condition: lawyers are possessed of unequal persuasive skills, perceptions of judges and juries are influenced by events outside the courtroom, people make mistakes. These obstacles to truth seeking are all, more or less, tolerated by our legal system. Indeed, addressing these various categories of obstacles is an important part of the day-to-day work of judges, juries, and lawyers.

But another, more pernicious, obstacle to truth seeking sometimes rears its ugly head. Parties lie under oath, forge documents or create other types of deceptive evidence, and destroy or hide relevant evidence. This conduct is intentional and designed to subvert the truth-seeking function of the judicial process. This type of intentional creation, alteration, or destruction of evidence—which I will refer to generally as falsification—is the narrow subject of this article.[1] This article will begin with a brief discussion of the nature and extent of the problem. Then, the article will list and discuss various available responses when an opposing party engages in falsification in the context of civil litigation.

The Problem of Falsification

Falsification is a serious problem, for two reasons. First, when it occurs, it can have an enormously detrimental impact on the litigation process. Most obviously, undetected falsification can lead directly to incorrect results. In criminal cases, innocent people can be imprisoned or criminals can go unpunished. And in civil cases, large sums of money or important legal rights can be undeservedly lost or won.

But falsification has other deleterious effects. Where one side of a dispute suspects the other of engaging in falsification, it can result in litigation that is much more expensive and time-consuming, for both the parties and the courts, because falsification often adds a fact-intensive issue (e.g., if the documents are forgeries) that can require additional discovery, expenses for various types of forensic experts, and increased trial time. In addition, falsification erodes public respect for the judicial system: to the extent that the public believes falsification is common, it will distrust the results reached by the judicial system and will lose faith in courts as reliable sources of justice.

The seriousness of falsification is reflected both by the numerous remedies that courts have developed to address it (many of which will be discussed below) and also by the legislative response. Falsification is a serious crime in most, if not all, jurisdictions.[2] And falsification can result in more severe punishment for otherwise-criminal conduct. For example, under the federal sentencing guidelines, a sentence is subject to significant "enhancement" if "the offense (A) involved the destruction, alteration, or fabrication of a substantial number of records, documents, or tangible objects; (B) involved the selection of any essential or especially probative record, document, or tangible object, to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation."[3]

Second, falsification occurs with alarming frequency. No good statistics on falsification exist, and indeed, it is hard to imagine how accurate statistics could be compiled, given the diverse ways falsification occurs and the lack of any comprehensive reporting system. But as one appellate judge accurately noted, "[i]n the centuries that have elapsed since Adam took that first bite of the apple in the Garden of Eden, a great many people, some of them powerful and famous, have been found to have lied under oath or to have otherwise done their best to conceal the truth and to subvert judicial proceedings."[4] In 1995, the *ABA Journal* conducted a survey of 50 federal and state judges and reported that most "agree[d] that perjury in some form permeates civil and criminal courts."[5] Numerous reported cases reflect instances of falsification and the legal system's attempts to grapple with it. And this author's own personal experience is that falsification occurs in a significant portion of civil cases; I have personally been involved in a number of significant cases in which I came to believe that one of the parties had intentionally forged or altered documents, and I often encounter trial and deposition testimony that I believe to be intentionally false or misleading. My discussions with other lawyers lead me to conclude that my perceptions are not unique but rather are very common among experienced litigators.

Responding to Falsification by an Opposing Party

Falsification is often a crime, but it rarely is prosecuted. So, a litigant faced with falsification by an opposing party is left to seek remedies directly from the courts. Numerous responses to falsification are available. The most common of these potential responses will now be

1 • Committee on Corporate Counsel Newsletter • American Bar Association • Winter 2006 • Volume 20 • Number 2

addressed. They are presented briefly and primarily as a guide to what should at least be considered by a lawyer faced with the problem. The law in each jurisdiction may differ on these issues; therefore, local law research may be required before deciding on appropriate steps. The responses discussed below are presented in no particular order.

Seek Dismissal or Default

If an opposing party has engaged in falsification, one potential response is to ask the court to throw the party out of court. Courts have long recognized their own inherent power to protect themselves and other parties from various forms of bad faith litigation, including the falsification of evidence. As the Supreme Court emphasized in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, this inherent power is a crucial mechanism for protecting the integrity of the judicial process:

> [T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. . . . The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.[6]

The inherent power to "fashion appropriate sanction[s] for conduct which abuses the judicial process" was reaffirmed by the Supreme Court in *Chambers v. NASCO, Inc.*[7]

Where falsification occurs in the midst of ongoing judicial proceedings, and is specifically directed at affecting those proceedings, it often is termed "fraud on the court." A court, as an exercise of this inherent authority, may sanction fraud on the court through dismissal (if the falsifier is the plaintiff) or default (if the falsifier is the defendant).[8] But because dismissal or default is a severe sanction that deprives a litigant entirely of the right to pursue or defend a claim, courts have adopted various standards to ensure that it is imposed sparingly and that "the need to maintain institutional integrity and the desirability of deterring future misconduct" is balanced appropriately against "the policy favoring adjudication on the merits."[9]

Courts have adopted three primary safeguards to ensure that the sanction of dismissal or default is imposed only in appropriate cases. First, most courts that have considered the issue have concluded that fraud on the court must be proved by clear and convincing evidence—a standard of proof higher than the preponderance of the evidence standard that normally applies in civil cases—before it can be punished through an exercise of inherent power.[10] Second, the party accused of falsification must be given notice of the potential sanctions and an opportunity to respond; however, whether to conduct a full evidentiary hearing is a matter generally left to the discretion of the court.[11] And third, as a general matter, a court must consider lesser sanctions before imposing the sanction of dismissal or default. Some of those lesser sanctions—such as awards of attorney fees or adverse findings on particular issues—are discussed below. But some courts also have recognized that falsification can be so serious an affront to the judicial system that a court can impose the sanction of dismissal or default even *without* first considering or imposing lesser sanctions. For example, in *Oliver v. Gramley*, the Seventh Circuit upheld a sanction of dismissal where the plaintiff had submitted a false affidavit relating to the filing and service of a habeas petition, even though the district court had not explicitly considered less severe sanctions. Judge Posner, writing for the court, concluded that this falsification was "so egregious, inexcusable, and destructive that no lesser sanction than dismissal with prejudice could be adequate."[12]

To hold a party or witness in contempt, the court must have judicial knowledge of the perjury.

In addition to inherent powers, courts may also have authority to impose the sanction of dismissal or default under various procedural rules. For example, Rule 37 of the Federal Rules of Civil Procedure provides an alternative basis for a court's authority to impose the sanction of dismissal or default, where the falsification amounts to a "fail[ure] to comply with the rules of discovery or with court orders enforcing those rules."[13] And Rule 11 of the Federal Rules of Civil Procedure provides similar authority where a party's falsification manifests itself as false allegations or denials in the party's pleadings.[14] Accordingly, when faced with falsification in ongoing civil litigation—particularly in the pretrial phases of the case—a lawyer should carefully consider whether any of the rules of the court before which the case is pending provide an alternative basis for sanctions.

Seek Recovery of Monetary Sanctions

All of the various sources of a court's authority to impose the sanction of dismissal or default also permit a court to impose monetary sanctions. The most common form of monetary sanction is an award of the attorney fees and expenses incurred by the other side of the case. The fees and expenses awarded do *not* need to bear a direct causal connection to particular acts of falsification. Rather, as the Supreme Court recognized in *Chambers*, once a party sets out on a course of bad faith litigation, it taints the entire litigation, and the court may vindicate itself by requiring the bad faith litigator to pay *all* of its opponent's attorney fees and expenses.[15] A court also may impose additional monetary sanctions—in the form of fines or punitive damages—above and beyond the specific amount of the innocent party's fees and expenses.[16]

Seek an Adverse Inference Instruction or Issue Preclusion

Where falsification takes the form of intentional destruction or alteration of evidence—an act often termed "spoliation" of evidence—then a court may decide to punish the wrongdoer and pro-

vide a remedy for the opposing party by altering the way in which the trial will be conducted. Two common methods are adverse inference instructions and issue preclusion.

An adverse inference instruction is an instruction to the jury that it may infer something specific about the wrongdoer's claims or defenses as a result of the spoliation. For example, if a doctor-defendant in a medical malpractice action is found to have intentionally discarded portions of the patient-plaintiff's medical records, a court might instruct the jury that it is permitted to infer that the records would have contained evidence of malpractice. The adverse inference instruction merely tells the jury that it is permitted to make a particular factual inference. While this may seem a relatively mild sanction for spoliation, it actually is fairly powerful medicine because the instruction "directs the jury's attention to the inference the court instructs on and can give the impression that the court thinks the jury ought to draw the inference."[17]

Generally, a party seeking an adverse inference instruction must show some degree of culpability on the part of the spoliator. Some courts have ruled that only intentional spoliation warrants an adverse inference instruction.[18] Others have held that gross negligence or recklessness is sufficient if the spoliated evidence would otherwise have been sufficiently important to the case.[19]

Issue preclusion is a somewhat stronger remedy. Issue preclusion typically takes the form of a pretrial ruling precluding the wrongdoer from pursuing a particular claim or defense (or some particular element of a claim or defense) or of a ruling designating particular facts that will be taken as established for purposes of the action. So, for example, if the plaintiff in a medical malpractice suit is found to have intentionally destroyed a personal diary that the plaintiff kept in the period following the alleged malpractice, the court might preclude the plaintiff from pursuing claims for emotional distress damages but still permit the plaintiff to pursue claims for medical expenses. Issue preclusion is a type of sanction specifically contemplated by Rule 37 of the Federal Rules of Civil Procedure; therefore, where the falsification also amounts to a violation of a party's discovery obligations, this rule (or equivalent state court rules) permits issue preclusion. Courts also have recognized that the sanction of issue preclusion can be imposed as an exercise of inherent power, making that sanction available even where the falsification does not fall within the scope of Rule 37.[20]

Seek Judgment of Criminal Contempt

In many jurisdictions, a trial court has the authority to summarily punish perjury through a criminal contempt proceeding against the lying witness. In federal courts, false or evasive testimony can constitute criminal contempt under 18 U.S.C. § 401. But the power to punish perjury by way of contempt proceedings is a very limited one. As the U.S. Supreme Court recognized in the 1919 case of *Ex parte Hudgings*, not all perjury is contempt of court.

> [I]t would follow that when a court entertained the opinion that a witness was testifying untruthfully the power would result to impose a punishment for contempt with the object or purpose of exacting from the witness a character of testimony which the court would deem to be truthful; and thus it would come to pass that a potentiality of oppression and wrong would result and the freedom of the citizen when called as a witness in a court would be gravely imperiled.[21]

Thus, to constitute criminal contempt, perjury must also be "[a]n obstruction to the performance of judicial duty resulting from an act done in the presence of the court."[22]

One of the most difficult barriers to obtaining a judgment of contempt is the requirement that, to hold a party or witness in contempt, the court must have what is described in the cases as judicial knowledge of the perjury. This is a very high standard that appears to require the court to know—in an almost metaphysical sense—that it has just witnessed false testimony. Thus, many cases have held that where the court must weigh conflicting testimony or evidence in order to determine if the witness has committed perjury, then the court cannot punish that perjury by way of a contempt proceeding. Rather, as one court recently put it, the perjury must be "apparent without reference to extrinsic evidence in the record."[23] For example, if a witness were asked for his or her whereabouts on a particular night, to answer "on Venus" would be contempt, whereas "in California" might not be, even if the witness had been photographed in New York on the night in question.[24] The judge knows the witness was not on Venus without reference to any other evidence. But, without resort to the extrinsic evidence of the photograph, the judge does not know that the witness was not in California.

Because of this judicial knowledge requirement, seeking a judgment of contempt is a step that is likely to succeed in only a fairly limited class of cases. Generally, it will not be enough that you can *demonstrate* that the witness has lied under oath. Rather, the testimony of the witness must be intended to obstruct the court's proceedings, and this must be apparent from the testimony itself.

Seek Relief from Prior Judgment

Where an opposing party's falsification comes to light after a final judgment or order, the falsification may provide a basis for reopening the case. In the federal courts, and in states with similar rules, the usual procedure is to file a motion for relief from judgment. Rule 60(b) of the Federal Rules of Civil Procedure explicitly recognizes that fraud, misrepresentation, or "other misconduct of an adverse party" may provide a basis for relief from a prior judgment or order.

Assert Claim for Tort of Spoliation

The tort of spoliation has been described as "intentional interference with prospective or actual civil litigation."[25] Although

altered evidence with the specific "purpose of depriving an opposing party of its use."[28] Claims for spoliation can lie, in some jurisdictions, against both "first-party" defendants (namely, parties to the underlying civil litigation) and "third-party" defendants (namely, those who are *not* parties to the underlying civil litigation).[29] A party asserting a tort claim for spoliation must meet other elements typical to tort claims, such as causation and damages. Accordingly, whether pursuit of a tort claim for spoliation is advisable may depend both upon the state of local law in the relevant jurisdiction and also upon whether causation and damages can be proven.

Assert Other Common Law Claims

Falsification can expose the wrongdoer to a claim for malicious prosecution. A claim for malicious prosecution lies only where the malicious prosecution plaintiff establishes that a prior action terminated in his or her favor and that the defendant brought the prior action without probable cause and with malicious intent.[30] A party has "probable cause" to initiate a civil lawsuit if, among other things, that party has a reasonable belief in the existence of the facts that warrant the lawsuit.[31] Thus, if it could be shown that the defendant instituted the prior action with knowledge that his or her claims could only be supported with fabricated evidence, then this would tend to show a lack of probable cause and would also be evidence in support of the malice element. In addition, courts have recognized that the favorable termination element of a malicious prosecution claim can be satisfied—even where the malicious prosecution plaintiff lost the prior case—where "the original judgment was obtained through fraud."[32] Thus, where the evidence of falsification comes to light after the falsifying party has already won the prior lawsuit, a malicious prosecution action may still be viable.

In some unusual circumstances—where one party is forced to give up a claim because of another party's falsification—fraud or other related deception-based claims also may be available. An example is *Morgan v. Graham*.[33] Graham was injured in an automobile accident and obtained a default judgment against the negligent driver, Godfrey W. Cochran. Graham learned that an insurance adjuster for the (as it turned out) inaptly-named Moral Insurance Company had investigated the accident. So Graham brought an action against that insurer on the theory that the insurer had issued a liability policy to Godfrey W. Cochran and that the insurer should pay proceeds of that policy to Graham to satisfy the default judgment. In response, Moral submitted an answer, verified by its president, Max T. Morgan, stating that there was no such policy in its files. Faced with that verified answer—and with no direct evidence to rebut it—Graham voluntarily dismissed the case.

If you catch the other side engaged in falsification, you can use it to argue that its entire position lacks merit.

Moral subsequently went into receivership. Graham then brought an action against Morgan, the president. In that action, Graham alleged that Moral had indeed issued a policy to a "G. W. Cockran," that this person and Godfrey W. Cochran were the same person, and that Morgan knew this when he signed the verified answer in the prior action against Moral. Graham's case against Morgan went to trial on a claim of fraud, and evidence was presented that Morgan knew that "G. W. Cockran" and Godfrey W. Cochran were the same person. The trial court found for Graham and awarded both compensatory and punitive damages.

On appeal, the Tenth Circuit affirmed. The court noted that the victim of perjury normally does not have a cause of action against the person who committed the perjury.[34] But the court reasoned that perjury can provide a predicate for other tort claims if the elements of those torts can otherwise be proven.[35] The court then considered whether Graham had proved reliance upon Morgan's false statements. Although Graham testified that he did not believe Morgan's statements in the earlier case, the court reasoned that Graham "was nonetheless forced to act to his detriment and do what he would not have done had the statement not been made," and thereby "was forced to rely on the misrepresentations."[36] The court upheld both the compensatory and punitive damages.

Use the Other Side's Falsification to Undermine Its Position

The last potential response I will address is also the most common and can often be the most powerful. If a lawyer believes that it is possible to catch the other side in a lie, the lawyer can simply do just that, and thereby destroy the other side's credibility. An oft-quoted passage from one of the leading evidence treatises explains:

> It has always been understood—the inference, indeed, is one of the simplest in human experience—that a party's falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.[37]

In other words, if you catch the other side engaged in falsification, you can use that catch to argue that the other side's entire position lacks merit. And even more fundamentally, judges and juries do not like being tricked. If a judge or jury agrees that your opponent has engaged in falsification—even falsification relating only to one of several issues in the case—it will hold this

quite strongly against your opponent and will come to doubt the validity of everything your opponent says and claims.

Conclusion

Falsification is a serious and common problem in civil litigation. The courts have developed numerous responses to falsification, including various types of sanctions that can be imposed in the case in which the falsification occurs and various potential claims that can arise out of falsification. When faced with falsification by an opposing party, a lawyer should consider all of these various responses. Responding vigorously to falsification not only serves your client's interests in the particular dispute but also serves to deter falsification in other cases, and helps to preserve the integrity and fairness of the judicial system as a whole.

Responding vigorously to falsification helps to preserve the integrity and fairness of the judicial system as a whole.

Jonathan K. Tycko is a partner with Tycko Zavareei & Spiva LLP in Washington, D.C. He can be reached at (202) 973-0900 or by email at jtycko@tzslaw.com.

Endnotes

1.Thus, this article does not address the related, but distinct, topic of unintentional—but still potentially culpable—destruction or loss of documents. That topic, and the related issue of preventive document retention policies, has been the subject of many articles. Replowing of that ground will be avoided here.

2. Various specific types of falsification violate federal criminal laws. *See, e.g.*, 18 U.S.C. § 1621 (perjury punishable by up to five years' imprisonment); 18 U.S.C. § 1519 (knowing falsification or destruction of documents or other tangible objects punishable by up to 20 years' imprisonment); 18 U.S.C. § 1520 (destruction of certain corporate audit records punishable by up to 10 years of imprisonment). And knowing destruction or falsification of documents in an attempt to influence the outcome of a judicial proceeding also violates the general "obstruction of justice" law. 18 U.S.C. § 1503. *See, e.g.*, U.S. v. Craft, 105 F.3d 1123, 1128 (6th Cir.1997) ("Acts that distort the evidence to be presented or otherwise impede the administration of justice are violations of 18 U.S.C. § 1503. The act of altering or fabricating documents used or to be used in a judicial proceeding would fall within the obstruction of justice statute if the intent is to deceive the court."). All states have similar laws.

3. USSG, § 2J1.2.

4. Breezevale Ltd. v. Dickinson, 759 A.2d 627, 641 (D.C. 2000) (Schwelb, J., concurring).

5. Mark Curriden, *The Lies Have It,* ABA J., May 1995, at 69.

6. 322 U.S. 238, 246 (1944).

7. 501 U.S. 32, 44 (1991).

8. Some examples are: Breezevale Ltd. v. Dickinson, 879 A.2d 957, 964 (D.C. 2005) (affirming sanction of dismissal where top executives of plaintiff company engaged in scheme to forge documents and subsequently denied the forgery in pleadings and sworn testimony); Synanon Found., Inc. v. Bernstein, 503 A.2d 1254, 1263 (D.C. 1986) (affirming sanction of dismissal where plaintiff, inter alia, destroyed audiotapes and made false statements to the court "that no responsive documents could be found" in order "to deceive the court, and to improperly influence the court in its decision on the defendants' motions to compel, with the ultimate aim of preventing the judicial process from operating in an impartial fashion"); Cox v. Burke, 706 So. 2d 43 (Fla. Dist. Ct. App. 1998) (affirming sanction of dismissal where plaintiff gave false answers to interrogatories and deceptive deposition testimony); Pope v. Fed. Express Corp., 974 F.2d 982, 984 (8th Cir. 1992) (affirming sanction of dismissal for plaintiff's forgery of, and reliance on, a single document); Aoude v. Mobil Oil Corp., 892 F.2d 1115 (1st Cir. 1989) (affirming dismissal where plaintiff concocted a single document); Tramel v. Bass, 672 So. 2d 78, 82 (Fla. Dist. Ct. App. 1996) (affirming default judgment against defendant who excised damaging six-second portion of videotape before producing it during discovery).

9. Shepherd v. Am. Broad. Cos., 62 F.3d 1469, 1478 (D.C. Cir. 1995) (quoting Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989)).

10. *See, e.g.*, Nichols v. Klein Tools, Inc., 949 F.2d 1047, 1048 (8th Cir. 1991).

11. *See, e.g.*, Breezevale Ltd v. Dickinson, 879 A.2d 957, 964 (D.C. 2005); Paladin Assocs., Inc. v. Montana Power Co., 328 F.3d 1145, 1164–65 (9th Cir. 2003).

12. 200 F.3d 465, 466 (7th Cir. 1999).

13. Wyle v. R.J. Reynolds Indus., Inc., 709 F.2d 585, 589 (9th Cir. 1983).

14. *See, e.g.*, Jimenez v. Madison Area Technical Coll., 321 F.3d 652 (7th Cir. 2003).

15. 501 U.S. at 56–57; *see also* Synanon Found., Inc. v. Bernstein, 517 A.2d 28, 43 (D.C. 1986) (once a party embarks on a "pattern of fraud," and "[r]egardless of the relevance of these [fraudulent] materials to the substantive legal issue in the case," this is enough to "completely taint [the party's] entire litigation strategy from the date on which the abuse actually began").

16. Jemison v. Nat'l Baptist Convention, 720 A.2d 275, 285 (D.C. 1998) (punitive damages may be imposed if court finds that bad faith litigator acted with malice).

17. Klezmer v. Buynak, 227 F.R.D. 43, 52 (E.D.N.Y. 2005).

18. *See, e.g.*, Stevenson v. Union Pac. R.R. Co., 354 F.3d 739, 746–47 (8th Cir. 2004).

19. *See, e.g.*, Reilly v. NatWest Markets Group Inc., 181 F.3d 253, 267–68 (2d Cir. 1999).

20. *See, e.g.*, Monsanto Co. v. Ralph, 382 F.2d 1374, 1382 (Fed. Cir. 2004).

21. 249 U.S. 378, 384 (1919).

22. *Id.*; *see also In re* Michael, 326 U.S. 224, 227–28 (1945).

23. U.S. v. Arredondo, 349 F.3d 310, 320 (6th Cir. 2003); *see also* D.V. v. State, 817 So. 2d 1098, 1099 (Fla. Ct. App. 2002) (discussing "judicial knowledge").

24. For discussion of "on Venus," *see* U.S. v. Arredondo, 349 F.3d 310, 320 at 319 n.9 (6th Cir. 2003).

25. J.S. Sweet Co. v. Sika Chem. Corp., 400 F.3d 1028, 1032 (7th Cir. 2005) (applying Indiana law).

26. *See* Gribben v. Wal-Mart Stores, Inc., 824 N.E.2d 349, 353 (Ind. 2005), for a recent listing of cases from different states that have either adopted or rejected an independent tort of spoliation.

27. *Id.*; *see also* Hannah v. Heeter, 584 S.E.2d 560, 568 (W. Va. 2003); Holmes v. Amerex Rent-A-Car, 710 A.2d 846, 854 (D.C. 1998).

28. Burge v. St. Tammany Parish, 336 F.3d 363, 374 (5th Cir. 2003) (discussion of Louisiana law).

29. *See, e.g.*, Smith v. Howard Johnson Co., 615 N.E.2d 1037, 1038 (Ohio 1993).

30. *See generally* 52 AM. JUR. 2d, "Malicious Prosecution."

31. *See, e.g.*, Norse Sys. v. Tingley Sys., 715 A.2d 807, 815–16 (Conn. App. 1998).

32. Tyler v. Central Charge Serv., Inc.,

33. 228 F.2d 625 (10th Cir. 1956).

34. *Id.* at 627.

35. *Id.*

36. *Id.* at 628.

37. 2 J. WIGMORE, EVIDENCES § 278, at 133 (Chadbourn ed. 1979).

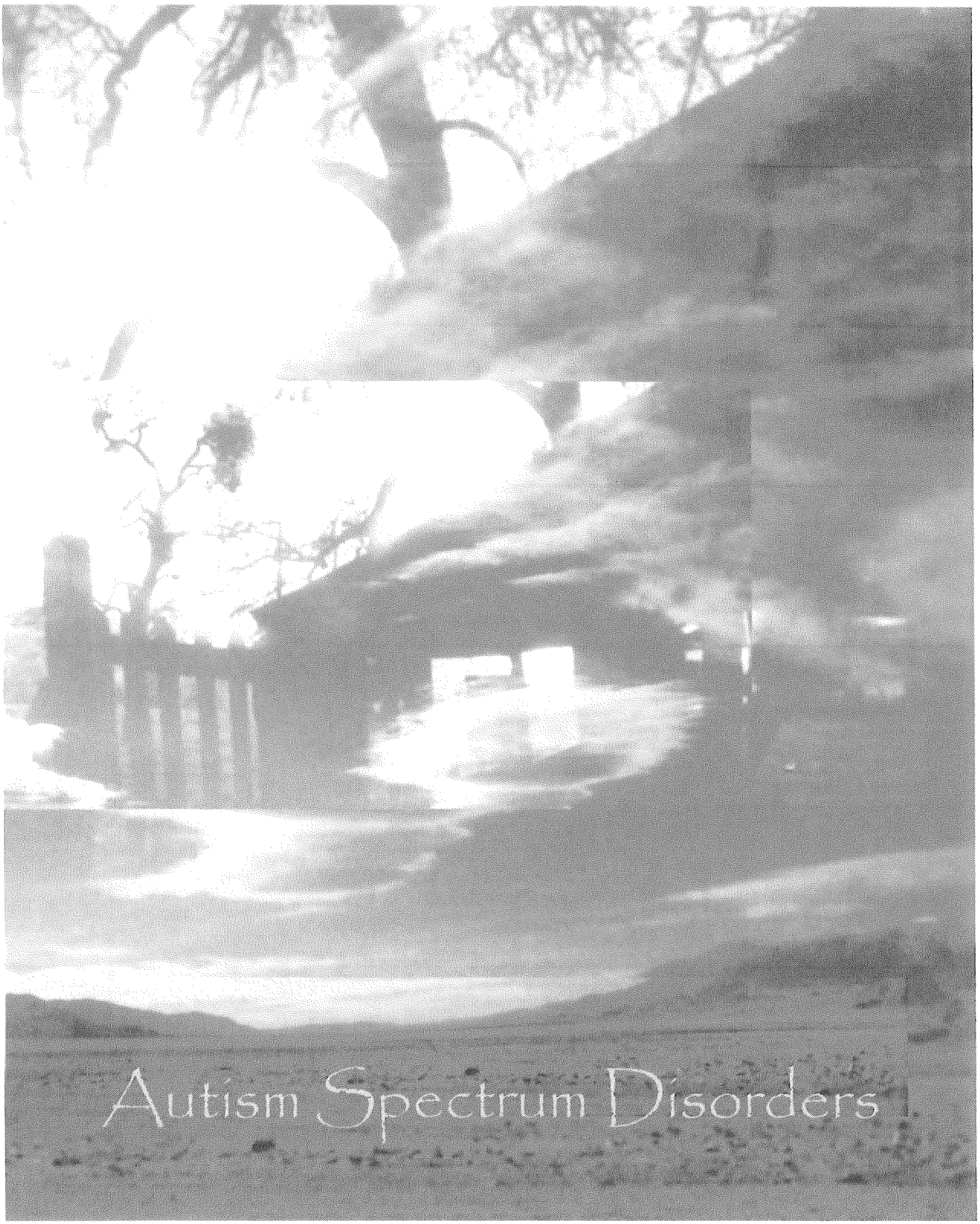
Exhibit 1

USWGO
QANON // DRAIN THE SWAMP
MAKE AMERICA GREAT AGAIN

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Exhibit in attachment to "MOTION FOR SANCTIONS AND TO VACATE JUDGMENT IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"


Autism Spectrum Disorders

About this booklet

Do you know someone who has an autism spectrum disorder? Chances are, you do. Responding to many requests from Missourians for information about autism, this booklet reflects a careful review of the latest autism research, and provides resources.

Acknowledgements

Geoff Lanham's "Preface" appeared in *The GUIDE* (March 2004) as "When the Diagnosis Doesn't Fit: A father finds help for his son."

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—Kristen Heitkamp, Editor
April, 2005

Contents

Preface

by Geoff Lanham, Project LIFE Coordinator

The diagnosis didn't match the behavior.

For a long time, I knew in my head and in my heart that there was something different about my youngest son, Grant. While the symptoms of ADHD were present, there were other behaviors that often alarmed me.

Grant started reading at the age of three. He was fascinated with dinosaurs and could tell you all about the diplodocus and triceratops. Grant often asked me for definitions of words that I had to look up in the dictionary. He was able to compute math problems that most six-year-old children couldn't touch. Grant's teachers complimented him on his intelligence.

His conduct at home wasn't really worrisome. Grant never got into much trouble. Although he always needed prompting to eat or to bathe, or to do common household chores, he wasn't much different than my other children. Then why was there a problem?

At first I thought it was the divorce and new home—changes that would account for any six-year-old child's behavioral problems. We also changed Grant's ADHD medication—that in itself was a living hell. When the dust settled from the divorce and the move, however, he was still acting out at school. On occasion, Grant had trouble with adults, but most of the aggression was directed at his classmates. This behavior was unacceptable—to me and to his teachers.

When Grant was suspended from school for a lunchroom incident, I had the opportunity to discuss his problems with the vice-principal. After a long talk, we agreed that he needed further psychological testing. She recommended referral to the public school autism specialist. Once again, we faced the arduous task of filling out paperwork. Both his mother and I answered questionnaires. For over two hours, we both were questioned by the autism specialist. His teachers were questioned. No stone was left unturned.

Finally the day arrived. We found out why Grant behaved the way he did: he was diagnosed with Asperger syndrome (AS). Having read about this disorder (when my nephew was diagnosed with autism), I recognized many of the characteristics in my son. Back then, I hated to put another label on Grant, and discarded the notion that he might have autism. Now I know better.

Although Grant has another label attached to his resume, this one has been a relief. With insight into Asperger syndrome, we can help my son by anticipating problematic situations. Grant's troubles seemed to happen in very noisy circumstances (in the gym or during recess), places where the decibel level makes the hardest of hearing plug their ears. The lunchroom was always difficult. Not only was noise bothersome, but certain smells also set him off. Grant would push or shove or throw things at fellow students. When I asked him why he did these things, Grant just said, "I don't know Dad, I really don't know."

Now I know, and it's getting easier to adapt his environment or to anticipate a challenge. For instance, children with AS are very sensitive to sound. Grant will cover his ears and get in the fetal position if a fire engine is within a couple of blocks—even when I can barely hear the fire engine. I cannot run the vacuum cleaner when Grant is in the house, because he acts as if someone is running fingers on a chalkboard, and he screams as if in pain.

Certain smells set him off: garlic, for instance. Grant eats only particular foods. I've learned to choose my battles, and as long as Grant is eating, it's better than fixing a meal that will sit on the dinner table, get cold and end up in the garbage.

I play a game with him called "let's see who can stare the other down the longest." Children with AS have a difficult time maintaining eye contact; their eyes wander back and forth. With a lot of effort—the "stare down" game—we are making progress.

Children with AS often take things literally. If you say it is "raining cats and dogs", don't be surprised if a child looks at you in a puzzled manner. To him, it is just raining; there are no cats and dogs falling from the sky!

At school, we've adapted Grant's routine. For instance, he has lunch in the assistant principal's office. He has one recess instead of two. He is given advance warning of a fire drill. These simple steps improve Grant's ability to get along with his peers.

As parents, we need to follow our instincts. We know what makes our children tick. I know that my son will struggle in the classroom. I know that he will shine, as well. Grant has been fortunate. His teachers perceived his strengths, and always encouraged him to be the best student possible. They knew in their hearts and minds that something was different about him. Together, we finally figured it out.

Introduction

Imagine, if you will, waking up one day. Your bed, your arms on the sheet, the book on the table, are seen in fragments. You try to focus but cannot. Lights flash off and on. Everything in the room seems to have a hard edge, without shades of gray, as if you woke up inside of a video game.

And the noise! BOOM boom BOOM boom BOOM boom. It could be the beating of your heart, footsteps in the hall—you have no idea.

Your arms feel asleep. You raise a hand and consider it, shaking it once to see what it will do. Lying back on the pillow, you hear another sound and freeze in fear. Something is touching you, a figure with darting eyes, making unrecognizable sounds. The figure grabs your hand—you scream, close your eyes and cover your ears, willing it to go away.

Imagine waking up with autism.

What is Autism?

Autism, or autism spectrum disorders (ASD), comprise a variety of developmental disorders related to

- communication
- developmental delays, or uneven development
- sensorimotor functions, and
- social interaction

Autism represents a wide range of cognitive and physical abilities, which vary considerably among diagnoses and individuals—thus the designation as a "spectrum." Because of this variability, diagnosis of autism is confusing. For instance, a person, who has a normal to high IQ and the ability to communicate, may be diagnosed with either Asperger syndrome, Asperger Disorder or High Functioning Autism. All of these labels describe the same set of symptoms.

Autism spectrum disorders involve biological systems: the brain, the immune system, the sensory/nervous systems and the gastrointestinal system.

Individuals with autism may have other (co-occurring) disorders such as seizures, allergies, gastrointestinal disorders, sensory disorders, hyperactivity, and anxiety or mood disorders.

NOTE:
In most cases, the words "autism" and "autism spectrum disorder" are used interchangeably.

"As a parent, what is not important is the label, but how I can help my child."
— Betty Kramer, RN

Prevalence

The reported prevalence of autism varies—the National Alliance for Autism Research estimates one in every 250 births, while recent studies place the prevalence as high as one in every 166 children.

Some scientists caution that the apparent rise in autism spectrum disorders may be due to increased awareness and diagnosis of these disorders.

Reviewing an epidemiological database in Olmstead County, Minn., Mayo Clinic researchers found that the incidence of reported cases of autism was stable prior to 1988. When diagnostic criteria for autism expanded in 1987, and new federal special education laws included autism as a disability category, the rate of reported autism increased.

Authors of the study theorize that, prior to these changes, children with autism may have been diagnosed with "developmental delay" or "mental retardation," while children with milder symptoms of autism may not have been identified at all.

REFERENCE
William Barbaresi, et. al. in *Archives of Pediatrics and Adolescent Medicine* (1/05), on-line at: http://www.mayoclinic.org/news2005-rst/2551.html

What causes autism?

Researchers have identified a genetic predisposition to autism spectrum disorders, which "interacts with an as-yet-unknown environmental factor or factors and causes alterations to the immune system, the sensory nervous system, the brain and often the gastrointestinal tract as well." (Cure Autism Now)

Researchers say autism spectrum disorders are a result of a combination of perhaps 10 to 20 genes, plus environmental factors, that seem to cause the brain to exhibit less activity in its social and emotional centers. *(New York Times)*

Recent research at Johns Hopkins School of Medicine suggests that autism may be related to brain inflammation, and further, the brain's immune system may be triggered by factors "possibly including birth complications, diet, toxins or infections." Researcher Carlos Pardo summarized: "These findings reinforce the theory that immune activation in the brain is involved in autism, although it is not yet clear whether it is destructive or beneficial, or both, to the developing brain." (*Annals of Neurology* 57, 1 (2004)) A BBC report on this study adds that "another [study] found raised levels of nitric oxide in the plasma of children with autism. This chemical plays a role in the immune response, and is known to affect neurodevelopmental processes." (Nov. 15, 2004)

While both genetic and environmental factors are responsible for autism, there is no single cause. Theories that vaccines cause autism are unproven. (See related information on p. 21.)

Sensorimotor Symptoms

Auditory Deficits

Individuals with autism often have difficulty processing auditory information. Some individuals may be overstimulated because they are unable to discriminate between sounds, or they are unable to filter out background noise. Some individuals are highly sensitive to different sound frequencies, while others may be sensitive to loud noise.

CAPD

Some individuals exhibit symptoms of central auditory processing disorder (CAPD), a hearing impairment located in the brain (where incoming speech is "processed" and understood) rather than in the ear.

REFERENCE
Stephen M. Edelson, Ph.D., "Auditory Processing Problems in Autism." Center for the Study of Autism. (Salem, Oregon)

Internal symptoms of CAPD:

- difficulty discriminating foreground from background noise
- distortions of incoming speech
- delay or "lag time" in processing speech

External symptoms of CAPD:

- asking for repetition ("huh?" "what?")
- echolalia
- articulation difficulties
- responding incorrectly to spoken directions (for instance, processing "incomplete sentences" for "*in* complete sentences")
- apparently "ignoring" people
- interrupting or "speaking over" people
- delayed response to speech

(from http://www.autistics.org/library/capd.html)

Speech and Language Deficits

Some individuals with autism hear the spoken word as a meaningless sound. As Temple Grandin writes, they do not perceive language as a way of communicating. Many of these individuals, who may be visually oriented, learn to talk when the sound is associated with a picture or the written word. Some people communicate through singing, and singing may become a "bridge" to the spoken word. Often children will echo what they hear (echolalia) or have heard (delayed echolalia). (Grandin, *Thinking in Pictures)*

Speech and language deficits, continued.

Testing by an audiologist can determine how well a person can hear a range of frequencies in each ear. From there, speech and language therapy, designed for individual needs, is essential. A certified speech pathologist can assess and design specific interventions to improve language comprehension and skills.

Visual Deficits

Many people with autism report visual perceptual problems, such as tunnel vision, reliance on peripheral vision, or difficulty in telling foreground from background. Other problems may include:

- sensitivity to light frequencies, typically to fluorescent light which flickers and emits a high buzzing sound;
- inability to focus on constantly changing visual stimulation, such as another person's eyes;
- visual "overload" producing sensations such as strobing, white light;
- difficulty with multisensory processing: inability to look at someone and listen to them at the same time.

An optometrist can rule out other problems with a visual exam.

Some of the areas in which individuals have visual differences may also provide their strengths—seeing differently can be an asset to an artist, for instance.

Hypersensitivity to Smell

Because of hypersensitivity to smell, some children with autism may refuse to eat certain foods, go to a zoo, sit in the school cafeteria, or visit a farm. Household chemicals, laundry detergent, perfume, cigarette smoke or cooking odors may trigger sensitivities.

Food Allergies

The rate of both food allergies and food sensitivities among people with ASD appears to be higher than the 5% norm. Common causes of food allergy are milk, eggs, peanuts, soy, nuts, fish and shellfish. Food allergies are confirmed by a skin-prick or blood test. Besides allergy testing, a child may be tested for vitamin or metabolic deficiencies with a urine test. (See "Dietary and Biomedical Treatments," page 15.)

Touch and Tactile Sensitivity

One of the early signs of autism is observed in babies who scream when they are touched or hugged. Some people with autism report that light touch can be painful, or may incite feelings of anxiety. (For instance, imagine when your leg has "gone to sleep" and you feel "pins and needles.")

Luke Jackson writes that clothing can feel especially torturous, especially clothing labels, new jeans, scratchy fabric or wool socks. Well-washed, soft, natural fabrics such as cotton and silk are preferable.

Others report that they have little or no sense of their bodies; some do not feel "in" their bodies, or perceive an arm or leg as a part of their body. Some self-stimulating behaviors are related to these feelings: hand flapping or wringing, twirling or rocking.

For many people with autism, a light level of tactile stimulation is painful; they actually crave *deep* pressure (received by bumping into walls, or rolling, or hitting their arms or leg).

A typical day ...

Educational Consultant Alex Michaels, who has Asperger syndrome, describes a typical school day:

> *All of a sudden my ears felt as if someone was taking a rototiller and cutting up my eardrums—the lunch bell rang. Next, I needed to claw my way into the jungle of smells where my classmates corralled around the coat hooks grabbing their lunch bags ... as I descended into the cafeteria of despair, I would do battle on the stairs as the sour smell of linoleum lined my nostrils...As if that wasn't bad enough, this overstimulating environment only led to the torture chamber (AKA: playground) where each day I was reminded of just how much I didn't fit in.*

REFERENCE

Luke Jackson, *Freaks, Geeks and Asperger Syndrome: A User Guide to Adolescence.* (2002) Jessica Kingsley Publishers: London.

Assessment

Red Flags

"Red flags" may indicate a child is at risk for developmental disorders, and should have an **immediate** evaluation. If your child shows any of the following signs, don't hesitate to call your doctor:

- No big smiles or other warm, joyful expressions by **6 months** or thereafter
- No back-and-forth sharing of sounds, smiles, or other facial expressions by **9 months** or thereafter
- No babbling by **12 months**
- No back-and-forth gestures, such as pointing, showing, reaching or waving by **12 months**
- No words by **16 months**
- No pretend play by **18 months**
- No two-word meaningful phrases (without imitating or repeating) by **24 months**
- **At any age**, ANY loss of speech or babbling, or of motor skills
- **Acute** sensitivity to touch, taste, noise or smells
- Repetitive behaviors like hand wringing, head banging, twirling
- Odd use of the eyes

Assessment/Diagnosis

An assessment of autism is based on observation of a child in various settings: the home, school and clinic or doctor's office. The diagnostic evaluation of autism will often include a complete physical and neurologic examination and use of specific diagnostic instruments such as the Childhood Autism Rating Scale (CARS); and Autism Diagnostic Observation Schedule (ADOS).

It is important that the interview include an in-depth social history with the parents or caregivers, and with others who know the child well. The interview may include assessment using one or more rating scales. The ADOS, a structured interaction with the child, is considered the gold standard in autism diagnosis.

For high functioning individuals, instruments specific to this population are the Asperger Syndrome Diagnostic Scale and the Gilliam Asperger Diagnostic Scale.

REFERENCES

Greenspan, S.I. (1999) *Building Healthy Minds*, Perseus Books: New York.

Filipek, P.A. et al. "Practice parameter: Screening and Diagnosis of autism." *Neurology* 2000, 55: 468-79.

Interventions

Typically, childhood development is an orderly process of acquiring and building upon skills. In ASD, however, the brain is unable to interpret sensory information, and to develop appropriate neurological responses. Therapy is designed as an intervention that retrains the brain's neurological functions.

Autism Toolbox
Think of interventions as tools. You wouldn't have just one tool, would you? "If you only have a hammer, then everything looks like a nail."
— *Julie Donnelly*

Treatment plans are based on a child's symptoms and the level of neurological impairment, and are designed to address the individual's needs. A National Academy of Sciences report (2001) suggests at least 25 hours a week of intensive training, starting with a child as young as age two. Other researchers noted, "fragmented, weak efforts in early intervention are not likely to succeed, whereas intensive, high-quality, ecologically pervasive interventions can and do." (*American Psychologist*, 1998)

Typically an intervention team includes parents, a trained consultant, speech pathologist, occupational therapist and special educators.

Therapy includes the following components:

- Speech and language therapy, in order to address language and communication delay
- Occupational therapy to improve sensory integration and motor skills
- Visual supports
- Social skills training
- Highly structured, one-to-one, and small-group education

Complementary therapies include hippotherapy, music therapy, and auditory intervention training, page 13. Educational interventions are discussed in "Case Studies," page 17.

Behavioral Interventions

Behavioral techniques help children with autism develop communication and social skills. Three strategies define the interventions: behavioral management using rewards and consequences (a star chart, for instance); functional behavioral analysis, in which the motive for a particular behavior is assessed (Why does he have his hands over his ears? Is he hypersensitive to noise?); and positive behavioral support (such as social skills building).

Parents learn behavioral techniques in order to provide structure in the child's environment, provide consistent rewards, and set limits.

Various intervention programs are designed specifically to enhance communication and cognitive skills. No single method works for all children; analysis of the research shows that approximately half of the children improve with any type of intervention. Rarely do individuals "recover."

Any intervention strategy should be designed to accommodate the strengths, interests and needs of the individual. Specific intervention programs or techniques include:

- Applied behavior analysis such as discrete trial-based training (Lovaas-type). This type of intervention is based on helping a child with ASD react to stimuli from the environment. In discrete trial-based training, a child is prompted and rewarded for a correct response.
- "Developmental/Individual Difference Model" is based on an analysis of where in the normal sequence of development the individual child went off the track, and on crafting a strategy for getting development back on track. It is designed to accomodate individual needs within unique family and cultural patterns.
- Building on the "individual difference" model, Dr. Stanley Greenspan developed a concept called "Floor Time," in which the caregivers (generally the parents) join the child in his or her preferred activity (with the intent of developing this action into an interaction). The caregiver must be able to identify an opportunity to teach a particular skill (such as taking turns), and then repeat the "lesson" until the child has acquired the skill.
- "Social Story" technique is used to teach better understanding of the many social and behavior concepts and routines that are a part of human relationships. Often individuals with autism "misbehave" because they don't understand implicit or nonverbal social rules. Through a social story, written specifically for that child and that situation, the therapist or parent shares the social cues that the child misses. The story helps the child understand the expectations and feelings of others in the situation, and gives cues to help the child choose socially appropriate behaviors. Social Stories can be written for all levels of functioning, by using pictures and varying the level of the language.

RESOURCE
www.thegraycenter.org/Social_Stories.htm

Complementary Therapies

Often, children with autism learn a social skill or routine within a particular setting, but cannot apply the lessons to everyday life (generalize). Complementary therapies help children use classroom skills in the real world.

Therapeutic Horseback Riding (Hippotherapy)

Hippotherapy literally means "treatment with the help of the horse" from the Greek word, "hippos" meaning horse.
— American Hippotherapy Association

Therapeutic riding (hippotherapy) promotes sensory integration, coordination, balance and communication. The physical benefits are based primarily on the movements of the horse, which helps to improve the rider's balance, coordination, strength and muscle tonea by gently mobilizing the rider's joints.

For those with ASD, horseback riding offers additional benefits, as one mother notes: "Things like listening skills, awareness of things around them, skills with animals, friendships they can't get in the schools, learning the days of the week so they know which day they ride, responsibility..." The many aspects of hippotherapy (riding, grooming, bonding with the horse) encourage effort, develop a positive attitude, and promote a sense of well-being and accomplishment.

RESOURCE
To find a therapeutic riding center near you, contact North American Riding for the Handicapped Association (NARHA) at 800-369-RIDE (7433) or on-line at www.narha.org

Auditory Intervention Training Strategies

Why do some children with autism hold their hands over their ears? They are hypersensitive to sound, or they cannot filter out background noise. Temple Grandin writes that unexpected noise, such as a public address system in schools, can be so frightening that a child will refuse to return to the classroom.

In 1950, the French physician Alfred Tomatis noted that the brain responds to "sound overload" through a process of blocking a particular frequency, or by "shutting down." He developed an instrument ("Electronic ear") that modulates—or changes—sound that enters the ears. Other sound therapies bear similarities to this method, such as Berard Auditory Integration Training, or Samonas Sound Therapy. While these approaches may help some people, they have not been verified by research studies to help all.

Music Therapy

Along with other learning strategies, music therapy can provide physical and emotional outlets:

> *Music provides concrete, multisensory stimulation (auditory, visual, and tactile). The rhythmic component of music is very organizing for the sensory systems of individuals diagnosed with autism. As a result, auditory processing and other sensory-motor, perceptual/motor, gross and fine motor skills can be enhanced.*
>
> —American Music Therapy Association

Touch

People who have autism may be hypersensitive to light touch, but deep touch may feel good. As part of sensory integation therapy, the "Squeeze Machine" (invented by Temple Grandin) allows a person to apply constant, deep pressure to the body; Grandin reports that this is comforting and calming. Grandin also suggests using a "mummy" type bag to sleep in. Some kids like to have rubber bands or snug shirt cuffs.

Recreation Therapy

Children who have autism spectrum disorders vary in their abilities and interests, but all have a need to relax and enjoy life. Acquiring leisure interests and skills is just as important as learning math or making a sandwich. Recreation therapists are trained to assess leisure interests and adapt recreation programs to the needs of the participants. Strategies may include direct instruction, peer mentors, and the selection of programs with an appropriate level of inclusion and support.

When you're exploring recreation opportunities for your child, the recreation staff should be able to

- offer suggestions for leisure interests;
- assess your child's ability to participate in a program; and
- adapt a program to the needs of your child.

The Americans with Disabilities Act (ADA) mandates that no child can be excluded from a community recreation program on the basis of disability. In the past, many recreation departments have adapted a "continuum of leisure options" (Schleien, et al.) ranging from "segregated" programs like "Special Olympics" to "integrated" (or mainstreamed) programs.

RESOURCE
National Center on Accessibility
(812) 856-4422 (voice)
(812) 856-4421 (tty)
(812) 856-4480 (fax)
nca@indiana.edu
website: www.ncaonline.org

Medications

While there is no "medication" for autism, there are medications that address some symptoms: for hyperactivity, depression, seizures, obsessive compulsive symptoms, aggression or anxiety. Sometimes medications are prescribed that do not seem to be appropriate, but actually work. For instance, some individuals without seizures often respond well to seizure medications. Every child is different.

The doctor looks at the symptoms and then tries medication for particular symptoms. Since each drug works differently in each body, often you may have to adjust medication levels.

You must see a medical doctor to decide which medications are necessary. It's important to find a physician who is experienced in prescribing medication for autism, and to maintain an ongoing relationship with the physician. If a medication is not working, it's important to get in touch with your doctor, and get good advice on changing meds. Be prepared to try several different medications or drug combinations until you find what is right for your child. Finally, realize that your child's needs will change over time.

—Julie Donnelly, Ph.D.

Dietary and Biomedical Treatments

The following treatments have been reported to alleviate some problem behaviors, and in many cases, help children feel much better. While the anecdotal reports and case studies are compelling, few controlled scientific studies have consistently replicated results.

- Gluten Free/Casein Free (GFCF) diets address allergies to gluten, (found in wheat, oats, rye and barley); and casein (from dairy products).
- An anti-yeast (fungal) diet addresses yeast intolerance.
- Mercury detoxification (chelation) may be recommended for those who have been exposed to high levels of mercury, or who are very sensitive to mercury.
- Dietary supplements such as Vitamin B6, magnesium and essential fatty acids may be helpful. Consult your physician before taking a supplement.
- Studies reported by the National Institute of Health indicate that the hormone secretin is no more effective than taking a placebo.

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Cure Autism Now!
www.cureautismnow.org

Web site list of metabolic research studies:
www.panix.com/~donwiss/reichelt.html

Also see www.gfcfdiet.com/Explanationofdiet.htm

Educational Interventions

Autism spectrum disorders are medical diagnoses. The public schools also evaluate students for "educational autism." While the educational and medical definitions are similar, the assessment procedures are different for each. To receive special education services, your child must go through the educational evaluation process.

IDEA

The federal Individuals with Disabilities Education Act (IDEA) provides that every child with a disability under the age of 21 is entitled to a free, appropriate public education. IDEA mandates that all children should receive their education in the least restrictive environment. Although the law encourages placement in neighborhood schools and interaction with typical peers, the child's needs determine actual placement.

Depending on the child's age, an Individualized Family Service Plan (IFSP; for children under 3) or an Individualized Educational Program (IEP; for students 3-21) describes the special educational and related services specifically designed to meet the child's needs.

The student must be assessed and found eligible for services. This evaluation also provides information on current functioning, which is used to write the Individualized Education Plan (IEP).

Following the assessment, an IEP is developed. Members of the IEP team include the child's family and the child (especially after age 14); special education professionals; the Local Educational Authority (LEA)—the school principal, counselor or special ed administrator who has the authority to delegate resources; and a regular education teacher. The parents may invite their physician or personnel from other support agencies, but these are not required.

Parental rights under IDEA include:

- The right to be informed about any evaluation activities that will be conducted with their child;
- The right to attend the IEP meeting and have input into the formulation of the IEP;
- The right to contest an IEP recommended by their local district if they do not feel it meets their child's needs;
- The right to a hearing and to mediation to resolve such conflicts;
- As a last resort, the right to take the school district to court to resolve their differences.

RESOURCE

To learn more about IDEA and federal programs for special education, see the Office of Special Education Programs (OSEP) web site at www.ed.gov/about/offices/list/osers/osep/index.html

Preschoolers

Services for children under three are usually home-based, with professionals visiting periodically to evaluate progress, provide direct teaching, and recommend activities to parents. Children from age three to five may be served in special programs, or in typical preschools with supportive services.

Case Studies

by Julie A. Donnelly, Ph.D.

AS A PARENT, I saw my son develop from a child with symptoms of classic autism to an adult with Asperger-type differences.

But nothing prepared me for the diversity of autism present in the public schools, where there is a range of desire and ability to communicate among individuals, and a variety of communication systems they may rely on. Sensory differences may cause these children to pull back from interaction, and to have unusual behaviors. Often their lives are complicated by co-occurring conditions. Add individual personalities, family experiences, education or therapy environments, and it comes as no surprise that these children are as different as snowflakes.

Co-occurring condition: may include sensory deficits such as poor eyesight or hearing; medical conditions such as allergies; or psychiatric disorders such as ADHD.

The following stories illustrate the range of educational needs for individuals on the autism spectrum.

COREY is a three-year-old with very limited communication skills. He signs the word *eat*, but uses it to mean many different things. Corey's play is best described as sensory-based. He likes to throw toys, run his hands through sand, and to "wave" items, in order to look at them out of the corner of his eyes. It is difficult to get Corey's attention and, when engaged, he remains focused for only a few seconds. Corey often runs off, and has to be watched closely. Some say he is "noncompliant," but since Corey does not understand much language, his lack of compliance is likely due to receptive language difficulty.

"Receptive" language: learning to listen and understand spoken language; skills focus on auditory memory, following directions, and concept development.

Corey is not yet toilet-trained, eats with his fingers, and can dress only with direction and assistance. While he seems comfortable in the company of familiar adults, Corey doesn't yet recognize individuals beyond his mother. He shows no awareness of peers.

Corey is enrolled in an intensive early-childhood special education program. Designed for his unique personality, the program helps Corey to feel comfortable and safe in the school setting, and to build relationships.

An integral part of Corey's team is the Occupational Therapist (OT) who works directly with Corey, and consults with his teachers. During short periods throughout the day, teachers work with Corey on a one-to-one basis. Some of these sessions are highly structured to help Corey recognize, imitate, and understand receptive language.

In therapy, a skill is taught in a structured setting and "generalized" for a social environment.

Other sessions are devoted to play time, where staff members follow Corey's lead, building interactive play routines with a variety of toys and materials. During play time, staff members work on generalizing the language and skills that Corey is learning in the more structured setting.

A speech-language therapist works one-on-one with Corey, teaching him to use the Picture Exchange Communication System (PECS). Corey has mastered the idea of the exchange (that when he hands someone a picture, he gets something he wants), but still has difficulty distinguishing one picture from another. Everyone working with Corey attempts to help him (and his mother) use the PECS system.

PECS (Picture Exchange Communication System): a way of communicating with visual symbols rather than words. The symbols or pictures may be drawn or pasted on index cards, or attached to a picture board.

Depending on his ability to cope, Cory joins his peers for "open circle." Currently he is sitting with the group for a short time during music—a preferred activity. Although Corey's supports are intensive, he is beginning to learn the routines of his school day, and to demonstrate slow but steady progress.

AMY exhibited problem behaviors in preschool. She refused to sit and listen to stories; she played alone with specific toys; when other students "got in her space," Amy often became aggressive.

Amy knew her ABCs and numbers better than other preschoolers, yet she refused to do work sheets or art projects. Sometimes Amy had meltdowns and screamed. Despite warnings from the preschool director, Amy's parents hoped she would grow out of her problem behaviors. Amy did not.

When Amy entered kindergarten, the school sought an evaluation. The diagnosis of an autism spectrum disorder shocked Amy's parents, but they agreed the characteristics fit their daughter.

Pragmatic skills: using both verbal and nonverbal language to give and receive information.

In kindergarten, a language therapist sees Amy individually (to build pragmatic skills), and also in a pair or small group setting (where Amy practices social language). At other times, the language therapist observes Amy in the classroom, and offers support by prompting generalization of new skills.

A thorough evaluation by an OT uncovered sensorimotor problems. The OT provides services in the classroom environment, where the teacher created a "quiet space" for Amy to use when she feels overwhelmed and needs to relax.

While Amy displays some skill in rote memory, she has difficulty understanding instructions and completing her work. A support person (aide) helps Amy with classroom tasks and projects, and also helps Amy learn to play with a wider variety of toys, and to interact with her peers.

MARY is in a fourth-grade inclusive classroom setting, where (with guidance from classroom and special education teachers) a support person adapts the regular curriculum for her. Mary participates in many classroom activities. While Mary can speak, she needs therapy to increase her receptive, expressive and pragmatic language skills. Mary has always had friends, but since she is not as emotionally mature as her classmates, Mary is often confused by some of their complex friendship rituals.

Expressive language: skills include using a vocabulary, and the ability to narrate, or tell a story.

Mary's parents know that their daughter will probably need continuing special education support. Mary may not be totally mainstreamed in secondary school, given the curricular challenges at that level. However, her parents hope that Mary will be able to find employment and live in the community with a moderate level of support.

JOHN's parents were very nervous about their son's move to middle school. John had been quite successful in his elementary school setting, with some special education "pull out" and in-class services. While John communicates, he has a great deal of difficulty with social cues. In elementary school, everyone knew John—so when he said something unusual, students and teachers accepted it as part of who John is. His parents worried that students and teachers would not accept John in the middle school environment, and alerted his teachers that John might be bullied.

An IEP (Individualized Education Plan) is reviewed and adapted on a regular basis.

John also struggles with academics. While he often doesn't understand what the teachers are saying, he won't tell them so. This creates a vicious cycle, as they get upset when John doesn't turn in his work. Due to this concern, his IEP team decided that he should stay with his peers in most classes, but also spend two periods in a resource room. There, special education staff help John complete his work, and make sure that he understands the course concepts. John also is placed in a pragmatic language/social skills group.

RON spent all of his schooling in a special education "self-contained" classroom. He has basic communication skills, but cannot understand more complex language. Now 18 years old, Ron is in a "community skills" class, where he works in different community environments during the school year. The staff assesses the type of work Ron does best, and determines the amount of support he needs to complete tasks. Members of his IEP team, and some community agencies, are planning for Ron's transition when he turns 21.

Federal law mandates that students with disabilities will have a plan in place to aid in their transition from school to community.

When he is not in a work setting, Ron attends the local high school, where he is friendly, and well-known for his special interest in fly swatters. In fact, both students and teachers have given Ron special fly swatters, and regularly ask him about his unique collection.

HARRY, a young man with Asperger syndrome, is graduating from high school with honors. Given the challenges of AS, Harry's success surprises and pleases everyone. In the last few years, Harry has needed only a 504 plan. This federally-mandated plan is used for students whose difficulties are in the mild range. In Harry's case, only a few accommodations are needed, such as preferential seating and extended time on tests. Harry is well aware of his differences, and sees a counselor regularly. He has two good friends who like and accept him for who he is.

504 Plan:
a program of instructional services to assist students with special needs who are placed in a regular education setting.

Harry looks forward to going to college, where his serious attitude and excellent reading ability should help him to succeed. Harry's counselor has not only helped him to better understand his Asperger's differences, but also has introduced Harry to an Internet group of others with similar characteristics and traits.

Students receiving services for autism are as diverse as the interventions they receive, and it's apparent that a diverse group of caregivers delivers these services. Keep in mind that the best services help students attain not only success, but also independence.

It is important to understand that autism is a multicausal phenomenon. There will not be one cure found, but we are finding some pieces of the puzzle. I do not know of miraculous recoveries. In fact, my son would be offended at the thought. He says he is not a failed or broken normal person, he is a perfectly fine person with autism. And he and the other individuals on the autism spectrum have a lot to contribute to this world.

[Julie Donnelly, Ph.D. has over 24 years of teaching and school consulting experience with all ages and disabilities, specializing in teaching students with autism. She is recognized nationally as an authority on autism. Her son Jean-Paul Bovee is a well-known speaker and person with autism.]

See Dr. Donnelly's website at www.autismsupports.com.

Psychiatric Diagnoses

In order to qualify for medical or insurance services, parents of children with autism spectrum disorders seek professional psychiatric diagnoses. These diagnoses are based on criteria from either the International Classification of Diseases (ICD-10) or the American Psychiatric Association *Diagnostic and Statistical Manual IV* (DSM-IV). Note that psychiatric diagnoses on the following pages are based on DSM-IV criteria.

In addition to the medical diagnosis, a child must be assessed in the educational system, in order to receive special education services. The two sets of diagnostic criteria do not necessarily correlate: a child may be diagnosed with High Functioning Autism as well as Asperger Disorder, or with PDD-NOS as well as Autism.

The inconsistency is due, in part, to the variability of behaviors in the autism spectrum disorder.

While scientists have attempted to diagnose autism based on behavioral characteristics, Dr. Judith Miles at the University of Missouri Autism Project clinic researched a different approach, "separating children who experienced central nervous system insult during [fetal development] from those who did not." In a study of 465 patients admitted to the clinic, Dr. Miles found that approximately 30% of the group display "complex autism," defined as autism in combination with dysmorphology, brain abnormalities, or microcephaly (small head). Children with "essential autism" were defined as those without dysmorphology, brain abnormalities or microcephaly.

REFERENCE
Miles and Fennell, "Autism and Jourbet's Syndrome," 2002.

> *Comparison of the subgroups suggested higher IQs, fewer seizures and abnormal EEGs, a regressive pattern of onset, higher prevalence for males than females, and higher family recurrence risk for children with* ***essential*** *autism. In contrast, children with* ***complex*** *autism had lower IQs, more seizures and abnormal EEGs, a gradual onset, a more even gender distribution, poorer outcome, and a lower familial recurrence risk.* (Miles and Fennell)

In summary, different diagnoses of autism attempt to describe the extensive variants of the disorder, and over time, a child may be assessed and given a different diagnosis.

Autistic Disorder (classical autism, Kanner's syndrome)

syndrome:
a group of symptoms indicating a biological condition

First described in medical literature by Leo Kanner in 1943, autism is a syndrome that includes some element of at least three criteria.

- Some qualitative impairment in reciprocal social interaction. This may be characterized by poor use of eye gaze and gestures, and a lack of interest in (or ability to develop) personal relationships.
- An impairment of communication—verbal and nonverbal—characterized by a delay in language acquisition, lack of (or poor) speech, lack of spontaneous play.
- A restricted repertoire of activities or interests, including repetitive or stereotyped movements—hand flapping, spinning—and preoccupation with specific movements in objects.

Three out of four children with autism also have mental retardation. One in three children with autism will have, or will develop, seizure disorders. Many others may have co-occurring disorders such as allergies, or hearing or visual impairments. Self-injury behaviors may emerge.

Diagnoses among the spectrum of autism disorders include high functioning autism (Asperger syndrome), classical autism (also called Autistic Disorder, Kanner's Syndrome), Childhood Disintegrative Disorder (also called Heller's Disorder), or Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS).

Childhood Disintegrative Disorder (Heller's Disorder)

This rare diagnosis refers to a child having normal development who suddenly regresses, or fails to meet developmental milestones, at around age two. It is difficult to ascertain if this is an independent condition, since a pattern of normal development and later regression is often identified in autism spectrum disorders. (See the classifications of Dr. Judith Miles, page 21.)

Asperger syndrome
High-functioning Autism

The difference between Asperger's and high functioning autism is ... the way they are spelled.
—Tony Attwood, in *Asperger's Syndrome: A Guide for Parents and Professionals.*

Asperger syndrome (AS) or Asperger Disorder [DSM-IV] represents a constellation of symptoms or characteristics at the "higher-functioning" end of the autism spectrum of pervasive developmental disorders, which is medically diagnosed by the presence of the majority of following traits:

- Unusual responses to stimulation and environment. A person with AS may be extremely sensitive to noise, smell or taste, and will respond to sensory overload with a meltdown or withdrawal.
- Limited interests or unusual preoccupations. People with high functioning autism tend to specialize on whatever they find interesting; they tend to "spout off" information.
- Repetitive routines or rituals. For a person with AS, ritual and routines provide comfort and predictability in a world that threatens his or her sense of control. If the routine is broken, typically, the person with high functioning autism may respond by having a meltdown.
- Speech and language peculiarities, such as tics or repetitive words or phrases.
- Uncoordinated or repetitive physical movements: walking on toes, flapping hands, fidgeting or facial tics.
- Impaired social and communication skills, such as the inability to "read" the facial expressions or body language of others; or the inability to intuit the rules ("give and take") of conversation.
- Lack of flexibility. People with high functioning autism interpret life literally. They rely on a schedule and structure. Often they have a "Plan A" but not a "Plan B."

A person with Asperger syndrome faces a new set of problems during adolescence, when peer pressure and "fitting in" take precedence over individuality. It can be difficult for people with high functioning autism to form relationships, often resulting in feelings of loneliness and frustration. It's not unusual for a person with AS to develop depression or anxiety. That being said, people with Asperger syndrome very often enjoy intimate relationships, and excel in their fields of interest.

Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS)

Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS) is called a "subthreshold" condition. PDD-NOS is a diagnosis indicating that a child's symptoms fall within the Autism Spectrum Disorder. For a PDD-NOS diagnosis, some—but not all—features of autism or another Pervasive Developmental Disorder must be identified.

Not all children with PDD-NOS have the same degree or intensity of the disorder: a child may show a few symptoms at school or in a neighborhood environment. Other children may exhibit more behaviors, and may have difficulties in all areas of their lives. (NICHY)

NICHY:
(National Dissemination Center for Children with Disabilities)
www.nichcy.org/pubs/factshe/fs20txt.htm

Information from the Yale Child Study Center web site notes:

> *While deficits in peer relations and unusual sensitivities are typically noted, social skills are less impaired than in classical autism. ... The limited available evidence suggest that children with PDD-NOS probably come to professional attention rather later than is the case with autistic children, and that intellectual deficits are less common.*

Speech problems are common in young children, but often diminish as the child gets older. Often children have a monotone or robotic speech inflection.

Intelligence and cognitive abilities vary among individuals.

Emotional expression of some children may be "flat," excessive or inappropriate to the situation, yet children with PDD-NOS can also express affection and humor.

Typical behaviors of children with PDD-NOS may include, to some degree:

- Resistance to change. Meltdowns are common when the routine is altered.
- Ritualistic or compulsive behaviors, such as "stimming."
- Intense attachments and preoccupations. A child may be fascinated with light bulbs or a certain toy.
- Unusual responses to sensory experiences. Some kids may hate to be touched, but will enjoy roughhousing.
- Movement disorders such as hand flapping, rocking and swaying, or head rolling or banging.

Rett syndrome

Rett syndrome is a pervasive developmental disorder that causes mental retardation and developmental degeneration. Inherited as an X-linked trait, it has been reported only in females.

> *Since the discovery of the MECP2 gene,* [implicated in] *Rett's, variants of the syndrome have been reported in males who have mutations of MECP2, with some overlap in the symptomatology observed in girls (Amir, et al, 1999; Schwartzman et al, 1999; Schanen et al, 1998).* (Yale Child Study Center)

RESOURCE
International Rett Syndrome Association
9121 Piscataway Road
Clinton, MD 20735
1-800-818-RETT
www.rettsyndrome.org

Infants with this disorder appear to have normal growth and development for at least five months. Parents may notice excess levels of hand patting, waving, and involuntary movements of the fingers, wrists and arms; however, these signs are subtle and may go unnoticed. At five months, there is a slowing of normal development and a failure to reach developmental milestones on time. Additionally, parents note the following signs:

- size of the child's head does not grow as much as it should between the ages of 5 and 48 months;
- loss of previously learned, useful hand skills (such as reaching for and grasping an object), and the development of stereotyped hand movements, especially hand wringing;
- loss of socially engaging behaviors like smiles and eye contact (however, these behaviors may redevelop later);
- loss of coordinated walking or body movements.

Additionally, expressive and receptive language skills become impaired, and severe psychomotor retardation develops.

A lack of interest in social relationships, loss of expressive language and the development of "stereotypies" can cause this disorder to be confused with classic autism.

Neurological Disorders

Neurological disorders of the brain may co-occur with autism spectrum disorders (ASD). Often a child with autism will display ADD/ADHD behaviors. Anxiety and panic disorders (as well as headaches) are common responses to sensory overload, and may accompany ASD. Individuals with ASD may develop mood disorders such as depression and dysthymia (chronically irritated, slightly depressed mood).

Attention Deficit Disorder (ADD)
Hyperactivity Disorder (HD)
Attention Deficit/Hyperactivity Disorder (ADHD)

Attention deficit disorders are neurological brain disorders that make it difficult to sit still, stay focused, remember instructions, play quietly or get along with others. These are treated with a combination of behavioral modifications, classroom interventions, and/or medication. For diagnosis, a person must exhibit characteristics of ADD or ADHD in more than one setting—in both school and home, for instance.

Reference:
For a detailed discussion of childhood brain disorders, see "The ABCs of Children's Mental Health" (2001) from Project LIFE.

A person diagnosed with **attention-deficit disorder** (ADD) fails to pay attention to details; has difficulty sustaining interest in tasks or play; will not follow through on instructions; procrastinates; is easily distracted; and is forgetful.

With **hyperactivity disorder**, a person typically fidgets or squirms; has difficulty playing quietly; often talks excessively; interrupts or intrudes on others, and displays a lack of ability to inhibit impulses.

Depression

Depression is characterized by a depressed or irritable mood most of the day, every day, for at least a year. In addition, a child will have sleep problems; will lose or gain weight; will feel restless; have fatigue or loss of energy; have feelings of worthlessness or excessive guilt; or have diminished ability to think or concentrate. Someone with depression may also have recurrent thoughts of death or suicide, or will make suicide attempts.

Depression is often accompanied by headaches (40% of females), general physical complaints or gastrointestinal problems.

Obsessive-Compulsive Disorder

Obsessive-compulsive disorder (OCD) is characterized by anxious thoughts or rituals that cannot be controlled. People with OCD may be plagued by persistent, unwelcome thoughts or images, or by the urgent need to perform certain rituals such as hand-washing, checking, counting or ordering. Many of the behaviors associated with OCD are also typically seen in autism. Research studying the similarities between autism and OCD behaviors suggests a "similar biobehavioral model in place in both autism and obsessive-compulsive disorder." (Winter and Schreibman)

Schizophrenia

While symptoms of schizophrenia usually appear in late adolescence, in rare cases childhood schizophrenia may be misdiagnosed as an autism disorder.

Schizophrenia is noted by:

- Hallucinations—usually visual or auditory, rarely olfactory
- Delusions—false beliefs, paranoia
- Disorganized speech, incoherence
- Disorganized or catatonic behavior
- Negative symptoms, specifically flat affect, lack of speech
- Marked impairment of at least six months duration

Tourette syndrome (TS)

Tourette Syndrome is an inherited neurological disorder characterized by repeated involuntary movements and uncontrollable vocal sounds, called tics. Symptoms of TS appear before the individual is 18 years old, often when the child enters school.

Like autism, Tourette syndrome (which occurs mainly in males) affects behavior, social interaction, movement and language. It is not a component of autism, but can be misdiagnosed as autism.

"Repetitive movements, stereotypies, [echolalia], self-injurious behaviors and compulsive behaviors are common in autistic spectrum, [as well as] a subset of severe TS without autism." (Barnhill and Horrigan)

Both syndromes are thought to have complex genetic and environmental origins. Research "suggests a genetic relationship between autism and Tourette syndrome, as well as a genetic relationship of both with disorders of immune dysregulaton." (Becker et al.)

Glossary

ABA (Applied Behavior Analysis): Acronym used to refer to a family of techniques based on behavioral principles.

aphasia: Loss of ability to use or understand words.

atypical autism : A general term for conditions that are similar to (but don't quite fit) the set of criteria for a diagnosis of autism or related disorders. (See PDD-NOS)

Auditory Integration Training (AIT): A technique used to relieve hearing dysfunctions by "retraining" the ear to hear in a more balanced fashion. *Also used: Tomatis, Berard, Samonas training*

Augmentative and Alternative Communication (AAC): Any method of communicating that can supplement the ordinary methods of speech and handwriting, where these are impaired. AAC devices range from low-tech ("photo boards" and picture exchange communication) to "high tech" (augmentative speech device).

Autism Diagnostic Interview (ADI): A standardized, semi-structured parent interview that can be used to assess children and adults with a mental age of 18 months and up.

Autism Diagnostic Observation Schedule (ADOS): A standard, semi-structured play session that allows the examiner to observe communicative and social behaviors that are associated with autism.

autistic savant: A rare condition in which an individual with autism displays a brilliant talent or intelligence in a particular area, such as feats of memory, mathematics or music.

Central auditory processing disorder (CAPD): A hearing impairment located in the brain (where incoming speech is "processed" and understood), rather than in the ear.

Childhood Autism Rating Scale (CARS): A rating scale developed to diagnose autism, based on ratings in 15 areas.

chromosomes: Structures in the cell nucleus that bear an individual's genetic information.

Diagnostic and Statistical Manual IV (DSM-IV): The official system for classification of psychological and psychiatric disorders prepared by and published by the American Psychiatric Association.

discrete trial: A short, instructional training, which has three distinct parts: a direction, a behavior, and a consequence. Many discrete trial programs rely heavily on directions or commands as the signal to begin the discrete trial.

dyspraxia: Impaired or painful functioning in any organ.

echolalia: Repeating words or phrases heard previously. The echoing may occur immediately after hearing the word or phrase, or much later. **Delayed echolalia:** can occur days or weeks after hearing the word or phrase. **Functional echolalia**: using a quoted phrase in a way that has shared meaning, for example, a child who sings the Barney jingle to ask for a Barney videotape, or says "Get your shoes and socks" to ask to go outside.

electroencephalogram (EEG): A test that uses electrodes placed on the scalp to record electrical brain activity. It is often used to diagnose seizure disorders or to look for abnormal brain wave patterns.

Fragile X Syndrome: A genetic disorder that shares many of the characteristics of autism.

gene: Formed from DNA, genes are carried on the chromosomes and are responsible for the inherited characteristics that distinguish one individual from another.

hyperlexia: The ability to read at an early age, but not necessarily to understand what is being read. **hypo-:** inability to read.

hypotonia: low muscle tone.

Individualized Educational Plan (IEP): A plan that identifies the student's specific learning expectations and outlines how the school will address these expectations through appropriate special education programs and services. The IEP also identifies the methods by which the student's progress will be reviewed. For students 14 years or older, the IEP must include a plan for the transition to postsecondary education or the workplace, or a plan to help the student live as independently as possible in the community.

Landau-Kleffner Syndrome: Also known as acquired aphasia with convulsive disorder, it is characterized by a progressive loss of the ability to understand language and to use speech, following a period of normal speech development. It is accompanied by seizure activity and is typically diagnosed through a sleep EEG.

macrocephaly: A head circumference two standard deviations above average.

mainstreaming: Placement of a child with a disability in a regular classroom.

microcephaly: A head circumference two standard deviations below average, producing an abnormally small head and small brain.

occupational therapy (OT): Provided by an occupational therapist, OT aids in development of the fine motor skills used in daily living. Occupational therapy can focus on sensory issues (e.g., coordination of movement, balance) and on self-help skills such as dressing, using a fork and spoon, or grooming. OT also can address problems with visual perception and hand-eye coordination.

perseveration: Repetitive movement or speech, or obsessing on one idea or task.

Positron Emission Tomography (PET) Scan: A scanning device that uses low-dose radioactive sugar to measure brain activity.

prosopagnosia: brain-based inability to recognize faces.

psychomotor: Relating to motor action directly proceeding from mental activity.

sensorimotor: Pertaining to brain activity other than automatic functions (respiration, circulation, sleep) or cognition. Sensorimotor activity includes voluntary movement, and relates to senses (sight, smell, touch and hearing).

sensory integration (SI): A term applied to the way the brain processes sensory stimulation or sensation from the body, and then translates that information into specific, planned, coordinated motor activity.

serotonin: A chemical neurotransmitter that regulates mood, as well as the physiological processes of sleep, pain and sensory perception, motor function, appetite, learning and memory.

Speech-Language Pathologist: Specialist in the area of human communication. The focus of language therapy is to increase a person's ability to understand and interact with their environment.

stereotypies: Excessive repetition (or lack of variation) in movements, ideas, or patterns of speech, especially when viewed as a symptom of certain developmental disorders.

stim: ("stimming"): Short for "self-stimulation," a term for behaviors whose sole purpose appears to be to stimulate one's own senses. An example is hand-flapping. Many people with autism report that some "self-stims" may serve a regulatory function, such as calming, adding concentration, or shutting out an overwhelming sound.

TEACCH (Treatment and Education of Autism and related Communication handicapped Children): TEACCH methodology is a collection of techniques including highly structured classrooms and visual supports. This approach may be used to enhance receptive communication and sequential memory.

Theory of Mind: The ability to understand that others have beliefs, desires, emotions and intentions that are different from one's own, and to interpret these through a process of inferring subtle verbal or nonverbal cues.

tic: An involuntary facial expression (constant winking, for instance) or vocalization (grunting, repeating words or sounds).

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Resources

ADA (Americans with Disabilities Act) www.usdoj.gov/crt/ada/adahom1.htm
For information and technical assistance, call (800) 514-0301.

Autism Network International (ANI) http://ani.autistics.org "An autistic-run self-help and advocacy organization for autistic people."

Autism Research Institute (ARI) www.autismresearchinstitute.com Fax (619)563-6840; contact for Defeat Autism Now physicians.

Autism Society of America www.autism-society.org
Central Missouri Chapter (660) 429-6409; Western Missouri Chapter (816) 353-7560

American Speech-Language-Hearing Association www.asha.org 1-800-638-8255

Cure Autism Now! www.cureautismnow.org 1-888-828-8476; (323) 549-0500

First Steps www.dese.state.mo.us/divspeced/FirstSteps/index.html. This Missouri state program provides services for children (birth to age 3) who have delayed development or diagnosed conditions associated with development disabilities. 1-866-583-2392

Governor's Council on Disability www.gcd.oa.mo.gov 1-800-877-8249

Judevine Centers. St. Louis (314)432-6200; Columbia 1-800-675-4241
Southeast MO (573)339-9300; Southwest MO 1-800-420-7410

MedLine www.nlm.nih.gov/medlineplus/autism.html National Library of Medicine information and news on autism.

Missouri Autism Consultants (MACs) 1-866-481-3841
On-site consultation to Missouri school districts, for programs for students with autism.

Missouri Department of Mental Health www.dmh.missouri.gov
Toll-free 1-800-364-9687.

Missouri Developmental Disabilities Resource Center www.moddrc.com
Locate needed services and obtain materials related to developmental disabilities and low incidence disabilities. MODDRC services are available free to Missourians. 1-800-444-0821

Missouri Families for Effective Autism Treatment (MO-FEAT) (314)645-6877
www.MO-FEAT.org Advocacy and information.

Missouri Family Trust www.missourifamilytrust.org 1-888-671-1069
The Missouri Family Trust administers a master trust which manages individual special needs trusts for persons with a mental or physical disability.

MU Autism Clinic (573)884-1871; 882-6991

National Alliance for Autism Research www.naar.org/naar.asp

National Center on Birth Defects and Developmental Disabilities at the Centers for Disease Control and Prevention. www.cdc.gov/ncbddd/dd/ddautism.htm

National Institute of Child Health & Human Development. www.nichd.nih.gov/autism 1-800-370-2943

National Institute on Deafness and Other Communication Disorders Information Clearinghouse www.nidcd.nih.gov 1-800-241-1044; 800-241-1055 (TTD/TTY)

National Institute of Mental Health (NIMH) www.nimh.nih.gov 1-866-615-6464

National Institute of Neurological Disorders and Stroke (NINDS) www.ninds.nih.gov 1-800-352-9424

Online Asperger Syndrome Information and Support (OASIS) www.aspergersyndrome.org

Project ACCESS www.smsu.edu/access 1-866-481-3841
This project trains professionals who serve children with autism and pervasive developmental disorders. Contact Joanie Armstrong at (417)836-6396.

Project LIFE. www.missouri.edu/~projlife 1-800-392-7348
Project LIFE offers publications, training and consultation on mental health topics, free of charge to Missourians.

Society for Neuroscience www.sfn.org (202) 462-6688 Information and fact sheets available on-line.

Talk Autism. www.talkautism.org
Resource for the autism community to share knowledge, information and assistance.

Yale University Child Study Center http://info.med.yale.edu/chldstdy/autism/index.html
Information about pervasive developmental disorders.

NOTES

A Project LIFE Book 2005

funded by

Missouri Department of Mental Health

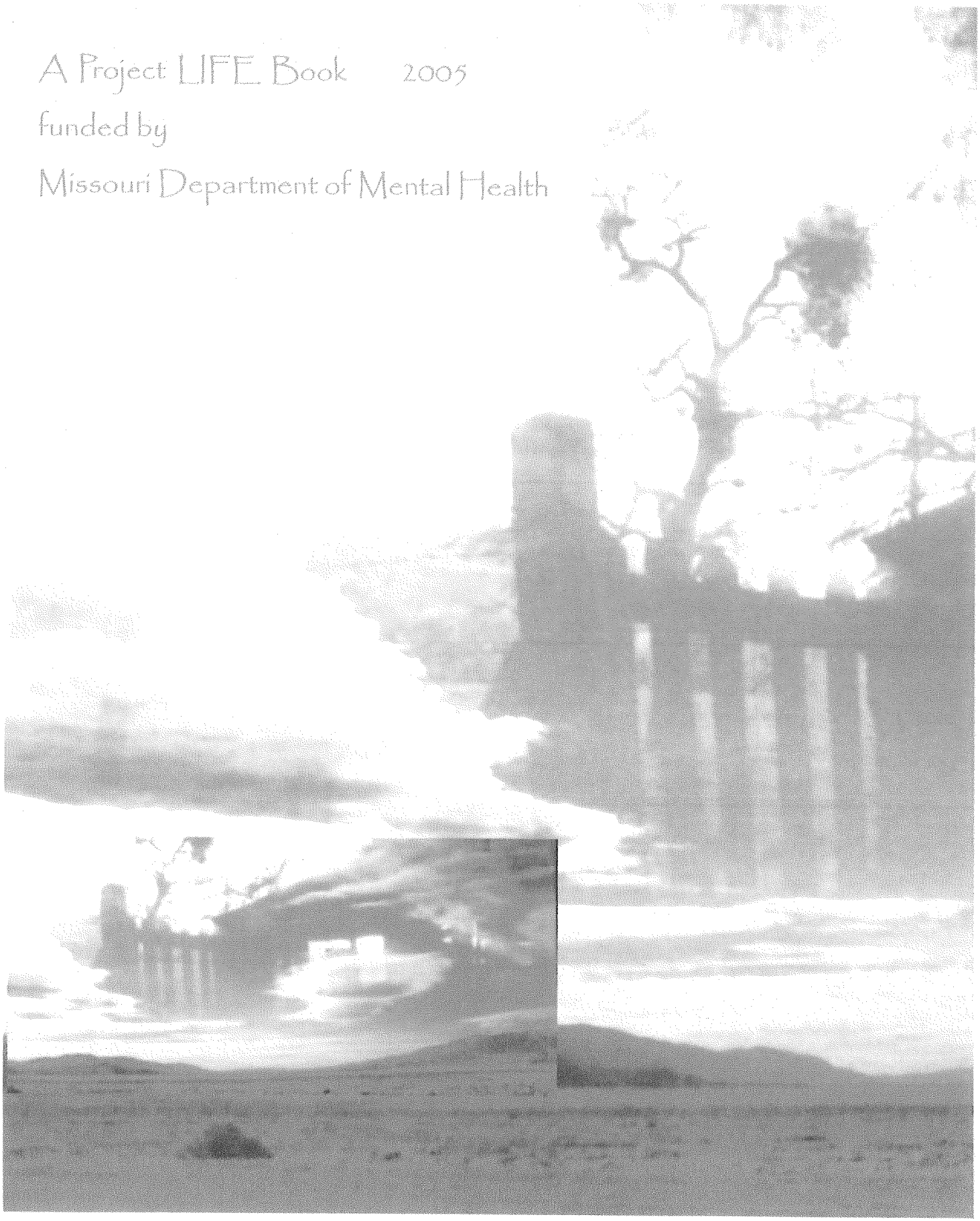

Exhibit 2

USWGO
QANON // DRAIN THE SWAMP
MAKE AMERICA GREAT AGAIN

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Exhibit in attachment to "MOTION FOR SANCTIONS AND TO VACATE JUDGMENT IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

National Institute of Neurological Disorders and Stroke

Search NINDS

En Español

Autism Spectrum Disorder Fact Sheet

Autism Spectrum Disorder Fact Sheet

What is autism spectrum disorder?

Autism spectrum disorder (ASD) refers to a group of complex neurodevelopment disorders characterized by repetitive and characteristic patterns of behavior and difficulties with social communication and interaction. The symptoms are present from early childhood and affect daily functioning.

The term "spectrum" refers to the wide range of symptoms, skills, and levels of disability in functioning that can occur in people with ASD. Some children and adults with ASD are fully able to perform all activities of daily living while others require substantial support to perform basic activities. The Diagnostic and Statistical Manual of Mental Disorders (DSM-5, published in 2013) includes Asperger syndrome, childhood disintegrative disorder, and pervasive developmental disorders not otherwise specified (PDD-NOS) as part of ASD rather than as separate disorders. A diagnosis of ASD includes an assessment of intellectual disability and language impairment.

ASD occurs in every racial and ethnic group, and across all socioeconomic levels. However, boys are significantly more likely to develop ASD than girls. The latest analysis from the Centers for Disease Control and Prevention estimates that 1 in 68 children has ASD.

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What are some common signs of ASD?

Even as infants, children with ASD may seem different, especially when compared to other children their own age. They may become overly focused on certain objects, rarely make eye contact, and fail to engage in typical babbling with their parents. In other cases, children may develop normally until the second or even third year of life, but then start to withdraw and become indifferent to social engagement.

The severity of ASD can vary greatly and is based on the degree to which social communication, insistence of sameness of activities and surroundings, and repetitive patterns of behavior affect the daily functioning of the individual.

Social impairment and communication difficulties

Many people with ASD find social interactions difficult. The mutual give-and-take nature of typical communication and interaction is often particularly challenging. Children with ASD may fail to respond to their names, avoid eye contact with other people, and only interact with others to achieve specific goals. Often children with ASD do not understand how to play or engage with other children and may prefer to be alone. People with ASD may find it difficult to understand other people's feelings or talk about their own feelings.

People with ASD may have very different verbal abilities ranging from no speech at all to speech that is fluent, but awkward and inappropriate. Some children with ASD may have delayed speech and language skills, may repeat phrases, and give unrelated answers to questions. In addition, people with ASD can have a hard time using and understanding non-verbal cues such as gestures, body language, or tone of voice. For example, young children with ASD might not understand what it means to wave goodbye. People with ASD

may also speak in flat, robot-like or a sing-song voice about a narrow range of favorite topics, with little regard for the interests of the person to whom they are speaking.

Repetitive and characteristic behaviors

Many children with ASD engage in repetitive movements or unusual behaviors such as flapping their arms, rocking from side to side, or twirling. They may become preoccupied with parts of objects like the wheels on a toy truck. Children may also become obsessively interested in a particular topic such as airplanes or memorizing train schedules. Many people with ASD seem to thrive so much on routine that changes to the daily patterns of life — like an unexpected stop on the way home from school — can be very challenging. Some children may even get angry or have emotional outbursts, especially when placed in a new or overly stimulating environment.

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What disorders are related to ASD?

Certain known genetic disorders are associated with an increased risk for autism, including Fragile X syndrome (which causes intellectual disability) and tuberous sclerosis (which causes benign tumors to grow in the brain and other vital organs) — each of which results from a mutation in a single, but different, gene. Recently, researchers have discovered other genetic mutations in children diagnosed with autism, including some that have not yet been designated as named syndromes. While each of these disorders is rare, in aggregate, they may account for 20 percent or more of all autism cases.

People with ASD also have a higher than average risk of having epilepsy. Children whose language skills regress early in life — before age 3 — appear to have a risk of developing epilepsy or seizure-like brain activity. About 20 to 30 percent of children with ASD develop epilepsy by the time they reach adulthood. Additionally, people with both ASD and intellectual disability have the greatest risk of developing seizure disorder.

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How is ASD diagnosed?

ASD symptoms can vary greatly from person to person depending on the severity of the disorder. Symptoms may even go unrecognized for young children who have mild ASD or less debilitating handicaps.

Autism spectrum disorder is diagnosed by clinicians based on symptoms, signs, and testing according to the Diagnostic and Statistical Manual of Mental Disorders-V, a guide created by the American Psychiatric Association used to diagnose mental disorders. Children should be screened for developmental delays during periodic checkups and specifically for autism at 18- and 24-month well-child visits.

Very early indicators that require evaluation by an expert include:

- no babbling or pointing by age 1
- no single words by age 16 months or two-word phrases by age 2
- no response to name
- loss of language or social skills previously acquired
- poor eye contact
- excessive lining up of toys or objects
- no smiling or social responsiveness

Later indicators include:

- impaired ability to make friends with peers
- impaired ability to initiate or sustain a conversation with others
- absence or impairment of imaginative and social play
- repetitive or unusual use of language
- abnormally intense or focused interest
- preoccupation with certain objects or subjects
- inflexible adherence to specific routines or rituals

If screening instruments indicate the possibility of ASD, a more comprehensive evaluation is usually indicated. A comprehensive evaluation requires a multidisciplinary team, including a psychologist, neurologist, psychiatrist, speech therapist, and other professionals who diagnose and treat children with ASD. The team members will conduct a thorough neurological assessment and in-depth cognitive and language testing. Because hearing problems can cause behaviors that could be mistaken for ASD, children with delayed speech development should also have their hearing tested.

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What causes ASD?

Scientists believe that both genetics and environment likely play a role in ASD. There is great concern that rates of autism have been increasing in recent decades without full explanation as to why. Researchers have identified a number of genes associated with the disorder. Imaging studies of people with ASD have found differences in the development of several regions of the brain. Studies suggest that ASD could be a result of disruptions in normal brain growth very early in development. These disruptions may be the result of defects in genes that control brain development and regulate how brain cells communicate with each other. Autism is more common in children born prematurely. Environmental factors may also play a role in gene function and development, but no specific environmental causes have yet been identified. The theory that parental practices are responsible for ASD has long been disproved. Multiple studies have shown that vaccination to prevent childhood infectious diseases does not increase the risk of autism in the population.

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What role do genes play?

Twin and family studies strongly suggest that some people have a genetic predisposition to autism. Identical twin studies show that if one twin is affected, then the other will be affected between 36 to 95 percent of the time. There are a number of studies in progress to determine the specific genetic factors associated with the development of ASD. In families with one child with ASD, the risk of having a second child with the disorder also increases. Many of the genes found to be associated with autism are involved in the function of the chemical connections between brain neurons (synapses). Researchers are looking for clues about which genes contribute to increased susceptibility. In some cases, parents and other relatives of a child with ASD show mild impairments in social communication skills or engage in repetitive behaviors. Evidence also suggests that emotional disorders such as bipolar disorder and schizophrenia occur more frequently than average in the families of people with ASD.

In addition to genetic variations that are inherited and are present in nearly all of a person's cells, recent research has also shown that *de novo*, or spontaneous, gene mutations can influence the risk of developing autism spectrum disorder. *De novo* mutations are changes in sequences of deoxyribonucleic acid or DNA, the hereditary

material in humans, which can occur spontaneously in a parent's sperm or egg cell or during fertilization. The mutation then occurs in each cell as the fertilized egg divides. These mutations may affect single genes or they may be changes called copy number variations, in which stretches of DNA containing multiple genes are deleted or duplicated. Recent studies have shown that people with ASD tend to have more copy number *de novo* gene mutations than those without the disorder, suggesting that for some the risk of developing ASD is not the result of mutations in individual genes but rather spontaneous coding mutations across many genes. *De novo* mutations may explain genetic disorders in which an affected child has the mutation in each cell but the parents do not and there is no family pattern to the disorder. Autism risk also increases in children born to older parents. There is still much research to be done to determine the potential role of environmental factors on spontaneous mutations and how that influences ASD risk.

top

Do symptoms of autism change over time?

For many children, symptoms improve with age and behavioral treatment. During adolescence, some children with ASD may become depressed or experience behavioral problems, and their treatment may need some modification as they transition to adulthood. People with ASD usually continue to need services and supports as they get older, but depending on severity of the disorder, people with ASD may be able to work successfully and live independently or within a supportive environment.

top

How is autism treated?

There is no cure for ASD. Therapies and behavioral interventions are designed to remedy specific symptoms and can substantially improve those symptoms. The ideal treatment plan coordinates therapies and interventions that meet the specific needs of the individual. Most health care professionals agree that the earlier the intervention, the better.

Educational/behavioral interventions: Early behavioral/educational interventions have been very successful in many children with ASD. In these interventions therapists use highly structured and intensive skill-oriented training sessions to help children develop social and language skills, such as applied behavioral analysis, which encourages positive behaviors and discourages negative ones. In addition, family counseling for the parents and siblings of children with ASD often helps families cope with the particular challenges of living with a child with ASD.

Medications: While medication can't cure ASD or even treat its main symptoms, there are some that can help with related symptoms such as anxiety, depression, and obsessive-compulsive disorder. Antipsychotic medications are used to treat severe behavioral problems. Seizures can be treated with one or more anticonvulsant drugs. Medication used to treat people with attention deficit disorder can be used effectively to help decrease impulsivity and hyperactivity in people with ASD. Parents, caregivers, and people with autism should use caution before adopting any unproven treatments.

top

What research is being done?

The mission of the National Institute of Neurological Disorders and Stroke (NINDS) is to seek fundamental knowledge about the brain and nervous system and to use that knowledge to reduce the burden of neurological disease. The NINDS is a component of the National Institutes of Health (NIH), the leading supporter of biomedical research in the

world. NINDS and several other NIH Institutes and Centers support research on autism spectrum disorder.

Nearly 20 years ago the NIH formed the Autism Coordinating Committee (NIH/ACC) to enhance the quality, pace, and coordination of efforts at the NIH to find a cure for autism. The NIH/ACC has been instrumental in promoting research to understand and advance ASD. The NIH/ACC also participates in the broader **Federal Interagency Autism Coordinating Committee (IACC)**, composed of representatives from various U.S. Department of Health and Human Services agencies, the Department of Education, and other governmental organizations, as well as public members, including individuals with ASD and representatives of patient advocacy organizations. One responsibility of the IACC is to develop a strategic plan for ASD research, which guides research programs supported by NIH and other participating organizations.

NINDS and several other NIH institutes support autism research through the **Autism Centers of Excellence (ACE)**, a trans-NIH initiative that supports large-scale multidisciplinary studies on ASD, with the goal of determining the causes of autism and finding new treatments. NINDS currently supports an ACE network focused on ASD and tuberous sclerosis complex (TSC). ASD occurs in approximately half of TSC patients. In particular, the ACE investigators are studying whether certain brain imaging and activity measures in infants diagnosed with TSC can predict the development of ASD. Such biomarkers could aid in understanding how and why ASD occurs in some children but not others, and help to identify patients who might benefit from early intervention. Other ACE centers and networks are investigating early brain development and functioning; genetic and non-genetic risk factors, including neurological, physical, behavioral, and environmental factors present in the prenatal period and early infancy; and potential therapies.

NINDS funds additional research aimed at better understanding the factors that lead to ASD, including other studies on genetic disorders associated with ASD, such as TSC, Fragile X Syndrome, Phelan-McDermid syndrome (which features such autism-like symptoms as intellectual disability, developmental delays, and problems with developing functional language), and Rett syndrome (a disorder that almost exclusively affects girls and is characterized by slowing development, intellectual disability, and loss of functional use of the hands). Many of these studies use animal models to determine how specific known mutations affect cellular and developmental processes in the brain, yielding insights relevant to understanding ASD due to other causes and discovering new targets for treatments.

NINDS researchers are studying aspects of brain function and development that are altered in people with ASD. For example, NINDS-funded researchers are investigating the formation and function of neuronal synapses, the sites of communication between neurons, which may not properly operate in ASD and neurodevelopmental disorders. Other studies use brain imaging in people with and without ASD to identify differences in brain connectivity and activity patterns associated with features of ASD. Researchers hope that understanding these alterations can help identify new opportunities for therapeutic interventions. Additional NINDS researchers are studying the relationship between epilepsy and autism.

Through the National Center for Advancing Translational Sciences (NCATS) **Rare Disease Clinical Research Network (RDCRN)**, NINDS and other NIH Institutes and Centers support a research consortium focused on three rare genetic syndromes associated with

ASD and intellectual disability, including TSC and syndromes involving mutations in the genes*SHANK3* (Phelan-McDermid syndrome) and *PTEN*. The goals of the consortium are to understand shared mechanisms across these syndromes, which may suggest common approaches to their treatment.

NINDS supports autism spectrum disorder research through clinical trials at medical centers across the United States to better our knowledge about ASD treatment and care. Information about participating in clinical studies can be found at the "NIH Clinical Trials and You" website at **www.nih.gov/health/clinicaltrials**. Additional studies can be found at **www.clinicaltrials.gov**. People should talk to their doctor before enrolling in a clinical trial.

More information about research on ASD supported by NINDS and other NIH Institutes and Centers can be found using NIH RePORTER (**projectreporter.nih.gov**), a searchable database of current and past research projects supported by NIH and other federal agencies. RePORTER also includes links to publications and resources from these projects.

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Where can I get more information?

For more information on neurological disorders or research programs funded by the National Institute of Neurological Disorders and Stroke, contact the Institute's Brain Resources and Information Network (BRAIN) at:

BRAIN
P.O. Box 5801
Bethesda, MD 20824
800-352-9424
http://ninds.nih.gov

Information also is available from the following organizations:

Centers for Disease Control and Prevention (CDC)
U.S. Department of Health and Human Services
1600 Clifton Road
Atlanta, GA 30333
inquiry@cdc.gov
https://www.cdc.gov/
Tel: 800-311-3435; 404-639-3311; 404-639-3543

National Institute of Child Health and Human Development (NICHD)
National Institutes of Health, DHHS
31 Center Drive, Rm. 2A32 MSC 2425
Bethesda, MD 20892-2425
http://www.nichd.nih.gov
Tel: 301-496-5133
Fax: 301-496-7101

National Institute on Deafness and Other Communication Disorders (NIDCD)
National Institutes of Health, DHHS
31 Center Drive, MSC 2320
Bethesda, MD 20892-2320
nidcdinfo@nidcd.nih.gov
http://www.nidcd.nih.gov

Tel: 301-496-7243; 800-241-1044; 800-241-1055 (TTY)

National Institute of Environmental Health Sciences (NIEHS)
National Institutes of Health, DHHS
111 T.W. Alexander Drive
Research Triangle Park, NC 27709
webcenter@niehs.nih.gov
http://www.niehs.nih.gov
Tel: 919-541-3345

National Institute of Mental Health (NIMH)
National Institutes of Health, DHHS
6001 Executive Blvd. Rm. 8184, MSC 9663
Bethesda, MD 20892-9663
nimhinfo@nih.gov
http://www.nimh.nih.gov
Tel: 301-443-4513; 866-415-8051; 301-443-8431 (TTY)
Fax: 301-443-4279

Association for Science in Autism Treatment
P.O. Box 1447
Hoboken, NJ 07030
info@asatonline.org
http://www.asatonline.org

Autism National Committee (AUTCOM)
P.O. Box 429
Forest Knolls, CA 94933
http://www.autcom.org

Autism Network International (ANI)
P.O. Box 35448
Syracuse, NY 13235-5448
jisincla@syr.edu
http://www.autismnetworkinternational.org

Autism Research Institute (ARI)
4182 Adams Avenue
San Diego, CA 92116
director@autism.com
http://www.autismresearchinstitute.com
Tel: 619-281-7165; 866-366-3361
Fax: 619-563-6840

Autism Science Foundation
28 West 39th Street
Suite 502
New York, NY 10018
contactus@autismsciencefoundation.org
http://www.autismsciencefoundation.org
Tel: 212-391-3913
Fax: 212-228-3557

Autism Society of America

4340 East-West Highway
Suite 350
Bethesda, MD 20814
http://www.autism-society.org
Tel: 301-657-0881; 800-3AUTISM (328-8476)
Fax: 301-657-0869

Autism Speaks, Inc.
1 East 33rd Street
4th Floor
New York, NY 10016
contactus@autismspeaks.org
http://www.autismspeaks.org
Tel: 212-252-8584; 888-288-4762
Fax: 212-252-8676

MAAP Services for Autism, Asperger Syndrome, and PDD
P.O. Box 524
Crown Point, IN 46308
info@aspergersyndrome.org
http://www.aspergersyndrome.org
Tel: 219-662-1311
Fax: 219-662-1315

"Autism Spectrum Disorder Fact Sheet", NINDS, Publication date September 2015.

NIH Publication No. 15-1877

Back to **Autism Spectrum Disorder Information Page**

See a list of all NINDS disorders

Publicaciones en Español

Autismo

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Prepared by:
Office of Communications and Public Liaison
National Institute of Neurological Disorders and Stroke
National Institutes of Health
Bethesda, MD 20892

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Date last modified: Tue, 2019-08-13 22:02

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Joint Appendix 3

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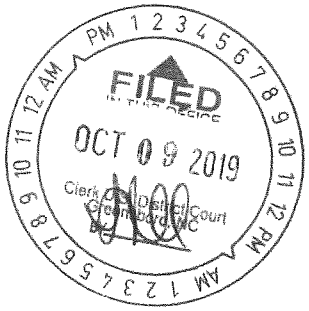
U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Joint Appendix in attachment to "PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MOTION FOR STAY OF DISTRICT COURT JUDGMENT PENDING MANDAMUS"



In the United States District Court
For the Middle District of North Carolina

Brian David Hill, **Petitioner/Defendant**	)	**Criminal Action No. 1:13-CR-435-1**
v.	)	**Civil Action No. 1:17-CV-1036**
United States of America, **Respondent/Plaintiff**	)	**Mandamus: 19-2077, 4th Circuit**

PETITIONER'S NOTICE OF APPEAL

NOW COMES the Petitioner, by and through Brian David Hill ("Brian D. Hill"), "Petitioner", or "Hill"), that is acting pro se in this action before this Honorable Court in the Middle District of North Carolina, and hereby respectfully moves to file this notice of appeal.

Notice is hereby given that Defendant/Petitioner Brian David Hill in the above named case hereby appeal to the United States Court of Appeals for the Fourth Circuit from an order entered in this action on October 4, 2019 (Document #198).

*See Fed. R. App. P. 3(c) for permissible ways of identifying appellants.

This NOTICE OF APPEAL concerns the abuse of discretion, ignoring the evidence, ignoring Brian's Probation officer Jason McMurray, ignoring the recommendation of the Western District of Virginia federal court that Brian David Hill be released on bond with curfew without requiring an ankle monitor, allowing frauds upon the court, and errors of the record by the Honorable U.S. District Court Chief Judge Thomas D. Schroeder.

Brian David Hill is illegally and unconstitutionally being ordered to turn himself into Federal Prison by December 6, 2019, and was done by the errors and usurpations of power by Judge Schroeder.

The Hon. Judge Schroeder is refusing to recuse himself from the case knowing that it is creating a conflict of interest and is allowing such prejudice and abuse to continue is not good for this case. Not good for the 2255 Civil case and not good for anything to do with this criminal case either. The Constitution and the law requires that a Judge be impartial and without prejudice and without bias, and for the Canons of Professional Conduct. It is also proper judicial conduct to follow the facts exactly and not making conclusory facts that cannot be proven on the record. It is also proper conduct to vacate any frauds upon the Court, even if such frauds were perpetuated by the Government.

THIS IS A CONSTITUTIONAL CRISIS.

ERRORS of the record:

Error of law #1:

Judge Schroeder; Page 1 of 8: "*The Defendant was convicted in state court in Virginia in 2018, and his federal revocation proceeding followed.*"

In the motion the Hon. Judge Thomas D. Schroeder denied under Document #192, evidence exhibit was filed from the record of the Martinsville, Virginia Circuit Court that his conviction in General District Court on December 21, 2018, was vacated due to appeal to the Circuit Court which that court had not convicted him yet due to the ongoing Trial De Novo. See Exhibit 4 — Document #193, Attachment #4 (Doc. #193-4). It is on record in Defendant's/Petitioner's Motion for Stay of Judgment pending Appeal that the "Circuit Court case was filed on 01/09/2019 and was commenced by General District Court Appeal". According to

attorney Scott Albrecht who had formerly worked for the Martinsville Public Defender office, once an appeal has been filed to the lowest municipal court also known as a police court, aka the General District Court which is not an Article III compliant constitutional state court and doesn't follow the usual constitutional obligations and is not a state court of record, then it is appealed to the Circuit Court for Trial De Novo which is to be tried in front of a Jury or Bench Trial by Judge in a state court of record. So Brian's conviction in the "police court" was no longer valid and was vacated after Brian's timely filed notice of appeal in the General District Court. It is on record during the hearing in the Western District of Virginia case no. 7:18-mj-00149, during the hearing on Dec 26, 2018 that Brian had timely filed his Notice of Appeal automatically vacating the conviction from General District Court, please review the Transcript from that case. Once the appeal has been filed in the municipal court, it is a fact and procedure of law that the conviction be treated as if it had never taken place and a new finding of guilty must be entered by the Circuit Court prior to a conviction being valid on the record or the Defendant/Petitioner would have to withdraw his appeal voluntarily to reinstate his conviction in General District Court.

So the Hon. Judge Schroeder is wrong on that factual claim, had erred, and cannot be substantiated. It shouldn't even have been entered in his opinion of his order.

Error of law #2:

Judge Schroeder; Page 7 of 8: "*Defendant reportedly hit his grandfather. (Doc. 123 at 22-23, 48.)*"

Actually it distorts what had entirely happened. USPO Kristy L. Burton had said that "*At that moment, everybody was very agitated and flurried, but I wasn't in there long enough for -- whatever had happened had occurred before I got to the home.*" Page 23 of 84.

It even said that the family did not call the police because the entire family was agitated and stressed (or flurried) which is the way families are from time to time. Families go through arguments. Nobody called the police so nobody felt that Brian David Hill was dangerous or aggressive enough to call law enforcement.

Renorda Pryor asked USPO Burton "*Q Okay. And while you were there in that environment, did they call the police? Was anyone hurt?*"

Her response was "*A As far as I know, they never called the police, no.*"

So it was a small family feud where everybody was agitated which happens in families across the country. To use that against Brian was simply wrong and was an error of fact and an abuse of discretion.

Even witness Kenneth Forinash had this to say about the incident: "*...and his reflex action was that he turned around and hit me. It didn't hurt. And a few minutes later, we all apologized and everything was okay.*" Page 53 of 84.

It doesn't sound as bad as the way it had sounded in the Hon. Judge Schroeder's order. That was back in 2015 and should not have been used against Brian David Hill as yet another reason to deny his motion for Stay of Judgment pending Appeal. It is normal for families and even married couples to have arguments and feuds in today's climate with the extreme stress and anxiety of modern American life with jobs and the stress of life. People handle these things in different ways. To use something this small and stupid, of a small family feud, as one of the basis of the decision to deny the Motion for Stay of Judgment pending Appeal is inappropriate and is an abuse of discretion.

Error of law #3:

Judge Schroeder; Page 7 of 8: "*The Defendant maintained that the child pornography was sent to his cell phone unsolicited and anonymously, which seems unlikely in so far as the cell phone is a prepaid phone belonging to his*

grandmother (Doc. 123 at 6, 35) and no one would likely have knowledge of the phone number."

That is not true as the Defendant/Petitioner had broken no law, and that Defendant/Petitioner had never asked for the child pornography, there is no evidence of it, there is no mentioning of it in this entire case. The only thing that happened was that Brian David Hill had received threatening text messages before the child pornography had allegedly been reportedly sent to his grandmother's cell phone. Brian immediately thereafter, in good faith, reported the cell phone to his Probation Officer Kristy L. Burton who acknowledged that Brian had voluntarily reported the matter to her, a federal "law enforcement officer" or "agent", and gave her the cell phone. That is an affirmative defense under federal law to any child pornography charge under the federal law. That was why Brian had not been charged for giving the phone to Kristy L. Burton because he is actually innocent of such allegation by turning over the so-called unsolicited such material to a law enforcement officer or agent in good faith. Brian maintains that he complied with the law, and did not do anything wrong to warrant that being used against him.

According to Attorney Susan Basko on the record of Document #46 in this case:

"*The other purpose was to follow the provision in federal child porn law that gives an affirmative defense under this law:*"

18 U.S. Code § 2252A - Certain activities relating to material constituting or containing child pornography

(d) ***Affirmative Defense.*** *– It shall be an affirmative defense to a charge of violating*

subsection (a)(§) that the defendant~

(l) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof~~

(A) took reasonable steps to destroy each such image; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

8. Shortly after Luke's situation, a group of indie journalists and activists contacted me and said they had porn sent to them in trick emails where the sender opened an email account in the name of someone the activist trusted The delivery technique had advanced to placing the images inside a pdf, so they images could not be previewed.

These men have access to a computer forensics expert who previewed the pdf in a "sandbox," and saw they were child porn. These men included Dan Johnson of People Against the NDAA, Stewart Rhodes of Oathkeepers, and several others These men were aware that Brian David Hill had also had child porn downloaded onto his computer.

According to the Document #123 Transcript, the Hon. Judge Schroeder forgot to bring up this part of the transcript in his order.

Page 38 of 84:

"Q When you stated that he turned over the phone to you, did he voluntarily do that?"

"A Yes, ma'am."

"Q You didn't ask him any questions about it? He just voluntarily contacted you or how -- I'm sorry. Help me understand. How did you get the phone?"

"A He did contact me to indicate -- we'd had a previous incident where information -- I was told by the family and him that the Mayodan Police Department had returned evidence to them that contained child pornography. When I asked to see that, they indicated it had been destroyed. During that time, I indicated that if this ever happens again or anything like that ever happens to let me know. So he contacted me after receiving that email -- or text message, sorry, whatever it was, and he turned it over to me within a couple of days."

"Q So he voluntarily did it?"

"A Yes."

That is an affirmative defense under "18 U.S. Code § 2252A - Certain activities relating to material constituting or containing child pornography".

Brian David Hill was compliant with federal child pornography law in this instance and that should not have been an issue to be used against Defendant/Petitioner in denying his Motion to Stay of Judgment pending Appeal.

Error of law #4:

Judge Schroeder; Page 7 of 8: "*Not only was the court unaware of the error, more importantly the filing had no influence on the court's independent determination it made based on the evidence presented at the revocation hearing.*"

That is interesting when the very Document #180 listed on pages 19 to 20 of Document #195, stated that Defendant/Petitioner was to have:

1. Been ordered to a high end of imprisonment (referring to the 10 months), and that it had been entered under the name of Brian David Hill and the correct case number for such a supposed template. The only reason why the Hon. Judge Schroeder ordered 9 months of imprisonment instead of 10 months was because of the statutory maximum that was requested by Assistant U.S. Attorney Anand Prakash Ramaswamy, the Government counsel in this case. So the 10 months was what Judge Schroeder apparently wanted but could only give 9 months, so that was similar.
2. Been ordered to the custody of the Federal Bureau of Prisons.
3. Finding that Brian David Hill was guilty of a commission of a crime on September 21, 2018, despite when the Martinsville Circuit Court has not yet come to such decision as Trial De Novo erases the conviction in General District Court and new trial had been ordered.
4. That Brian had been revoked of Supervised Release.

5. And that Brian had been represented by Attorney Renorda Pryor.

Judge Schroeder; Page 7 of 8: "*The Defendant's contention that the court pre-determined the case is false.*"

Document #180 (Pages 19 to 20 of Document #195) looked way too perfect to simply be some template. It will be up to the U.S. Court of Appeals and a judicial investigation into Judge Schroeder to determine whether Brian's contention was false or true. It is ironic that Judge Schroeder is having to defend himself against an allegation, when that has been all Brian David Hill has been able to do is consistently having to defend himself against false allegations right and left since 2012. Even if any element of an allegation was true against Brian, Judge Schroeder is seeing what it is like to being accused of something even though he has never reportedly been a criminal defendant and never got to experience what every criminal defendant has had to ever go through in the criminal justice system. Has he even wore their shoes? Has he ever been to prison and seen what it's like?

Also the fact that U.S. Probation Officer Kristy L. Burton was given more credibility and respect, but the good conduct of Brian David Hill with U.S. Probation Officer Jason McMurray was ignored and not taken into consideration by the same Judge Does In-Fact show evidence that it was premeditated/prejudice.

The fact that the Hon. Judge Schroeder gave the maximum imprisonment by (#1) didn't take his compliance under the bond conditions into account (*May 14, 2015 and is still compliant with all of the bond conditions till even this day of October 5, 2019, and beyond*); (#2) didn't take into account his compliance with the conditions of Supervised Release from the August 13, 2015 infraction under Document #124 (filed September 4, 2015) all the way until September 21, 2018 (calculated at 3 years, 1 month, and 8 days) when Brian exhibited a weird and abnormal behavior that he had never done before in the 28 years of Brian being

alive; (#3) didn't take into account that Brian and his family had respected Brian's Probation Officer Jason McMurray. Even before the infraction, Brian had been compliant and respectful with USPO McMurray during the home detention, an additional June 30, 2015 when released until August 13, 2015 before the day of infraction, 12 additional days calculated, in total would be 3 years, 1 month, and 20 days. The infraction should not count against Brian David Hill for the Final Revocation hearing because it conflicts with the affidavit of Brian's actual innocence inside of his 2255 Motion under Document #125 and #128 brief/memorandum and was filed in November, 2017, putting Brian at risk of multiple federal perjury charges just to simply get Brian to comply with sex offender treatment when that requires that Brian be forced against his will to commit criminal acts of multiple felony acts of perjury against his claims of actual innocence. None of Brian's good behavior, respect and compliance with Brian's Probation Officer Jason McMurray was taken into account at all in his decision on September 12, 2019, and none of anything at all was taken into account in Brian's favor. Sounds to me like Judge Schroeder is not exonerated of his premeditated order under Document #180 (Pages 19 to 20 of Document #195) and that simply him claiming Defendant's/Petitioner's contentions was "false" is not sufficient to prove that the Hon. Judge Schroeder is innocent of Brian's allegations of being partial, prejudicial, and biased towards Brian David Hill and is partially in favor of the Government and the liar/perjurer Kristy L. Burton. The Hon. Judge Schroeder was okay with picking at Brian's grandmother having a pre-paid cell phone with child pornography received on it but did not take Attorney Susan Basko's (Document #46) declaration into account that said anyone who receives unsolicited child pornography can report it to a law enforcement agency and turn in such device and is considered actual innocence under an affirmative defense to the child pornography law. Brian's conduct was lawful and in good faith. Judge Schroeder

jumped on any allegation against Brian that looks bad but the record says different. That is an abuse of discretion and is an error of law, false facts submitted on court record, a fraud upon the court. When Brian is complying with federal law and reporting any issues or knowledge of any criminal activity going on against Brian and his family, reporting the matter to law enforcement, that should not be used against him in denying his Motion for Stay of Judgment pending Appeal.

Last note here was that Brian had received threatening text messages in 2015, threatening emails in 2013, all about setting him up with child pornography. All of them were reported to a law enforcement agency or contact. That was before Brian had reported the child pornography being received from an anonymous person (unsolicited) on his grandmother's pre-paid cell phone.

The allegations against Judge Schroeder have still not been resolved. His answer is not sufficient to prove that he is not guilty of that misconduct of a premeditated order under Document #180.

Threatening message #1: Exhibit A — Document #71, Attachment #1
Threatening message #2: Exhibit B — Document #71, Attachment #2

Whistleblower message #1: Exhibit D — Document #71, Attachment #4

Proof from Defendant's/Petitioner's side that Tracfone was voluntarily given to USPO Kristy L. Burton and goes along with her statement on that regard under oath: Exhibit E — Document #71, Attachment #5

Threatening text messages reported to law enforcement agency N.C. State Bureau of Investigation: Exhibit F — Document #71, Attachment #6

Threatening message #3: Document #84, Attachment #7

Threatening message #4: Document #84, Attachment #8

After all of this gets argued before the U.S. Court of Appeals on the records in this case, it is clear that the Hon. Judge Thomas D. Schroeder has abused his discretion,

ignored evidence, ignored witnesses like USPO Jason McMurray, made errors of law and made errors of record, and took no evidence into consideration in Brian's favor on September 12, 2019. Prejudice, partiality, dereliction of duty?

It is clear that the U.S. Court of Appeals will rule in favor of Brian's appeals including the Writ of Mandamus.

It is also interesting that the Hon. Judge Thomas D. Schroeder and any of his legal staff had taken the time and research into producing 8 pages of order under (Document #198) dated October 4, 2019, that the error under Document #180 was already reportedly by the Order as a template that looked as though it wouldn't take long to produce a written judgment for the Notice of Appeal under Document #187 and Document #190 to finally be docketed. Despite the Court of Appeals reminding Judge Schroeder through the Clerk's office on September 20, 2019, to file the written judgment (USCA4 Appeal: 19-2077, Doc: 3, Filed: 10/02/2019, Pg: 54 of 68). Despite being served with a copy of the petitioned Writ of Mandamus (USCA4 Appeal: 19-2077, Doc: 2, Filed: 10/02/2019, all pages: 1 through 21). Instead of making sure to do his duty and file the written judgment, he is taking the time to deny two motions and write a lot of errors of law, conclusory facts by assumptions, and abuses of discretion. He rather file an order denying two motions rather than make sure that Defendant's/Petitioner's right to direct appeal under the Constitution and as of matter of law, matter of right, being protected by the court.

It is clear that the Hon. Judge Thomas D. Schroeder of Winston-Salem, North Carolina, has decided to rebel against the U.S. Court of Appeals which is disrespect and mockery of the higher courts, that may be willing to flaunt his contempt and disrespect to the higher court, out of fear that his judgment or judgments may be remanded and vacated as a matter of facts and/or as a matter of law. He is mocking the Appellate Court by failing or refusing to file the written

judgment. It normally takes a week, especially after allegedly admitting in his order as to Document #180 (Pages 19 to 20 of Document #195) being simply a template from another case as he argued in his defense to Brian's allegations in Document #195. He and his staff has allegedly taken the time to already have a template as he had claimed, took the time to file 8 pages of an order denying motions, but doesn't seem to be filing the written judgment necessary for the direct appeal of the Final Revocation hearing on September 12, 2019. In eight (8) days, it will be an entire month that Judge Schroeder may or may not file his written judgment. It is as if he is flaunting his disrespect towards the U.S. Court of Appeals in Richmond, Virginia, because they may not view his decision favorable in another state outside of North Carolina State Senator Philip Edward Berger Senior's and his son Phil Berger Jr.'s jurisdiction (Phil Berger was allegedly called a dictator by a law professor in North Carolina).

I think it is about time for the Court of Appeals to order the Hon. Judge Thomas D. Schroeder to enter his written judgment by a fixed time period or he should face contempt of a higher court. No judge should disobey his superiors that are honorable judges of a higher court. The whole judicial system of Government is about following the rules and following your duties.

The Honorable Judge Thomas D. Schroeder needs to remember to follow the law. Respectfully filed with the Court, this the 5th day of October, 2019.

Respectfully submitted,

Brian D. Hill
Signed

Signed
Brian D. Hill (Pro Se)
310 Forest Street, Apartment 1
Martinsville, Virginia 24112
Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter
I stand with QANON/Donald-Trump – Drain the Swamp
Brian asks Donald Trump for a full pardon of innocence, asks Qanon for help
Make America Great Again

Defendant/Petitioner also requests with the Court that a copy of this pleading be served upon the Government as stated in 28 U.S.C. § 1915(d), that "The officers of the court shall issue and serve all process, and preform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases". Petitioner requests that copies be served with the U.S. Attorney office of Greensboro, NC via CM/ECF Notice of Electronic Filing ("NEF") email, by facsimile if the Government consents, or upon U.S. Mail. Thank You!

CERTIFICATE OF SERVICE

Petitioner hereby certifies that on October 5, 2019, service was made by mailing the original of the foregoing:

"PETITIONER'S NOTICE OF APPEAL"

by deposit in the United States Post Office, in an envelope (certified mail), Postage prepaid, on October 5, 2019 addressed to the Clerk of the Court in the U.S. District Court, for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401.

Then pursuant to 28 U.S.C. §1915(d), Petitioner requests that the Clerk of the Court move to electronically file the foregoing using the CMIECF system which will send notification of such filing to the following parties to be served in this action:

Anand Prakash Ramaswamy U.S. Attorney Office	Angela Hewlett Miller U.S. Attorney Office

Civil Case # 1:17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 Anand.Ramaswamy@usdoj.gov	Civil Case # 1: 17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 angela.miller@usdoj.gov
JOHN M. ALSUP U.S. Attorney Office 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 john.alsup@usdoj.gov	

This is pursuant to Petitioner's "In forma Pauperis" ("IFP") status, 28 U.S.C. §1915(d) that "The officers of the court shall issue and serve all process, and perform all duties in such cases ... "the Clerk shall serve process via CM/ECF to serve process with all parties.

Date of signing: October 5, 2019	Respectfully submitted, Brian D. Hill Signed Signed Brian D. Hill (Pro Se) 310 Forest Street, Apartment 1 Martinsville, Virginia 24112 Phone #: (276) 790-3505 U.S.W.G.O. I stand with QANON/Donald-Trump – Drain the Swamp I ask Qanon and Donald John Trump for Assistance (S.O.S.) Make America Great Again

I ask Department of Defense ("DOD") military Constitutional oath keepers, alliance, Qanon for help in protecting me from corruption and criminal behavior of Government. There needs to be an investigation. There needs to be an investigation into this "dictator" NC Senator Philip Edward Berger as one law professor has called him in his own opinion.

Certified Mail tracking no: 7019-1120-0001-4751-4757

Joint Appendix 4

USWGO
QANON // DRAIN THE SWAMP
MAKE AMERICA GREAT AGAIN

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Joint Appendix in attachment to "PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MOTION FOR STAY OF DISTRICT COURT JUDGMENT PENDING MANDAMUS"

In the United States District Court
For the Middle District of North Carolina

Brian David Hill, Petitioner/Defendant	
v.	**Criminal Action No. 1:13-CR-435-1**
United States of America, Respondent/Plaintiff	**Civil Action No. 1:17-CV-1036**

PETITIONER'S SECOND MOTION FOR SANCTIONS AND TO VACATE JUDGMENT THAT WAS IN PLAINTIFF'S/RESPONDENT'S FAVOR

MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS

NOTICE: Due to the Motion to "Disqualify/Recuse Judge — Document #195" and appeal of his decision not to recuse himself, in regards to the Hon. Judge Thomas D. Schroeder, this motion should not be decided by that Judge but should be tried by another Judge of the bench. Due to the facts and allegations inside of this motion, it would be a conflict of interest for Judge Schroeder to render any decision on this motion.

Pursuant to the inherit power or implied power of the U.S. District Court (Courts § 18 - inherent or implied powers, Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991), Courts § 225.1; Equity § 47 - power to vacate fraudulent judgment) (See **Supplement 1 — Document #199, Attachment #1 ECF No. 199-1**), the Defendant/Petitioner Brian David Hill ("Brian D. Hill", "Hill", "Brian", "Defendant", "Petitioner"), proceeding Pro Se in this action, respectfully requests that the Honorable U.S. District Court vacate a fraudulently begotten judgment, the Document #200, filed: October 7, 2019, and the oral judgment on September 12,

2019 finding the Defendant/Petitioner in violation of Supervised Release conditions, that the Defendant/Petitioner be sentenced to nine (9) months imprisonment, and that nine (9) years Supervised Release be re-imposed. On the basis of fraud upon the court, such judgment should be vacated. Defendant/Petitioner plans to file a third motion for sanctions after reviewing over the transcript of the September 12, 2019 hearing. Brian also plans on filing a final motion for sanctions for the 2255 motion to be given default judgment in favor of Defendant/Petitioner on the ground of actual innocence as that is not subject strictly to the one year statute of limitations under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), and a judgment rendered on the basis of fraud upon the court by the adverse party is not a final judgment and can be subject to collateral attack upon proving intrinsic and/or even extrinsic frauds upon the court by the adverse party (See **Supplement 2 — Document #199, Attachment #2, ECF No. 199-2**)

The U.S. Probation Office in Greensboro (the petitioner for revocation) and represented through the United States Attorney Office for the Middle District of North Carolina had petitioned for revocation back in November 13, 2018 on issues that are based on perjury and/or subornation of perjury which is a fraud upon the court, and that such a basis had lacked merit. Their entire position lacks merit.

Defendant/Petitioner can no longer stand by and allow any more lies to be used against Brian David Hill by law enforcement and by the corrupt U.S. Probation office in Greensboro, North Carolina and by the Assistant United States Attorney Anand Prakash Ramaswamy. Brian is requesting that the fraud be addressed, vacated as a matter of right of the Court through it's inherit powers, and punish those who had engaged in the fraud against the Court and sanction them for the fraud or frauds against Defendant/Petitioner.

Defendant/Petitioner would like to request sanctions against the Government/Respondent/Plaintiff counsel Assistant U.S. Attorney ("AUSA") Anand Prakash Ramaswamy at the Greensboro, NC Office, Kevin M. Alligood (U.S. Probation Officer Specialist), and Edward R. Cameron (Supervisory U.S. Probation Officer). The sanctions are on the basis of the fraud upon the court. The fraud is the perjury of U.S. Probation Officer Specialist ("USPOS") Kevin M. Alligood ("Kevin") in the Petition for Warrant or Summons for Offender Under Supervision (See Petition under Document #157, ECF No. 157). Also the false statements of USPOS Kevin that ended up as statements carried under penalty of perjury as stated in the Petition for revocation under Order for Warrant — Document #157, was approved by Supervisor Edward R. Cameron.

These are not the full facts of fraud upon the court as Brian is still awaiting the Transcript to challenge the final revocation judgment on appeal. Once the transcript is acquired, more inquires will be conducted of the fraud upon the court by the adverse party counsel AUSA Ramaswamy and be documented and then a final motion for sanctions. This final motion for sanctions will be filed not just asking for the final judgment for the Supervised Release Violation under Doc. #200 to be vacated, but also a request for default judgment for Brian's 2255 Motion (Document #125) as a matter of law (actual innocence exception) and for the basis of the Government's repeated pattern of fraud upon the court which invalidates any final judgments and therefore are not final judgments that can shielded from any collateral attack. Brian will soon request permanent relief from the final conviction and all judgments against Brian and wants this wrongful conviction overturned once and for all. Attorney Renorda Pryor does not represent Brian's 2255 case and is not reportedly counsel for the 2255 case, so any motions

for that case are not under Renorda's jurisdiction, but under Brian's pro se jurisdiction.

FACTS THAT REPRESENT THAT THERE ARE STATEMENTS OF PERJURY IN DOCUMENT #157 PETITION FOR WARRANT AND THAT SUCH PERJURY STATEMENTS REPRESENT A FRAUD UPON THE COURT BY THE U.S. PROBATION OFFICE

"According to the police report, on the night of September 21, 2018, a report was received that a nude male had been observed **running on a public park trail** within the city limits." (ECF No. 157, pg. 1)

The hiking trail that Brian David Hill was allegedly on was the "Dick and Willie passage" hiking trail. That is all it was. There are no playgrounds on this trail. This trail is not called a park, and not considered as a park, but a hiking trail, a nature trail with access to the city in certain trail heads. See **Exhibit 1**, "*Dick & Willie Passage Rail Trail - Virginia Is For Lovers*", a 3-page printout by family. Also at night the hiking trail has absolutely no children and usually no adults. Nobody in their right frame of mind would hike a hiking trail at night due to coyotes, wild black bears, and even the risk of running into criminals that usually conduct their dealings around nighttime (referencing drug dealers and gangs). There is no teeter totters (seesaw) on the hiking trail. There is no playgrounds on the trail. It is meant to be a walking trail, and a biking trail. Plenty of trees on both sides of the trail in various areas of the hiking trail.

That hiking trail was mentioned on affidavits/declarations by Brian prior to Document #157.

"*...near the hiking trail of "Dick and Willie"*..." (ECF No. 153, Pg. 3)

Anybody who conducts any investigation into the "Dick and Willie" hiking trail would know that it is not a "park" but just a public hiking trail. To smear the hiking trail as a park, is meant to ensnare Brian into being liable under the Sex Offender laws and regulations. That hiking trail is not a park. There is a clear difference between a public park and a public hiking trail.

"***Mr. Hill ran away from the officers*** *and was shortly thereafter detained near a creek.*" (ECF No. 157, pg. 1)

That is a vague statement which paints a picture that Brian had allegedly and knowingly ran from the police. The fact is that they never announced verbally that they were officers of a law enforcement agency.

"*...I ran and then noticed a red lazer beam light like that private mercenaries, bad guys, and good guys all have. A light came on with a guy yelling at me. I didn't know who he was. I was scared it was them, going to kill me for not exactly following the hoodie guy's directives. I ran, fell down the left side slope of the trail, getting cuts and scrapes all over my body, until I fell in the creek bed.*" (ECF No. 153, Pg. 4)

So it is clear that they did not announce themselves as law enforcement. As far as Brian was concerned, he thought it was a bad guy or bad guys in his reported dealings with a man wearing a dark hoodie. Brian was scared and it is a normal reflex action to run away from criminals in the middle of the night. Brian did not knowingly and intentionally ran from officers. That was why Brian was never charged under V.A. Code § 18.2-460(E) and/or Virginia Code 18.2-479.1. That is because the officer who yelled at Brian did not announce verbally that he was a police officer. It was nighttime when visibility is very poor.

Two laws of Virginia code govern charges of "fleeing from an officer" of the law.

V.A. Code § 18.2-460(E), "*Any person who intentionally prevents or attempts to prevent a law-enforcement officer from lawfully arresting him, with or without a warrant, is guilty of a Class 1 misdemeanor. For purposes of this subsection, intentionally preventing or attempting to prevent a lawful arrest means fleeing from a law-enforcement officer when (i) the officer applies physical force to the person, or (ii) the officer communicates to the person that he is under arrest and (a) the officer has the legal authority and the immediate physical ability to place the person under arrest, and (b) a reasonable person who receives such communication knows or should know that he is not free to leave.*"

"Virginia Code 18.2-479.1: Fleeing from a law-enforcement officer; penalty"

"*A. Any person who intentionally prevents or attempts to prevent a law-enforcement officer from lawfully arresting him, with or without a warrant, is guilty of a Class 1 misdemeanor.*"

"*B. For purposes of this section, intentionally preventing or attempting to prevent a lawful arrest means fleeing from a law-enforcement officer when (i) the officer applies physical force to the person, or (ii) the officer communicates to the person that he is under arrest and (a) the officer has the legal authority and the immediate physical ability to place the person under arrest, and (b) a reasonable person who receives such communication knows or should know that he is not free to leave.*"

There is no evidence that Brian had intentionally fled from the law enforcement officer or officers. When Brian had realized that they were law enforcement officers, he had cooperated and that shows that Brian did not intentionally flee from justice.

That statement from the ECF No. 157 Petition for Warrant or Summons, is misleading and did not specify that the officer did not verbally announce that he was law enforcement before Brian had ran away.

"*Mr. Hill advised the officers that a "black man in a hoodie" made Mr. Hill "get naked and take pictures of himself.*" (ECF No. 157, Pg. 1 and 2)

Brian had never stated in writing or verbally that it was a "black man in a hoodie".

"*I was approached by a man in a hoodie, probably some time between 11 to 12 that night, I think maybe between 5 to 6 feet tall, **maybe white***..." (ECF No. 153, Pg. 3)

That statement made under declaration (penalty of perjury) said that Brian had thought the man wearing the hoodie was "WHITE" or sounded like a white guy and not a "BLACK MAN". Sounds kind of racist when the officers of Martinsville wanted to depict the suspect as being a "black man" when Brian stated he sounded like a white man.

"*...Hill was coerced and threatened by an unidentified guy wearing a hoodie...*" (ECF No. 162, Pg. 2, Paragraph 2)

That document also did not mention anything about a "black man" in a hoodie.

That was probably why the police were never able to find the "man in the hoodie" because they were too racially focused looking for a black man in a hoodie, that they were never going to find the suspect because they had already pictured some black man wearing a hoodie threatening a white man to get naked in public or his momma would be killed like it is some projects or ghetto like in big cities. The police made the wrong call and put the wrong description from Brian's statements.

Because of that, they were never going to find the suspect because they had already screwed up their case from the very beginning, such incompetence. It is clear incompetence and that isn't good for any law enforcement agency. They even refused to retain the blood vials drawn from Brian as evidence while he was at the hospital. They pretty much caused the hospital to destroy the blood vials causing Brian to never be able to prove the Carboxyhemoglobin levels and thus will never be able to fully prove carbon monoxide poisoning. Because of that they were able to make Brian look like a liar and have his supervised release wrongfully revoked. They destroyed evidence that could have proven Carboxyhemoglobin, and then have Brian's probation revoked. All of that was intentional fraud and sabotage.

That covers the issue of intrinsic fraud.

The issue of extrinsic fraud is that, Brian had repeatedly said that the man in the hoodie had sounded like a white guy, that the man in the hoodie had sounded like a white guy. Brian had told that to his lawyer Scott Albrecht, had told that to his family, and even to the police.

Brian never said that it sounded like a black guy in a hoodie. That element of fraud should be investigated by the court.

"*The camera contained several nude photographs of Mr. Hill in different locations around the city of Martinsville*." (ECF No. 157, Pg. 2)

That statement had apparently came from Officer Robert Jones of Martinsville Police Department.

Brian had reported that he had received a letter from his mother about a statement similar to what was said in the quoted sentence from Document #157.

"Received a letter from Roberta Hill dated "Sept. 25, 2018." Parts of her letter said "I talked to Jason and he told me that the police said that you recanted the story that you told us in the hospital."" (ECF No. 152, Pg. 1)

*"Letter also said that "**taking photos of yourself at various places around town**. ""*

That statement is false, according to Exhibit 2 of the Government's trial exhibits on September 12, 2019 during the revocation hearing, the photos were all taken around one area around the Dick and Willie hiking trail, (See citation on Document #186, Witness and Exhibit List).

When you hear from the petition that Brian allegedly was taking nude photos of himself "*in different locations around the city of Martinsville*", it sounds exactly like that. It would make any reasonable person feel that Brian was running all over the big city of Martinsville taking photos of himself at different areas around the city, by foot, as if Brian was walking to different areas of the city to take nude photos of himself.

However when AUSA Ramaswamy's Exhibit 2 (See **Exhibit 2**, attached to this pleading) (Cited in Document #186, Witness and Exhibit List) show that the photos were all taken around the Greene Co. Inc. building at night and at the places close to the Greene Co. Inc. building at night when nobody was working at the building, it shows a direct contradiction to the officer's claim that Brian was taking nude photos of himself around the city of Martinsville. There is a clear difference between "*around the city of Martinsville*" and in one specific area around the Dick and Willie passage hiking trail at night. Brian was not walking all over Martinsville taking photos of himself. He did hike miles and was arrested in a different area from where he had taken the photos, but he did not take photos

where he was allegedly arrested. Brian took photos only in one spot, in one area around the hiking trail, around one of the trailheads. It is a clear cut contradiction and is a fraud upon the court meant to make the story after Brian's arrest sound more extreme than it really truthfully was in regards to the photos obtained.

"*Mr. Hill was subsequently arrested for Indecent Exposure, in violation of Virginia Criminal Code § 18.2-37, a Class 1 Misdemeanor.*" (ECF No. 157, Pg. 2)

That is not accurate or correct. There has to be enough factual elements of the crime to establish evidence that a crime was committed. Being arrested does not constitute evidence that a crime was committed. That is why jury trials and bench trials are set up, to determine whether the law was violated by a criminal defendant or not.

The statute in that petition was not even correctly cited. It was "§ 18.2-387. Indecent exposure". The wrong statute was cited in that petition.

From that statute: "*Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.*"

There is a lot of well-established case law regarding the elements of what it takes to violate § 18.2-387 of Virginia Code.

Supplement 1: KENNETH WAYNE ROMICK v. COMMONWEALTH OF VIRGINIA, Record No. 1580-12-4

Supplement 2: KENNETH SAMUEL MOSES v. COMMONWEALTH OF VIRGINIA Record No. 0985-03-3

Supplement 3: A. M.* v. COMMONWEALTH OF VIRGINIA, Record No. 1150-12-4

Supplement 4: KIMBERLY F. NEICE v. COMMONWEALTH OF VIRGINIA, Record No. 1477-09-3

Notably, the allegations make reference to naked and nude but do not contain any reference to obscene or obscenity or intent. It does not contain any reference to masturbation and does not contain any reference to any evidence of sexual arousal.

The evidence is insufficient as to whether or not Brian had violated Virginia Code § 18.2-387.

A violation of a conditions of probation should be detailed enough to provide a demarcation line to afford a criminal defendant fair notice. In this case, that demarcation line is very detailed and clear when the condition is that the defendant is not to commit a "crime" because a "crime" is defined by elements which, when each element has been met, can serve as basis for a conviction of a "crime". Contrariwise, when any element of a defined crime has not been met with sufficient evidence, then there is insufficient evidence that the condition (i.e., not commit a crime) has been violated. In the case at hand, the alleged condition violation is based on committing the "crime" defined by Virginia Criminal Code § 18.2-387 which has been addressed by the courts of Virginia (See e.g., *Kimberly F. Neice v. Commonwealth of Virginia*, Record No. 1477-09-3 in the Circuit Court of Giles County; see also *A. M. v. Commonwealth of Virginia*, Record No. 1150-12-4 in the Circuit Court of Shenandoah County; see also *Kenneth Samuel Moses v.*

Commonwealth of Virginia, Record No. 0985-03-3 in the Circuit Court of Richmond. Note: these cases were also referenced by Brian in earlier filing with the Court in ECF No. 179 at page 10). These courts have found, concerning meeting all of the elements of the crime, that mere nudity is not a sufficient basis for a finding of obscene or indecent as would be required for Brian David Hill to have committed that crime. Based on the evidence in the District Court, Hill's conduct was not a crime because his actions did "not rise to the level of obscenity required under Code § 18.2-387, as defined in Code § 18.2-372."

To support a finding that a crime was committed as defined by Virginia Criminal Code § 18.2-387, the District Court must have found, at least, by a preponderance of the evidence that Hill's "actions had as their dominant purpose an appeal to the prurient interest in sex" with "purient interest in sex" meaning "a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value." Such a finding has no support in the record of the District Court.

Parole and supervised release are both conditional liberty but revocation of either is subject to the requirements of due process which includes "a written statement by the factfinders as to the evidence relied on and reason for revoking". See *Morrissey v. Brewer*, 408 U.S. 471, 489-90 (1972).

There is no factual basis that Brian David Hill had been "*in violation of Virginia Criminal Code § 18.2-37, a Class 1 Misdemeanor*." (ECF No. 157, Pg. 2)

The Probation Office assumed that Brian David Hill was already guilty and had violated Criminal Code § 18.2-387, there was no fact of such as the petition was

filed one month before the General District Court trial that was set for December 21, 2018. The petition was flawed and should not have been executed until Brian was convicted of the state charge and had exhausted all appeals and had failed. However Officer Robert Jones had admitted at the hearing on September 12, 2019, that Brian had not been obscene. There is no evidence of obscenity against Brian as to the violation and the evidence of his state charge.

In fact multiple written filings before Brian's arrest for the violation had stated under penalty of perjury, under oath, that Brian had never masturbated.

"*…I was threatened to get naked, I never masturbated, it was a crazy incident. Whoever threatened me needs to be charged and arrested…*" (ECF No. 153, Pg. 9)

"*Attorney said that I can bring up about the guy wearing the hoodie. Said that under the law, I would have to have masturbated or be aroused in public to have committed indecent exposure. After he heard my story about the guy in the hoodie, he said taking pictures of myself is not illegal. So he argued that I am technically innocent.*" (ECF No. 163, Pg. 5)

"*I never masturbated, I told the police the truth. When I was seen by a passing vehicle, I never masturbated.*" (ECF No. 163, Pg. 4)

Same statements in Amended declaration under Document #164.

Multiple affidavits, same statements that Brian had never masturbated in public.

There is no evidence at all of obscenity, no evidence of sexual behavior.

It is a fraud upon the court for the U.S. Probation Office to assert that Brian had violated Virginia law when his own lawyer, an assistant public defender none the

less, had stated that Brian never violated Virginia law. Then well-established case law precedents stating that simply being naked is not obscene. Which that of course is the same as nudism (nudism is non-sexual nudity), a nudist out of place for example. Whether or not Brian can prove that carbon monoxide had caused his bazaar behavior on September 21, 2018, is irrelevant when the conduct of Brian did not rise to the level of obscenity for him to be guilty of indecent exposure.

It is clear that Brian had violated no law and engaged in no commission of a crime.

There is no basis to support the fact of Brian ever had violated Virginia law unless he was to be convicted and the conviction affirmed by the highest court in Virginia. Is Brian to be punished for lawful nudism arguably? If he were in an area where nudism was okay, would Brian have been in violation for that?

ANALYSIS OF THE CASE LAW INVOLVING FRAUD UPON THE COURT

Various specific types of falsification violate federal criminal laws. See, e.g., 18 U.S.C. § 1621 (perjury punishable by up to five years' imprisonment); 18 U.S. Code § 1622 (subornation of perjury punishable up to five years' imprisonment); 18 U.S.C. § 1519 (knowing falsification or destruction of documents or other tangible objects punishable by up to 20 years' imprisonment); 18 U.S.C. § 1520 (destruction of certain corporate audit records punishable by up to 10 years of imprisonment). And knowing destruction or falsification of documents in an attempt to influence the outcome of a judicial proceeding also violates the general "obstruction of justice" law. 18 U.S.C. § 1503. See, e.g., U.S. v. Craft, 105 F.3d 1123, 1128 (6th Cir. 1997) ("Acts that distort the evidence to be presented or otherwise impede the administration of justice are violations of 18 U.S.C. § 1503.

The act of altering or fabricating documents used or to be used in a judicial proceeding would fall within the obstruction of justice statute if the intent is to deceive the court."). All states have similar laws.

Citing: 501 U.S. 32, 44 (1991), G. RUSSELL CHAMBERS vs. NASCO, INC., 501 US 32, 115 L Ed 2d 27, 111 S Ct 2123, reh den 501 US 1269, 115 L Ed 2d, 1097, 112 S Ct 12, [No. 90-256], Argued February 27, 1991., Decided June 6, 1991.

"501 U.S. at 56–57; see also Synanon Found., Inc. v. Bernstein, 517 A.2d 28, 43(D.C. 1986) (once a party embarks on a "pattern of fraud," and "[r]egardless of the relevance of these [fraudulent] materials to the substantive legal issue in the case," this is enough to "completely taint [the party's] entire litigation strategy from the date on which the abuse actually began")."

The perjury of USPOS Kevin M. Alligood and the subornation of perjury by Edward R. Cameron shows that they are willing to deceive the Court in an attempt to punish and revoke the Supervised Release of Defendant/Petitioner and be able to use that violation as leverage to push for the maximum imprisonment if the Defendant/Petitioner is ever accused of another violation of Supervised Release condition in the future. If AUSA Ramaswamy is not willing to undo the damage he had caused by having Brian's supervised release wrongfully revoked since Brian's conduct was completely legal, then Ramaswamy has further permitted, used, and encouraged frauds upon the court and had violated N.C. State Bar Rule 3.8, again. He continues wanting to imprison and persecute an innocent man. Innocent of indecent exposure statute of Virginia, and actually innocent of the original conviction of possession of child pornography (ECF No. 125, 128). AUSA

Ramaswamy cannot control himself in wrongfully convicting people, and to always win cases at any cost.

There is no established fact that Brian's conduct had violated § 18.2-387. It is not good for a legitimate Article III federal court to punish and imprison an actually innocent person. It is considered cruel and unusual punishment, in violation of the Eighth (8th) Amendment under the United States Constitution, to imprison an innocent man or woman. The revocation petition had pushed for imprisonment of Brian David Hill, despite being legally innocent of indecent exposure and has a high chance of being acquitted by proper jury instructions or being acquitted by the Courts of Appeals which would create yet another case law authority on indecent exposure, with highly likely the exact same reasoning as to why Brian is not guilty of indecent exposure.

The Court has the authority to reverse the judgments that are based upon frauds upon the court. Fact frauds, frauds of innocent people being imprisoned, testimony frauds (perjury, lying, false statements) and document frauds such as submitting any official government or court documents with false information. It must be corrected to protect the integrity of the judiciary.

See Breezevale Ltd. v. Dickinson, 879 A.2d 957, 964 (D.C. 2005)(affirming sanction of dismissal where top executives of plaintiff company engaged in scheme to forge documents and subsequently denied the forgery in pleadings and sworn testimony); Synanon Found., Inc. v. Bernstein, 503 A.2d 1254, 1263 (D.C. 1986)(affirming sanction of dismissal where plaintiff, inter alia, destroyed audiotapes and made false statements to the court "that no responsive documents could be found" in order "to deceive the court, and to improperly influence the court in its decision on the defendants' motions to compel, with the ultimate aim of

preventing the judicial process from operating in an impartial fashion"); Cox v. Burke, 706 So. 2d 43 (Fla. Dist. Ct. App. 1998) (affirming sanction of dismissal where plaintiff gave false answers to interrogatories and deceptive deposition testimony); Pope v. Fed. Express Corp., 974 F.2d982, 984 (8th Cir. 1992) (affirming sanction of dismissal for plaintiff's forgery of, and reliance on, a single document); Aoude v. Mobil Oil Corp., 892 F.2d 1115 (1st Cir.1989) (affirming dismissal where plaintiff concocted a single document); Tramel v. Bass, 672 So. 2d 78, 82 (Fla. Dist. Ct. App.1996) (affirming default judgment against defendant who excised damaging six-second portion of videotape before producing it during discovery).

A court also may impose additional monetary sanctions—in the form of fines or punitive damages—above and beyond the specific amount of the innocent party's fees and expenses.

Jemison v. Nat'l Baptist Convention, 720 A.2d 275, 285 (D.C. 1998) (punitive damages may be imposed if court finds that bad faith litigator acted with malice).

AUSA Ramaswamy did not want to address the substantial evidential issues of Brian not being obscene and that Brian had never masturbated in public. Brian was not sexually aroused in public. Brian had not repeated the behavior that had been exhibited on September 21, 2018. Brian was clearly not in his right frame of mind and had no intent to violate § 18.2-387. There was no reason to enter an order revoking Brian's supervised release for a crime that he is legally innocent of. Even if Brian was inappropriately being a nudist out of place and should have been in a nudist colony or nudist beach or nudist resort or nudist camp to freely walk around naked, he did not break the law as it was defined. Even though it is clear that Brian should not have been out there at night, but Brian never actually broke the law.

More frauds upon the court will be brought up from the September 12, 2019 final revocation hearing after receipt of the Transcript. Defendant/Petitioner shall push more evidence of any findings of the frauds upon the court, to further push for vacating that Judgment at a later time, and will also push for default judgment of the 2255 Motion on the ground of actual innocence as a matter of law or matter of constitutional right and based upon the Government's repeated pattern of frauds and abuses upon the court against Brian David Hill, to win for the Government. The 2255 statutory filing deadlines do not block a Defendant's/Petitioner's ability to petition a court to vacate a fraudulent begotten Judgment. A Judgment is not subject to finality where there is any evidence of a fraud upon the court that led to such judgment.

Defendant asks that the Honorable Court consider vacating the fraud begotten oral judgment of September 12, 2019, and vacating the fraudulent begotten written judgment under Document #200, filed: October 7, 2019, "JUDGMENT ON REVOCATION OF PROBATION/SUPERVISED RELEASE. The Defendant's supervised release is revoked. Nine (9) months imprisonment. Nine (9) years supervised release is re-imposed under the same terms and conditions as previously imposed. The Defendant shall surrender to the U.S. Marshal for the Middle District of N.C. or to the institution designated by the Bureau of Prisons by 12:00 p.m. on 12/6/2019 as to BRIAN DAVID HILL. Signed by CHIEF JUDGE THOMAS D. SCHROEDER on 10/4/2019. (Daniel, J))".

WHEREFORE, Brian prays for relief that the fraudulent begotten Judgments concerning the Supervised Release Violation of 2018 (ECF No. 157) to 2019 (ECF No. 200) be vacated or set aside, and be stricken from the record unless such evidence must remain on the record to further prove a repeated pattern of fraud

upon the court by the Government and/or by the U.S. Probation Office for the 2255 case when Brian pushes for default judgment.

WHEREFORE, Brian prays that any judgments adverse to Defendant/Petitioner and favorable to the Government in the future that had cited the violation charge from Document #157 to also be modified, corrected, or reconsidered to address the frauds upon the court and not use them against Defendant/Petitioner who is a victim of such frauds by the adversary.

The sanctions Defendant/Petitioner are requesting are as followers:

WHEREFORE, Defendant/Petitioner prays that the Court vacate and reverse the fraudulent begotten judgment entered under Document #200;

WHEREFORE, Defendant/Petitioner prays that the Court consider reversing, vacating, nullifying, setting aside, or even striking any other Judgments in favor of the United States of America (Respondent/Plaintiff) and in favor of the U.S. Probation Office when they had used any frauds upon the court to obtain favorable judgment;

WHEREORE, Defendant/Petitioner prays that he be reimbursed for any or all legal expenses that was necessary to defend against such frauds and the expenses can be simple things such as postage for legal mailings and paper and printer ink and/or any other resources necessary, and be reimbursed for any emotional damages caused by the adverse party.

WHEREORE, Defendant/Petitioner prays that the Court hold Kevin M. Alligood (U.S. Probation Officer Specialist), and Edward R. Cameron

(Supervisory U.S. Probation Officer) accountable for perjury (or subornation of perjury), unethical or unprofessional misconduct, and/or fraud or frauds being pushed through the Petition for revocation under Document #157.

WHEREFORE, Defendant/Petitioner prays that Kevin M. Alligood be charged with perjury or subornation of perjury and that the judge recommend that he be charged with perjury.

WHEREFORE, Defendant/Petitioner prays that the court consider reporting Edward R. Cameron's misconduct to the U.S. Merit Systems Protection Board for an investigation for ethics violations and unprofessional misconduct.

WHEREFORE, Defendant/Petitioner prays that the court consider reporting Kevin M. Alligood's misconduct to the U.S. Merit Systems Protection Board for an investigation for ethics violations and unprofessional misconduct.

WHEREFORE, Defendant/Petitioner prays that Martinsville Police Officer Robert Jones be charged with Obstruction of Justice by supplying false information to Kevin M. Alligood and any other U.S. Probation Officials and that the judge recommend that he be charged with Obstruction of Justice.

WHEREFORE, Defendant/Petitioner prays that the Court sanction AUSA Ramaswamy for misconduct including violation of State Bar Rule 3.8.

WHEREFORE, Brian prays that he receives any other relief that the Court deems as necessary and proper.

Attached evidence

Supplement 1: Case law: KENNETH WAYNE ROMICK v. COMMONWEALTH OF VIRGINIA, Record No. 1580-12-4. **Total of 5 pages.**

Supplement 2: Case law: KENNETH SAMUEL MOSES v. COMMONWEALTH OF VIRGINIA Record No. 0985-03-3. **Total of 29 pages. The pages 30 through 39 of the case filing was omitted from this supplement.**

Supplement 3: Case law: A. M.* v. COMMONWEALTH OF VIRGINIA, Record No. 1150-12-4. **Total of 8 pages.**

Total is 11 pages of attachment including Supplement marker pages.

Supplement 4: Case law: KIMBERLY F. NEICE v. COMMONWEALTH OF VIRGINIA, Record No. 1477-09-3. **Total of 8 pages.**

Total is 54 pages of attachment including Supplement marker pages.

Declaration of Brian David Hill on attached evidence

I, Brian David Hill, declare pursuant to Title 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. Attached hereto as Exhibit 1, is a true and correct photocopy of a printout of the "Dick & Willie Passage Rail Trail - Virginia Is For Lovers", a 3-page printout by family. **Total of 3 pages.**

2. Attached hereto as Exhibit 2, is a true and correct black-and-white photocopy of Assistant United States Attorney Anand Prakash Ramaswamy's Exhibit 2 that was presented at the final revocation hearing dated September 12, 2019 (Citation on Document #186, Witness and Exhibit List). Showed the alleged location of where the nude photographs were taken. Original may or may not have been in color but Renorda Pryor had did her best to have scanned the exhibit and other exhibits in black-and-white due to the limitations of her scanner. **Total of 1 pages.**

Total is 6 pages of attachment including Exhibit marker pages.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 11, 2019.

Respectfully submitted,

Brian D. Hill
Signed

Signed
Brian D. Hill (Pro Se)
310 Forest Street, Apartment 1
Martinsville, Virginia 24112
Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter
I stand with QANON/Donald-Trump – Drain the Swamp
I ask Qanon and Donald John Trump for Assistance (S.O.S.)
Make America Great Again

Respectfully filed with the Court, this the 11th day of October, 2019.

Respectfully submitted,

Brian D. Hill
Signed

Signed
Brian D. Hill (Pro Se)
310 Forest Street, Apartment 1
Martinsville, Virginia 24112
Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter
I stand with QANON/Donald-Trump – Drain the Swamp
I ask Qanon and Donald John Trump for Assistance (S.O.S.)
Make America Great Again

Petitioner also requests with the Court that a copy of this pleading be served upon the Government as stated in 28 U.S.C. § 1915(d), that "The officers of the court shall issue and serve all process, and preform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases". Petitioner requests that copies be served with the U.S. Attorney office of Greensboro, NC via CM/ECF Notice of Electronic Filing ("NEF") email, by facsimile if the Government consents, or upon U.S. Mail. Thank You!

CERTIFICATE OF SERVICE

Petitioner hereby certifies that on October 11, 2019, service was made by mailing the original of the foregoing:

"PETITIONER'S SECOND MOTION FOR SANCTIONS AND TO VACATE JUDGMENT THAT WAS IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

by deposit in the United States Post Office, in an envelope (certified mail), Postage prepaid, on October 11, 2019 addressed to the Clerk of the Court in the U.S. District Court, for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401.

Then pursuant to 28 U.S.C. §1915(d), Petitioner requests that the Clerk of the Court move to electronically file the foregoing using the CMIECF system which will send notification of such filing to the following parties to be served in this action:

Anand Prakash Ramaswamy U.S. Attorney Office Civil Case # 1:17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401	Angela Hewlett Miller U.S. Attorney Office Civil Case # 1: 17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401

Anand.Ramaswamy@usdoj.gov	angela.miller@usdoj.gov
JOHN M. ALSUP U.S. Attorney Office 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 john.alsup@usdoj.gov	

This is pursuant to Petitioner's "In forma Pauperis" ("IFP") status, 28 U.S.C. §1915(d) that "The officers of the court shall issue and serve all process, and perform all duties in such cases ... "the Clerk shall serve process via CM/ECF to serve process with all parties.

Date of signing:	Respectfully submitted,
October 11, 2019	Brian D. Hill Signed Signed Brian D. Hill (Pro Se) 310 Forest Street, Apartment 1 Martinsville, Virginia 24112 Phone #: (276) 790-3505 U.S.W.G.O. I stand with QANON/Donald-Trump – Drain the Swamp I ask Qanon and Donald John Trump for Assistance (S.O.S.) Make America Great Again

I ask Department of Defense ("DOD") military Constitutional oath keepers, alliance, Qanon for help in protecting me from corruption and criminal behavior of Government.

Certified Mail tracking no: 7019-1120-0001-4751-4580

Friend's justice site: JusticeForUSWGO.wordpress.com

Exhibit 1

USWGO
QANON // DRAIN THE SWAMP
MAKE AMERICA GREAT AGAIN

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Exhibit in attachment to "PETITIONER'S SECOND MOTION FOR SANCTIONS AND TO VACATE JUDGMENT THAT WAS IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

OUTDOORS AND SPORTS

DICK & WILLIE PASSAGE RAIL TRAIL

ADDRESS
699 Liberty St.
Martinsville, VA 24112

PHONE
276-634-4640

CITY
Martinsville
LOCALITY
Martinsville City

EMAIL US
mailto:radams@co.henry.va.us

VISIT SITE
http://www.henrycountyva.gov/parksandrec

The Dick and Willie Passage Rail Trail is a beautiful 4.5 mile paved rail trail that is located in Martinsville and Henry County. The trail begins at Virginia Avenue and ends near Mulberry Creek in Martinsville. The trail can be accessed at one of four locations: Virginia Avenue, Liberty St., Doyle St and Fisher St. This trail is great for walking, biking, running or rollerblading.

This trail is part of the former Danville and Western Railroad. Train enthusiasts will enjoy reading stories about the history of the rail line on the many signs located along the trail. Contact Henry County Parks and Recreation at 276.634.4640 for more information about the trail.

Addresses for trail access location:

- Virginia Avenue - 1094 Virginia Ave., Martinsville, VA
- Liberty Street - 699 Liberty St., Martinsville, VA
- Doyle Street - 220 Doyle St., Martinsville, VA
- Fisher Street - 815 Fisher St., Martinsville, VA

AMENITIES

· Family Friendly

· Pet Friendly

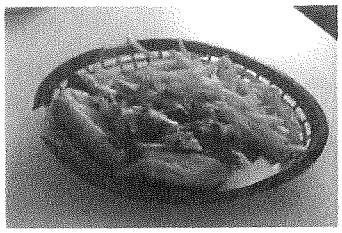
ACCESSIBILITY

REGION

Southern Virginia

Last Updated: 09/15/2015

What's Nearby



FAMOUS SUBS & MORE

811 Liberty Street
Martinsville, VA 24112

0.11 MI

EVERYTHING UNNECESSARY

716 Liberty Street
Martinsville, VA 24112

0.12 MI

THE VILLAGE OF MARTINSVILLE

240 Commonwealth Blvd.
Martinsville, VA 24112

0.44 MI

DUNHAM'S SPORTS

240 Commonwealth Blvd.

0.44 MI

MARSHALLS DEPARTMENT STORE

240 Commonwealth Blvd.
Martinsville, VA 24112

0.44 MI

Exhibit 2

USWGO
QANON // DRAIN THE SWAMP
MAKE AMERICA GREAT AGAIN

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Exhibit in attachment to "PETITIONER'S SECOND MOTION FOR SANCTIONS AND TO VACATE JUDGMENT THAT WAS IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

1. Photos SANYO01-2, 094-101, starting at 12:29 a.m.

2. Photos SANYO103-109, 110-114, starting at 12:36 a.m.

3. Photos SANYO115-20, starting at 12:51 a.m.

4. Photos SANYO121-122, starting at 1:01 a.m.

5. Photos SANYO123-126, starting at 1:08 a.m., ending at 1:20 a.m.

Supplement 1

USWGO
QANON // DRAIN THE SWAMP
MAKE AMERICA GREAT AGAIN

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Supplement in attachment to "PETITIONER'S SECOND MOTION FOR SANCTIONS AND TO VACATE JUDGMENT THAT WAS IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

COURT OF APPEALS OF VIRGINIA

UNPUBLISHED

Present: Judges Frank, Petty and Senior Judge Haley
Argued at Alexandria, Virginia

KENNETH WAYNE ROMICK

v. Record No. 1580-12-4

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE JAMES W. HALEY, JR.
NOVEMBER 19, 2013

FROM THE CIRCUIT COURT OF WARREN COUNTY
Dennis L. Hupp, Judge

Peter K. McDermott, Assistant Public Defender, for appellant.

Katherine Quinlan Adelfio, Assistant Attorney General (Kenneth T. Cuccinelli, II, Attorney General, on brief), for appellee.

Kenneth Wayne Romick was convicted of indecent exposure, third offense, in violation of Code §§ 18.2-387 and 18.2-67.5:1, and he argues the evidence was insufficient to prove that he intentionally made a display of his private parts and that such display was obscene. We agree that such display was not obscene and reverse and dismiss the indictment.

"On appeal, 'we review the evidence in the light most favorable to the Commonwealth, granting to it all reasonable inferences fairly deducible therefrom.'" Archer v. Commonwealth, 26 Va. App. 1, 11, 492 S.E.2d 826, 831 (1997) (quoting Martin v. Commonwealth, 4 Va. App. 438, 443, 358 S.E.2d 415, 418 (1987)). So viewed, the evidence proved that at approximately 6:00 p.m. on March 21, 2011, Investigator Smoot investigated a suspicious person at an abandoned motel. Smoot arrested Romick and transported him to the station. Romick was dressed in a woman's white nightgown that reached the top of his knees. Later that evening, Smoot found a car registered to

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

"Mary Romick" parked behind a Holiday Inn. The Holiday Inn was approximately 100 feet from the abandoned motel where Smoot had encountered Romick earlier that day. At approximately 7:00 p.m. on March 22, 2011, Smoot returned to the Holiday Inn and noticed that Mary Romick's car had not moved. When Smoot returned at approximately 9:30 p.m., he saw that Mary Romick's car was no longer parked at the Holiday Inn. Smoot confirmed that Romick had been released from jail, and Smoot searched for the car because he knew Romick did not have a valid driver's license.

At approximately 12:25 a.m. on March 23, 2011, Smoot saw Mary Romick's car in the parking lot of a Hampton Inn. As Smoot exited his car, he saw Romick lying in the driver's seat, wearing the same white nightgown, and the nightgown was pulled up to his navel area, exposing Romick's genitals.

In the two to three seconds that it took Smoot to walk to the car, Romick did not cover himself. As Smoot approached Romick's car, Smoot could not tell if Romick was aroused. After Smoot told Romick "put some clothes on," Romick pulled down the nightgown, picked up a pair of pants, and put them on.

Romick testified when he was released from jail, he was wearing coveralls over the nightgown and his parents drove him to the car registered to Mary Romick. Romick testified he called a few friends, but no one was available to help him and he decided to drive home. Romick testified he drove to a fast-food restaurant, realized he had no money, and decided to drive further back in the lot to find a parking space to sleep. Romick testified he removed the coveralls because he was warm, listened to the radio, made phone calls, and saw Smoot pull into the parking lot. Romick testified after Smoot stopped his car, he leaned back further to find his pants in the passenger seat, and had his pants in his hands when Smoot arrived at his window. Romick explained that his nightgown was above his waist because he lifted his leg to put on the pants.

In finding Romick guilty, the trial judge found that Romick parked in a hotel parking lot, wearing only a woman's nightgown pulled up to his navel clearly exposing his genitals, and his pants were on the seat next to him. The trial judge found that "[t]he whole set of circumstances indicates it is an intentional act and what other purpose could there be but to appeal to his prurient interest."

Code § 18.2-387 provides in part, "Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor."

"Code § 18.2-387 requires proof that defendant intentionally made an obscene display or exposure of his person, or the private parts thereof, in any public place." Hart v. Commonwealth, 18 Va. App. 77, 79, 441 S.E.2d 706, 707 (1994).

Assuming without deciding that Romick's display of his private parts was intentional, such display was not obscene.

> The word "obscene" . . . shall mean that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value.

Code § 18.2-372.

The "obscenity" element of Code § 18.2-387 may be satisfied when: (1) the accused admits to possessing such intent, Moses v. Commonwealth, 45 Va. App. 357, 360, 611 S.E.2d 607, 608 (2005) (*en banc*); (2) the defendant is visibly aroused, Morales v. Commonwealth, 31 Va. App. 541, 543, 525 S.E.2d 23, 24 (2000); (3) the defendant engages in masturbatory behavior, Copeland v. Commonwealth, 31 Va. App. 512, 514, 525 S.E.2d 9, 10 (2000); or (4) in other circumstances when

the totality of the circumstances supports an inference that the accused had as his dominant purpose a prurient interest in sex, Hart, 18 Va. App. at 80, 441 S.E.2d at 707-08. The mere exposure of a naked body is not obscene. See Price v. Commonwealth, 214 Va. 490, 493, 201 S.E.2d 798, 800 (1974) (finding that "[a] portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene").

"'On appeal, we must make an independent determination of the constitutional issue of obscenity, which is a mixed question of law and fact.'" Lofgren v. Commonwealth, 55 Va. App. 116, 119-20, 684 S.E.2d 223, 225 (2009) (quoting Allman v. Commonwealth, 43 Va. App. 104, 110, 596 S.E.2d 531, 534 (2004)). The Court must examine the particular circumstances of each case to determine whether something is obscene. Id. at 121, 684 S.E.2d at 226.

In this case, Romick did not admit to having an obscene intent, he was not visibly aroused, and there was no evidence he was masturbating. Thus, Romick's actions were only obscene if the totality of the circumstances support an inference that he had as his dominant purpose a prurient interest in sex.

Our decision in Hart is instructive as to circumstances proving the type of behavior that has a dominant purpose a prurient interest in sex. In Hart, the defendant entered a store, asked an employee for help, and when the employee looked up, she saw that the defendant had "dropped his pants" and was wearing a "skimpy G-string." Hart, 18 Va. App. at 78, 441 S.E.2d at 706. The G-string covered the defendant's penis, but the employee could see the outline of the defendant's penis, his buttocks, and the remaining pubic area. Id. The defendant stated his shorts just kept falling off, modeled his outfit for the employee, told the employee he searched all over town for the outfit, stated he like to wear it or nothing at all when he went out on his boat, and asked the employee what she thought of his outfit. The defendant also stated the shorts "were great" because they attached with velcro, which "gave easy access to women who wanted him." Id. at 78, 441

Supplement 2

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UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Supplement in attachment to "PETITIONER'S SECOND MOTION FOR SANCTIONS AND TO VACATE JUDGMENT THAT WAS IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Fitzpatrick, Judges Benton, Elder, Frank, Humphreys, Clements, Felton, Kelsey and McClanahan
Argued at Richmond, Virginia

KENNETH SAMUEL MOSES

v. Record No. 0985-03-3

COMMONWEALTH OF VIRGINIA

OPINION BY
JUDGE D. ARTHUR KELSEY
APRIL 12, 2005

UPON REHEARING EN BANC

FROM THE CIRCUIT COURT OF THE CITY OF LYNCHBURG
J. Leyburn Mosby, Jr., Judge

Eric G. Peters, Sr., for appellant.

Deana A. Malek, Assistant Attorney General (Jerry W. Kilgore, Attorney General, on briefs), for appellee.

Kenneth Samuel Moses challenges his conviction on two counts of making an obscene display or exposure in violation of Code § 18.2-387. Finding no error in the trial court's application of the statute to this case, we affirm.

I.

On appeal, we review the evidence in the "light most favorable" to the Commonwealth. Commonwealth v. Hudson, 265 Va. 505, 514, 578 S.E.2d 781, 786 (2003). That principle requires us to "'discard the evidence of the accused in conflict with that of the Commonwealth, and regard as true all the credible evidence favorable to the Commonwealth and *all fair inferences to be drawn therefrom*.'" Parks v. Commonwealth, 221 Va. 492, 498, 270 S.E.2d 755, 759 (1980) (emphasis in original and citation omitted).

On August 8, 2001, Moses walked up to a 10-year-old girl at a Kmart. While he masturbated in front of the child, he told her she was "very beautiful." The child saw his hand "through his pants" exercising his penis. Pale with fright, the child later told her mother what happened.

On December 4, 2001, Moses stalked an 11-year-old girl at a Wal-Mart. He made eye-contact with the child and passed her in the aisle several times. As he did so, Moses masturbated with a hand down his pants while looking directly at her. During a brief moment while the child's mother spoke with a friend, Moses approached the girl. He told her she was a "pretty girl" and asked her how her "butt felt." The child ran to her mother confused and upset.

After his arrest, Moses admitted both incidents. According to him, he used a similar *modus operandi* about 40 to 50 times with young girls. It "kinda became a habit." Moses said he would frequent Wal-Mart and Kmart because "[t]hat's where the crowd is and where you can wander around and look at people." "It became a method of letting off steam," he explained, "because I had no other sexual outlet." His underlying motive, Moses said, was the "need to fulfill my sex drive."

After reviewing a sex offender evaluation of Moses, the trial judge found him to be a sexual "predator" and concluded "the least I can do in this case is to try to prevent you from committing these crimes again by incarcerating you." Convicted of two counts of obscene display or exposure under Code § 18.2-387, Moses appeals both convictions.

II.

At trial, Moses argued that his conduct did not violate Code § 18.2-387 as a matter of law.[1] Such behavior can only offend the statute, he reasoned, if it takes place at least partly in

[1] As he concedes on appeal, Moses never challenged the obscene nature of his conduct. Rule 5A:18 precludes him from asserting this challenge for the first time on appeal. No basis exists in this case for invoking the "good cause" or "ends of justice" exceptions to Rule 5A:18.

the nude. A divided panel of our Court agreed with this reasoning and vacated Moses's convictions under Code § 18.2-387. Moses v. Commonwealth, 43 Va. App. 565, 600 S.E.2d 162 (2004). Having reconsidered this case *en banc*, we now affirm. We come to this conclusion based upon the common law history of this offense and the literal text of the statute codifying it.

A. THE COMMON LAW ANTECEDENTS OF CODE § 18.2-387

The common law recognized any "open and notorious lewdness" as an indictable offense. 4 William Blackstone, Commentaries on the Law of England *64 (1769). The offense included any "grossly scandalous and public indecency." Id. Virginia adopted this common law restatement. See William W. Hening, The Virginia Justice 431 (4th ed. 1825) (stating that "in general, all open lewdness, grossly scandalous, is punishable upon indictment at common law"); James M. Matthews, Virginia Criminal Laws 123 (2d ed. 1878) (recognizing crime of "open and gross lewdness and lasciviousness").[2]

At common law, nudity or near nudity was never the all-important referent. The lewd nature of the *conduct* itself, if open and notorious, was the main characteristic of the offense. When state legislatures began codifying various subsets of this common law crime, they did not abandon its "open and notorious" characteristic. The history of these codification efforts

> leads to one of two possible conclusions about the framers' intentions with respect to the regulation of sexual intercourse and masturbation. On the one hand, it could be inferred that, because the framers so relentlessly prohibited even as little as public nudity, it necessarily follows that public intercourse and

---

[2] The "best construction" of a statute codifying common law principles is the one "most near to the reason of the common law, and by the course which that observes in cases of its own." Chichester v. Vass, 5 Va. (1 Call) 83, 102 (1797), quoted in part in Wicks v. Charlottesville, 215 Va. 274, 276, 208 S.E.2d 752, 755 (1974). "The reason is that the Legislature is presumed to have known and to have had the common law in mind in the enactment of a statute. The statute must therefore be read along with the provisions of the common law, and the latter will be read into the statute unless it clearly appears from express language or by necessary implication that the purpose of the statute was to change the common law." Wicks, 215 Va. at 276, 208 S.E.2d at 755.

> masturbation would have been regarded as even more odious and even more obviously subject to state regulation. On the other hand, it could be inferred that, although the framers understood that public nudity could be regulated, they apparently understood that public nudity while engaged in intercourse or masturbation could not (or that both were permissible as long as the offenders kept their clothes on). Frankly, given the evidence that we have described about antebellum public morals, statutes, and case law, we find the latter possibility to be remote, to say the least.

State v. Ciancanelli, 45 P.3d 451, 459 (Or. Ct. App.) (*en banc*), petition for review allowed, 58 P.3d 821 (Or. 2002).

It follows that masturbation in a public place, in a manner obvious to all, falls squarely within reach of the common law. See generally Miller v. California, 413 U.S. 15, 25 (1973) (noting that patently offensive "representations or descriptions of masturbation" are "obscene"); State v. Maunsell, 743 A.2d 580, 582-83 (Vt. 1999) (upholding conviction for "open and gross lewdness" where defendant "massag[ed] his genitals through his pants" in a public place); see also United States v. Statler, 121 F. Supp. 2d 925, 927 (E.D. Va. 2000) (observing that "there is little doubt that masturbation in a public bathroom, if proven, fits well within the federal regulation proscribing 'a display or act that is obscene'").

B. OBSCENE "DISPLAY OR EXPOSURE" UNDER CODE § 18.2-387

Consistent with the common law, Virginia codified a particular type of lewdness offense in Code § 18.2-387. Leaving little doubt as to its intentions, the General Assembly criminalized the "obscene display *or* exposure" of one's person or private parts in a public place. Code § 18.2-387 (emphasis added).

Moses argues the word "exposure" means nudity and "display" means nothing more, making the disjunctive no more than a redundant conjunctive. We find this reasoning inconsistent with first principles of statutory construction. As has been often said: "Words in a statute should be interpreted, if possible, to avoid rendering words superfluous." Cook v.

Commonwealth, 268 Va. 111, 114, 597 S.E.2d 84, 86 (2004); Zhou v. Zhou, 38 Va. App. 126, 136, 562 S.E.2d 336, 340 (2002) (observing that "basic canons of statutory construction" exclude interpretations rendering statutory language "superfluous"). "It is the duty of the courts to give effect, if possible, to every word of the written law." Hodges v. Commonwealth, 45 Va. App. 118, 126, 609 S.E.2d 61, 65 (2005) (*en banc*) (citation omitted).

Unless the word "display" is superfluous, it must mean something different from "exposure." If "exposure" can only mean some degree of nudity, then "display" necessarily means something different. And so it does. Among the definitions of "display" in ordinary speech (particularly where, as here, it is used as a noun rather than a verb) is the "demonstration or manifestation of something." American Heritage Dictionary 407 (2d coll. ed. 1985).[3] It is just that definition we give to the word "display" when used in other provisions of the Code.

For example, Code § 18.2-53.1 criminalizes the "display" of a firearm while committing a felony. A robber can effectively "display" a firearm in his pocket even though completely hidden from view. Cromite v. Commonwealth, 3 Va. App. 64, 66-67, 348 S.E.2d 38, 39-40 (1986). The word "display" means "not only the notion of spreading before view or exhibiting to the sight, but also that which is manifested to any of a victim's senses . . . ." Id. (quoting State v. Smallwood, 346 A.2d 164, 167 (Del. 1975)). "Thus a weapon may be manifested to a victim even though he may not see it" because the ability to otherwise discern the weapon's presence is itself a manifestation "just as effective, for the statutory purpose, as putting a gun in plain view." Id.; see also Deshields v. State, 706 A.2d 502, 507 (Del. 1998) (finding that robber "displays" a weapon by putting his hand in his pocket and then handling the weapon); People v. Butts, 580

[3] This point demonstrates the irrelevance of cases like State v. Jaime, 236 A.2d 474, 475 (Conn. Cir. Ct. 1967), and State v. Wymore, 560 P.2d 868, 869-70 (Idaho 1977). The indecency laws in those cases only make it unlawful to "expose" the person or private parts — but do not go further and criminalize the "display" of the person or private parts, as does Code § 18.2-387.

N.Y.S.2d 758, 758 (N.Y. App. Div. 1992) (holding that robber displays a weapon by putting his hand inside his jacket and asking victim if it would "make a difference" if he had a gun).

Moses argues that this understanding of display has been foreclosed by prior Virginia cases. The cases he relies upon, however, do not once mention or discuss the word display as used in Code § 18.2-387. See, e.g., Wicks v. Charlottesville, 215 Va. 274, 274-75, 208 S.E.2d 752, 753-54 (1974) (interpreting local ordinance stating that no "person shall *expose* himself"); Noblett v. Commonwealth, 194 Va. 241, 72 S.E.2d 241 (1952) (affirming a conviction on an indictment alleging that the defendant *exposed* himself); Siquina v. Commonwealth, 28 Va. App. 694, 697-99, 508 S.E.2d 350, 352-53 (1998) (interpreting the indecent liberties statute, which forbids *exposing* one's sexual or genital parts to a child). They instead focus entirely on the meaning of "expose."[4]

Properly understood, every visible exposure of one's genitals necessarily involves a display of one's genitals. But that does not prove the reverse: that every display necessarily includes an exposure. Hence, a robber can still display a handgun in his pocket while not exposing it to sight. So too a man masturbating in public can still display his "person" or "private parts" while not exposing his penis to sight. We thus reject Moses's claim that the display-or-exposure formulation in Code § 18.2-387 codifies a mere semantic redundancy, a pairing of interchangeable synonyms.

[4] Under Virginia law, *stare decisis* does not "foreclose inquiry" into an issue not previously "raised, discussed, or decided." Chesapeake Hosp. Auth. v. Commonwealth, 262 Va. 551, 560, 554 S.E.2d 55, 59 (2001); see also Finnerty v. Thornton Hall, Inc., 42 Va. App. 628, 639-40, 593 S.E.2d 568, 574 (2004).

III.

The trial court found Moses's public masturbation to be an obscene "display" of his "person, or the private parts thereof" in violation of Code § 18.2-387. This conclusion cannot be set aside simply because Moses made this display while fully clothed.

Affirmed.

Benton, J., with whom Fitzpatrick, C.J., and Elder, J., join, dissenting.

The sole issue in this case is whether the evidence was sufficient to prove the offenses charged in the arrest warrant: that on two occasions Kenneth Samuel Moses "did unlawfully in violation of [Code §] 18.2-387 . . . intentionally make an obscene display of [his] person or private parts in a public place or in a place where a child under the age of 18 years and others were present." Because I believe that Code § 18.2-387 codified the common law's understanding of "expose" and "display" to mean without clothes, I do not believe Moses's behavior falls within the purview of the statute. I would, therefore, reverse the misdemeanor convictions.

I.

This issue, whether Moses's conduct fell within the purview of the statute, was clouded in this case from the beginning. At the bench trial, the prosecutor informed the judge as follows in his opening statement:

> [W]e must tell the Court that *the only issue before the Court from the Commonwealth's perspective is does the defendant's conduct constitute indecent exposure of his person* as opposed to his private parts.
>
> Judge, that issue is not decided in the Commonwealth, what does it mean to expose your person. The Commonwealth does have a case from Iowa in 1977. That's the only jurisdiction that we found that provides some insight. I will tell you that that case is contrary to the Commonwealth's position. Iowa said if you don't expose the actual skin itself, there is no indecent exposure. This issue is not decided in the Commonwealth of Virginia. We're going to ask the Court to basically make some law today. And I believe [Moses's attorney] will argue that point.

(Emphasis added).

Moses's attorney responded, in part, as follows:

> Judge, if you're going to make law today, I would submit to you it's going to be bad law. Because what [the prosecutor] is saying is if someone goes up, a male usually, in most cases it's going to be a male, goes up and just scratches at his crotch area because he has an itch to scratch or something like that, that could possibly be considered to be exhibiting something.

> And I would submit to the Court that can't be the case. It would just be too easy for too many people to say I saw him grab his genital area. Without -- our position is that without exposure of actual flesh, that that's -- there is no conviction. Just rubbing parts of your clothing should not be a crime. You know, you can't protect people from -- we would submit you can't protect people from everything bad that's going to happen. While this event shouldn't have been done, it wasn't in good taste, it obviously shouldn't have been done, we don't think it meets the meaning of a crime under the law.

At trial, a ten-year-old girl testified that when Moses began a conversation with her in a store he had his hands in his pants as he talked to her. She saw "his hand through his pants" and said his hand was rubbing his penis. She also testified that she did not see the "shape of his penis under his clothes." The eleven-year-old girl testified she saw Moses in another store on another occasion behind a display rack. He was looking at her and "rubbing himself . . . [i]n his private area." She described it as the place "around his waist." She told her mother "that . . . man was adjusting himself."

At the conclusion of the evidence, the prosecutor argued several points, including the assertion "that the statute is contemplating types of displays or exposures where private parts of an individual are not seen. And that's why the statute has person or private parts." Moses's attorney argued that if the statute "taken to mean an obscene display, there certainly are no standards for deciding what a display is[, and in] our opinion -- we would argue in this case that a display is not something you can decide." He also argued that the statute required proof that the defendant "actually exposed some skin."

In pertinent part, the trial judge found the evidence regarding the misdemeanor charges to prove the following conduct:

> And this fact finder is going to find that the conduct of Mr. Moses was not acceptable in our community and that it violates the standards of sexual candor. It's clear that he was grabbing his parts when he approached these two young girls in Wal-Mart and Kmart. And that one girl testified he had his hand in his pants as if

> he were manipulating himself or masturbating himself. And the other girl testified he was grabbing his parts and looking at her. And that's not the same as if you see a baseball player or football player or somebody else sometimes may grab their parts.

II.

Code § 18.2-387 provides as follows:

> Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

(A)

The evidence failed to prove the conduct charged in the warrant: that Moses displayed his private parts. He outwardly exhibited nothing, not even a visible outline of his private parts. The testimony of both children establishes that they did not see his private parts. Although one child testified that Moses rubbed his penis, she expressly testified that she saw no objective physical manifestation of his penis. She saw his "hands through his pants." The other child was less specific, testifying only he was "rubbing himself . . . [i]n his private area." Addressing Moses's conduct, the trial judge only found that he was "grabbing his parts."

Although, in both instances, the testimony established movement of Moses's hand in his "private area," this evidence failed to prove either "an obscene *display* . . . of his person, or the private parts thereof." Code § 18.2-387 (emphasis added). Absent proof that either of the girls saw or was reasonably likely to have seen Moses's genitals, at least partially uncovered, the evidence failed to prove Moses's behavior came within the conduct charged by the warrant, regardless of the intent with which Moses acted.

(B)

Furthermore, my review of the language of the statute itself and the common law of indecent exposure compels the conclusion that the words "display" and "exposure" as used in Code § 18.2-387 codify the common law and that the statute applies only when the body part in question was exposed without clothing and likely to be seen. See also 1960 Va. Acts, ch. 233 (first enacting Code § 18.1-236, the predecessor statute, which proscribed the same behavior, "obscene display or exposure," as Code § 18.2-387).

The structure of the statute itself establishes that the legislature intended the term "display" to be synonymous with the term "exposure." The legislature used the terms "display or exposure" in the first part of the statute to proscribe the behavior in which an individual may not himself or herself engage, but it used only the term "exposure" in the second half of the statute to set out the behavior in which an individual may not "procure" another to engage. It would be anomalous under the language of this statute to hold that the legislature intended to punish a defendant for engaging in either of two types of behavior himself but to punish him for enticing someone else to engage in only one of those two types of behavior. A court must construe the challenged statute "from its four corners and not by singling out particular words or phrases." Smith v. Commonwealth, 8 Va. App. 109, 113, 379 S.E.2d 374, 376 (1989). "If the several provisions of a statute suggest a potential for conflict or inconsistency, we construe those provisions so as to reconcile them and to give full effect to the expressed legislative intent." Mejia v. Commonwealth, 23 Va. App. 173, 176-77, 474 S.E.2d 866, 868 (1996) (*en banc*). Furthermore, the rule of lenity requires that penal statutes "must be strictly construed against the state and limited in application to cases falling clearly within the language of the statute." Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); see also Richardson v. Commonwealth, 25 Va. App. 491, 496, 489 S.E.2d 697, 700 (1997) (holding that "[w]here the

application and enforcement of the criminal law is at issue, any ambiguity shall be resolved against the Commonwealth and in favor of the accused"). Thus, absent a clear legislative intent to the contrary, principles of statutory construction compel a conclusion that the legislature intended a "display" in violation of the statute also requires an "exposure."[5]

Code § 18.2-387 is a codification of the common law, continuing the ban against indecent exposure.[6] The language used by the legislature in enacting the successive code sections that have proscribed indecent exposure fail to support the conclusion that the legislature intended to change the common law when it used the word "display" in its enactment of Code § 18.2-387. Here, the legislature adopted the common law's "precise, well defined meaning" of indecent

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[5] An analogy between the use of the term "display" in the indecent exposure statute and Code § 18.2-53.1, which proscribes "display[ing]" a firearm in a threatening manner during the commission of certain felonies, is inapt for two reasons.

First, the Virginia cases construing the firearms statute to hold a weapon was displayed to a victim through a sense other than actual sight involved the sense of touch. See, e.g., Cromite v. Commonwealth, 3 Va. App. 64, 67-68, 348 S.E.2d 38, 40 (1986) (involving a robber who approached the victim with his hand in his pocket and "stuck something ['hard'] in his stomach . . . that 'felt . . . like a pistol'"). Here, Moses's conduct did not involve tactile experiences. Rather, they involved only sight of hand movement.

Second, the evils at which the two statutes are directed are entirely different. The presence of a firearm as an aid to a felony may be just as effective even where the firearm is not displayed visually; one need not see a firearm in order to be motivated by fear of the potential harm it represents. See id. In the case of indecent exposure, however, the core of the offense is just that--the exposure itself, coupled with the related shock and embarrassment, People v. Massicot, 118 Cal. Rptr. 2d 705, 711-12 (Cal. Ct. App. 2002), rather than the fear that it represents some intent to do physical harm to the victim. Other statutes criminalize sexual behavior that threatens direct physical contact or harm. As a result, what it means to display a firearm during the commission of a felony has little or no relevance to determining what types of displays violate the indecent exposure statute.

[6] Indeed, Code § 18.2-387 is titled "Indecent exposure." Although the title of a statute is for "informative convenience," Good v. Commonwealth, 155 Va. 996, 999-1000, 154 S.E. 477, 478 (1930), it is of use for interpretative purposes if it "shed[s] light on some ambiguous word or phrase." Trainmen v. Baltimore & Ohio R. Co., 331 U.S. 519, 528-29 (1947). See also Almendarez-Torres v. United States, 523 U.S. 224, 234 (1998) ("not[ing] that 'the title of a statute and the heading of a section' are 'tools available for the resolution of a doubt' about the meaning of a statute"). As noted earlier in this opinion, the statutory language suggests a potential for inconsistency that must be reconciled.

exposure. Wicks v. City of Charlottesville, 215 Va. 274, 276, 208 S.E.2d 752, 755 (1974) (interpreting a local ordinance containing the term "indecently expose").

> "[T]he best construction of [a] statute is[] to construe it as near to the reason of the common law as may be . . . ." The reason is that the Legislature is presumed to have known and to have had the common law in mind in the enactment of a statute. The statute must therefore be read along with the provisions of the common law, and the latter will be read into the statute unless it clearly appears from express language or by necessary implication that the purpose of the statute was to change the common law.

Id. (quoting Chichester v. Vass, 5 Va. (1 Call) 83, 102 (1797)). Thus, where the statute has not expressly or by necessary implication changed the common law, we must assume the common law definitions apply. See People v. Massicot, 118 Cal. Rptr. 2d 705, 711 (Cal. Ct. App. 2002) (holding that the common law targeted genital exposure, therefore, in the "absence of express definitions, . . . we may construe the statute to encompass indecent exposure as it was defined at common law" (citing 2A J.G. Sutherland, Statutes and Statutory Construction § 50.03, at 435 (Norman J. Singer ed., 4th ed. 1984)). Further, penal statutes "must be strictly construed against the state and limited in application to cases falling clearly within the language of the statute." Turner, 226 Va. at 459, 309 S.E.2d at 338.

At common law, a conviction for indecent exposure required proof that the accused intentionally exposed private parts in a manner that they could reasonably have been seen by members of the public. Noblett v. Commonwealth, 194 Va. 241, 244-46, 72 S.E.2d 241, 243-44 (1952) (citing definitions indicating the offense is committed where the "'act is seen or is likely to be seen'" (quoting 67 C.J.S. Obscenity § 5, at 25 (1950)). Indecent exposure statutes from other states "have generally adopted the common law requirements of the offense of indecent exposure; to convict someone of indecent exposure, there must be shown a wilful and intentional exposure of the private parts of the body." 50 Am. Jur. 2d Lewdness, Indecency, and Obscenity § 17, at 291-92 (1995). Thus, courts typically have held that "[i]ndecent exposure at common

law consists of exposure in public of the entire person or of parts that should not be exhibited." State v. Chiles, 767 P.2d 597, 599 (Wash. App. 1989); see also Massicot, 118 Cal. Rptr. 2d at 713. Significantly, the Supreme Court of Virginia has recognized a definition of common law "indecent exposure" that requires "'[e]xposure *to sight*.'" Wicks, 215 Va. at 276, 208 S.E.2d at 754 (quoting Black's Law Dictionary 909 (4th ed. 1951) (emphasis added)).

Black's Law Dictionary, which is referenced in Wicks, treats the terms "exposure" and "display" as synonymous, defining "indecent *exposure*" as "[a]n offensive *display* of one's body in public, esp. of the genitals. Cf. Lewdness . . . ." Black's Law Dictionary 773 (7th ed. 1999) (emphases added); see also Noblett, 194 Va. at 245, 72 S.E.2d at 243-44 (referring to exposure as an "exhibition"); Black's, supra, at 595 (defining "exhibitionism" as an "indecent *display* of one's body" (emphasis added)); Massicot, 118 Cal. Rptr. 2d at 712 (noting that conduct sought to be prohibited by common law indecent exposure was "exhibitionism," which it defined as "the *display* of the male genital organs for sexual gratification" (emphasis added)). The Oregon Court affirmed a conviction in State v. Ciancanelli, 45 P.3d 451 (Or. App. 2002), involving an act of masturbation that exposed the person's genitalia. It was in this context that the court discussed the framers' intentions and noted "that eighteenth-and nineteenth-century statutes and case law reflect the widespread -- if not universal -- regulation of public exposure of the genitals." Id. at 459.

Moreover, our adoption of just such a definition of "expose" in Siquina v. Commonwealth, 28 Va. App. 694, 697-99, 508 S.E.2d 350, 352-53 (1998) (construing the portion of Code § 18.2-370 that proscribed "knowingly and intentionally 'expos[ing] [one's] sexual or genital parts to any child'"), underscores the conclusion that the General Assembly codified the common law requirement. Noting that the dispositive issue was whether the indecent liberties statute required that the child actually see the perpetrator's genitals, we held,

based on analogy to the common law and the Supreme Court's interpretation of it in Noblett and Wicks, that actual viewing was not required, but that the evidence had to prove the genitals were "seen or likely to be seen." Siquina, 28 Va. App. at 698-99, 508 S.E.2d at 352-53.[7] In doing so, we conducted an extended analysis of the "origin and contemporary definition of the verb 'expose'":

> "Expose" originated as an adaptation of the Latin verb "exponere," which includes the following definitions: 1) to put or bring out into the open, or 2) to put on show or *display*. 5 The Oxford English Dictionary 578 (2d ed. 1989); Oxford Latin Dictionary 651 (1982). Today, the definition has remained true to its roots. Webster's Third New International Dictionary 802 (1981), defines "expose" as "to lay open to view." In Black's Law Dictionary 579 (6th ed. 1990), "expose" is defined as: "To show publicly; *to display*; to offer to the public view . . . ." Black's definition of "indecent exposure" is also instructive: "This term refers to exhibition of those private parts which . . . human decency . . . require[s] shall be kept covered in [the] presence of others. Exposure . . . becomes indecent when it occurs at such time and place where [a] reasonable person knows or should know his act [may be viewed by] others." Id. at 768.

Siquina, 28 Va. App. at 697-98, 508 S.E.2d at 352 (emphases added); see also Brooker v. Commonwealth, 41 Va. App. 609, 616, 587 S.E.2d 732, 735 (2003) (adopting Siquina's definition of "expose").

Thus, I would hold that the statutory language and the common law history require that an accused actually render visible or cause to be seen or likely to be seen the body or the

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[7] Wicks and Siquina suggest that we need to have an actual display of a person's genitalia in order to find conduct sufficient to convict for indecent exposure under Code § 18.2-387. The facts in Wicks showed that while the police officer "could not be certain that he had actually seen the defendant's organ because his hand was covering it," the officer did testify that he saw the defendant "holding his hand in front of his trousers and . . . urinating" as he walked. 215 Va. at 275 n.1, 208 S.E.2d at 754 n.1. Thus, the defendant's conduct supported an inference beyond a reasonable doubt that the defendant's genitalia was actually exposed. Furthermore, in Siquina, while the child did not see the defendant's genitalia, the child's mother saw the defendant in the bathroom with her child and saw the defendant's erect penis. 28 Va. App. at 697, 508 S.E.2d at 352. Although Siquina dealt with Code § 18.2-370, taking indecent liberties with a child, the facts also showed that actual exposure of genitalia did occur.

proscribed part. The statute requires proof of some degree of nudity of the body or the private parts of the body under circumstances denoting obscenity and satisfying the other statutory requirements. Cf. Copeland v. Commonwealth, 31 Va. App. 512, 515-16, 525 S.E.2d 9, 10-11 (2000) (holding that evidence of defendant's exposing his genitals and being visibly aroused in a woman's backyard was sufficient to support conviction for indecent exposure); Morales v. Commonwealth, 31 Va. App. 541, 543, 525 S.E.2d 23, 24 (2000) (holding evidence of defendant's exposing his erect penis and masturbating outside a lighted window sufficient to convict for indecent exposure).

III.

The statute is not a general bar to a person's conducting himself or herself in an indecent or offensive manner. Thus, for example, the statute obviously does not purport to proscribe tight pants or sweaters or other garments that opaquely clothe the body but leave some portion of the population offended due to sensitivity about the tightness of the garment. It does not, by its terms, bar hand gestures that might be considered offensive. Indeed, nothing in the statutory words, when given their meanings in ordinary parlance, bars a person from the mere act of rubbing or "grabbing" himself or herself without proof of more. The statute does not bar indecent conduct that does not expose parts of the body. See, e.g., State v. Jaime, 236 A.2d 474, 475 (Conn. Cir. Ct. 1967) (holding that defendant's "shaking his hand in his pelvic region" and exposing white underpants was insufficient to support a conviction for violating statute prohibiting "wantonly and indecently expos[ing] his person"); State v. Wymore, 560 P.2d 868, 869-70 (Idaho 1977) (holding that a statute barring a person from "publicly expos[ing] his person or his genitals" does not reach obscene gestures and comments where the accused did not expose his private parts).

Moses is serving a ten-year sentence, with four years suspended on various conditions, for the felony of taking indecent liberties with a child pursuant to Code § 18.2-370. Further, the prosecutor obviously selected among the various other statutes under which Moses could have been prosecuted in deciding how to proceed. See, e.g., Code § 18.2-67.3 (proscribing aggravated sexual battery); Code § 18.2-67.4 (proscribing sexual battery); Code § 18.2-370(1) (proscribing indecent liberties with children); see also Code § 18.2-26 (proscribing *attempts* to commit noncapital felonies). See also Jaime, 236 A.2d at 475-76 (holding defendant's "shaking his hand in his pelvic region" and exposing white underpants did not violate indecent exposure statute but might amount to disorderly conduct). If any gaps exist in the types of behavior the various statutes proscribe, it is the job of the legislature, not the courts, to fill those gaps. See, e.g., United States v. Statler, 121 F. Supp. 2d 925, 927 & n.6 (E.D. Va. 2000) (holding "there is little doubt that masturbation in a public bathroom, if proven, fits well within *the federal regulation* proscribing 'a display or act that is obscene'" but emphasizing that the federal regulation is "*broader* than . . . the Virginia indecent exposure statute" because the Virginia statute "requires a display or exposure of parts of one's body [whereas the federal regulation] does not" (emphases added)); see also Ohio Rev. Code Ann. § 2907.09 (2004) (proscribing public indecency, which it defines to include "recklessly" "(1) [e]xpos[ing] his or her private parts, or engag[ing] in masturbation; (2) [e]ngag[ing] in sexual conduct; [or] (3) [e]ngaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation"); Duvallon v. District of Columbia, 515 A.2d 724, 725 n.1 (D.C. 1986) (analyzing conviction for indecent exposure under statute making it unlawful "for any person or persons to make any obscene or indecent exposure of his or her person, *or* to make any other lewd, obscene, or indecent sexual proposal, *or* to commit any other lewd, obscene, or indecent act" (emphases added)); State v. Ovitt, 535 A.2d 1272, 1275-76 (Vt. 1986) (under statute proscribing "open and gross lewdness and lascivious

behavior" without further defining that offense, holding evidence sufficient to support conviction where defendant masturbated publicly through clothing but did not expose his genitals).

The dispositive issue in this case is whether Moses's behavior constituted a "display or exposure of his person, or the private parts thereof," analogizing to the common law definition of that offense. I would hold it did not, and I would reverse both misdemeanor convictions.

Tuesday 14th

September, 2004.

Kenneth Samuel Moses, Appellant,

against Record No. 0985-03-3
Circuit Court Nos. CR02014083-00, CR02014116-00
and CR02014116-01

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing En Banc

Before Chief Judge Fitzpatrick, Judges Benton, Elder, Annunziata, Bumgardner, Frank, Humphreys, Clements, Felton, Kelsey and McClanahan

On August 23, 2004 came the appellee, by the Attorney General of Virginia, and filed a petition praying that the Court set aside the judgment rendered herein on August 10, 2004, and grant a rehearing *en banc* thereof.

On consideration whereof, the petition for rehearing *en banc* is granted, the mandate entered herein on August 10, 2004 is stayed pending the decision of the Court *en banc*, and the appeal is reinstated on the docket of this Court.

The parties shall file briefs in compliance with Rule 5A:35. The appellee shall attach as an addendum to the opening brief upon rehearing *en banc* a copy of the opinion previously rendered by the Court in this matter. It is further ordered that the appellee shall file with the clerk of this Court twelve additional copies of the appendix previously filed in this case.

A Copy,

Teste: Cynthia L. McCoy, Clerk

By: Deputy Clerk

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Elder and Kelsey
Argued at Salem, Virginia

KENNETH SAMUEL MOSES

v. Record No. 0985-03-3

COMMONWEALTH OF VIRGINIA

OPINION BY
JUDGE JAMES W. BENTON, JR.
AUGUST 10, 2004

FROM THE CIRCUIT COURT OF THE CITY OF LYNCHBURG
J. Leyburn Mosby, Jr., Judge

Eric G. Peters, Sr., for appellant.

Deana A. Malek, Senior Assistant Attorney General (Jerry W. Kilgore, Attorney General, on brief), for appellee.

The trial judge convicted Kenneth Samuel Moses of the felony of taking indecent liberties with a child, Code § 18.2-370, and two misdemeanor counts of making an obscene display or exposure of his person in violation of Code § 18.2-387. Moses contends the evidence was insufficient to support the misdemeanor convictions. We agree, and we reverse both misdemeanor convictions.

I.

The evidence proved a ten-year-old girl was in a department store with her mother and her brother in August of 2001, when she saw Moses walking among the aisles. Later, in the check-out line, Moses began a conversation with the girl. Moses told the girl she was very beautiful and told her he thought other people must have said this to her. The girl testified that Moses had his hands in his pants as he talked to her. She saw "his hand through his pants" and said his hand was rubbing his penis. She also testified that she did not see the "shape of his penis

under his clothes." When the girl's mother arrived, the girl left the store with her mother and brother. Outside the store, the girl reported the incident to her mother.

In December of 2001, an eleven-year-old girl was in another department store with her mother. The girl saw Moses behind a display rack looking at her and "rubbing himself . . . [i]n his private area." She told her mother "that . . . man was adjusting himself." After her mother paid for merchandise, she momentarily walked away from the girl. Moses approached the girl when she was alone near the entrance and "told [her] that [she] was a pretty little girl and . . . asked how [her] butt felt." Later, in the parking lot, the girl reported the conversation to her mother.

The trial judge convicted Moses of two offenses of violating Code § 18.2-387.[1]

II.

Code § 18.2-387 provides as follows:

> Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

The evidence proved Moses's conduct was indecent, but we hold that the evidence failed to prove either "an obscene *display* . . . of his person, or the private parts thereof" or "an obscene . . . *exposure* of his person, or the private parts thereof." Code § 18.2-387 (emphases added). Our review of the common law of indecent exposure and the language of the statute itself compels the conclusion that the words "display" and "exposure" as used in Code § 18.2-387 are

[1] We do not describe the evidence supporting the felony conviction because those events occurred on a separate occasion and are not germane to the issues on this appeal. Furthermore, because Moses does not challenge the sufficiency of the evidence to prove he acted intentionally, we also need not review as an issue on appeal that aspect of the misdemeanor convictions.

synonymous and that the statute applies only when the body part in question was clearly visible without clothing or was exposed without clothing and likely to be seen.[2] See also 1960 Va. Acts, ch. 233 (first enacting Code § 18.1-236, the predecessor statute, which proscribed the same behavior, "obscene display or exposure," as Code § 18.2-387).

"The term 'indecent exposure' had a precise, well defined meaning at common law . . . ." Wicks v. City of Charlottesville, 215 Va. 274, 276, 208 S.E.2d 752, 755 (1974) (interpreting a local ordinance containing the term "indecently expose").

> "[T]he best construction of [a] statute is[] to construe it as near to the reason of the common law as may be . . . ." The reason is that the Legislature is presumed to have known and to have had the common law in mind in the enactment of a statute. The statute must therefore be read along with the provisions of the common law, and the latter will be read into the statute unless it clearly appears from express language or by necessary implication that the purpose of the statute was to change the common law.

Id. (quoting Chichester v. Vass, 5 Va. (1 Call.) 83, 102 (1797)); see People v. Massicot, 118 Cal. Rptr. 2d 705, 711 (Cal. Ct. App. 2002) (holding that in the "absence of express definitions, . . . we may construe the statute to encompass indecent exposure as it was defined at common law" (citing 2A J.G. Sutherland, Statutes and Statutory Construction, § 50.03, at 435 (Norman J. Singer ed., 4th ed. 1984))). Further, penal statutes "must be strictly construed against the state and limited in application to cases falling clearly within the language of the statute." Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983). Both the history of the common law offense of indecent exposure and the language used by the legislature in enacting the successive code sections that have proscribed indecent exposure fail to support the conclusion

[2] No evidence established that Moses's covered penis was visible in outline form through his clothing in either of the incidents at issue. Thus, we need not consider whether such behavior would constitute a "display or exposure" in violation of Code § 18.2-387.

that the legislature intended to change the common law when it used the word "display" in its enactment of Code § 18.2-387.

At common law, indecent exposure involved intentionally exposing one's private parts in a manner that same could reasonably have been seen by members of the public.[3] Noblett v. Commonwealth, 194 Va. 241, 244-46, 72 S.E.2d 241, 243-44 (1952) (citing definitions indicating the offense is committed where the "'act is seen or is likely to be seen'" (quoting 67 C.J.S. Obscenity § 5, at 25 (1950))). The Supreme Court of Virginia has recognized a definition of common law "indecent exposure" that requires "'[e]xposure *to sight*.'" Wicks, 215 Va. at 276, 208 S.E.2d at 754 (quoting Black's Law Dictionary 909 (4th ed. 1951) (emphasis added)). Black's Law Dictionary, which is referenced in Wicks, treats the terms "exposure" and "display" as synonymous, defining "indecent *exposure*" as "[a]n offensive *display* of one's body in public, esp. of the genitals. Cf. Lewdness . . . ." Black's Law Dictionary 773 (7th ed. 1999) (emphases added); see also Noblett, 194 Va. at 245, 72 S.E.2d at 243-44 (referring to exposure as an "exhibition"); Black's, supra, at 595 (defining "exhibitionism" as an "indecent *display* of one's body" (emphasis added)); Massicot, 118 Cal. Rptr. 2d at 712 (noting that conduct sought to be prohibited by common law indecent exposure was "exhibitionism," which it defined as "the *display* of the male genital organs for sexual gratification" (emphasis added)).

We adopted just such a definition of "expose" in Siquina v. Commonwealth, 28 Va. App. 694, 697-99, 508 S.E.2d 350, 352-53 (1998), where we construed the portion of Code § 18.2-370, proscribing "knowingly and intentionally 'expos[ing] [one's] sexual or genital parts

[3] Indecent exposure "[s]tatutes have generally adopted the common law requirements of the offense of indecent exposure; to convict someone of indecent exposure, there must be shown a wilful and intentional exposure of the private parts of the body." 50 Am. Jur. 2d Lewdness, Indecency, and Obscenity § 17, at 291-92 (1995). Thus, courts typically have held that "[i]ndecent exposure at common law consists of exposure in public of the entire person or of parts that should not be exhibited." States v. Chiles, 767 P.2d 597, 599 (Wash. App. 1989); see also Massicot, 118 Cal. Rptr. 2d at 713.

to any child.'" Noting that the dispositive issue was whether the indecent liberties statute required that the child actually see the perpetrator's genitals, we held, based on analogy to the common law and the Supreme Court's interpretation of it in Noblett and Wicks, that actual viewing was not required, but that the evidence had to prove the genitals were "seen or likely to be seen." Siquina, 28 Va. App. at 698-99, 508 S.E.2d at 352-53. In doing so, we conducted an extended analysis of the "origin and contemporary definition of the verb 'expose'":

> "Expose" originated as an adaptation of the Latin verb "exponere," which includes the following definitions: 1) to put or bring out into the open, or 2) to put on show or *display*. 5 The Oxford English Dictionary 578 (2d ed. 1989); Oxford Latin Dictionary 651 (1982). Today, the definition has remained true to its roots. Webster's Third New International Dictionary 802 (1981), defines "expose" as "to lay open to view." In Black's Law Dictionary 579 (6th ed. 1990), "expose" is defined as: "To show publicly; *to display*; to offer to the public view . . . ." Black's definition of "indecent exposure" is also instructive: "This term refers to exhibition of those private parts which . . . human decency . . . require[s] shall be kept covered in [the] presence of others. Exposure . . . becomes indecent when it occurs at such time and place where [a] reasonable person knows or should know his act [may be viewed by] others." Id. at 768.

Id. at 697-98, 508 S.E.2d at 352 (emphases added); see also Brooker v. Commonwealth, 41 Va. App. 609, 616, 587 S.E.2d 732, 735 (2003) (adopting Siquina's definition of "expose").

The structure of the statute itself also fails to establish that the legislature did not intend the term "display" to be synonymous with the term "exposure." The legislature used the terms "display or exposure" in the first part of the statute to proscribe the behavior in which an individual may not himself or herself engage, but it used only the term "exposure" in the second half of the statute to set out the behavior in which an individual may not "procure" another to engage. It would be anomalous under the language of this statute to hold that the legislature intended to punish a defendant for engaging in either of two types of behavior himself but to punish him for enticing someone else to engage in only one of those two types of behavior. A

court must construe the challenged statute "from its four corners and not by singling out particular words or phrases." Smith v. Commonwealth, 8 Va. App. 109, 113, 379 S.E.2d 374, 376 (1989). "If the several provisions of a statute suggest a potential for conflict or inconsistency, we construe those provisions so as to reconcile them and to give full effect to the expressed legislative intent." Mejia v. Commonwealth, 23 Va. App. 173, 176-77, 474 S.E.2d 866, 868 (1996) (*en banc*). "[A] statute should never be construed so that it leads to absurd results." Branch v. Commonwealth, 14 Va. App. 836, 839, 419 S.E.2d 422, 424 (1992). Absent a clear legislative intent to the contrary, principles of statutory construction compel us to conclude the legislature intended that a "display" in violation of the statute also requires an "exposure."[4]

Thus, by its plain terms, the statute requires that the accused actually render visible or cause to be seen or likely to be seen the body or the proscribed part. The statute requires proof of some degree of nudity of the body or the private parts of the body under circumstances

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[4] An analogy between the use of the term "display" in the indecent exposure statute and Code § 18.2-53.1, which proscribes "display[ing]" a firearm in a threatening manner during the commission of certain felonies, is inapt for two reasons.

First, the Virginia cases construing the firearms statute to hold a weapon was displayed to a victim through a sense other than actual sight involved the sense of touch. See, e.g., Cromite v. Commonwealth, 3 Va. App. 64, 67-68, 348 S.E.2d 38, 40 (1986) (involving a robber who approached the victim with his hand in his pocket and "stuck something ['hard'] in his stomach . . . that 'felt . . . like a pistol'"). Here, Moses's conduct did not involve tactile experiences. Rather, they involved only vague visual manifestations not proved sufficient to show even the outline of a penis beneath his trousers. See *supra* footnote 2.

Second, the evils at which the two statutes are directed are entirely different. The presence of a firearm as an aid to a felony may be just as effective even where the firearm is not displayed visually; one need not see a firearm in order to be motivated by fear of the potential harm it represents. See Cromite, 3 Va. App. at 67-68, 348 S.E.2d at 40. In the case of indecent exposure, however, the core of the offense is just that--the exposure itself, coupled with the related shock and embarrassment, Massicot, 118 Cal. Rptr. 2d at 711-12, rather than the fear that it represents some intent to do physical harm to the victim. Other statutes criminalize sexual behavior that threatens direct physical contact or harm. As a result, what it means to display a firearm during the commission of a felony has little or no relevance to determining what types of displays violate the indecent exposure statute.

denoting obscenity and satisfying the other statutory requirements.[5] Cf. Copeland v. Commonwealth, 31 Va. App. 512, 515-16, 525 S.E.2d 9, 10-11 (2000) (holding that evidence of defendant's exposing his genitals and being visibly aroused in a woman's backyard was sufficient to support conviction for indecent exposure); Morales v. Commonwealth, 31 Va. App. 541, 543, 525 S.E.2d 23, 24 (2000) (holding evidence of defendant's exposing his erect penis and masturbating outside a lighted window sufficient to convict for indecent exposure).

III.

The evidence proved that Moses did not expose his genitalia or private parts to the children on either occasion.[6] The evidence proved Moses was fully clothed and exposed no part of his body as proscribed by the statute. Cf. Hart v. Commonwealth, 18 Va. App. 77, 80, 441 S.E.2d 706, 708 (1994) (holding that a man wearing "a skimpy G-string which covered only his penis and anus, leaving his pubic area and buttocks exposed," violated the statute by intentionally exposing in an obscene manner his pubic area and buttocks). In both instances, Moses rubbed his "private parts" beneath his clothing while looking at the girls and while in a position where the girls could see his conduct. In neither instance, however, did he cause to be visible any part of his body that he rubbed. One girl testified that she did not see the shape of his

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[5] See *supra* footnote 2.

[6] Citing Wicks and Siquina, the dissent suggests that we do not need to have an actual display of a person's genitalia in order to find conduct sufficient to convict for indecent exposure under Code § 18.2-387. The facts in Wicks showed, however, that while the police officer "could not be certain that he had actually seen the defendant's organ because his hand was covering it," the officer did testify that he saw the defendant "holding his hand in front of his trousers and . . . urinating" as he walked. 215 Va. at 275 n.1, 208 S.E.2d at 754 n.1. Thus, the defendant's conduct supported an inference beyond a reasonable doubt that the defendant's genitalia was actually exposed. Furthermore, in Siquina, while the child did not see the defendant's genitalia, the child's mother saw the defendant in the bathroom with her child and saw the defendant's erect penis. 28 Va. App. at 697, 508 S.E.2d at 352. Although Siquina dealt with Code § 18.2-370, taking indecent liberties with a child, the facts also showed that actual exposure of genitalia did occur.

penis as he rubbed it. The other girl testified only that he was standing behind a display rack "rubbing . . . his private area." She, likewise, did not see his genitalia.

The statute is not a general bar to a person's conducting himself or herself in an indecent or offensive manner. Thus, for example, the statute obviously does not purport to proscribe tight pants or sweaters or other garments that opaquely clothe the body but leave some portion of the population offended due to sensitivity about the tightness of the garment. It does not, by its terms, bar hand gestures that might be considered offensive. Indeed, nothing in the statutory words, when given their meanings in ordinary parlance, bars a person from the mere act of rubbing himself or herself without proof of more. The statute bars "obscene" conduct, not indecent conduct that does not expose parts of the body. See, e.g., State v. Jaime 236 A.2d 474, 475 (Conn. Cir. Ct. 1967) (holding that defendant's "shaking his hand in his pelvic region" and exposing white underpants was insufficient to support a conviction for violating statute prohibiting "wantonly and indecently expos[ing] his person"); State v. Wymore, 560 P.2d 868, 869-70 (Idaho 1977) (holding that a statute barring a person from "publicly expos[ing] his person or his genitals" does not reach obscene gestures and comments where the accused did not expose his private parts).

This case is not about a disagreement over whether Moses's acts were rude, disgusting, or indecent. It also is not about freeing a pedophile. Moses is serving a ten-year sentence, with four years suspended on various conditions, for the felony of taking indecent liberties with a child pursuant to Code § 18.2-370. Further, the prosecutor obviously selected among the various other statutes under which Moses could have been prosecuted in deciding how to proceed. See, e.g., Code § 18.2-67.3 (proscribing aggravated sexual battery); Code § 18.2-67.4 (proscribing sexual battery); Code § 18.2-370(1) (proscribing indecent liberties with children); see also Code § 18.2-26 (proscribing *attempts* to commit noncapital felonies); Jaime, 236 A.2d at 475-76

(holding defendant's "shaking his hand in his pelvic region" and exposing white underpants did not violate indecent exposure statute but might amount to disorderly conduct). If any gaps exist in the types of behavior the various statutes proscribe, it is the job of the legislature, not the courts, to fill those gaps. See, e.g., United States v. Statler, 121 F. Supp. 2d 925, 927 & n.6 (E.D. Va. 2000) (holding "there is little doubt that masturbation in a public bathroom, if proven, fits well within *the federal regulation* proscribing 'a display or act that is obscene'" but emphasizing that the federal regulation is "*broader* than . . . the Virginia indecent exposure statute" because the Virginia statute "requires a display or exposure of parts of one's body [whereas the federal regulation] does not" (emphases added)); see also Ohio Rev. Code Ann. § 2907.09 (2004) (proscribing public indecency, which it defines to include "recklessly" "(1) [e]xpos[ing] his or her private parts, or engag[ing] in masturbation; (2) [e]ngag[ing] in sexual conduct; [or] (3) [e]ngaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation"); Duvallon v. District of Columbia, 515 A.2d 724, 725 n.1 (D.C. 1986) (analyzing conviction for indecent exposure under statute making it unlawful "for any person or persons to make any obscene or indecent exposure of his or her person, *or* to make any other lewd, obscene, or indecent sexual proposal, *or* to commit any other lewd, obscene, or indecent act" (emphases added)); State v. Ovitt, 535 A.2d 1272, 1275-76 (Vt. 1986) (under statute proscribing "open and gross lewdness and lascivious behavior" without further defining that offense, holding evidence sufficient to support conviction where defendant masturbated publicly through clothing but did not expose his genitals).

Thus, the dispositive issue in this case is whether Moses's behavior constituted "an obscene display . . . of his person, or the private parts thereof" or "an obscene . . . exposure of his person, or the private parts thereof," analogizing to the common law definition of that offense. Absent proof that either of the girls saw or was reasonably likely to have seen Moses's genitals,

at least partially uncovered, the evidence was insufficient to support the convictions under the particular statute at issue in this case, regardless of the intent with which Moses acted.[7] It is our job to interpret and apply the laws the legislature has enacted.[8] For these reasons, we reverse both misdemeanor convictions.

Reversed and dismissed.

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[7] Although the dissent contends otherwise, our present holding, in conjunction with existing case law, does not compel the conclusion that a female swimmer wearing a thong bathing suit violates the indecent exposure statute whereas a man masturbating beneath his trench coat does not. The indecent exposure statute requires both a proscribed act and a particular intent. Our decision in Hart involved not a swimmer at the beach but a man in an office supply store who wore Velcro shorts which he dropped to reveal a "real skimpy," "form-fitting" "G-string" that showed the outline of his penis and provided no coverage for his remaining pubic area and buttocks. 18 Va. App. at 78, 441 S.E.2d at 706-07. We held Hart violated the statute not only because his choice of attire "constituted 'an exposure of his person, or the private parts thereof,'" by exposing his groin and buttocks, but also because his behavior, including his suggestive statements to the store clerk about his G-string and shorts, his delay in putting his shorts back on, and his return to the store wearing the same shorts six days later, indicated an intent to make "an obscene display or exposure." Id. at 79-80, 441 S.E.2d at 707-08.

Thus, under Hart, a sunbather wearing a G-string swim suit at the beach might violate the "exposure" portion of the statute, but more would be required to prove she acted with the requisite intent. In the case of a man masturbating in obvious fashion beneath his trench coat without exposing his person or private parts to public view, just the reverse would likely be true--the evidence would establish that his behavior was obscene but would not establish the requisite exposure of his person or private parts. The possible existence of a gap in the statutes proscribing obscene and lewd behavior does not permit the judiciary to expand the scope of the offense of indecent exposure beyond its statutory and common law bounds.

[8] If, as the dissenter posits, Moses's case involves "a pedophile['s] masturbating in front of a young child as he tries to talk her into being his next victim," that was a matter for the Commonwealth to consider in determining what offenses to charge. The failure to charge under the appropriate statute does not justify our upholding Moses's convictions for two counts of an offense the evidence does not prove he committed.

Supplement 3

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U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Supplement in attachment to "PETITIONER'S SECOND MOTION FOR SANCTIONS AND TO VACATE JUDGMENT THAT WAS IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

COURT OF APPEALS OF VIRGINIA

UNPUBLISHED

Present: Judges Beales, Alston and Senior Judge Willis
Argued at Alexandria, Virginia

A. M.*

v. Record No. 1150-12-4

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION** BY
JUDGE RANDOLPH A. BEALES
FEBRUARY 12, 2013

FROM THE CIRCUIT COURT OF SHENANDOAH COUNTY
Dennis L. Hupp, Judge

D. Eric Wiseley (The Wiseley Law Firm, PLC, on briefs), for appellant.

Katherine Quinlan Adelfio, Assistant Attorney General (Kenneth T. Cuccinelli, II, Attorney General, on brief), for appellee.

On September 29, 2011 A.M. (appellant) was convicted of the misdemeanor of indecent exposure in violation of Code § 18.2-387 in the Juvenile and Domestic Relations District Court of Shenandoah County. On appeal for a trial *de novo*, the Circuit Court for the County of Shenandoah found appellant guilty of the same charge, and on February 15, 2012 sentenced him to fifty hours of community service. Appellant argues on appeal that the trial court erred when it found the evidence sufficient to convict him of indecent exposure, pursuant to Code § 18.2-387, because the obscenity element of that statute was not satisfied. For the following reasons, we reverse appellant's conviction.

* We use initials for the appellant and the juvenile witness in an attempt to protect their identities, given that they are juveniles.

** Pursuant to Code § 17.1-413, this opinion is not designated for publication.

I. BACKGROUND

Appellant, a fourteen-year-old middle school student, was a regular passenger on a school bus driven by Ms. Bridget Vance Keffer. Ms. Keffer had driven appellant's bus for two years, and she described his general conduct on her bus as "not very good, at times." She testified that he would throw papers, would not remain in his seat, and was loud sometimes. She noted, though, that "he's not the worst." Before June 8, 2011 (the date of the incident at issue), the record does not include any evidence of any overtones of sexuality in appellant's behavior toward Ms. Keffer.

Appellant's bus stop was near the end of the bus route. In fact, appellant's home was the second to last stop, such that when appellant got off the bus, the only other passenger left was another juvenile student, J.G. June 8, 2011 was the last day of school before summer vacation. Ms. Keffer testified that, on that date, when only J.G., appellant, and she were on the bus, "[appellant] made a comment to [her] that [she] had nice lips." Ms. Keffer testified that she did not respond because it was "[appellant's] last day, and [she] didn't even want to get into it with him."

A couple minutes later, the bus approached appellant's home. J.G. and appellant were sitting two or three seats behind Ms. Keffer. As appellant went to exit the bus by descending the steps, Ms. Keffer testified that he stopped and asked her, "Ms. Bridget, you want to know what the little piggy said all the way home?" Ms. Keffer responded, "No, [A.M.]. Just go home, have a good summer." Ms. Keffer testified that appellant then "stepped down on the second step on the bus, turned around, dropped his pants down to his . . . around his knees, and jumped off the bus, and ran up his lane, going wee, wee, wee." Ms. Keffer stated that she "did not see his privates," but did see his exposed buttocks.

Testifying for the Commonwealth, J.G. testified that he saw appellant get off the bus with his pants down, crying "wee, wee, wee, wee, wee . . . with the pig thing." Appellant had notified J.G. beforehand that he would get off the bus with his pants down. J.G. testified that appellant did not tell Ms. Keffer that he wanted to have any type of sexual relations with her. He also testified that appellant did not do anything overtly sexual during the incident. J.G. stated that he did not observe appellant flirt with Ms. Keffer or try to have any sexual contact with her. J.G. did not see anything in appellant's behavior that made him think appellant was making any sort of sexual overtures. J.G. did not hear the comment from appellant to Ms. Keffer, in which appellant said that she had "nice lips."

Appellant did not present any evidence. Appellant moved to strike the evidence. The trial court denied the motion to strike, and found appellant guilty as charged. A final order convicting appellant was entered on February 15, 2012, and this appeal followed.

II. ANALYSIS

Appellant argues that the trial court erred when it found the evidence sufficient, as a matter of law, to convict appellant of indecent exposure, pursuant to Code § 18.2-387 – and argues specifically that the obscenity element of the statute was not satisfied.

When considering the sufficiency of the evidence on appeal, "a reviewing court does not 'ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" Crowder v. Commonwealth, 41 Va. App. 658, 663, 588 S.E.2d 384, 387 (2003) (quoting Jackson v. Virginia, 443 U.S. 307, 318-19 (1979)). "Viewing the evidence in the light most favorable to the Commonwealth, as we must since it was the prevailing party in the trial court," Riner v. Commonwealth, 268 Va. 296, 330, 601 S.E.2d 555, 574 (2004), "[w]e must instead ask whether '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,'" Crowder, 41 Va. App. at 663, 588 S.E.2d at 387 (quoting

Kelly v. Commonwealth, 41 Va. App. 250, 257, 584 S.E.2d 444, 447 (2003) (*en banc*)). See also Maxwell v. Commonwealth, 275 Va. 437, 442, 657 S.E.2d 499, 502 (2008). The Commonwealth's evidence must exclude every reasonable hypothesis of innocence. See Yarborough v. Commonwealth, 247 Va. 215, 218, 441 S.E.2d 342, 344 (1994).

Code § 18.2-387, the statute under which appellant was convicted, states:

> Every person who intentionally makes an *obscene* display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

(Emphasis added).

While "private parts" can include the buttocks, Hart v. Commonwealth, 18 Va. App. 77, 79, 441 S.E.2d 706, 707 (1994), Code § 18.2-387 does not criminalize mere exposure of a naked body, see Price v. Commonwealth, 214 Va. 490, 493, 201 S.E.2d 798, 800 (1974) ("A portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene."). Instead, a conviction under Code § 18.2-387 requires proof beyond a reasonable doubt of obscenity.

Code § 18.2-372 defines the word "obscene" accordingly:

> The word "obscene" where it appears in this article shall mean that which, considered as a whole, has as its *dominant theme or purpose an appeal to the prurient interest in sex*, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, *excretory functions or products thereof* or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value.

(Emphasis added).

The "obscenity" element of Code § 18.2-387 may be satisfied when: (1) the accused admits to possessing such intent, Moses v. Commonwealth, 45 Va. App. 357, 359-60, 611 S.E.2d

607, 608 (2005) (*en banc*); (2) the defendant is visibly aroused, Morales v. Commonwealth, 31 Va. App. 541, 543, 525 S.E.2d 23, 24 (2000); (3) the defendant engages in masturbatory behavior, Copeland v. Commonwealth, 31 Va. App. 512, 515, 525 S.E.2d 9, 10-11 (2000); or (4) in other circumstances when the totality of the circumstances supports an inference that the accused had as his dominant purpose a prurient interest in sex. See Jackson, 443 U.S. at 319. Even with properly according the trial court's factfinding "with the highest degree of appellate deference," Thomas v. Commonwealth, 48 Va. App. 605, 608, 633 S.E.2d 229, 231 (2006), the record here does not support the conclusion that appellant's conduct was obscene, as is defined in Code § 18.2-372 and as required by Code § 18.2-387. It was repulsive, disrespectful, and inappropriate in every way – but not actually "obscene" as the General Assembly has defined the meaning of that term in Code § 18.2-372.

When the evidence is "considered as a whole," it is simply insufficient to prove beyond a reasonable doubt that appellant's conduct was obscene as defined by Code § 18.2-372. The question on appeal is not whether a rational factfinder could infer a sexual aspect about appellant's conduct. Instead, the question is whether a rational factfinder could find that appellant's conduct had, as its "*dominant* theme or purpose an appeal to the *prurient* interest in sex, that is, a *shameful or morbid interest* in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse." Code § 18.2-372 (emphasis added).

Here, the trial court found:

> I don't look at either incident--that is, the statement about the lips, the dropping of the pants--separately, and look at each of them in a vacuum. You look at the total, the conduct as a package. Here, he makes the comment about having pretty lips, and then, shortly thereafter, drops his pants.
>
> Now, I agree, making a comment to someone that you have pretty lips, standing alone, is not necessarily *a sexual comment*. It depends on the circumstances surrounding it. Dropping his pants, standing alone, perhaps would not have *a sexual content*. But it is

> the two acts together, in close proximity, that I think makes this a violation of the statute.

(Emphasis added).

The trial court inferred that appellant's statement was "a sexual comment" and that appellant's actions, considered as a whole, had "a sexual content." The trial court was entitled to make these inferences. However, proof that appellant's actions had "a sexual content" is the incorrect legal standard here and is an insufficient basis upon which to conclude that the obscenity element of Code § 18.2-387 was satisfied beyond a reasonable doubt.

Even viewing the totality of the evidence in the light most favorable to the Commonwealth, as we must since it was the prevailing party below, the trial court's conclusion that appellant's conduct violated the *obscenity* element of Code § 18.2-387 was plainly wrong. See Code § 8.01-680. Appellant's comment that Ms. Keffer had "nice lips" could have been a sexual comment, as the trial court inferred, but that lone comment was not coupled by evidence of any other statements[1] or actions demonstrating that the *dominant* theme of his conduct was a *prurient* interest in sex – i.e., "a *shameful* or *morbid* interest" in, *inter alia*, "sexual conduct" or "sexual excitement." Code § 18.2-372 (emphasis added). For example, nothing in the record on appeal even suggests that appellant invited any sexual conduct with Ms. Keffer, hinted at any sexual excitement on his part, or, when he dropped his pants upon exiting the bus (with his back to Ms. Keffer and running away from her), displayed his sexual organs to her (or to anyone else). In fact, Ms. Keffer testified that she "did not see his privates." Moreover, there was no evidence that appellant had ever made sexual comments or acted in a sexual manner in the presence of

[1] The Commonwealth argues that appellant's statement as he mooned Ms. Keffer and ran down the street – "wee, wee, wee" – referred to excretory functions under Code § 18.2-372. While the trial court was entitled to make such an inference, it was plainly wrong to conclude that the *dominant* theme of appellant's statement and conduct was a prurient interest in sex, as required by Code § 18.2-372.

Ms. Keffer before June 8, 2011 (the date of the incident before us), which was the last day of school.

Appellant's conduct here certainly does not rise to the level that this Court found obscene in Hart. There, Hart entered an office supply store wearing a "G-string" swimsuit covered by short running shorts. 18 Va. App. at 78, 441 S.E.2d at 706. While a clerk waited on him, Hart pulled down his running shorts (or he allowed them to fall) to expose his pubic area and buttocks, while asking the clerk what she thought of "the whole picture." Id. at 78, 441 S.E.2d at 706. Hart told the clerk that he liked the Velcro on his shorts because it allowed for "easy access to women who wanted him." Id. at 78, 441 S.E.2d at 707. This Court held, that based on Hart's "statements, in conjunction with his actions . . . [t]he trial court was entitled to conclude that . . . his actions had as their dominant purpose an appeal to the prurient interest in sex as defined in the Code." Id. at 80, 441 S.E.2d at 707. The contrast between Hart's behavior and appellant's behavior is illustrative. Whereas the sexual nature of Hart's conduct was extremely overt, whatever sexual aspect of appellant's conduct, if any, could only be inferred.

The evidence fails to exclude the reasonable hypothesis that the dominant purpose of appellant's conduct – i.e., "mooning" Ms. Keffer two minutes after he told her she had "nice lips" – was to pull a "prank" on his bus driver on the last day of school – albeit an extremely inappropriate and repulsive one. Therefore, we find that a rational factfinder could not conclude that the fourteen-year-old appellant's statement and actions when "considered as a whole, [had as their] dominant theme or purpose an appeal to the prurient interest in sex." Code § 18.2-372. Consequently, he could not be found guilty under Code § 18.2-387.[2]

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[2] On brief and during oral argument before this Court, appellant's counsel acknowledged that his client potentially was criminally culpable for disorderly conduct under Code § 18.2-415, but argued that the required "obscene" element was missing so that appellant could not be convicted of indecent exposure under Code § 18.2-387. Disorderly conduct, under Code § 18.2-415, is not a lesser-included offense of the misdemeanor of indecent exposure, under Code § 18.2-387.

In indecent exposure cases, the Commonwealth is also obliged to prove that the defendant's conduct violated "contemporary community standards of sexual candor." Morales, 31 Va. App. at 544, 525 S.E.2d at 24 (citing House v. Commonwealth, 210 Va. 121, 126, 169 S.E.2d 572, 576 (1969)). However, we do not need to reach the question of whether appellant's conduct violated "contemporary community standards of sexual candor" because we have concluded that the evidence simply cannot support the conclusion that appellant's behavior was obscene, as defined by Code § 18.2-372, and as required for conviction under Code § 18.2-387.

III. CONCLUSION

Although appellant's behavior was certainly inappropriate and repulsive, it does not rise to the level of obscenity required under Code § 18.2-387, as defined in Code § 18.2-372. Accordingly, we must reverse the trial court's conviction of appellant under Code § 18.2-387.

Reversed and dismissed.

Supplement 4

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U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Supplement in attachment to "PETITIONER'S SECOND MOTION FOR SANCTIONS AND TO VACATE JUDGMENT THAT WAS IN PLAINTIFF'S/RESPONDENT'S FAVOR -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF REQUESTING THE HONORABLE COURT IN THIS CASE VACATE FRAUDULENT BEGOTTEN JUDGMENT OR JUDGMENTS"

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Petty and Alston
Argued by teleconference

KIMBERLY F. NEICE

v. Record No. 1477-09-3

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE ROSSIE D. ALSTON, JR.
JUNE 8, 2010

FROM THE CIRCUIT COURT OF GILES COUNTY
Colin R. Gibb, Judge

Richard L. Chidester (Hartley & Chidester, P.C., on brief), for appellant.

Richard B. Smith, Special Assistant Attorney General (Kenneth T. Cuccinelli, II, Attorney General, on brief), for appellee.

Kimberly F. Neice (appellant) appeals from two convictions for indecent exposure, in violation of Code § 18.2-387. On appeal, appellant contends the evidence was insufficient to establish that her actions had as their dominant purpose an appeal to the prurient interest in sex. For the reasons that follow, we agree with appellant and reverse her convictions.

I. BACKGROUND[1]

On appeal, "we review the evidence in the 'light most favorable' to the Commonwealth." Pryor v. Commonwealth, 48 Va. App. 1, 4, 628 S.E.2d 47, 48 (2006) (quoting Commonwealth v. Hudson, 265 Va. 505, 514, 578 S.E.2d 781, 786 (2003)). "Viewing the record through this evidentiary prism requires us to 'discard the evidence of the accused in conflict with that of the

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

[1] As the parties are fully conversant with the record in this case, and because this memorandum opinion carries no precedential value, this opinion recites only those facts and incidents of the proceedings as are necessary to the parties' understanding of this appeal.

Commonwealth, and regard as true all the credible evidence favorable to the Commonwealth and all fair inferences to be drawn therefrom.'" Cooper v. Commonwealth, 54 Va. App. 558, 562, 680 S.E.2d 361, 363 (2009) (quoting Parks v. Commonwealth, 221 Va. 492, 498, 270 S.E.2d 755, 759 (1980) (emphasis omitted)).

So viewed, the evidence showed that appellant was a family friend of twelve-year-old L.S., eleven-year-old J.M., and twelve-year-old D.S.[2] On several occasions, while appellant and the three boys were "joking around," appellant exposed her breasts to the boys.[3] Appellant told the boys they were babies, lifted up her shirt, and said, "Would you want some of Mama Kim's milk?," "[D.S.] loves my ninnies," or "[D.S.] likes my big boobies." Sometimes appellant was wearing a bra when she lifted up her shirt and sometimes she was not. On at least one occasion, she put the boys' heads under her shirt. These incidents occurred at appellant's residence and J.M.'s parents' residence. At least one of the boys' parents was present when each incident occurred.

Appellant was charged with three counts of indecent exposure, in violation of Code § 18.2-387. At appellant's trial, J.M.'s mother testified that the families were always joking and that the boys would "pick at" appellant and appellant would "pick back." J.M.'s mother stated that "a lot of times [the boys] would come in, wanting to go somewhere and do something[;] . . . they were whining and [appellant] was just referring to them as babies." She stated that appellant never made any sexual comments to the children. She further testified that she never told appellant to stop her behavior, but she would say, "Oh Kim, come on," and then try to

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[2] The evidence showed that appellant also had a daughter around the same age as the three boys.

[3] L.S. testified that he saw appellant's breasts between ten and fifteen times. J.M. testified that appellant exposed her breasts several times but he did not know exactly how many times. D.S. testified that it happened once, but he subsequently described two separate incidents.

change the subject. D.S.'s mother testified that she found nothing inappropriate about appellant's behavior toward her son.

L.S. testified that appellant and the three boys picked on each other a lot. When asked if everyone was "laughing and cutting up" when the exposures occurred, L.S. responded, "Yes." J.M. testified that when the exposures occurred, they were "joking around," as they did frequently. J.M. stated that appellant never said anything of a sexual nature to him. However, the boys said appellant's actions embarrassed them and made them feel uncomfortable.

Appellant admitted to joking with the boys and to pulling up her shirt. She denied that she ever lifted her shirt while she was not wearing a bra. She also denied ever putting the boys' heads under her shirt or saying anything of a sexual nature to any of the children.

The trial court convicted appellant of two counts of indecent exposure, in violation of Code § 18.2-387.[4] This appeal followed.

II. ANALYSIS

Under well-established principles of appellate review, "[t]he judgment of a trial court . . . will not be set aside unless it appears from the evidence that the judgment is plainly wrong or without evidence to support it." Morales v. Commonwealth, 31 Va. App. 541, 543, 525 S.E.2d 23, 24 (2000); Code § 8.01-680. The "appellate court does not 'ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.' Rather, the relevant question is whether '*any* rational trier of fact could have found the essential elements of the

[4] Appellant was charged with three counts of indecent exposure, one count regarding her exposure to each child. At the close of the evidence, the trial court sustained appellant's motion to strike the charge of indecent exposure, regarding her actions toward D.S. During his testimony, D.S. admitted that appellant was always wearing a bra when she exposed her breasts to him and the trial court held, "I just don't think there's sufficient evidence to proceed on the charge involving [D.S.]."

crime beyond a reasonable doubt.'" Williams v. Commonwealth, 278 Va. 190, 193, 677 S.E.2d 280, 282 (2009) (quoting Jackson v. Virginia, 443 U.S. 307, 318-19 (1979)).

Appellant contends the evidence was insufficient to prove she committed indecent exposure in violation of Code § 18.2-387 because the evidence did not establish that her actions had, as their dominant purpose, an appeal to the prurient interest in sex. Code § 18.2-387 states, "Every person who intentionally makes an *obscene* display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor." (Emphasis added).[5] Thus, by its terms, Code § 18.2-387 requires the Commonwealth to prove that appellant's exposure was *obscene*.

"A portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene." Price v. Commonwealth, 214 Va. 490, 493, 210 S.E.2d 798, 800 (1974) (citing House v. Commonwealth, 210 Va. 121, 127, 169 S.E.2d 572, 577 (1969)). What is "obscene" under applicable law has plagued the courts for the last fifty years. In an oft-quoted remark, Justice Potter Stewart noted, "I shall not today attempt further to define the kinds of material I understand to be [obscene] . . . and perhaps I could never succeed in intelligibly doing so. But I know it when I see it . . . ." Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). This quote aptly summarizes the difficulty faced by the Court in obscenity cases.

"'On appeal, we must make an independent determination of the constitutional issue of obscenity, which is a mixed question of law and fact.'" Lofgren v. Commonwealth, 55 Va. App. 116, 119-20, 684 S.E.2d 223, 225 (2009) (quoting Allman v. Commonwealth, 43 Va. App. 104,

[5] "Private parts" include not only a person's genitalia, but also one's "'anus, groin, *breast* or buttocks.'" Hart v. Commonwealth, 18 Va. App. 77, 79, 441 S.E.2d 706, 707 (1994) (quoting Code § 18.2-67.10(2)) (emphasis added).

110, 596 S.E.2d 531, 534 (2004)). The Court must examine the particular circumstances of each case to determine whether an item is obscene. Id. at 121, 684 S.E.2d at 226.

"Obscene" is defined as,

> that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value.

Code § 18.2-372.

> Under this definition, . . . three elements must coalesce: it must be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

House, 210 Va. at 125, 169 S.E.2d at 575; accord Price v. Commonwealth, 213 Va. 113, 115, 189 S.E.2d 324, 326 (1972), vacated and remanded, 413 U.S. 912, aff'd on reh'g, 214 Va. 490, 201 S.E.2d 798 (1974). Appellant challenges the sufficiency of the evidence to prove her actions had as their dominant theme or purpose a prurient interest in sex.

Defining what constitutes a prurient interest in sex, this Court has held the statute proscribing indecent exposure may be satisfied when: (1) the defendant admits possessing such intent, Moses v. Commonwealth, 45 Va. App. 357, 359-60, 611 S.E.2d 607, 608 (2005) (*en banc*) (affirming the defendant's conviction based in part on his statement that his underlying motive was "the need to fulfill [his] sex drive"); (2) the defendant is visibly aroused, see Morales, 31 Va. App. at 542, 525 S.E.2d at 24; Copeland v. Commonwealth, 31 Va. App. 512, 515, 525 S.E.2d 9, 10-11 (2000); or (3) the defendant engages in masturbatory behavior in front

of the victim(s), see Moses, 45 Va. App. at 359, 611 S.E.2d at 608; Morales, 31 Va. App. at 542, 525 S.E.2d at 24; Copeland, 31 Va. App. at 515, 525 S.E.2d at 10-11.

However, the totality of the circumstances may also support an inference that the accused had as his dominant purpose a prurient interest in sex, even if none of these factors is present. In Hart v. Commonwealth, 18 Va. App. 77, 78, 441 S.E.2d 706, 706 (1994), Hart entered an office supply store wearing a "G-string" swimsuit covered by short running shorts. While a store clerk was helping Hart locate an item in the store, Hart pulled down his shorts and asked the clerk what she thought of "the whole picture." Id. at 78, 441 S.E.2d at 706-07. Hart's swimsuit covered his genitals but his pubic area and buttocks were exposed. Id. at 78, 441 S.E.2d at 706. Hart told the store clerk that he liked the Velcro on his shorts because it allowed for "easy access to women who wanted him"; however, he denied purposefully taking off his shorts. Id. at 78, 441 S.E.2d at 707. This Court held that based on Hart's "statements, in conjunction with his actions," "[t]he trial court was entitled to conclude that . . . his actions had as their dominant purpose an appeal to the prurient interest in sex as defined in the Code." Id. at 80, 441 S.E.2d at 707.[6]

In the instant case, the question before us is whether appellant had as her dominant purpose "a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse." Code § 18.2-372. If the question before us was whether appellant's conduct was indiscrete, bizarre, inappropriate, or in bad taste,

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[6] The Commonwealth also cites Willis v. Commonwealth, No. 0173-04-2, 2005 Va. App. LEXIS 58, at *8 (Feb. 8, 2005), an unpublished opinion, in which Willis, a transvestite, exposed his augmented breasts and buttocks while "parading up and down a street in an area known for illegal prostitution." Willis exposed his body parts on several occasions for an extended period of time, and made no attempt to cover himself. Id. This Court held that "Willis' conduct was both intentional and done with the purpose of 'appealing to the prurient interest in sex.'" Id. (quoting Code § 18.2-372; citing Hart, 18 Va. App. at 79-80, 441 S.E.2d at 707). In both Willis and Hart, the Court noted that there was no explanation for the defendant's behavior other than the defendant engaged in the behavior with a prurient interest in sex.

it would likely be an easier question for us to resolve. However, our inquiry requires a more challenging examination. Accordingly, we consider the evidence as a whole and the statements appellant made in conjunction with her actions.

The uncontroverted evidence showed that appellant's actions, albeit bizarre, were always done in a "joking" manner.[7] Unlike many of the cases in which the defendant's physical behavior indicates a prurient interest in sex exists, appellant did not exhibit the outward signs of sexual interest, such as visible arousal or masturbatory behavior. See Moses, 45 Va. App. at 359, 611 S.E.2d at 608; Morales, 31 Va. App. at 542, 525 S.E.2d at 24; Copeland, 31 Va. App. at 515, 525 S.E.2d at 10-11. Further, unlike Hart, appellant's statements did not irresistibly lead to the conclusion that appellant's actions were sexual in nature. On the contrary, in context, appellant's statement, "Would you want some of Mama Kim's milk?," corroborated the testimony of appellant, the alleged victims, and their parents, that appellant's action was in response to the children's whining, as if they were babies who needed milk. The alleged victims and their parents testified that appellant's other comments,"[D.S.] loves my ninnies," or "[D.S.] likes my big boobies," were made in the same joking context.

The Commonwealth was required to prove, beyond a reasonable doubt and to the exclusion of "every reasonable hypothesis of innocence," Smith v. Commonwealth, 218 Va. 927, 930, 243 S.E.2d 463, 464 (1978), that appellant's actions had as their *dominant* theme or purpose a prurient interest in sex. The evidence, taken as a whole, simply does not exclude the reasonable hypothesis of innocence suggesting that appellant's actions, although indiscriminate,

[7] We do not condone appellant's behavior, and we wholeheartedly agree with appellant's concession at trial and on appeal that she exercised poor judgment. Furthermore, this holding is not meant to suggest that actions similar to these in other contexts or those committed in an attempt to be humorous are always committed without a prurient interest in sex. However, under the circumstances of this case, appellant's *indiscretions* did not rise to the level of criminal culpability sufficient to prove *indecency*.

were not criminal in nature. There is no evidence whatsoever to support the conclusion that appellant's dominant purpose in exposing her breasts was sexual in nature, or fostered a shameful or morbid interest in nudity, sexual conduct, or sexual excitement.

Accordingly, under the circumstances of this case, appellant's conduct was not "obscene" as a matter of law. For these reasons, the trial court erred in concluding the Commonwealth proved this element of the offense.

III. CONCLUSION

For the foregoing reasons, we conclude the evidence was insufficient to prove appellant exposed herself in an obscene manner, and therefore, insufficient to support her convictions for indecent exposure. Accordingly, we reverse appellant's convictions.

Reversed and dismissed.

Joint Appendix 5

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U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Joint Appendix in attachment to "PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MOTION FOR STAY OF DISTRICT COURT JUDGMENT PENDING MANDAMUS"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BRIAN DAVID HILL, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	)	NOTICE Case Number: 17CV1036/13CR435-1

The Magistrate Judge's Order and Recommendation in the above-entitled action has been filed and entered upon the docket in this case. Pursuant to Fed. R. Civ. P. 72(b), 6(a), and 6(d), objections to the Magistrate Judge's Order and Recommendation in this case must be filed and served by Monday, November 4, 2019 for those parties who receive this notice via CM/ECF and Thursday, November 7, 2019 for those parties who receive this notice via postal mail.

Rule 72(b), Fed. R. Civ. P. provides in pertinent part: (b) Dispositive Motions and Prisoner Petitions.

***

Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portion of it the parties agree to or the magistrate judge considered sufficient.

You are hereby notified that unless written objections to the Magistrate Judge's Order and Recommendation are served and filed as provided in the federal rules, the District Judge shall enter an appropriate order or judgment but need not make a de novo review of the Magistrate Judge's Order and Recommendation. Therefore, if you fail to serve and file objections within the time limitation provided by the rules, as computed in this notice, you may waive your right to question on appeal the substance of the Order and Recommendation of the Magistrate Judge accepted by the District Judge.

If you are a CM/ECF participant in the above-captioned case, you have been served with the Magistrate Judge's Order and Recommendation by a Notice of Electronic Filing. Non-CM/ECF participants have been mailed a copy of this Notice and the related Magistrate Judge's Order and Recommendation on 10/21/2019. For a listing of parties served, refer to this document's Notice of Electronic Filing.

John S. Brubaker, Clerk

By: /s/Leah J. Garland
Deputy Clerk

Joint Appendix 6

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UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Joint Appendix in attachment to "PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MOTION FOR STAY OF DISTRICT COURT JUDGMENT PENDING MANDAMUS"

Dear Hon. U.S. Magistrate Judge Joe Webster
323 E. Chapel Hill ST, Room 2,
Durham, N.C. 27701-3351,
CC: Assistant U.S. Attorney Anand Prakash Ramaswamy
Re: 1:13-CR-435-1, 2255:1:17-CV-1036,

I, Brian D. Hill Petitioner of my filed 2255 Motion and 2255 Brief/Memorandum-of-Law (Documents 125 et seq.) am notifying you that I won't let a guy in a hoodie who had threatened to kill my mother (Documents 152 et seq.) stop me from proving my factual innocence in this case. Being temporarily in FCI Butner prison for a mental evaluation study has severely crippled my ability to prove factual innocence and prove AUSA Ramaswamy's fraud upon the Court. However I am ready for an evidentiary hearing if necessary, As Soon As Possible (ASAP), and I am ready for effective assistance of Counsel to be appointed for my 2255 case. The need for such a hearing is long overdue. According to the U.S. Supreme Court case law Chambers v. Nasco INC, 501 US 32, 115 L.ED 2d 27, 111 S Ct 2123 (1991), Courts § 18 "inherent or implied powers", as well as Courts § 225.1; Equity § 47 "power to vacate fraudulent judgment", this Court has an inherent power to investigate a fraud upon the Court and to vacate an earlier judgment upon proof of such fraud. The fraud upon the Court is caused by both ineffective assistance of Counsel forcing me to falsely plead guilty under Oath, and a fraud upon the Court by a false factual basis of guilt in this criminal case.

1 2255 letter #01

The fraud in the fact that I never got to review over the entire discovery evidence with Attorney Eric David Placke, before he persuaded me to falsely plead guilty under Oath means I had plead guilty without understanding the full weight of the very evidence that the prosecution had used against me in my case. The "Factual Basis" of my guilt provided by the Government prior to Sentencing was Fraudulent. My confession statements were proven to ~~inaccurate~~ be inaccurate and false, a false confession caused by my Autism because of the way I was interrogated. The SBI, that is the State Bureau of Investigation and through their Case File (forensic report) reported files/images/videos of interest but there was NO affidavit verifying/confirming whether each such file could have been actual child pornography. In addition to that, the SBI case file said that 454 files had been downloaded with the eMule program between July 20, 2012, and July 28, 2013, while my computer was ~~seiv~~ seized on August 28, 2012. The criminal Judgment of guilty on November 12, 2014 was a fraudulent Judgment based upon fraud on the Court. Letter respectfully filed with both the Hon. Magistrate Judge of the Court and the AUSA Ramaswamy on this the 24th day of January, 2019.

U.S.W.G.O. Brian D. Hill
signed

Brian David Hill #29947-057
Federal Correctional Institution 1
Old NC Hwy 75; P.O. Box 1000
Butner NC. 27509

My friend's blog:
JusticeForUSWGO.wordpress.com
God Bless America
God Bless You.

2

2255 letter #01

Magistrate's Copy

To Anand Prakash Ramaswamy,
Re: 1:13-CR-435
Dated: January 23, 2019
United States Attorney Office
Middle District of North Carolina
CC: Hon. U.S. Magistrate Judge Joe Webster
101 S. Edgeworth ST, 4th Flr, Greensboro, NC,

I just want my life back I am respectfully giving you an olive branch to do what is right. President Donald Trump's Art of the Deal. God Bless You. You understand with the threatening greeting card postmarked Tennessee that I am a victim of crimes, that somebody out to hurt me, my family, and Attorney Susan Basko was behind the threatening Tormail.org messages and the threatening greeting card. Me and my family is under attack Ramaswamy I am tired of being a darn victim Ramaswamy. We need to come to a resolution because it is clear that I am factually innocent. You and the Court and I are victims of fraud. It's clear that I was set-up and framed. Stop resisting State Bar Rule 3.8. Let's make a deal. I want my life back. I would like to be acquitted. Please vacate my sentence.

God Bless,

Brian D. Hill
Signed

Brian David Hill #29947-057
Federal Correctional Institution 1
P.O. Box 1000
Butner, N.C. 27509

Please make a deal.

Q anon

Joint Appendix 7

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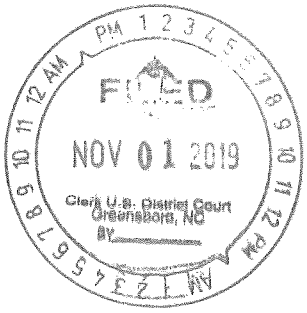
UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Joint Appendix in attachment to "PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MOTION FOR STAY OF DISTRICT COURT JUDGMENT PENDING MANDAMUS"



In the United States District Court
For the Middle District of North Carolina

Brian David Hill, Petitioner/Defendant	
v.	**Criminal Action No. 1:13-CR-435-1**
United States of America, Respondent/Plaintiff	**Civil Action No. 1:17-CV-1036**

PETITIONER'S MOTION FOR LEAVE TO AMEND OR SUPPLEMENT HIS § 2255 MOTION

MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF "PETITIONER'S MOTION FOR LEAVE TO AMEND OR SUPPLEMENT HIS § 2255 MOTION"

NOTICE: Due to the Motion to "Disqualify/Recuse Judge — Document #195" in regards to the Hon. Judge Thomas D. Schroeder, this motion should not be decided by that Judge but should be tried by another Judge of the bench. Due to the facts and allegations inside of this motion, it would be a conflict of interest for Judge Schroeder to render any decision on this motion until the Appeals Court makes a decision on whether Judge Schroeder should be recused from the case as judicial officer.

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, the Petitioner Brian David Hill ("Brian D. Hill", "Hill", "Brian", "Defendant", "Petitioner"), proceeding Pro Se in this action, respectfully moves for leave to file an AMENDED Document #125 "MOTION to Vacate, Set Aside or Correct Sentence (pursuant to 28 U.S.C. 2255) by BRIAN DAVID HILL.", a copy of which is attached hereto. The amendment proposed to amend 4 extra pages to the

Petitioner's Document #125 2255 Motion is **Ground Five: Fraud Upon the Court.**

The new amended 2255 Motion maintains the issues already presented in the Document #128 brief / memorandum of law and all other pleadings in the 2255 case from the original 2255 Motion, but accounts for the significant factual and procedural developments that have occurred since the original 2255 Motion was filed, including (i) the issue of fraud upon the court being raised in Petitioner's response under Document #150 to "*Government's Response to "Motion and Brief for Leave to File Additional Evidence" and Government's Motion for Pre-Filing Injunction*"; (ii) that the issues in the Brief / Memorandum of law under Document #128 had already raised issues on disproving the Government's/Respondent's elements of the factual basis (Document #19) of guilt constitutes a fraud upon the court on the part of Anand Prakash Ramaswamy; (iii) that the Petitioner's filed Document #137 "*DECLARATION entitled "fifth Additional Evidence Declaration" filed by BRIAN DAVID HILL re [128] Memorandum. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7, # (8) Certificate of Service, # (9) Envelope - Front and Back) (Civil Case number: 17CV1036) (Garland, Leah)*" also had addressed the issues of the Government/Respondent engaging in subornation of perjury and the witness committing perjury which had also raised the issue of a fraud upon the court but had not simply included that exact set of legal words.

Petitioner had already raised issues of the substance of fraud by the adverse party from the beginning of the 2255 case and all of the way to the end, but had first used such terminology of "fraud upon the court" in Document #150 when opposing the Government's motion for pre-filing injunction. Petitioner stating that the Government had knowingly introduced a liar as a witness in the Supervised

Release Violation hearing, stating that the Government's evidence of confession was false as the confession was proven false, and the download dates of the SBI forensic report and other contradictions all may constitute fraud upon the court. Therefore the elements of the ground of "fraud upon the court" had already been established, but just not introduced as a ground, so therefore Petitioner finds it appropriate to ask the Court for permission for amending to his 2255 Motion to include a "Ground Five: Fraud Upon the Court" in support of his 2255 motion. Also Fraud Upon the Court does not have a statute of limitations as it is an inherit power of the Court to vacate a fraudulent begotten judgment and would be considered a VOID JUDGMENT because it doesn't create or impair any rights and cannot be enforceable as a valid judgment, and isn't subject to the consequences of a valid judgment.

Petitioner is entitled to amend or supplement his pending § 2255 motion to include a claim based on "Fraud Upon the Court". Although a petitioner generally must seek leave to amend or supplement his claim from the district court before presenting that claim to the court of appeals, that rule is subject to an exception. See Guam v. American President Lines, 28 F.3d 142, 149 (D.C. Cir. 1994) (recognizing that the court's approach to amendments presented for the first time on appeal "need not be inflexible"). Where leave to amend has not first been sought in the district court, "[o]ur approach is not totally inflexible; amendments will sometimes be allowed, but such instances comprise the long-odds exception, not the rule. The touchstone is equitable and case-specific: leave to amend will be granted sparingly and only if '[j]ustice . . . requires further proceedings.'" Dartmouth Rvw v. Dartmouth College, 889 F.2d 13, 23 (1st Cir. 1989). This case falls within that exception, and the court therefore should either grant petitioner's

motion to amend, or, in the alternative, remand to the district court for petitioner to seek leave to amend in that court. See American President Lines, 28 F.3d at 151.

In Foman v. Davis, 371 U.S. 178, 182 (1962), the Court emphasized Rule 15(a)'s mandate that "leave to amend 'shall be freely given when justice so requires.'" The Court concluded that "[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.—the leave sought should, as the rules require, be 'freely given.'" Id. This court has interpreted Rule 15(a) to require that leave to amend be liberally granted. See, e.g., Harrison v. Rubin, 174 F.3d 249, 252-253 (D.C. Cir. 1999) (reversing denial of plaintiff's motion for leave to amend because defendant had not made any showing that it would be prejudiced by amendment).

In addition, "courts freely grant pro se litigants leave to amend." Richardson v. United States, 193 F.3d 545, 548 (D.C. Cir. 1999) (citing Moore v. Agency for Int'l Dev., 994 F.2d 874, 877 (D.C. Cir. 1993)). Given the absence of any evidence of "bad faith, undue prejudice to the opposing party, repeated failure to cure deficiencies, or futility," petitioner's entitlement to Rule 15 relief is evident. See id. The government has not responded to and neither objected to the Petitioner's motion under Document #199 entitled the "*Motion for Sanctions and to Vacate Judgment in Plaintiff's/Respondent's Favor" "Motion and Brief/Memorandum of Law in Support of Requesting the Honorable Court in this case Vacate Fraudulent Begotten Judgment or Judgments*", nor could it want to, as the issues of the Government's/Respondent's fraud at issue when Petitioner had filed his § 2255 motion and additional evidence in support of that motion. Similarly, the government cannot argue any undue prejudice from petitioner's amendment.

Petitioner's original pleading challenged his conviction and sentence, and the government therefore was on notice that petitioner was contesting his conviction and sentence. Once Document #137 was filed on Dec 4, 2017 concerning the perjury of the Government's witness Kristy L. Burton, the issue of fraud upon the court was preserved as it was filed before the Government's response to the 2255 Motion which was the Document #141 "MOTION to Dismiss Motion to Vacate, Set Aside, or Correct Sentence by USA as to BRIAN DAVID HILL. Response to Motion due by 2/5/2018 (RAMASWAMY, ANAND)". The issues that Brian's confession was false, and the issues of more frauds by the Government all show that the issue of "Fraud Upon the Court" is preserved in the 2255 Motion and brief and additional evidence. Fraud upon the Court can be brought up at any time during a proceeding or even after the final judgment or a proceeding or proceedings to address the issue of fraud or frauds being directed at the judicial machinery.

With respect to "cause," the legal basis for petitioner's claim of "Fraud upon the Court" was not "reasonably available" to counsel at the time of the trial and change of plea hearing, and frauds would be difficult to prove on direct appeal since it can only make a determination on what was on the record. See Murray v. Carrier, 477 U.S. 478, 488 (1986); Reed v. Ross, 468 U.S. 1, 16 (1984).

See Reed v. Ross, 468 U.S. 1, 16 (1984), 468 U.S. at 14 ("the failure of counsel to raise a constitutional issue reasonably unknown to him is one situation in which the [cause] requirement is met"); id. at 17 (when Supreme Court decision with retroactive application "'overtur[ns] a longstanding and widespread practice to which this Court has not spoken, but which a near-unanimous body of lower court authority has expressly approved,'" then "[b]y definition . . . there will almost certainly have been no reasonable basis" for an attorney to have argued the claim

previously); United States v. Jones, 2001 WL 127300, *7 (E.D. La. February 9, 2001) ("Jones has shown adequate cause for his failure to raise this precise constitutional issue on appeal because neither Jones [v. United States, 526 U.S. 227, 243 n.6 (1999)] nor Apprendi had been rendered at the time of his guilty plea trial or his appeal.")).

Finally, petitioner suffered prejudice from the Frauds upon the Court. The first set of frauds upon the court was that Government/Respondent had continued asserting that Brian's confession was a factual elemental basis of guilt when the confession being attacked and proven false shows that it is a fraudulent conclusion and not a basis of fact. The other issue is involving the contradictions of the SBI forensic report download dates and the fact that the SBI forensic report never verified that each file of interest was ever confirmed as "child pornography" and was of obscene material. Petitioner and his family never saw blurred thumbnails on January 22, 2015 when reviewing over the discovery material. The report has a lack of information confirming that each file of interest was ever what they had claimed Brian David Hill had possessed, and what about the 11 months of download dates when computer was in law enforcement custody. The second set of frauds upon the court wrongfully led to Petitioner's six (6) months of home detention (house arrest) while under the condition of not being allowed to use the internet that did create an unlawful impediment by the Government which had prevented timely filing of his 2255 Motion. Document #199 is to attempt to correct that first set of fraudulent begotten judgments that were entered against Petitioner. The third set of frauds was addressed in Document #206, regarding the fact that Petitioner was only "naked" and was not being obscene, as is required under Virginia Court of Appeals case law in order for Petitioner to be convicted. Petitioner was not obscene as there is no evidence of masturbation and therefore

cannot be found guilty of Virginia Law, and therefore did not violate Virginia Law. There was no basis for even attempting revocation of Petitioner's Supervised Release as was stated in Document #157. Then the Government's/Respondent's counsel (mainly) Anand Prakash Ramaswamy had further attempted to push this fraud upon the court and pushed for the maximum imprisonment of Petitioner at 9 months in a federal prison. The frauds are causing Petitioner to suffer harsher punishments, and consecutive punishments that increase on any future allegation of a violation of the conditions of supervised release. Each fraud snowballs into a future decision. That fraud had even been injected into the legal order and opinion of the Hon. Judge Jackson L. Kiser in the Freedom of Information Act lawsuit, and may have permanently prejudiced Petitioner beyond repair. See Document #64, Feb 6, 2018, Hill v. Executive Office for United States Attorneys (case no. 4:17-cv-00027), United States District Court for the Western District of Virginia. When frauds are not corrected and are injected into any other opinion or case law in any other federal case or even a state case, it contaminates the entire judicial system and makes it unreliable and causes the judicial system to no longer hold any integrity. It didn't just prejudiced the Petitioner, but had also contaminated and poisoned any facts and truth with lies and those lies are being used to cause more and more harm and punishments, sanctions such as imprisonment, and worse conditions for supervised release to be imposed. These frauds have mentally harmed Petitioner in him almost committing suicide (killing himself) which would also have been irreversible had Petitioner decided to end his life, all because of damage caused by lies and more lies. The frauds upon the court have to be stopped at its source before it causes any more wrongful suffering and further damages, cruel and unusual punishments inflicted against Petitioner. Had the frauds not been perpetuated, Petitioner possibly never would have been indicted, never would have plead guilty, and never would have been forced to plead guilty under oath, and

never would have dealt with ineffective assistance of counsel. Petitioner has established the ground of prejudice.

The prejudice from the fraud upon the court in Petitioner's case is magnified because now Petitioner is facing 9 months imprisonment from the oral order on September 12, 2019, and was ordered in writing in Document #200.

The evidence of fraud upon the court is not subject to any statute of limitations alone as it is the Court's inherit power. *"Chambers v. Nasco, INC, 501 US 32, 115 L. ED 2d 27, 111 S Ct 2123 (1991), Courts §18 "inherent or implied powers", as well as Courts §225.1; Equity §47 "power to vacate fraudulent judgment".*

It is important that the 2255 Motion have an additional ground to include the inherit issue of "fraud upon the court", as any judgments which have deprived Petitioner of due process and even were grounded in frauds by the opposing counsel are VOID JUDGMENTS. Void Judgments cannot impair or create any new rights, cannot have the consequences as would normally be under a valid judgment. Petitioner clearly has the right to collaterally attack the fraudulent begotten judgments and cannot be time-barred. Thus, petitioner is entitled to relief under the issues of "fraud upon the court", and the court should grant his motion for leave to amend.

CONCLUSION

The special status of habeas actions, the facts that petitioner was proceeding pro se when he filed his § 2255 motion and that the more recently committed frauds by the Government/Respondent were unavailable to him at the time he filed his § 2255 motion, and the strength of petitioner's "fraud upon the court" claim combine to present a "compelling scenario" for invoking the inherit power of the district court to correct the frauds by vacating earlier judgments, and that fraudulent

begotten judgments are not final judgments. Accordingly, the court should grant petitioner's motion for leave to amend and decide the merits of Petitioner's amended section 2255 motion.

Petitioner also requests that the Court set aside the recommendations at least until all issues of "Fraud Upon the Court" that Petitioner had claimed are addressed in this case.

WHEREFORE, Petitioner requests that the Court grant this Motion and allow Petitioner to amend to his 2255 Motion to include a proposed Ground Five: Fraud Upon the Court and allow the Respondent to respond to this fifth ground to answer for their frauds upon the court;

WHEREFORE, Petitioner requests any other relief that the Court deems necessary and proper for the interests of justice that so require;

Attached amendment

Original 2255 Motion which is 12 pages that was filed under Document #125 to demonstrate where the amended information will be added.

Attached 4 pages "AMENDMENT TO Petitioner's original Document #125 §2255 Motion"

Total of 16 pages attached.

Respectfully filed with the Court, this the 30th day of October, 2019.

Respectfully submitted,

Brian D. Hill
Signed

Signed
Brian D. Hill (Pro Se)
310 Forest Street, Apartment 1
Martinsville, Virginia 24112
Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter
I stand with QANON/Donald-Trump – Drain the Swamp
I ask Qanon and Donald John Trump for Assistance (S.O.S.)
Make America Great Again

Petitioner also requests with the Court that a copy of this pleading be served upon the Government as stated in 28 U.S.C. § 1915(d), that "The officers of the court shall issue and serve all process, and preform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases". Petitioner requests that copies be served with the U.S. Attorney office of Greensboro, NC via CM/ECF Notice of Electronic Filing ("NEF") email, by facsimile if the Government consents, or upon U.S. Mail. Thank You!

CERTIFICATE OF SERVICE

Petitioner hereby certifies that on October 30, 2019, service was made by mailing the original of the foregoing:

"PETITIONER'S MOTION FOR LEAVE TO AMEND OR SUPPLEMENT HIS § 2255 MOTION -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF "PETITIONER'S MOTION FOR LEAVE TO AMEND OR SUPPLEMENT HIS § 2255 MOTION"

by deposit in the United States Post Office, in an envelope (certified mail), Postage prepaid, on October 30, 2019 addressed to the Clerk of the Court in the U.S.

District Court, for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401.

Then pursuant to 28 U.S.C. §1915(d), Petitioner requests that the Clerk of the Court move to electronically file the foregoing using the CMIECF system which will send notification of such filing to the following parties to be served in this action:

Anand Prakash Ramaswamy U.S. Attorney Office Civil Case # 1:17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 Anand.Ramaswamy@usdoj.gov	Angela Hewlett Miller U.S. Attorney Office Civil Case # 1: 17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 angela.miller@usdoj.gov
JOHN M. ALSUP U.S. Attorney Office 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 john.alsup@usdoj.gov	

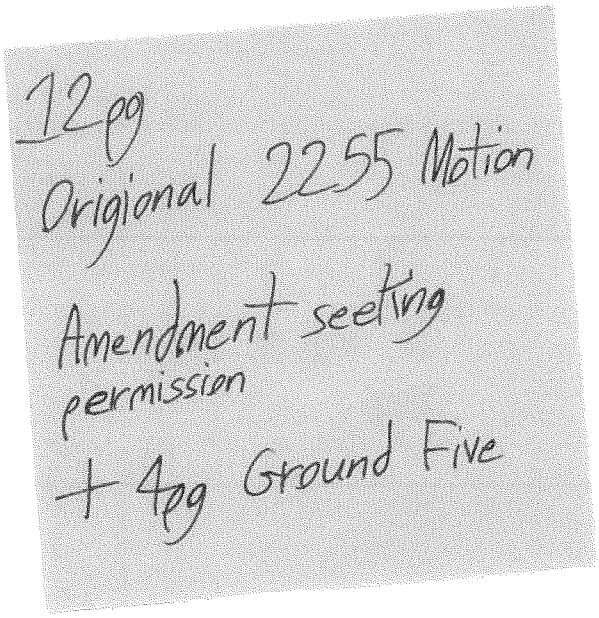
This is pursuant to Petitioner's "In forma Pauperis" ("IFP") status, 28 U.S.C. §1915(d) that "The officers of the court shall issue and serve all process, and perform all duties in such cases ... "the Clerk shall serve process via CM/ECF to serve process with all parties.

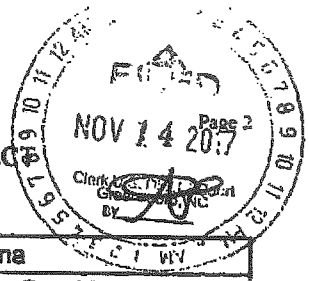
Date of signing: October 30, 2019	Respectfully submitted, Brian D. Hill Signed Signed Brian D. Hill (Pro Se) 310 Forest Street, Apartment 1 Martinsville, Virginia 24112 Phone #: (276) 790-3505 U.S.W.G.O. I stand with QANON/Donald-Trump – Drain the Swamp I ask Qanon and Donald John Trump for Assistance (S.O.S.) Make America Great Again

I ask Department of Defense ("DOD") military Constitutional oath keepers, alliance, Qanon for help in protecting me from corruption and criminal behavior of Government.

Certified Mail tracking no: 7019-1120-0001-4751-4597

Friend's justice site: JusticeForUSWGO.wordpress.com


12pg
Original 2255 Motion
Amendment seeking
permission
+4pg Ground Five



AO 243 (Rev. 01/15)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District: Middle District of North Carolina
Name *(under which you were convicted)*: Brian David Hill	Docket or Case No.: 1:13-cr-435-1
Place of Confinement: Supervised Release under the U.S. Probation Office	Prisoner No.: 29947-057 (USM number)
UNITED STATES OF AMERICA V.	Movant *(include name under which convicted)*: Brian David Hill

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court
for Middle District of North Carolina
324 West Market Street, Suite 1, Greensboro, NC 27401

(b) Criminal docket or case number (if you know): 1:13-cr-435-1

2. (a) Date of the judgment of conviction (if you know): 11/12/2014

(b) Date of sentencing: 11/10/2014

3. Length of sentence: 10 months and 20 days, but not less than time served

4. Nature of crime (all counts):

Count 1: 18:2252A(a)(5)(B) and (b)(2) - Possession of Child Pornography

5. (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☑ (3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

I plead guilty to possession of child pornography because from what I understood, the U.S. Attorney claimed that it was on my computer, regardless of whom put it there, so therefore I thought I was technically guilty of possession of child porn. However at a later time I realized that I was wrong to assume that, that I am entitled to prove the affirmative defense of Frame Up which is recognized by the U.S. Supreme Court. I falsely plead guilty because of ineffective Counsel and deteriorating health. See Brief/Memorandum in attachment to this Motion for more information.

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☑ No ☐

8. Did you appeal from the judgment of conviction? Yes ☑ No ☐

Defendant's Answer to 8.: Almost had a Jury trial Defendant's Answer to 7.: Not testified on the stand

9. If you did appeal, answer the following:

(a) Name of court: U.S. Court of Appeals for the Fourth Cirsuit

(b) Docket or case number (if you know): 15-4057

(c) Result: The judgment of the district court is affirmed in part. The appeal is dismissed in part. Doc #19-1

(d) Date of result (if you know): 4/7/2015

(e) Citation to the case (if you know):

(f) Grounds raised:

N\A - Untimely filed

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☑

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☑ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: U.S. District Court for the Middle District of North Carolina

(2) Docket or case number (if you know): 1:13-cr-435-1

(3) Date of filing (if you know):

(4) Nature of the proceeding: Misc. pro se Motions

(5) Grounds raised: Various issues in the Misc. pro se Motions

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☑

(7) Result: Judge Osteen denied every single pro se motion since conviction

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket of case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Actual Innocence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant Brian David Hill ("Defendant"), is asserting the claim of actual innocence based on particular elements of what was discovered after conviction.
The Defendant didn't get to review over the rest of all of the discovery material for the criminal case until January 22, 2015 at the office of John Scott Coalter (court appointed lawyer).
(Confession element)The Defendant confirmed after conviction that he made false confession statements which could have been proven by cross referencing/examining the U.S. Attorney's discovery material. Defendant made a confirmed false confession statement regarding child pornography in his Netbook, regarding the child pornography download date for "about a year or so", and his statement of describing PTHC which stands for "Preteen Hardcore" (excerpt cited from Mayodan Police Report) was fabricated over what was already described in Police detective Robert Bridge's search warrant affidavit and in the Police Report, so Defendant describing what PTHC stood for was already described in Detective Bridge's Affidavit. Defendant exhibited a sophisticated form of echolalia which means he repeated what was already described to him by Police. See Brief/Memorandum in attachment to this Motion for more information.
(Forensic element)The Defendant asserts that the entire "SBI Case File" forensic report is questionable on it's own merits. Making a claim that child pornography downloaded using the eMule program between the dates "July 20, 2012, and July 28, 2013." That same Laptop had been seized on August 28, 2012. The child porn download dates corroborate the claims in various threatening emails from tormail.org. More are stated in the Brief attached.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Untimely filed Appeal. The U.S. Court of Appeals would not let me raise any of these issues due to filing too late. Actual Innocence claim doesn't require prior direct appeal, especially on newly discovered evidence.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☑ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Various pro se filings on actual innocence. Document #71, Document #73, etc

Name and location of the court where the motion or petition was filed:
U.S. District Court for the Middle District of North Carolina

Docket or case number (if you know): 1:13-cr-435-1

Date of the court's decision: 4/29/2015

Result (attach a copy of the court's opinion or order, if available):

Document #87

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☑

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Because there was no statute or federal rule that was used to back any of the post-conviction pro se motions, that was why they were all denied. There was no use appealing motions that hold no legal basis. That is why this 2255 motion is being filed, because it is backed by both case law and statute. I have a legal basis for this motion, good evidence, and good grounds.
See Brief/Memorandum in attachment to this Motion for more information.

GROUND TWO: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Brief/Memorandum in attachment to this Motion for more information.

Eric David Placke did many things that were ineffective and would be difficult to explain in this little box.

See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY""
"DECLARATION, ATTACHED EXHIBITS, AND BRIEF IN SUPPORT OF THIS MOTION"
for all of the evidence and Affidavits?Declarations in support of Defendant's ineffective assistance of Counsel claim needed to prove actual innocence, as the change of plea from guilty to not guilty will require me to prove ineffective Counsel prior to my false guilty plea, and a good reason why I had falsely plead guilty instead of taking it to trial. Evidence I have is that my health was deteriorating while in Jail, my Counsel was going to provide no evidence for the Jury Trial, my Autism would not be brought up, Placke had no defense planned nor prepared. I would have faced prison time if I had no falsely taken the guilty plea. Now that I am out of jail, I can fight to prove my innocence without Placke.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Untimely filed Appeal. The U.S. Court of Appeals would not let me raise any of these issues due to filing too late.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

_____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

_____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

_____

GROUND THREE: Deprivation of due process rights as guaranteed by Fourteenth Amendment. Deprivation of discovery rights

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Was not given full access to criminal case discovery materials until January 22, 2015, at John Scott Coalter's office, a few months after I was convicted upon final Judgment. That was why I was furious and filed a bunch of pro se motions with evidence, even though none of those had any statutory basis. I was angry that I was swindled by my own lawyers. They wouldn't let me prove my innocence in any way. All Placke wanted me to do was to say falsely under Oath that I was guilty, and Coalter to stick with my false guilty plea.

See Brief/Memorandum in attachment to this Motion for more information.

See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY"" "DECLARATION, ATTACHED EXHIBITS, AND BRIEF IN SUPPORT OF THIS MOTION"

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Untimely filed Appeal. The U.S. Court of Appeals would not let me raise any of these issues due to filing too late.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☑

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☑

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: Prosecutorial misconduct - Based upon new evidence that has surfaced in a 2017 Freedom of Information Act ("FOIA") lawsuit and FOIA Appeal case, in the Western Dist. of Virginia.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The U.S. Attorney has covered up two pieces of evidence that is needed to help prove factual innocence for this 2255 motion. Because of this I ask that the Court enforce the discovery of the criminal case evidence that was originally received by Eric David Placke but he refused to let me prove my innocence in any way with the discovery evidence material. John Scott Coalter has threatetened that he may destroy the evidence of discovery which further forces me to be stuck with my false guilty plea. Eric avid Placke only wanted to work with the U.S. Attorney and get the best guilty plea bargain he could. He was no interested in suppressing any evidence, and not inteested in my innocence. Because of not getting access to all of my discovery material, I had to sue the Executive Office for United States Attorneys and U.S. Department of Justice citing the deprivation of my rights under Brady v. Maryland and Giglio v. United States.

See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY"" "DECLARATION, ATTACHED EXHIBITS, AND BRIEF IN SUPPORT OF THIS MOTION"

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Newly discovered evidence filed in Federal civil case "Brian David Hill v. Executive Office for United States Attorneys (EOUSA) et al," case no. 4:17-cv-00027, U.S. Dist. Court for Western District of Virginia.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

U.S. Attorney refusing to give me access to my entire criminal case discovery material even though requested via Freedom of Information Act.

Federal civil case "Brian David Hill v. Executive Office for United States Attorneys (EOUSA) et al," case no. 4:17-cv-00027, U.S. Dist. Court for Western District of Virginia.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:
Eric David Placke

(b) At the arraignment and plea:
Eric David Placke

(c) At the trial:
Eric David Placke (no trial had to proceed because of the change of plea to guilty)

(d) At sentencing:
John Scott Coalter

(e) On appeal:
Mark Jones

(f) In any post-conviction proceeding:
No proceeding yet

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☑

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☑

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Because actual innocence and my Constitutional rights should not be barred by statute. Even John Scott Coalter ("Mr. Coalter") admitted on September 30, 2016, that if I decide to file a 2255 and assert actual innocence, that I would have to appear before a "change of plea" hearing and I would have to raise ineffective assistance of Counsel as a reason why I had (falsely) taken the plea of guilty. Since ineffective Counsel can arubly be raised, then why not all Constitutional grounds since I have been deprived of all Constitutional rights that an Article III Court is supposed to guarantee all criminal Defendants accused of serious crimes.
Also new evidence has been discovered since then. I had filed a Freedom of Information Act ("FOIA") request with the Executive Office for U.S. Attorneys ("EOUSA") concerning my criminal case discovery evidence since Mr. Coalter refused to give me my discovery, has threatened to possibly destroy the evidence, and Mr. Coalter has admitted to being in conflict of interest of me wanting to prove my actual innocence so he is working against me.

In a June 29, 2017, letter mailed to me from the Office of Government Information Services ("OGIS"), the Mediation staffer admitted to receiving a claim from the EOUSA that the U.S. Attorney office of Greensboro, NC do not have the confession audio and SBI case file, even though they were made aware on June 30, 2015 during the Supervised Release Revocation ("SRV") hearing that I fully intend on overturning my criminal conviction and prove my actual innocence via a 2255 Motion. The U.S. Attorney has removed evidence from their office to evade my FOIA request and prevent me from getting access to my criminal case discovery evidence to be able to mount a factual claim of actual innocence. The original evidence that they had used against me to led me to being wrongfully convicted, they have removed a portion of the evidence records that was used to indict and convict me. Because of that I had filed a lawsuit in the U.S. District Court, for the Western District of Virginia, case # 4:17-cv-27. The case is currently being reviewed and heard in the Danville Division in Danville, VA. The evidence presented in my Complaint that has been presented had enough of a merit to cause the U.S. Attorney office of Greensboro, NC (Middle District of North Carolina) to file answers to my complaint. They filed answers denying all allegations, even denying knowledge of my health condition (aka Autism and Type 1 Brittle Diabetes) which in my criminal case that had fully had knowledge of my health condition in both Transcripts and the U.S. Attorney admitted to receiving and reviewing the psychological report by Dr. Dawn Graney at the June 3, 2014, Pretrial Status Conference. The U.S. Attorney has made denial of knowledge to things that they are very well knowledgable on. The U.S. Attorney of Greensboro, NC, to my knowledge has perpetuated a fraud among the Court with answers that I and witnesses (Kenneth Forinash, Stella Forinash, Roberta Hill) know for a fact of matter are not the truth. The U.S. Attorney office of Greensboro, NC, collectively in the FOIA lawsuit in 2017, have lied about the evidence that they had originally used to indict and eventually convict me by plea agreement. I feel that the U.S. Attorney knew of any facts of possible factual innocence but they have either ignored it, lied about it, or got rid of any evidence records, papers, or things that can help to prove any facts of my actual innocence.
If the U.S. Attorney perpetuated a fraud among the Court, then I have a right to investigate if that is indeed the case, and as to why. The Court has a right to investigate if that is indeed the case, and as to why. If there is clear and convincing evidence that the U.S. Government may have perpetuated a fraudulent criminal case against a innocent man, then the Court needs to investigate with a full eventiary hearing and ask both sides what evidence they have. Under Marbery v. Madison, any law that is repugnant to the Constitution is null and void. My Constitutional rights should not be further deprived by the one year limitation. Actual Innocence is also a factor in Constitutional rights being deprived. Even though I am not in a federal prison, I am still remanded to the custody of the U.S. Marshal, to serve my sentence under Supervised Release and sex offender restrictions. I am not free to come and go as I please.
See Brief/Memorandum in attachment to this Motion for more information. See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY""
"DECLARATION, ATTACHED EXHIBITS, AND BRIEF IN SUPPORT OF THIS MOTION"

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* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

AO 243 (Rev 01/15)

Therefore, movant asks that the Court grant the following relief:

Vacate and overturn the criminal conviction and Judgment on November 12, 2014. Vacate the entire sentence. Grant the Defendant a "certificate of innocence" allowing the Defendant the right to expunge records. State facts of innocence.

or any other relief to which movant may be entitled.

Brian D. Hill (Pro Se)
Signed
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on November ~~10~~ 11, 2017 (month, date, year)
U.S. Postal Service or FedEx

Executed (signed) on November ~~10~~ 11, 2017 (date)

Brian D. Hill
Signed
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Certified Mail tracking #: 7017-1450-0000-9407-6759

Brian D. Hill (Pro Se)
310 Forest St. Apartment 2
Martinsville, VA 24112

2nd certified mail tracking #: 7017-1450-0000-9407-6766

AMENDMENT TO Petitioner's original Document #125 §2255 Motion

Dated October 30, 2019

Case no. 1:13-cr-435-1, Civil Case no. 1:17-cv-1036

GROUND FIVE: Fraud Upon the Court

(a) Supporting facts:

One or more attorneys for the U.S. Attorney Office of Greensboro, NC, counsel for the United States of America had engaged in a fraud upon the Court that had gone as far as introducing (1) a false confession as a genuine confession of guilt (Document #19) by Petitioner Brian David Hill and then used that as a coercive means to mislead mentally and neurologically impaired (Autism, OCD, Type 1 brittle diabetes) criminal defendant Brian David Hill into falsely pleading guilty under oath (a perjury trap set up by the fraudsters). The fraud upon the court that the N.C. SBI forensic report did not confirm whether each file was actually of obscene material and was child pornography as defined by federal and state statutes. Even the Presentence Investigation Report (Dkt. 33) stated under paragraph 13 that "*According to the government, none of the children have been identified as part of a known series by the National Center for Missing and Exploited Children (NCMEC)*". The Government didn't admit this until after Brian David Hill falsely pleads guilty which is a sick joke. The argument is that anything pornographic shared on a public file-sharing network and is monitored by law enforcement is known pornographic material of a known series. For the Government to admit that none of the alleged files are of a known series which contradicts Detective Robert Bridge.

The SBI forensic report had even stated the following:

> **"SBI CASE NUMBER: 2012-02146 (915)"**
>
> **"eMule Known.met: The Known.net saves all files eMule knows of whether they are shared files, files currently in the download list, or downloaded in the past. For every file, information like file size, file name, hash sets, hash values, and some statistics are saved. From the analysis, this record showed that 454 files had been downloaded with the eMule program**

between July 20, 2012, and July 28, 2013. This record also showed that files were shared with other users and the number of times each file was shared."

(Some paragraph or text omitted)
"ITEM #2: ASUS Eee PC Laptop"
"Serial Number: 9COAAS155554"

"The following hard drive was removed from Item #2:"
"Seagate HD 250GB"
"Serial Number: 6VCIL6G5"
"No images of interest were noted."

"No videos of interest were noted."
"IV"

That same netbook, Brian falsely confessed to child porn being in that netbook, the very netbook that they didn't get on their search of August 28, 2012. Proves one false confession statement directly when cross examined/referenced. There are more confession statements that cannot be sustained as a truthful and genuine confession. The download dates match Brian's confession statement of "about a year or so" but 11 months of that download date time-frame was when the computer was in law enforcement custody (Town of Mayodan Police Department, North Carolina State Bureau of Investigation (N.C. SBI)). That invalidates Brian's next confession statement as false. Brian gave a false confession and the U.S. Attorney Office purported false element or elements of guilt against Brian David Hill as a coercive means to persuade Brian David Hill and lawyer Eric David Placke to get Brian to falsely plead guilty under oath on June 10, 2014, Dkt. 20.

The U.S. Attorney Office had engaged in a fraud upon the court again on June 30, 2015, at the Supervised Release Violation hearing. Petitioner Brian David Hill had filed a Document #199, "*MOTION entitled "Motion for Sanctions and to Vacate Judgment in Plaintiff's/Respondent's Favor" "Motion and Brief/Memorandum of Law in Support of Requesting the Honorable Court in this case Vacate Fraudulent Begotten Judgment or Judgments" filed by BRIAN DAVID HILL. Response to Motion due by 10/25/2019.*" No responses have been made by October 25, 2019 which landed on a Friday. Even if the Court were to consider the U.S. Attorney's response timely filed in the event that they had filed their response on a Monday which would be October 28, 2019, they did not file a response on that date either. When the Respondent aka the U.S. Attorney Office files no response to allegations against them in regards to a "fraud upon the court", then they do not object to such allegations against them. Fraud upon the court demonstrates that invalid judgment or invalid judgments were entered

against Petitioner and gave Petitioner a clear cut miscarriage of justice in the judgment(s) against Petitioner. Fraud upon the court is not subject to any statute of limitations of a time-bar. Evidence that is proven of any fraud upon the court can also support Petitioner's "*GROUND ONE: Actual Innocence*" if such frauds were of any evidence and/or facts concerning the alleged guilt of Brian David Hill.

Petitioner may have other frauds that cannot be explained in this amendment, but Petitioner reserves the right to file a third and final Motion for default judgment as sanctions for being a victim of repeated pattern of fraud upon the court against Petitioner, which compromises the Court to rule partially against Petitioner in favor of the Government.

(b) Direct Appeal of Ground Five:

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes ___ No X

(2) If you did not raise this issue in your direct appeal, explain why:

Fraud upon the court is almost impossible to appeal since the issues of fraud are usually derived from extrinsic and/or intrinsic evidence depending on circumstances. Appeals only review what was on the record prior to a judgment. Frauds that are discovered usually are not subject to appeal because frauds are normally not detectable on the record. Any judicial decisions made afterwards in regards to a discovered fraud upon the court can be appealed.

A Party Affected by VOID Judicial Action including frauds upon the court Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J.,concurring). A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999).

(c) Post-Conviction Proceedings:

This issue is being amended to the first 2255 Motion case under Document #125. Original 2255 Motion filed on November 14, 2017. This amendment is being added

on October 30, 2019.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 30, 2019.

Respectfully submitted,

Brian D. Hill
Signed

Signed
Brian D. Hill (Pro Se)
310 Forest Street, Apartment 1
Martinsville, Virginia 24112
Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter
I stand with QANON/Donald-Trump – Drain the Swamp
I ask Qanon and Donald John Trump for Assistance (S.O.S.)
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Joint Appendix 8

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U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Joint Appendix in attachment to "PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MOTION FOR STAY OF DISTRICT COURT JUDGMENT PENDING MANDAMUS"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BRIAN DAVID HILL,	)	
	)	
Petitioner,	)	
	)	**1:17CV1036**
v.	)	**1:13CR435-1**
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER

Petitioner filed a motion (Docket Entry 125) to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The undersigned recently recommended that this motion be dismissed as time-barred, or, in the alternative, be denied as meritless. (Docket Entry 210.) Petitioner has now filed a motion to amend his § 2255 motion to raise an additional ground for relief. (Docket Entry 214.) For the following reasons, the motion is denied.

Rule 15(a) of the Federal Rules of Civil Procedure provides that, "A party may amend its pleading once as a matter of course within 21 days after serving it" or within 21 days of a responsive pleading or motion under Rule 12(b), (e) or (f), whichever is earlier. Fed. R. Civ. P. 15(a). Otherwise "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." *Id.* "Under Rule 15(a) leave to amend shall be given freely, absent bad faith, undue prejudice to the opposing party, or futility of amendment." *United States v. Pittman*, 209 F.3d 314, 317 (4th Cir. 2000). In this case, the time to amend as a matter of course has long since passed, the

Government has not consented to the amendment, and, consequently, Petitioner can only amend with the Court's permission. It would, however, be futile to permit Petitioner to amend to add this new ground for relief asserting fraud upon the Court.

More specifically, the essence of Petitioner's proposed amended ground for relief appears to be that one or more of the Assistant United States Attorneys who prosecuted him in this case framed him and that this amounted to a fraud upon the Court. (Docket Entry 214 at pdf pages 26-29.) To begin, it is far from clear that this is a new ground for relief, as this theory (*i.e.*, that Petitioner has been set-up or framed) is woven into the fabric of all of his other grounds for relief to greater or lesser degrees. In any event, Petitioner's proposed amended ground for relief fails for the same reasons that Petitioner's other grounds for relief fail. As explained in detail in the prior Recommendation (Docket Entry 210), all Petitioner's grounds are vague, conclusory, unsupported, speculative, irrelevant, and time-barred. (*See generally* Docket Entry 210.) *See Nickerson v. Lee*, 971 F.2d 1125, 1136 (4th Cir. 1992) *abrog'n on other grounds recog'd*, *Yeatts v. Angelone*, 166 F.3d 255 (4th Cir. 1999). The proposed new ground for relief fails for all these reasons as well. If the Court were to permit Petitioner to amend to raise this ground, it would immediately be dismissed as time-barred, denied as meritless, or both. Given that it would be futile to permit Petitioner to pursue his proposed new ground for relief further, and given that it fails as a matter of law for multiple reasons, his motion to amend is denied as futile.[1]

[1] Even if Petitioner's motion were treated as an objection to the previously filed Recommendation, or as supplementary argumentation relevant to the grounds set forth in the initial § 2255 motion, Petitioner would still not be entitled to any form of relief. As explained, all his grounds for relief are vague, conclusory, unsupported, speculative, irrelevant, and time-barred.

IT IS THEREFORE ORDERED that Petitioner's motion for leave to amend (Docket Entry 214) is **DENIED**.

Joe L. Webster
United States Magistrate Judge

November 20, 2019
Durham, North Carolina

Joint Appendix 9

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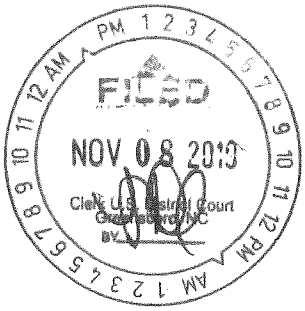
U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Joint Appendix in attachment to "PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MOTION FOR STAY OF DISTRICT COURT JUDGMENT PENDING MANDAMUS"



In the United States District Court
For the Middle District of North Carolina

Brian David Hill, Petitioner/Defendant	**Criminal Action No. 1:13-CR-435-1**
v.	**Civil Action No. 1:17-CV-1036**
United States of America, Respondent/Plaintiff	

REQUEST THAT THE U.S. DISTRICT COURT VACATE FRAUDULENT BEGOTTEN JUDGMENT, VACATE THE FRAUDS UPON THE COURT AGAINST BRIAN DAVID HILL

Criminal Defendant and § 2255 Motion Petitioner Brian David Hill is respectfully requesting that the earlier Motion under Document #199, be granted.

The MOTION was entitled "Motion for Sanctions and to Vacate Judgment in Plaintiff's/Respondent's Favor" "Motion and Brief/Memorandum of Law in Support of Requesting the Honorable Court in this case Vacate Fraudulent Begotten Judgment or Judgments" filed by BRIAN DAVID HILL. Response to Motion due by 10/25/2019. (Attachments: # 1 Supplement 1, # 2 Supplement 2, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Envelope - Front and Back) (Civil Case number: 17CV1036) (Garland, Leah) (Entered: 10/04/2019).

The U.S. Attorney Office had until October 25, 2019 to respond to that motion, to oppose that motion, and did not object to it and did not file any response thereto. "Response to Motion due by 10/25/2019."

Therefore to prevent any further injury, miscarriage of justice, and frauds against the party "Brian David Hill" in this criminal case, Brian requests that the Motion for Sanctions under Document #199 be granted As Soon As Possible.

The Supervised Release Violation under Document #122 is a nullity and should be considered a void judgment on the basis of fraud, ineffective counsel, and due process violations. Brian is considering filing a Writ of Mandamus or Writ of Prohibition to order that the fraudulent begotten judgment or judgments be vacated and nullified.

CONSTITUTION INVOLVED

Fifth and Fourteenth Amendments

Guarantee all citizens the right to equal protection under the laws and due process in all courts from being deprived of life, liberty and property, without due process under the laws of the land.

CASE LAW INVOLVED

Ex Parte Seidel, 39 S.W.3d 221 (2001), Court of Criminal Appeals of Texas, En Banc.

"A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring). Since the trial court's dismissal "with prejudice" was void, it may be attacked either by direct appeal or collateral attack. See Ex parte Shields, 550 S.W.2d at 675.

The law is well-settled that a void order or judgement is void even before reversal", VALLEY v. NORTHERN FIRE & MARINE INS. CO., 254 U.S. 348,41 S. Ct. 116 (1920) "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." WILLIAMSON v. BERRY, 8 HOW. 945, 540 12 L. Ed. 1170, 1189 (1850). It has also been held that" It is not necessary to take any steps to have a void judgment reversed, vacated, or set aside, It may be impeached in any action direct or, collateral.' Holder v. Scott, 396 S.W.2d 906, (Tex.Civ.App., Texarkana, 1965, writ ref., n.r.e.). A court' cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court", OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8,27 S. Ct. 236 (1907). Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4),28 U.S.C.A., U.S.C.A. Const.

FRCP RULE 60(b) FRCP Rule 60(b) provides that the court may relieve a party from a final judgment and sets forth the following six categories of reasons for which such relief may be granted: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly-discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party; (4) circumstances under which a judgment is void; (5) circumstances under which a judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment

should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. F.R.C.P. Rule 60(b)(1)-(b)(6). To be entitled to relief, the moving party must establish facts within one of the reasons enumerated in Rule 60(b).

This cannot be ignored its fact recorded! Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 —Klugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985).

When appeal is taken from a void judgment, the appellate court must declare the judgment void, because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. See El-Kareh v. Texas Alcoholic Beverage Comm'n, 874 S.W.2d 192, 194 (Tex. App.—Houston [14th Dist.] 1994, no writ); see also Evans v. C. Woods, Inc., No. 12-99-00153-CV, 1999 WL 787399, at *1 (Tex. App.—Tyler Aug. 30, 1999, no pet. h.).

A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999).

Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process. U.S.C.A. Const. Amend. 5 – *Triad Energy Corp. v. McNell* 110 F.R.D. 382 (S.D.N.Y. 1986).

A void judgment is one which, from its inception, was, was a complete nullity and without legal effect, Rubin v. Johns, 109 F.R.D. 174 (D. Virgin Islands 1985).

A void judgment is one which, from its inception, was a complete nullity and without legal effect, Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645, 14 A.L.R. Fed. 298 (C.A. 1 Mass. 1972).

A void judgment is one which, from its inception, is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right, of no legal force and effect whatever, and incapable of enforcement in any manner or to any degree – *Loyd v. Director, Dept. of Public Safety,* 480 So. 2d 577 (Ala. Civ. App. 1985).

A judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all attributes of a void judgment, *City of Los Angeles v. Morgan,* 234 P.2d 319 (Cal.App. 2 Dist. 1951). Void judgment which is subject to collateral attack, is simulated judgment devoid of any potency because of jurisdictional defects, *Ward v. Terriere,* 386 P.2d 352 (Colo. 1963).

A void judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it and defect of jurisdiction may relate to a party or parties, the subject matter, the cause of action, the question to be determined, or relief to be granted, *Davidson Chevrolet, Inc. v. City and County of Denver,* 330 P.2d 1116, certiorari denied 79 S.Ct. 609, 359 U.S. 926, 3 L.Ed. 2d 629 (Colo. 1958).

People v. Sales, 551 N.E.2d 1359 (Ill.App. 2 Dist. 1990). *Res judicata* consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect, *Allcock v. Allcock* 437 N.E. 2d 392 (Ill. App. 3 Dist. 1982).

Void judgment is one which, from its inception is complete nullity and without legal effect *In re Marriage of Parks,* 630 N.E. 2d 509 (Ill. App. 5 Dist. 1994). Void judgment is one entered by court that lacks the inherent power to make or enter the particular order involved, and it may be attacked at any time, either

directly or collaterally; such a judgment would be a nullity *People v. Rolland* 581 N.E.2d 907, (Ill. App. 4 Dist. 1991).

Void judgment under federal law is one in which rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties, or acted in manner inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment, U.S.C.A. Const. Amed. 5, *Hays v. Louisiana Dock Co., 452 n.e.2D* 1383 (Ill. App. 5 Dist. 1983).

A void judgment has no effect whatsoever and is incapable of confirmation or ratification, *Lucas v. Estate of Stavos,* 609 N. E. 2d 1114, rehearing denied, and transfer denied (Ind. App. 1 dist. 1993).

Void judgment is one that from its inception is a complete nullity and without legal effect *Stidham V. Whelchel,* 698 N.E.2d 1152 (Ind. 1998).

Relief form void judgment is available when trial court lacked either personal or subject matter jurisdiction, *Dusenberry v. Dusenberry,* 625 N.E. 2d 458 (Ind.App. 1 Dist. 1993).

Void judgment is one rendered by court which lacked personal or subject matter jurisdiction or acted in manner inconsistent with due process, U.S.C.A. Const. Amends. 5, 14 *Matter of Marriage of Hampshire,* 869 P.2d 58 (Kan. 1997).

Judgment is void if court that rendered it lacked personal or subject matter jurisdiction; void judgment is nullity and may be vacated at any time, *Matter of Marriage of Welliver,* 869 P.2d 653 (Kan. 1994).

A void judgment is one rendered by a court which lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process *In re Estate of Wells,* 983 P.2d 279, (Kan. App. 1999).

Void judgment is one rendered in absence of jurisdiction over subject matter or parties 310 N.W. 2d 502, (Minn. 1981). A void judgment is one rendered in absence of jurisdiction over subject matter or parties, *Lange v. Johnson,* 204 N.W.2d 205 (Minn. 1973).

A void judgment is one which has merely semblance, without some essential element, as when court purporting to render is has no jurisdiction, *Mills v. Richardson,* 81 S.E. 2d 409, (N.C. 1954).

A void judgment is one which has a mere semblance, but is lacking in some of the essential elements which would authorize the court to proceed to judgment, *Henderson v. Henderson,* 59 S.E. 2d 227, (N.C. 1950).

Void judgment is one entered by court without jurisdiction to enter such judgment, *State v. Blankenship* 675 N.E. 2d 1303, (Ohio App. 9 Dist. 1996).

Void judgment, such as may be *vacated at any time* is one whose invalidity appears on face of judgment roll, *Graff v. Kelly,* 814 P.2d 489 (Okl. 1991). A void judgment is one that is void on face of judgment roll, *Capital Federal Savings Bank v. Bewley,* 795 P.2d 1051 (Okl. 1990).

Where condition of bail bond was that defendant would appear at present term of court, judgment forfeiting bond for defendant's bail to appear at subsequent term was a void judgment within rule that ***laches does not run against a void judgment*** *Com. V. Miller,* 150 A.2d 585 (Pa. Super. 1959).

A void judgment is one which shows upon face of record a want of jurisdiction in court assuming to render the judgment, *Underwood v. Brown,* 244 S.W. 2d 168 (Tenn. 1951).

A Void judgment is one which shows upon face of record want of jurisdiction in court assuming to render judgment, and want of jurisdiction may be either of person, subject matter generally, particular question to be decided or relief assumed to be given, *State ex rel. Dawson v. Bomar,* 354 S.W. 2d 763, certiorari denied, (Tenn. 1962).

A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment, *State v. Richie,* 20 S.W.3d 624 (Tenn. 2000).

A void judgment is one which shows on face of record the want of jurisdiction in court assuming to render judgment, which want of jurisdiction may be either of the person, or of the subject matter generally, or of the particular question attempted to decided or relief assumed to be given, *Richardson v. Mitchell,* 237 S.W. 2d 577, (Tenn.Ct. App. 1950).

A void judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or the parties." Rook v. Rook, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987)

A void judgment or order is one that is entered by a court lacking jurisdiction over the parties or the subject matter, or lacking the inherent power to enter the particular order or judgment, or where the order was procured by fraud, *In re Adoption of E.L.,* 733 N.E.2d 846, (Ill. App. 1 Dist. 2000). Void judgments are those rendered by court which lacked jurisdiction, either of subject matter or parties, *Cockerham v. Zikratch,* 619 P.2d 739 (Ariz. 1980).

Void judgments generally fall into two classifications, that is, judgments where there is want of jurisdiction of person or subject matter, and judgments procured through fraud, and such judgments may be attacked directly or collaterally, *Irving v. Rodriquez,* 169 N.E.2d 145, (Ill. app. 2 Dist. 1960). Invalidity need to appear on face of judgment alone that judgment or order may be said to be intrinsically void or void on its face, if lack of jurisdiction appears from the record, *Crockett Oil Co. v. Effie,* 374 S.W.2d 154 (Mo. App. 1964).

Void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before court, *People ex rel. Brzica v. Village of Lake Barrington,* 644 N.E.2d 66 (Ill. App. 2 Dist. 1994).

While voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus, *Sanchez v. Hester,* 911 S.W.2d 173, (Tex. App. – Corpus Christi 1995). Arizona courts give great weight to federal courts' interpretations of Federal Rule of Civil Procedure governing motion for relief from judgment in interpreting identical text of Arizona Rule of Civil Procedure, *Estate of Page v. Litzenburg,* 852 P.2d 128, review denied (Ariz. App. Div. 1, 1998).

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner v. Shalala,* 30 F.3d 1307, (Colo. 1994).

Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside, *Jaffe and Asher v. Van Brunt,* S.D.N.Y.1994. 158 F.R.D. 278.

A "void" judgment as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by).

No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been. 10/13/58 *FRITTS v. KRUGH.* SUPREME COURT OF MICHIGAN, 92 N.W.2d 604, 354 Mich. 97.

In *Stoesel v. American Home,* 362 Sel. 350, and 199 N.E. 798 (1935), the court ruled and determined that, "Under Illinois Law and Federal Law, when any officer of the Court has committed "fraud on the Court", the order and judgment of that court are void and of no legal force and effect." In *Sparks v. Duval County Ranch,* 604 F.2d 976 (1979), the court ruled and determined that, "No immunity exists for co-conspirators of judge. There is no derivative immunity for extra-judicial actions of fraud, deceit and collusion." In E*dwards v. Wiley,* 374 P.2d 284, the court ruled and determined that, "Judicial officers are not liable for erroneous exercise of judicial powers vested in them, but they are not immune from liability when they act wholly in excess of jurisdiction." See also, *Vickery v. Dunnivan,* 279 P.2d 853, (1955). In *Beall v. Reidy,* 457 P.2d 376, the court ruled and determined, "Except by consent of all parties a judge is disqualified to sit in trial of a case if he comes within any of the grounds of disqualification named in the Constitution. In *Taylor v. O'Grady,* 888 F.2d 1189, 7th Cir. (1989), the circuit

ruled, "Further, the judge has a legal duty to disqualify, even if there is no motion asking for his disqualification." Also, when a lower court has no jurisdiction to enter judgment, the question of jurisdiction may be raised for the first time on appeal. See *DeBaca v. Wilcox,* 68 P. 922. The right to a tribunal free from bias and prejudice is based on the Due Process Clause. Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his/her property, then the judge has engaged in the crime of interference with interstate commerce; the judge has acted in his/her personal capacity and not in the judge's judicial capacity. See *U.S. v. Scinto,* 521 F.2d 842 at page 845, 7th circuit, 1996. Party can attack subject matter jurisdiction at anytime in the proceeding, even raising jurisdiction for the first time on appeal, *State v. Begay,* 734 P.2d 278. "A prejudiced, biased judge who tries a case deprives a party adversely affected of due process." See *Nelson v. Cox,* 66 N.M. 397.

"Where a court failed to observe safeguards, it amounts to **denial of due process of** law, court is deprived of juris." Merritt v. Hunter, C.A. Kansas 170 F2d 739.

Federal Rules of Civil Procedure, Rule 60. Relief from Judgment or Order:

This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. Where necessary parties in government have actual notice of suit, suffer no prejudice from technical defect in service, and there is justifiable excuse for failure to serve properly, courts should not construe rule 4 of these rules governing service so

rigidly, or construe this rule governing relief from orders so narrowly, as to prevent relief from dismissal, especially where dismissal signals demise of all or some of plaintiff's claims. Jordan v. U.S., C.A.D.C. 1982, 694 F.2d 833, 224 U.S. App. D.C. 267. A liberal construction of this rule is particularly appropriate where equitable considerations are involved. Johnson Waste Materials v. Marshall, C.A.5 (Tex) 1980, 611 F.2d 593. This rule authorizing a court on motion to relieve a party or a legal representative from a final judgment or order for any reason justifying relief is to be liberally applied in a proper case, that is, in a case involving extraordinary circumstances or extreme hardship. U.S.S. v. Cirami, C.A.2 (N.Y) 1977, 563 F.2d 26, on remand 92 F.R.D. 483. See, also, Marquette Corp. v. Priester, D.C.S.C.1964, 234 F.Supp. 799;U.S. v. $3,216.59 in U.S. Currency, D.C.S.C.1967, 41 F.R.D. 433. Subd. (b)(4) to (6) of this rule that court may relieve party from final judgment if it is void, if it is no longer equitable that judgment should have prospective application or for any other reason justifying relief from operation of judgment, is to be liberally construed to carry out purpose of avoiding enforcement of erroneous judgment. Blanchard v. St. Paul Fire & Marine Ins. Co., C.A.5 (Fla.) 1965, 341 F.2d 351, certiorari denied 86 S.Ct. 66, 382 U.S. 829, 15 L.Ed.2d 73. This rule should be liberally construed for purpose of doing substantial justice. In re Hankins, N.D.Miss.1973, 367 F.Supp. 1370. See, also, Fackelman v. Bell, C.A.Ga.1977, 564 F.2d 734; Radack v. Norwegian America Line Agency, Inc., C.A.N.Y.1963, 318 F.2d 538; Triplett v. Azordegan, D.C.Iowa 1977, 478 F.Supp. 872; Tann v. Service Distributors, Inc., D.C.Pa.1972, 56 F.R.D. 593, affirmed 481 F.2d 1399. This rule establishing requirement for granting relief from a final judgment or order is to be given a liberal construction. U. S. v. One 1966 Chevrolet Pickup Truck, E.D.Tex.1972, 56 F.R.D. 459. 7. — Void judgment clause: Although this rule providing for relief from judgment is not substitute for appeal and finality of judgments ought not be disturbed except on

very narrow grounds, liberal construction should be given this rule to the end that judgments which are void or are vehicles of injustice not be left standing. Brennan v. Midwestern United Life Ins. Co., C.A.7 (Ind.) 1971, 450 F.2d 999, certiorari denied 92 S.Ct. 957, 405 U.S. 921, 30 L.Ed.2d 792.

There is no time limit when a judgment is void:

Precision Eng. V. LPG, C.A. 1st (1992) 953 F.2d 21 at page 22, *Meadows v. Dominican Republic* CA 9th (1987) 817 F.2d at page 521, *In re: Center Wholesale, Inc.* C.A. 10th (1985) 759 F.2d 1440 at page 1448, *Misco Leasing v. Vaughn* CA 10th (1971) 450 F.2d 257, *Taft v. Donellen* C.A. 7th (1969) 407 F.2d 807, and *Bookout v. Beck* CA 9th (1965) 354 F.2d 823. See also, *Hawkeye Security Ins. V. Porter*, D.C. Ind. 1982, 95 F.R.D. 417, at page 419, *Saggers v. Yellow Freight* D.C. Ga. (1975) 68 F.R.D. 686 at page 690, *J.S. v. Melichar* D.C. Wis. (1972) 56 F.R.D. 49, *Ruddies v. Auburn Spark Plug*. 261 F. Supp. 648, *Garcia v. Garcia*, Utah 1986 712 P.2d 288 at page 290, and *Calasa v. Greenwell*, (1981) 633 P.2d 555 at page 585, 2 Hawaii395. "Judgment was vacated as void after 30 years in entry," *Crosby. V. Bradstreet, CA 2nd (1963) 312 F.2d 483 cert. denied 83 S.Ct. 1300, 373 US 911, 10 L. Ed. 2.d 412. "Delay of 22 years did not bar relief," U.S. v. Williams, D.C. Ark. (1952) 109 F.Supp. 456.*

GOVERNMENT DID NOT FILE ANY OBJECTIONS TO AND NO RESPONSES TO MOTION FOR SANCTIONS UNDER DOCUMENT #199 AND SECOND MOTION FOR SANCTIONS UNDER DOCUMENT #206

Government/Respondent, Counsel for the United States of America did not object to any of the Doc. #199 and #206 claims raised by Petitioner/Defendant Brian David Hill in regards to being a victim of a "fraud upon the court" and that the Court should vacate the fraudulent begotten judgment or judgments based on the issues raised.

Government had until October 25, 2019, to respond to the allegations in Document #199 but they did not respond to the allegations against Anand Prakash

Ramswamy, counsel representing the United States of America, as well as others. That motion was well grounded in law as well as case law authorities as all Courts have an inherit power to attack any frauds upon the court either on appeal or collaterally at any time and isn't subject to a statute of limitations.

Government had until November 5, 2019, to respond to the allegations in Document #206 but they did not respond to the allegations that the United States Probation Office has entered a fraudulent begotten "*Petition for Warrant or Summons for Offender Under Supervision*" (See Document #157) under oath or affirmation which is perjury on its face and subject to impeachment. That motion was well grounded in law as well as case law authorities as all Courts have an inherit power to attack any frauds upon the court either on appeal or collaterally at any time and isn't subject to a statute of limitations. The original Petition under Doc. #157 is a nullity from its inception and should not have been carried as a valid charge. The finding of violation under Doc. #200 should have been considered as a void judgment on its face and had no jurisdiction.

The Government and U.S. Probation Office has waived any right to challenge the allegations of fraud against them under Documents #206 and #199 by refusing to answer the allegations in Documents #206 and #199. It shows that they did not hold their position in adversity against Brian David Hill. They didn't respond when given three weeks of a deadline as if they flaunt that they do not care about Brian David Hill's actual innocence and neither do they care about violating N.C. State Bar Rule 3.8. Unless they attack any of the facts alleged in both motions for sanctions, they are kept as facts and were not challenged. If those allegations were challenged timely, then there would be a hearing to address the allegations. Since no response was made to both Motions' fraud upon the court allegations, then they are prima facie evidence of frauds unless proven otherwise.

So this request is asking the U.S. District Court to promptly, As Soon As Possible, relieve the party Brian David Hill from any further injury and cruel and unusual punishment against him by the Respondent for the judgment under Document #122 being created by frauds such as perjury, conclusory claims and misunderstandings that cannot be established as facts, and the fact that the U.S. Attorney Office in Greensboro, North Carolina refuses to correct any frauds brought to their attention by pleadings that were filed by the adverse party Brian David Hill.

Brian also requests that since the U.S. Attorney Office, the counsel for the United States of America has not objected to the Document #206 motion for sanctions in regards to the Document #157 fraud upon the court issues, that if the original petition was based upon fraud, then the entire Supervised Release Violation was voided and was a nullity from the beginning of its filing. It never should have been signed by a judge and neither should it have a force and effect. Brian warns that he may have to file a Writ of Mandamus or Writ of Prohibition asking for prohibiting enforcement of any fraudulent begotten judgments as they are a nullity and shouldn't have any consequences of a valid judgment.

The frauds need to be addressed, and such frauds on its face are grounds for vacating and nullifying the effected judgments at any time.

This is not the Third Motion for Sanctions Brian plans on filing as his last resort in his 2255 case, then Brian is considering that if the U.S. District Court in the Middle District of North Carolina does not reverse any of its fraudulent begotten judgments, then he shall ask the Court of Appeals or the U.S. Supreme Court for Writ of Mandamus or Writ of Prohibition, and ask the higher courts for remedy of relieving Brian David Hill of any or all fraudulent begotten judgments as documented and was filed properly before the Court.

As long as Brian David Hill files the proper case law authorities and his requests

are well grounded in law, he has every right to file a motion or request asking for any relief as well-grounded by statute, the Court's inherit power, and well-grounded by the United States Constitution.

Brian is entitled with every legal right and common law right, as a United States citizen, to ask any Court to reverse any or all of its judgments when any proof surfaces that such judgments were grounded in fraud. If the adverse party does not object to the fraud allegations, then they have consented to or not objected to losing any judgments favorable to them that such allegations directly address. Not filing any responses when the other party asks for sanctions, is the same as both parties being ordered to appear before a hearing over the issues of fraud and the party to which the allegations were directed against do not show up at the hearing to respond. They had plenty of opportunity to respond and they did not respond to the allegations against them in both Documents #199 and #206.

Brian David Hill is entitled to relief of voidable judgments, As Soon As Possible.

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that the Court enter a vacatur of judgment under Document #122 and that it be ruled as a VOID judgment and can no longer be used against Brian David Hill (Petitioner/Defendant) as brought out in unopposed Document #199 motion;

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that the Court enter a vacatur or nullification or voiding of Document #157 as a fraudulent begotten petition for warrant or summons for offender under supervision and is a nullity from its inception as brought out in unopposed Document #206 motion;

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that the Court enter a vacatur of Document #200 as the fraudulently filed

petition under Document #157 that opened up the Supervised Release Violation case was a nullity from its inception and creating a judgment from a fraudulent petition on the basis of perjury and false information does not make it less voidable;

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests any relief that the Court deems necessary and proper for the interests of justice that so require;

Definition: Definition of INCEPTION (Black's Law Dictionary) INCEPTION. Commencement; opening; initiation. The beginning of the operation of a contract or will, or of a note, mortgage, lien, etc.; the beginning of a cause or suit in court.

Respectfully filed with the Court, this the 7th day of November, 2019.

Respectfully submitted,

Brian D. Hill
Signed

Signed
Brian D. Hill (Pro Se)
310 Forest Street, Apartment 1
Martinsville, Virginia 24112
Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter
I stand with QANON/Donald-Trump – Drain the Swamp
I ask Qanon and Donald John Trump for Assistance (S.O.S.)
Make America Great Again

Petitioner also requests with the Court that a copy of this pleading be served upon the Government as stated in 28 U.S.C. § 1915(d), that "The officers of the court shall issue and serve all process, and preform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases". Petitioner requests that copies be served with the U.S. Attorney office of Greensboro, NC via CM/ECF Notice of Electronic Filing ("NEF") email, by facsimile if the Government consents, or upon U.S. Mail. Thank You!

CERTIFICATE OF SERVICE

Petitioner/Defendant hereby certifies that on November 7, 2019, service was made by mailing the original of the foregoing:

"REQUEST THAT THE U.S. DISTRICT COURT VACATE FRAUDULENT BEGOTTEN JUDGMENT, VACATE THE FRAUDS UPON THE COURT AGAINST BRIAN DAVID HILL"

by deposit in the United States Post Office, in an envelope (Express Mail), Postage prepaid, on November 7, 2019 addressed to the Clerk of the Court in the U.S. District Court, for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401.

Then pursuant to 28 U.S.C. §1915(d), Petitioner requests that the Clerk of the Court move to electronically file the foregoing using the CMIECF system which will send notification of such filing to the following parties to be served in this action:

Anand Prakash Ramaswamy U.S. Attorney Office Civil Case # 1:17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 Anand.Ramaswamy@usdoj.gov	Angela Hewlett Miller U.S. Attorney Office Civil Case # 1: 17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 angela.miller@usdoj.gov
JOHN M. ALSUP U.S. Attorney Office 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 john.alsup@usdoj.gov	

This is pursuant to Petitioner's "In forma Pauperis" ("IFP") status, 28 U.S.C. §1915(d) that "The officers of the court shall issue and serve all process, and perform all duties in such cases ... "the Clerk shall serve process via CM/ECF to serve process with all parties.

Date of signing: November 7, 2019	Respectfully submitted, Brian D. Hill Signed Signed Brian D. Hill (Pro Se) 310 Forest Street, Apartment 1 Martinsville, Virginia 24112 Phone #: (276) 790-3505 U.S.W.G.O. I stand with QANON/Donald-Trump – Drain the Swamp I ask Qanon and Donald John Trump for Assistance (S.O.S.) Make America Great Again

I ask Department of Defense ("DOD") military Constitutional oath keepers, alliance, Qanon for help in protecting me from corruption and criminal behavior of Government.

Certified Mail tracking no: EL 334901015 US

Friend's justice site: JusticeForUSWGO.wordpress.com

Qanon, S.O.S. Help Me!

Joint Appendix 10

USWGO
QANON // DRAIN THE SWAMP
MAKE AMERICA GREAT AGAIN

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
MIDDLE DISTRICT OF NORTH CAROLINA

Joint Appendix in attachment to "PETITION FOR A WRIT OF MANDAMUS AND PROHIBITION TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AND MOTION FOR STAY OF DISTRICT COURT JUDGMENT PENDING MANDAMUS"

In the United States District Court
For the Middle District of North Carolina

Brian David Hill,	)	
Petitioner/Defendant	)	
	)	**Criminal Action No. 1:13-CR-435-1**
v.	)	
	)	**Civil Action No. 1:17-CV-1036**
United States of America,	)	
Respondent/Plaintiff	)	

Petitioner's Third Motion for Sanctions, Motion for Default Judgment in 2255 case and to Vacate Judgment that was in Plaintiff's/Respondent's Favor

Motion and Brief/Memorandum of Law in support of Requesting the Honorable Court in this case grant request for Default Judgment and Vacate Fraudulent begotten Judgment or Judgments

Criminal Defendant and § 2255 Motion Petitioner Brian David Hill("Brian D. Hill", "Hill", "Brian", "Defendant", "Petitioner")is respectfully requesting that the Honorable U.S. District Court grant this motion for sanctions and give Petitioner default judgment in Petitioner's favor in the 2255 case as a matter of law and for evidence of a repeated pattern of fraud upon the court. This is pursuant to the inherit power or implied power of the U.S. District Court (Courts § 18 - inherent or implied powers, Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991), Courts § 225.1; Equity § 47 - power to vacate fraudulent judgment) (See Supplement 1 — Document #199, Attachment #1 ECF No. 199-1).

The sanctions that Petitioner has requested are to deter habitual lying, repeated pattern of frauds upon the court, repeated injury and prosecutorial abuses against

party: Brian David Hill. Since the counsel of the United States of America, Anand Prakash Ramaswamy, and had further doubled down with more fraud and lies against Petitioner to have Petitioner imprisoned on December 6, 2019.

The lies and frauds are repeated, will cause repeated injury and distrust of the Federal Court, and will cause repeated miscarriages of justice and cruel and unusual punishments continually inflicted against Brian David Hill.

The original criminal conviction and all Supervised Release Violations should be declared null and void for the frauds upon the court by the United States of America and for the constitutional rights violations and deprivations against Petitioner since the original criminal case had begun.

Brian David Hill has been repeatedly injured and lied about by Attorney Anand Prakash Ramaswamy, NC Lic. #24991, and this attorney had continued to repeat more misrepresentations and lies on the court against Brian David Hill. He is being repeatedly injured and his rights repeatedly violated.

Anand Prakash Ramaswamy is a licensed attorney and is an officer of this Court. It is the duty of any Court of competent jurisdiction, to vacate fraudulent begotten judgments caused by an attorney who is an officer of that court. It is this Court's duty to punish an attorney who misrepresents the facts, misrepresents what happened, brings any frauds upon the court, and attempts to deceive the court to win their case and win their argument.

LIES OF ANAND PRAKASH RAMASWAMY FROM TRANSCRIPT #215

The lies or misrepresentation of what actually happened because of what Assistant U.S. Attorney Anand Prakash Ramaswamy had said at the hearing dated September 12, 2019. This is sourced from the transcript Document #215. Now of course there is an order under Document #218 to correct the omissions from the transcript but the statements in the transcript can still be used for the purpose of this motion.

Citing pages 67 and 68 of transcript:

MR. RAMASWAMY: I would first say that the Defendant is a registered sex offender who spent at least three hours out that night naked, photographing himself for some unknown reason. **And the Court has also heard testimony that there were other reports of a naked man in a stocking cap, and he's shown wearing a stocking cap prior to this, and that there were no such reports after Mr. Hill's arrest.**

"...***there were other reports of a naked man in a stocking cap, and he's shown wearing a stocking cap prior to this, and that there were no such reports after Mr. Hill's arrest.***"

That is hearsay and AUSA Ramawamy cannot establish facts out of hearsay. How would Ramaswamy like it if I claimed that I saw him wearing a tutu and wearing makeup at a bar sounding like a girl? Or I claim that he is Santa clause? But I do not know whether it was Ramaswamy or not? (Making a theoretical argument here to prove a point).

Either it was Brian or it was not. Hearsay cannot be accepted for any party. Ramaswamy is not above the law so hearsay is not affirmative evidence. Ramaswamy saying that "there were other reports of a naked man in a stocking cap", and "he's shown wearing a stocking cap prior to this, and that there were no such reports after Mr. Hill's arrest." That does not match what Sergeant Jones had said under oath, the Government's own witness. The Court heard testimony that

said "*Did you get similar calls after Mr. Hill was arrested in this case?*" and his answer was "*A. We've had, I know,* ***two other calls for indecent exposure incidents****, but* ***they were both identified as not being Mr. Hill***."

Citing Page 28 of Transcript:

Q Other than September 21, were you -- of last year, were you aware of other calls in reference to a naked person on that trail or in that area?
A We have had other calls in the city in reference to a white male running naked with a stocking cap on, which was consistent with Mr. Hill.
Q Did you get similar calls after Mr. Hill was arrested in this case?
A We've had, I know, two other calls for indecent exposure incidents, but they were both identified as not being Mr. Hill.

That proves that indecent exposure is not limited to Brian David Hill, that anybody can be doing it. There is a college campus right around the City of Martinsville. It is titled the "Patrick Henry Community College". It is a college campus, and colleges are where young students go around doing things like streaking, hazing, and getting drunk and can run around naked acting crazy. There are college students who are wild and ones who love to party and get drunk or do stupid and crazy things.

Unless Officer Jones had correctly identified any phone calls regarding a nude male to being of Brian, it is hearsay and cannot be established as a material fact. Ramaswamy's claim of "that there were other reports of a naked man in a stocking cap" is not based on a material fact but hearsay and then lying on top of that by claiming "and that there were no such reports after Mr. Hill's arrest." That contradicts what the witness had said on page 28.

Again the witness said on page 28 that "I know, two other calls for indecent exposure incidents, but they **were both identified as not being Mr. Hill**". Ramaswamy is such a habitual liar that he would lie or misrepresent about what a witness had said earlier in the very exact same hearing.

Citing Page 32 of Transcript:

"Okay. And you said that the caller, based on the diagram on -- I believe that's Government's Exhibit No. 7. The caller that called in at 3:12 a.m., that was near I believe -- that looks like a Burger King; is that correct?
A Correct. Right there at that intersection for the Burger King is a 24-hour laundromat and just around -- if you take a right from there, you are in sight of the CVS that's open 24 hours a day.
Q And that's not pictured here on Exhibit No. 5; correct?
A No."

Brian and his family knows where that Burger King was located. The hiking trail was below the bridge and the bridge connects to the road where to the right side is where Burger King would be located, and Hooker Street was a road that is going downward to the left at the 3-way intersection.

See Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4 and Exhibit 5 in attachment to this motion.

Shows that any folks at the Burger King cannot see what was on the Dick and Willie hiking trail. Shows that there were no 24-hour-open-businesses around the Dick and Willie trail. It shows that the Hooker Street road goes downward and the trees block anybody from seeing the hiking trail from the top. The trail goes underneath a bridge. The photographs tell a lot.

Ramaswamy along with Sergeant Jones had attempted to deceive the court by showing a 2-dimensional roadmap as an exhibit to make it appear that the Dick and Willie hiking trail is easily seen by folks at Burger King, and a "*24-hour laundromat and just around -- if you take a right from there, you are in sight of the CVS that's open 24 hours a day*". That is a major distortion and misrepresentation of the location of where Hooker Street was. 2D maps is not an accurate description as it doesn't show trees, hills, and can be used to paint whoever they want a certain way. CVS Pharmacy is across from the bridge and cannot be seen from the Dick and Willie trail. The area of Hooker Street where the Dick and Willie trail can be seen cannot see CVS.

The Government's Exhibit 2 of the exhibits introduced at the hearing on September 12, 2019 were of "map, arrows, and some text". A 2D map does not show the level of hills, does not show where trees are, and does not show the terrain of the area of the location. That right there was a fraud and misrepresentation perpetuated by Anand Prakash Ramaswamy from the record.

Citing Pages 19 and 18 of Transcript:

BY MR. RAMASWAMY

"Q I'm going to ask you about Government's Exhibit 1 in relation to this trail, the Dick and Willie Passage. In your further investigation or knowledge, were you able to determine whether these photographs were taken in reference to that trail?
A Further investigation from the initial incident, it looks like all of these were taking place at the Greene Company right behind the Mexican restaurant right in that area, Virginia Avenue, Memorial Boulevard, and Commonwealth Boulevard.
Q What type of area is that?"

"A It's the Wal-Mart -- it's our Wal-Mart intersection. There's several restaurants, a gas station right here in this little area, along with a hotel there as well.
Q In terms of Martinsville, or Henry County, is it -- how would you describe it in terms of car traffic? Foot traffic?

A Heavy traffic."

That is also a distortion, lies, and deceiving the Court into believing that Brian was running naked around close to Wal-Mart and where there is heavy traffic. Late at night, there is no heavy traffic (12:30 AM to 3:AM) in the middle of the **NIGHT.** That was why 911 was never called from where the photos were taken. Heavy traffic and heavy foot traffic was during the daytime. That response and question by AUSA Ramaswamy is deceptive and another fraud upon the court.

Citing Pages 22, 23, to beginning of 24 of Transcript:

"Q Now, in relation to Martinsville, Henry County -- well, strike that.
Is that the same intersection that has the Wal-Mart on the one side and other businesses on the other?
A Correct.
Q In relation to Martinsville and Henry County, how busy of an intersection is that? Is it a -- it's in the top?
A It's one of our busiest intersections for that area.
Q I am going to show you a photograph marked Government's Exhibit 6.
MR. RAMASWAMY: And I have no objection if counsel moves to seal this one as well, Your Honor.
MS. PRYOR: That would be my request, Your Honor.
THE COURT: All right. It's granted.
BY MR. RAMASWAMY
Q I have some questions related to Government's Exhibit 6. What is shown in that exhibit?
A This is the grassy section just up from the intersection behind the gas station. The Wal-Mart intersection is here with the stoplights. The signs for all the stores down there in the strip mall just below Wal-Mart is here in the smaller, lower right-hand corner.
Q And you're pointing to the lower right-hand corner of Government's Exhibit 6. Is there also a yellow sign with a semicircular top about in the center near the bottom?"

"A Yes, sir.
Q What business is that?
"A That's one of the businesses right here on the main strip. I think it's a Midas or Monro, something to that effect, and then Hill Chiropractic is right there as well.

Q Is that a tire store?
A Correct.
Q And is that visible? Is this intersection visible in Government's Exhibit 5?
A Yes, sir. It's right here.
Q And you're pointing to -- in Government's Exhibit 5, on the right, you're pointing to where there's a Lowe's sign, in between the Lowe's and the Wal-Mart?
A Right. The Hill Chiropractic sign is here just at the stoplight, the Monro Muffler shop is here, and the Wal-Mart intersection is all right there together.
MS. PRYOR: Your Honor, do you mind if I move closer just so I can see where they're pointing? I am unable to see it from here.
THE COURT: Why don't you hold it up so counsel can see it.
THE WITNESS: The Wal-Mart intersection is here where the blue sign is. We've got the yellow building, which is the muffler shop, tire shop there, and then just past that one with this other brick building behind it is the Hill Chiropractic building."

See Exhibit 6, Exhibit 7, Exhibit 8, Exhibit 9 and Exhibit 10 in attachment to this motion.

It is not one of the busiest intersections at night. It is impossible for anybody at night from Wal-Mart, Hill Chiropractic, and Monro Muffler shop to see anybody on the other side of the road where the Dick and Willie trail is at a lower level. The road does not have heavy traffic at night as a majority of stores are closed. Traffic is usually between hardly anybody to nobody at night depending on the time and some periods there could be some more traffic but again at night but not heavy traffic. Not many cars even though there is nighttime traffic. At night time it is difficult to see anybody to the left or right. That was why 911 was never called from that entire area. It was only Hooker Street where the 911 call came from. Brian was not around Wal-Mart and the photos were taken NOT at Wal-Mart and was far away from Wal-Mart. Brian never even crossed the big stretch of road that was shown in Government's exhibits.

Again, it is a big deception and AUSA Ramaswamy along with Sergeant Robert Jones deceived the Court into believing that Brian was taking nude photos of himself around a busy intersection while heavy traffic was pouring through and where he can be seen from Wal-Mart, Hill Chiropractic, and Monro tires. It again makes the situation sound far worse than it really was.

The Government's exhibits on September 12, 2019, the photos were taken in the daytime during a more heavy traffic period instead of being taken at night when Brian was out on September 21, 2018. It again, shows that AUSA Ramaswamy is misrepresenting the location and area by painting it out to be what they wanted to depict it in a negative light against Brian.

Citing Page 10 of Transcript:

THE COURT: You may have a seat, sir.
The allegation in the petition is that Mr. Hill was arrested by the Martinsville, Virginia Police Department for a misdemeanor indecent exposure on September 21, 2018. He reportedly **was running around a public park nude at the time.**

The Dick and Willie passage was not a public park but a hiking trail. That comment above was not by AUSA Ramaswamy though but that too is a fraud upon the court that Brian was "reportedly was running around a public park nude".

See Exhibit 1 — Document #206, Attachment #1.

It is not a park but a walking trail. It is not a place meant for kids to congregate.

Citing Page 13 of Transcript:

Q On that trail, is that trail open at night?
A It is.
Q Is it a park?
A **It's a walking trail that goes from the county through the**

city back out into the county.

The Government's own witness admitted under oath that it is a walking trail and did not answer to it being a park. So it is not a park but a "walking trail".

Citing Page 43 of Transcript:

Q As far as being a registered sex offender and the conditions of his supervision, would that prevent him from going to parks and places where children congregate?
A I would have to review his conditions of supervision, but our standing order in the Western District of Virginia would require permission for someone to go to places that are primarily used by children.
Q Did Mr. Hill ever seek such permission in relation to the Dick and Willie Passage?
A In the past, he has asked for permission during the daytime hours to go on the trail to take pictures of wildlife and nature.

Walking trails have no playgrounds, mainly adults use that walking trail. It is not designated as a place for children to congregate. AUSA Ramaswamy was attempting to deceive Jason McMurray and the Court to believe that Brian was congregating at a park walking trail instead of 'just a walking trail'. The Dick and Willie passage has no playgrounds, has no teeter totters. Brian didn't violate his condition for walking on a walking trail. What Jason McMurray had meant for Brian asking for permission to walk on hiking trails was whenever he was under home detention, he would have to fax a weekly schedule with times that he wanted to go hiking. When you're walking out in the woods or on hiking trails, that is not where kids congregate and it is not a park. There are public parks with hiking trails but the Dick and Willie passage is not a park, it is just a long walking trail.

Again AUSA Ramaswamy deceived the Court into the recommendation of 9 months of imprisonment.

It is clear and convincing arguments and evidence that proves Anand Prakash Ramaswamy is a habitual liar and deceiver and he deceives the Court to punish his political enemy Brian D. Hill formerly of USWGO Alternative News.

This is hardcore criminal defamation of character against Brian by lying and deceiving the Court into believing that Brian is walking naked around Burger King, Wal-Mart, or even around a public park where kids congregate to make it appear that Brian was engaging in violation type behavior. This deception by an officer of the court should not be tolerated. Ramaswamy should be held accountable for criminal-level defamation of character.

LIES OF ANAND PRAKASH RAMASWAMY FROM HIS RESPONSE TO "EMERGENCY MOTION FOR STAY OF IMPRISONMENT PENDING APPEAL"

See **Supplement 1**, which is the official response from Assistant U.S. Attorney Anand Prakash Ramaswamy. This is sourced from Document #19, case no. 19-4758, U.S. Court of Appeals for the Fourth Circuit.

Cited from page 9 of that response:

"*Defendant Hill fails to show exceptional reasons why his detention would not be appropriate, and the government submits that the transcript of hearing supports Hill's* ***detention as a danger to the community****, based on the conduct of his violation.*"

That was a lie, as it goes against what even the Chief Judge Thomas D. Schroeder had said. Fraud upon the court is exceptional circumstances why detention would not be appropriate.

Citing page 76 to 77 of #215 Transcript:

"**THE COURT:** I'm going to find **he's not likely to flee or pose a danger to the community** under circumstances where he's on GPS monitoring. So I'm going to add a condition to his supervision that he be given GPS location monitoring, and he can self-report then."

Not only that but the Court was sent pleadings that Ramaswamy was also served a copy of thorough Notice of Electronic Filing through CM/ECF, which means he was made aware of this issue: The issue that there was case law showing that Brian David Hill cannot be guilty of indecent exposure under V.A. Code § 18.2-387 unless he was being obscene.

There is no evidence of obscenity. Sergeant Officer Robert Jones of Martinsville Police Department never made any comment or suggestion that Brian was being obscene, no comment or suggestion that Brian ever engaged in masturbatory behavior, and he was the witness of the Respondent/Government at that hearing.

In fact a Declaration is coming into the U.S. District Court, to the Clerk's office entitled "DECLARATION OF BRIAN DAVID HILL IN OPPOSITION TO DOCUMENTS #157 AND #200" which has a true and correct copy (however the signatures were all original in this copy) of the Writ of Habeas Corpus filed by Brian David Hill against the Commonwealth of Virginia on the ground of his legal innocence.

Brian was never charged with rape, Brian was never accused of rape. Brian was never charged with murder, never accused of murder. Brian's state charge of indecent exposure was without victims and no restitution was requested. Brian never raped, never molested, never killed anybody, and never hurt anybody. Brian was only hurting himself on September 21, 2018, Brian didn't have his insulin with him and didn't have any of his medications with him when he was naked, and

when he was out of his home with clothes on. There is no evidence that Brian is a danger to society, a danger to the community.

Brian was out on Federal bond conditions without the ankle monitor after May 15, 2019, and was placed on the ankle monitor around September 15, 2019. Brian never was accused of anything and was never charged with anything around that time, was compliant with his curfew, and was out in the community. Nobody of the public has ever considered Brian David Hill to be a danger to the community. The only one accusing Brian of being a danger to the community is Anand Prakash Ramaswamy and some yes-men or yes-women at the U.S. Probation Office over being misled and over an autistic meltdown that Kristy L. Burton had witness. Just people that do not know Brian at all personally to make any such correct determination on that but would do what they are told like servants to keep their jobs.

Brian never engaged in masturbatory behavior, he never approached anybody of the general public while he was naked at night, he never went up to somebody and that person could scream "oh my god". Brian was not being obscene and obscenity is required under that statute. AUSA Ramaswamy never showed the case law precedent to the U.S. District Court during the hearing on September 12, 21019.

See Supplement 1 — Document #206, Attachment #3: case law

See Supplement 2 — Document #206, Attachment #4: case law

See Supplement 3 — Document #206, Attachment #5: case law

See Supplement 4 — Document #206, Attachment #6: case law

The cases that are in Petitioner's favor as to his charge of indecent exposure are cited herein:

1. Kenneth Wayne Romick v. Commonwealth of Virginia, Record No. 1580-12-4, Argued at Alexandria, Virginia
2. A. M. Commonwealth of Virginia, Record No. 1150-12-4, Argued at Alexandria, Virginia
3. Kenneth Samuel MOSES v. COMMONWEALTH of Virginia, Record No. 0985-03-3, Court of Appeals of Virginia,Richmond.
4. Kimberly F. Neice v. Commonwealth of Virginia, 1477093 (Va. Ct. App. 2010), Record No. 1477-09-3, CIRCUIT COURT OF GILES COUNTY.
5. Price v. Commonwealth, 214 Va. 490, 493, 201 S.E.2d 798, 800 (1974)
6. Hart v. Commonwealth, 18 Va. App. 77, 79, 441 S.E.2d 706, 707 (1994)

Analysis:

From A. M. Commonwealth of Virginia:

"Code § 18.2-387, the statute under which appellant was convicted, states:"

"Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present."

"(Emphasis added)."

"While "private parts" can include the buttocks, Hart v. Commonwealth, 18 Va. App. 77, 79, 441 S.E.2d 706, 707 (1994), Code § 18.2-387 does not criminalize mere exposure of a naked body, see Price v. Commonwealth, 214 Va. 490, 493, 201 S.E.2d 798, 800 (1974) ("A portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene."). Instead, a

conviction under Code § 18.2-387 requires proof beyond a reasonable doubt of obscenity."

"Code § 18.2-372 defines the word "obscene" accordingly:"

"The word "obscene" where it appears in this article shall mean that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value."

"(Emphasis added)."

"The "obscenity" element of Code § 18.2-387 may be satisfied when: (1) the accused admits to possessing such intent, Moses v. Commonwealth, 45 Va. App. 357, 359-60, 611 S.E.2d 607, 608 (2005) (en banc); (2) the defendant is visibly aroused, Morales v. Commonwealth, 31 Va. App. 541, 543, 525 S.E.2d 23, 24 (2000); (3) the defendant engages in masturbatory behavior, Copeland v. Commonwealth, 31 Va. App. 512, 515, 525 S.E.2d 9, 10-11 (2000); or (4) in other circumstances when the totality of the circumstances supports an inference that the accused had as his dominant purpose a prurient interest in sex."

From Kenneth Wayne Romick v. Commonwealth of Virginia:

"Kenneth Wayne Romick was convicted of indecent exposure, third offense, in violation of Code §§ 18.2-387 and 18.2-67.5:1, and he argues the evidence was insufficient to prove that he intentionally made a display of his private parts

and that such display was obscene. We agree that such display was not obscene and reverse and dismiss the indictment."

"*The mere exposure of a naked body is not obscene. See Price v. Commonwealth, 214 Va. 490, 493, 201 S.E.2d 798, 800 (1974) (finding that "[a] portrayal of nudity is not, as a matter of law, a sufficient basis for finding that [it] is obscene").*"

Unless Brian was breaking the law and was being sexual in public, Ramaswamy cannot ask the Court to punish Brian for conduct that is not illegal and not in violation of his condition for Supervised Release.

This Court may take judicial notice that the allegation supported by affidavit (i.e., Petition for Warrant, District Court Docket No. 157, 1:13-cr-435 M.D. North Carolina) which lead to the District Court's judgment and order (Doc 200) alleged:

> "According to the police report, on the night of September 21, 2018, a report was received that a nude male had been observed running on a public park trail within the city limits. Officers responded and made contact with the male, later identified as Mr. Hill. Mr. Hill ran away from the officers and was shortly thereafter detained near a creek. Mr. Hill advised the officers that a "black man in a hoodie" made Mr. Hill "get naked and take pictures of himself." Mr. Hill was in possession of a camera which he voluntarily allowed the officers to examine. The camera contained several nude photographs of Mr. Hill in different locations around the city [illegible]." Doc 157 at pages1-2.

Also at the hearing there was no statement proving any obscenity had happened. No supporting evidence that Brian engaged in any kind of sexual behavior. Again, the Dick and Willie passage is not park. See Doc. #206.

Notably, the allegations make reference to naked and nude but do not contain any reference to obscene or obscenity.

This Court may take judicial notice of an opinion of the Court of Appeals of Virginia (See http://www.courts.state.va.us/wpcau.htm (All *web links researched and pasted by Eric Clark of Kansas and emailed to Brian's mother inside of a sample motion for stay*)) summarized as "Trial court erred in finding evidence was sufficient to prove appellant made a display of his private parts and that such display was obscene; conviction reversed and dismissed". Full opinion located at http://www.courts.state.va.us/opinions/opncavwp/1580124.pdf

An arrest is only evidence of an allegation of a crime, not evidence of any of the elements of a crime. At best, the crime alleged by an arrest provides notice of the elements of a crime. At the very least, it must be shown by a preponderance of other evidence that each of the elements of the alleged crime was met before a finding of a violation for the commission of a crime holds any merit. The only evidence identified by the judgment only cites to "arrested for the commission of a crime" which is insufficient evidence, even under a preponderance of evidence standard, to show each of the required elements of a crime were met. In other words, the District Court's showing of evidence relied upon and the reasoning of the District Court as to why or how any condition of release was violated is insufficient to conclude that any probation violation occurred.

A violation of a conditions of probation should be detailed enough to provide a demarcation line to afford a defendant fair notice. In this case, that demarcation line is very detailed and clear when the condition is that the defendant is not to commit a "crime" because a "crime" is defined by elements which, when each

element has been met, can serve as basis for a conviction of a "crime". Contrariwise, when any element of a defined crime has not been met with sufficient evidence, then there is insufficient evidence that the condition (i.e., not commit a crime) has been violated. In the case at hand, the alleged condition violation is based on committing the "crime" defined by Virginia Criminal Code § 18.2-387 which has been addressed by the courts of Virginia (See e.g., *Kimberly F. Neice v. Commonwealth of Virginia*, Record No. 1477-09-3 in the Circuit Court of Giles County; see also *A. M. v. Commonwealth of Virginia*, Record No. 1150-12-4 in the Circuit Court of Shenandoah County; see also *Kenneth Samuel Moses v. Commonwealth of Virginia*, Record No. 0985-03-3 in the Circuit Court of Richmond. Note: these cases were also referenced by Hill in the District Court in ECF 179 at page 10.) These courts have found, concerning meeting all of the elements of the crime, that mere nudity is not a sufficient basis for a finding of obscene or indecent as would be required for Hill to have committed that crime. Based on the evidence in the District Court, Hill's conduct was not a crime because his actions did "not rise to the level of obscenity required under Code § 18.2-387, as defined in Code § 18.2-372."

To support a finding that a crime was committed as defined by Virginia Criminal Code § 18.2-387, the District Court must have found, at least, by a preponderance of the evidence that Hill's "actions had as their dominant purpose an appeal to the prurient interest in sex" with "prurient interest in sex" meaning "a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or

scientific value." Such a finding has no support in the record of the District Court and the State cannot cure a statement of findings by the factfinder post hoc.

That is, if the sole evidence of being "arrested" is not the only evidence relied upon by the District Court then due process was not accorded to Hill. Parole and supervised release are both conditional liberty but revocation of either is subject to the requirements of due process which includes "a written statement by the factfinders as to the evidence relied on and reason for revoking" . See *Morrissey v. Brewer*, 408 U.S. 471, 489-90 (1972). Brian is not a danger to the community. Brian cannot have access to any evidence while he is incarcerated which of course is what Ramaswamy wants so that he can lie some more against Brian and prevent Brian from being able to prove his lies. That is how dangerous Ramaswamy is in Brian's criminal case.

Cited from page 8 of that response:

"*At the conclusion of the hearing, the district court found by a preponderance of the evidence that Hill violated Virginia law by indecently exposing himself as alleged.*"

That right there is kangaroo territorial-jurisdictional defect of judicial action and is also a lie by Ramaswamy.

A Federal Court in North Carolina, that isn't even under the jurisdiction of Virginia, cannot simply override interpretations of law in another state. Only the U.S. Supreme Court has the authority to override lower courts in both state and federal jurisdictions. North Carolina Federal Court does not have the authority to override the case law of Virginia and then declare Brian guilty of Virginia law without giving Brian an opportunity to prove in the state court that Brian may not have violated Virginia law or may be legally innocent of Virginia law. Only the

Federal Courts in the Western District of Virginia shall be able to determine the legality of Virginia Law in the Federal constitutional and legal context.

There are six persuasive cases that would disagree with U.S. District Court's wrongful usurpation of power in favor of Anand Prakash Ramaswamy.

(# 1) Kenneth Wayne Romick v. Commonwealth of Virginia, Record No. 1580-12-4, Argued at Alexandria, Virginia; (# 2) A. M. Commonwealth of Virginia, Record No. 1150-12-4, Argued at Alexandria, Virginia; (# 3) Kenneth Samuel MOSES v. COMMONWEALTH of Virginia, Record No.0985-03-3, Court of Appeals of Virginia, Richmond; (# 4) Kimberly F. Neice v. Commonwealth of Virginia, 1477093 (Va. Ct. App. 2010), Record No. 1477-09-3, CIRCUIT COURT OF GILES COUNTY; (# 5)Price v. Commonwealth, 214 Va. 490, 493, 201 S.E.2d 798, 800 (1974); (# 6) Hart v. Commonwealth, 18 Va. App. 77, 79, 441 S.E.2d 706, 707 (1994).

A federal court in North Carolina that has no authority over and no knowledge of Virginia case law and isn't even residing in Virginia and has no idea how Virginia law is interpreted, cannot just declare that Brian had violated Virginia law without giving him the full benefits of a state criminal trial including but not limited to the right to an impartial jury, the right to present and submit evidence in a criminal defendant's defense, the right to effective assistance of counsel, the right to cross examine the witnesses, and the right to present case law showing that Brian has to meet the legal elements of a statute of offense in order to be guilty of that state of offense. One cannot offend under a statute unless the conduct meets the case law interpretation and definition of that statute. Courts were given power to interpret the statute but must respect the jurisprudence of other courts. One court in a different jurisdiction cannot rule that one violated a law in a case in another state. That is major tyrannical usurpation of power. Jurisdiction is important when

Courts decide the issues. One of the reasons why the United States of America was created was so that the King of Great Britain (the Manga Carta) couldn't whisk away criminal defendants to some far away courthouse in another territory where access to witnesses may be impossible as somebody can be dragged before a court faraway from where the alleged crime may have happened.

This may be a territorial jurisdictional defect by the U.S. District Court. They can legally decide whether Brian violated his conditions of Supervised Release, but cannot decide whether Brian had violated Virginia law as it overrides the power, authority, and jurisdiction of the Virginia courts by a Federal Court foreign to Virginia soil. The reason we have jurisdictional territory limits is to prevent a Court in a faraway state from asserting jurisdiction over an allegation of a crime in a completely different state where the alleged offense actually occurred. The State of Washington or Federal Courts in the State of Washington cannot charge or convict that Brian David Hill violated Virginia law. That judgment right there is subject to being a void judgment and never had any jurisdictional merits.

There has been a trend to treat certain "jurisdictional facts" that do not bear on guilt (*mens rea or actus reus*) as non-elements of the offense, and therefore as issues for the court rather than the jury, and to require proof by only a preponderance that the offense was committed in the territorial jurisdiction of the court to establish that venue has been properly laid. *See United States v. Bowers*, 660 F.2d 527, 531 (5th Cir. 1981); *Government of Canal Zone v. Burjan*, 596 F.2d 690, 694 (5th Cir. 1979); *United States v. Black Cloud*, 590 F.2d 270 (8th Cir. 1979) (jury question); *United States v. Powell*, 498 F.2d 890, 891 (9th Cir. 1974). The court in *Government of Canal Zone v. Burjan*, 596 F.2d at 694-95, applied the preponderance test to determinations of whether or not the offenses took place within the Canal Zone which established not merely proper venue but subject

matter jurisdiction as well. Other cases, however, hold that the issue of whether the United States has jurisdiction over the site of a crime is a judicial question, *see UnitedStates v. Jones*, 480 F.2d 1135, 1138 (2d Cir. 1973), but that the issue of whether the act was committed within the borders of the Federal enclave is for the jury and must be established beyond a reasonable doubt. *See United States v. Parker*, 622 F.2d 298 (8th Cir. 1980); *United States v. Jones*, 480 F.2d at 1138. The law of your Circuit must be consulted to determine which approach is followed in your district.

The decision in *Burjan* should be viewed with caution. The analogy between territorial jurisdiction and venue has much to recommend it. Nevertheless, it is important to recognize that the two are not of equal importance. As the *Burjan* court noted, citing Fed. R. Crim. P. 12, subject matter jurisdiction is so important that it cannot be waived and may be noticed at any stage of the proceeding, *see Government of the Canal Zone v. Burjan*, 596 F.2d at 693, whereas the Ninth Circuit in *Powell* rested its ruling that venue need be proved by only a preponderance on the relative unimportance of venue as evidenced by its waivability. There is a clear distinction between the question of which court of a sovereign may try an accused for a violation of its laws and whether the sovereign's law has been violated at all.

Proof of territorial jurisdiction may be by direct or circumstantial evidence, and at least at the trial level may be aided by judicial notice. *SeeUnited States v. Bowers*, 660 F.2d at 530-31; *Government of Canal Zone v. Burjan*, 596 F.2d at 694. *CompareGovernment of Canal Zone v. Burjan*, 596 F.2d 690 *withUnited States v. Jones*, 480 F.2d 1135, concerning the role judicial notice may play on appeal.

If a court does not have personal jurisdiction over a defendant or property, then the court cannot bind the defendant to an obligation or adjudicate any rights over the

property. ... Personal jurisdiction is different from subject-matter jurisdiction or territorial jurisdiction. Territorial jurisdiction is the power of a court to render a judgment concerning events that occurred within a territory.

It is a wrongful usurpation of power for a Federal Court located in Winston-Salem, North Carolina to ever assert that Brian David Hill had violated Virginia law and not let the Virginia courts handle the innocence or guilt of the offense allegation that had happened in Martinsville, Virginia.

CASE LAW AUTHORITIES IN SUPPORT OF THIS MOTION

501 U.S. 32, 44 (1991), 501 U.S. at 56–57; see also Synanon Found., Inc. v. Bernstein, 517 A.2d 28, 43(D.C. 1986) (once a party embarks on a "pattern of fraud," and "[r]egardless of the relevance of these [fraudulent] materials to the substantive legal issue in the case," this is enough to "completely taint [the party's]entire litigation strategy from the date on which the abuse actually began").

In *Stoesel v. American Home,* 362 Sel. 350, and 199 N.E. 798 (1935), the court ruled and determined that, "Under Illinois Law and Federal Law, when any officer of the Court has committed "fraud on the Court", the order and judgment of that court are void and of no legal force and effect." In *Sparks v. Duval County Ranch,* 604 F.2d 976 (1979), the court ruled and determined that, "No immunity exists for co-conspirators of judge. There is no derivative immunity for extra-judicial actions of fraud, deceit and collusion." In *Edwards v. Wiley,* 374 P.2d 284, the court ruled and determined that, "Judicial officers are not liable for erroneous exercise of judicial powers vested in them, but they are not immune from liability when they act wholly in excess of jurisdiction." See also, *Vickery v. Dunnivan,* 279 P.2d 853, (1955). In *Beall v. Reidy,* 457 P.2d 376, the court ruled and determined, "Except by consent of all parties a judge is disqualified to sit in

trial of a case if he comes within any of the grounds of disqualification named in the Constitution. In *Taylor v. O'Grady,* 888 F.2d 1189, 7th Cir. (1989), the circuit ruled, "Further, the judge has a legal duty to disqualify, even if there is no motion asking for his disqualification." Also, when a lower court has no jurisdiction to enter judgment, the question of jurisdiction may be raised for the first time on appeal. See *DeBaca v. Wilcox,* 68 P. 922. The right to a tribunal free from bias and prejudice is based on the Due Process Clause. Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his/her property, then the judge has engaged in the crime of interference with interstate commerce; the judge has acted in his/her personal capacity and not in the judge's judicial capacity. See *U.S. v. Scinto,* 521 F.2d 842 at page 845, 7th circuit, 1996. Party can attack subject matter jurisdiction at anytime in the proceeding, even raising jurisdiction for the first time on appeal, *State v. Begay,* 734 P.2d 278. "A prejudiced, biased judge who tries a case deprives a party adversely affected of due process." See *Nelson v. Cox,* 66 N.M. 397.

Destafano v. State Farm Mutual Automobile Insurance Co., 28 Fla. L. Weekly D1077 (Fla. 1st DCA April 28, 2003), and Long v. Swofford, 805 So. 2d 882 (Fla. 3d DCA 2003), have been more favorably disposed to affirm dismissals with prejudice for serious, palpable "fraud on the court."

The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." Main v. Thiboutot, 100 S. Ct. 2502 (1980).

"Jurisdiction can be challenged at any time." and "Jurisdiction, once challenged, cannot be assumed and must be decided." Basso v. Utah Power & Light Co., 495 F 2d 906, 910.

"Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." Hill Top Developers v. Holiday Pines Service Corp., 478 So. 2d. 368 (Fla 2nd DCA 1985)

"Once challenged, jurisdiction cannot be assumed, it must be proved to exist." Stuck v. Medical Examiners, 94 Ca 2d 751. 211 P2d 389.

"There is no discretion to ignore that lack of jurisdiction." Joyce v. US, 474 F2d 215." The burden shifts to the court to prove jurisdiction." Rosemond v. Lambert, 469 F2d 416.

"A universal principle as old as the law is that proceedings of a **court without jurisdiction** are a **nullity** and its judgment therein without effect either on person or property." Norwood v. Renfield, 34 C 329; Ex parte Giambonini, 49 P. 732.

"Jurisdiction is fundamental and a judgment rendered **by a court that does not have jurisdiction** to hear is **void** ab initio." In Re Application of Wyatt, 300 P. 132; Re Cavitt, 118 P2d 846.

A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked *at any time*, in any court, either directly or collaterally, provided that the party is properly before the court, *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999).

A **void** judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or the parties." Rook v. Rook, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987).

Void judgments generally fall into two classifications, that is, judgments where there is want of jurisdiction of person or subject matter, and judgments procured through fraud, and such judgments may be attacked directly or collaterally, *Irving v. Rodriquez,* 169 N.E.2d 145, (Ill.app. 2 Dist. 1960). Invalidity need to appear on face of judgment alone that judgment or order may be said to be intrinsically void or void on its face, if lack of jurisdiction appears from the record, *Crockett Oil Co. v. Effie,* 374 S.W.2d 154 (Mo.App. 1964).

Void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before court, *People ex rel. Brzica v. Village of Lake Barrington,* 644 N.E.2d 66 (Ill.App. 2 Dist. 1994).

So the Court can vacate the conviction under Document #54, entered on November 12, 2014, and entitled "*JUDGMENT as to BRIAN DAVID HILL (1), Count(s) 1, Ten (10) months and twenty (20) days imprisonment, but not less than time served; ten (10) years supervised release; $100.00 special assessment. Signed by CHIEF JUDGE WILLIAM L. OSTEEN JR. on 11/12/2014. (Daniel, J) (Entered: 11/12/2014)*". Not just vacate the conviction but dismiss the entire case with prejudice to prevent any further injury and frauds and misrepresentations by Anand Prakash Ramaswamy against Brian David Hill. Even if Brian were as guilty as Al Capone (citing United States of America v. Alphonse Capone), no court should deny any criminal defendant the due process of law, the impartial and fair trial, and courts should deter any and all frauds upon the court. Any judgments grounded on fraud and due process violations are null and void. They are either void judgments and/or should be voided.

Brian David Hill had already filed three motions with fraud upon the court allegations which were never opposed (Citing Doc. #206, Doc. #169, and Doc. #199).

Brian had read the response by Anand Prakash Ramaswamy (See **Supplement 1**) opposing Attorney Kennedy's motion to stay judgment of imprisonment pending appeal. He had discovered that it had lies. So after Brian had filed multiple motions and other pleadings in the past directly accusing Anand Prakash Ramaswamy, by name, of frauds upon the court and lying, he doubles down and continues his pathological lying. Ramaswamy is a habitual liar, and any more injuries from this bad lawyer could lead to even worse wrongful revocations, more punishments, or even worse wrongful repercussions. Brian David Hill shouldn't be under this kind of abuse, he has Autism, he has OCD, and it is affecting his health negatively since late 2013 and all of 2014. It worsens his blood sugars and makes them more difficult to control because of the consistent anxiety, stress, and fear that Brian lives in on a daily basis as a result of the corruption and misconduct by Anand Prakash Ramaswamy.

How many times must Brian prove the lies over and over again before the Court will wise up to these abuses and allow Brian to permanently be vacated of this case, his wrongful conviction, and be allowed to live his life freely again? When will Brian not be made to continually suffer these miscarriages of justice anymore?

Brian isn't just entitled to default judgment in his 2255 case due to a repeated pattern of fraud upon the court, he is entitled to default judgment on the ground of "Actual Innocence" as a matter of law.

PETITIONER'S REQUEST FOR DEFAULT JUDGMENT AS A MATTER OF LAW

The Petitioner had already demonstrated false confession, that the SBI forensic report doesn't confirm whether each and every file of interest was of actual obscene child pornographic material as required under federal statute, and that Anand Prakash Ramaswamy had repeatedly engaged in a fraud upon the court.

Fraud upon the court is also not subject to any statute of limitations and is part of equity as well as the Courts' inherit powers.

Since the fraud upon the court issues are in regards to the "guilt" elements and the "violation" elements which make Brian look guilty, the frauds upon the court make it even more likely that Brian is innocent. When facts of guilt are disproven and shown that they are possible frauds, then the adverse party, the United States of America had defrauded Petitioner and the Court, and coerced Petitioner to falsely plead guilty under oath (See Documents #19 and #20) to cover up those frauds. Petitioner shouldn't even have to be held accountable for falsely pleading guilty under oath when Brian was misled not just by his court appointed lawyers but also misled by the frauds perpetuated by Anand Prakash Ramaswamy. The whole point of the guilty plea was to finalize Brian's conviction because they did have a weak case against Brian if even a case at all and to cover up the evidence. Cover up the N.C. SBI forensic report and not ever allow Brian to have a copy of it, and to cover up the confession audio file that was obtained by Mayodan Police Department and never allow Brian to have access to his own [false] confession on August 29, 2012, making is difficult for Brian to prove his innocence. Cover ups and frauds, which is what Anand Ramaswamy is good at.

Proving the frauds not only could have a chance at reversing the Supervised [illegible] Violations, but also demonstrate that the United States of America in this case has no merits to any of their arguments, and the repeated pattern of fraud demonstrate that they have no merits at all in this case. The only thing left is that

Brian David Hill is actually innocent and that Brian should never have been convicted or forced into a situation of ever having to enter a false plea of guilty by being misled and by ineffective assistance of counsel.

Brian, actually innocent of possession of child pornography, is entitled to default judgment in his 2255 Motion on the ground of only "Actual Innocence" and frauds upon the court by the adverse party, as a matter of law.

See McQuiggin v. Perkins, 569 U.S. 383 (2013)

"*More than 11 years after his conviction became final, Perkins filed his federal habeas petition, alleging, inter alia, ineffective assistance of trial counsel. To overcome AEDPA's time limitations, he asserted newly discovered evidence of actual innocence, relying on three affidavits, the most recent dated July 16, 2002, each pointing to Jones as the murderer. The District Court found that, even if the affidavits could be characterized as evidence newly discovered, Perkins had failed to show diligence entitling him to equitable tolling of AEDPA's limitations period. Alternatively, the court found, Perkins had not shown that, taking account of all the evidence, no reasonable juror would have convicted him. The Sixth Circuit reversed. Acknowledging that Perkins' petition was untimely and that he had not diligently pursued his rights, the court held that Perkins' actual-innocence claim allowed him to present his ineffective-assistance-of-counsel claim as if it had been filed on time. In so ruling, the court apparently considered Perkins' delay irrelevant to appraisal of his actual-innocence claim.*"

That claim was untimely filed by "10 YEARS" as his writ of habeas corpus petition was filed "11 YEARS" after his final conviction. Brian's 2255 claim of actual innocence was filed est. 3 years after the final conviction. Brian's untimely filing was less years than McQuiggin v. Perkins, 569 U.S. 383 (2013). Also that

case never brought out the issue of fraud upon the court by Government counsel in the criminal case. That case also never had two motions asking for sanctions which both of them brought up issues of fraud upon the court but were unopposed, again citing Doc. #199 and Doc. #206.

Brian is even more entitled to default judgment for his actual innocence in his favor than the decision under McQuiggin v. Perkins.

"*Actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in Schlup v. Delo, 513 U. S. 298 , and House v. Bell, 547 U. S. 518 , or expiration of the AEDPA statute of limitations, as in this case. Pp. 7–14.*"

"(a) Perkins, who waited nearly six years from the date of the 2002 affidavit to file his petition, maintains that an actual-innocence plea can overcome AEDPA's one-year limitations period. This Court's decisions support his view. The Court has not resolved whether a prisoner may be entitled to habeas relief based on a freestanding actual-innocence claim, Herrera v. Collins, 506 U. S. 390 –405, but it has recognized that a prisoner "otherwise subject to defenses of abusive or successive use of the writ may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence," id., at 404."

"*The Court has applied this "fundamental miscarriage of justice exception" to overcome various procedural defaults, including, as most relevant here, failure to observe state procedural rules, such as filing deadlines. See Coleman v. Thompson, 501 U. S. 722 . The exception, the Court's decisions bear out, survived AEDPA's passage. See, e.g., Calderon v. Thompson, 523 U. S. 538 ; House, 547 U. S., at 537–538. These decisions "see[k] to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest*

in justice that arises in the extraordinary case." Schlup, 513 U. S., at 324. Sensitivity to the injustice of incarcerating an innocent individual should not abate when the impediment is AEDPA's statute of limitations. Pp. 7–9."

"(b) The State urges that recognition of a miscarriage of justice exception would render §2244(d)(1)(D) superfluous. That is not so, for AEDPA's time limitations apply to the typical case in which no actual-innocence claim is made, while the exception applies to a severely confined category: cases in which new evidence shows "it is more likely than not that 'no reasonable juror' would have convicted [the petitioner]," Schlup, 513 U. S., at 329. Many petitions that could not pass through the actual-innocence gateway will be timely or not measured by §2244(d)(1)(D)'s triggering provision. Nor does Congress' inclusion of a miscarriage of justice exception in §§2244(b)(2)(B) and 2254(e)(2) indicate an intent to preclude courts from applying the exception in §2244(d)(1)(D) cases. Congress did not simply incorporate the miscarriage of justice exception into §§2244(b)(2)(B) and 2254(e)(2). Rather, Congress constrained the exception's application with respect to second-or-successive petitions and the holding of evidentiary hearings in federal court. The more rational inference to draw from the incorporation of a modified version of the exception into other provisions of AEDPA is that, in a case not governed by those provisions, the exception survived AEDPA's passage intact and unrestricted. Pp. 9–14."

"A federal habeas court, faced with an actual-innocence gateway claim, should count unjustifiable delay on a habeas petitioner's part, not as an absolute barrier to relief, but as a factor in determining whether actual innocence has been reliably shown. A petitioner invoking the miscarriage of justice exception "must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." Schlup, 513 U. S., at 327. Unexplained delay in

presenting new evidence bears on the determination whether the petitioner has made the requisite showing. Taking account of the delay in the context of the merits of a petitioner's actual-innocence claim, rather than treating timeliness as a threshold inquiry, is tuned to the exception's underlying rationale of ensuring "that federal constitutional errors do not result in the incarceration of innocent persons." Herrera, 506 U. S., at 404. Pp. 14–16."

Any reasonable juror would find a criminal defendant actually innocent when the adverse party has committed a repeated pattern of fraud upon the court, and when the confession is a false confession but still considered a factual basis of guilt, and when the forensic report doesn't represent an actual fact or facts of what is necessary to convict Brian David Hill of possession of child pornography.

Brian also had referenced the United States counsel's fraud upon the court in his Doc. #213 "Objection by BRIAN DAVID HILL re 210 Recommended Ruling - Magistrate Judge re 168 MOTION filed by BRIAN DAVID HILL, 153 MOTION to Appoint Attorney filed by BRIAN DAVID HILL, 141 MOTION to Dismiss Motion to Vacate, Set Aside, or Correct Sen (Attachments: # 1 Envelope - Front and Back)(Butler, Carol) (Entered: 11/04/2019)" was not timely responded to either.

According to the Clerk's filed Doc. #211 "Notice of Mailing Recommendation: Objections to R&R due by 11/4/2019. Objections to R&R for Pro Se due by 11/7/2019. (Garland, Leah) (Entered: 10/21/2019)", "*A party may respond to another party's objections within 14 days after being served with a copy.*" The objections were filed on CM/ECF by the Clerk on November 4, 2019. The two week mark would be November 18, 2019, which is a Monday. There was no timely response. Even if the response deadline was by Tuesday, November 19, 2019, out of grace, there was still no timely filed response.

Then there was Brian's letter to the U.S. Magistrate Judge in his 2255 case. See Doc. #169, MOTION for Hearing and for Appointment for Counsel filed by BRIAN DAVID HILL. **Responses due by 2/20/2019**. (Attachments: # 1 Envelope - Front and Back) (Garland, Leah) (Entered: 01/30/2019).

It says "…crippled my ability to prove factual innocence and prove AUSA Ramaswamy's fraud upon the Court." Another written statement from that letter said "*The "Factual Basis" of my guilt provided by the Government prior to Sentencing was fraudulent. My confession statements were proven to be inaccurate and false, a false confession caused by my Autism because of the way I was interrogated.*" That letter cited the proper case law of Chambers v. NASCO, Inc. and properly cited the Court's inherit powers.

More statements cited from that letter that was a motion said "*The SBI, that is the State Bureau of Investigation and through their Case File (forensic report) reported files/images/videos of interest but there was NO affidavit verifying/confirming whether each such file could have been actual child pornography. In addition to that, the SBI case file said that 454 files had been downloaded with the eMule program between July 20, 2012, and July 28, 2013, while my computer was seized on August 28, 2012.*"

That motion and statements in that letter was never opposed or responded to by the Government counsel, by Anand Prakash Ramaswamy.

He may believe he can get away with all of this; defrauding the court and getting away with it all without any sanctions or punishment, while making poor criminal defendants suffer under their prosecutions. It is time for ABSOLUTE REMEDY in favor of Brian David Hill.**Ramaswamy IS NOT ABOVE THE LAW**!!!!!!!!!!!!!!

How many lies does Brian have to prove was told by Anand Prakash Ramaswamy on court records before he is entitled to any relief? Does Brian have to consider filing a Writ of Mandamus to get any kind of afforded relief? Have all judgments throughout this criminal case that have harmed and prejudiced Brian at all been void judgments and are without merit?

So three motions talking about fraud upon the court against Ramaswamy were unopposed (Citing Doc. #169, Doc. #206, and Doc. #199).

Brian will go ahead and show the lies of Ramaswamy.

Ramaswamy claimed in his appeal response to the Attorney Kennedy's Motion for Stay that Brian is a danger to the community, but yet he knows that Brian is still being released in the community for months without any further charges or complaints that would warrant to ever paint Brian as a danger to the community. Ramaswamy continues uttering words without merit or using incidents caused by Autism and then making up things to make Brian sound worse than what he really was.

Ramaswamy is damaging and injuring Brian David Hill and his life, damaging and injuring Brian David Hill's family members and their lives. When Brian shows any evidence of fraud by the adverse party, and they don't respond to multiple motions and pleadings (where they can legally respond to within a certain fixed time period) accusing them of specific frauds they have perpetuated against the Court and against Brian David Hill, Brian the Petitioner is entitled to default judgment and vacatur of all fraudulent judgments that were against him.

---Again case law on void judgments and judgements grounded on fraud---

Ex Parte Seidel, 39 S.W.3d 221 (2001), Court of Criminal Appeals of Texas, En Banc.

"A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring). Since the trial court's dismissal "with prejudice" was void, it may be attacked either by direct appeal or collateral attack. See Ex parte Shields, 550 S.W.2d at 675.

The law is well-settled that a void order or judgement is void even before reversal", VALLEY v. NORTHERN FIRE & MARINE INS. CO., 254 U.S. 348,41 S. Ct. 116 (1920) "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." WILLIAMSON v. BERRY, 8 HOW. 945, 540 12 L. Ed. 1170, 1189 (1850). It has also been held that" It is not necessary to take any steps to have a void judgment reversed, vacated, or set aside, It may be impeached in any action direct or, collateral.' Holder v. Scott, 396 S.W.2d 906, (Tex.Civ.App., Texarkana, 1965, writ ref., n.r.e.). A court' cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court", OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8,27 S. Ct. 236 (1907). Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4),28 U.S.C.A., U.S.C.A. Const.

When appeal is taken from a void judgment, the appellate court must declare the judgment void, because the appellate court may not address the merits; it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be

attacked at any time by a person whose rights are affected. See El-Kareh v. Texas Alcoholic Beverage Comm'n, 874 S.W.2d 192, 194 (Tex. App.—Houston [14th Dist.] 1994, no writ); see also Evans v. C. Woods, Inc., No. 12-99-00153-CV, 1999 WL 787399, at *1 (Tex. App.—Tyler Aug. 30, 1999, no pet. h.).

A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999).

A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment, *State v. Richie,* 20 S.W.3d 624 (Tenn. 2000).

A void judgment is one which shows on face of record the want of jurisdiction in court assuming to render judgment, which want of jurisdiction may be either of the person, or of the subject matter generally, or of the particular question attempted to decided or relief assumed to be given, *Richardson v. Mitchell*, 237 S.W. 2d 577, (Tenn.Ct. App. 1950).

A **void** judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or the parties." Rook v. Rook, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987)

A void judgment or order is one that is entered by a court lacking jurisdiction over the parties or the subject matter, or lacking the inherent power to enter the particular order or judgment, or where the order was procured by fraud, *In re Adoption of E.L.,* 733 N.E.2d 846, (Ill.App. 1 Dist. 2000). Void judgments are those rendered by court which lacked jurisdiction, either of subject matter or parties, *Cockerham v. Zikratch,* 619 P.2d 739 (Ariz. 1980).

Void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before court, *People ex rel. Brzica v. Village of Lake Barrington,* 644 N.E.2d 66 (Ill.App. 2 Dist. 1994).

Void judgments generally fall into two classifications, that is, judgments where there is want of jurisdiction of person or subject matter, and judgments procured through fraud, and such judgments may be attacked directly or collaterally, *Irving v. Rodriquez,* 169 N.E.2d 145, (Ill.app. 2 Dist. 1960). Invalidity need to appear on face of judgment alone that judgment or order may be said to be intrinsically void or void on its face, if lack of jurisdiction appears from the record, *Crockett Oil Co. v. Effie,* 374 S.W.2d 154 (Mo.App. 1964).

While voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus, *Sanchez v. Hester,* 911 S.W.2d 173, (Tex.App. – Corpus Christi 1995). Arizona courts give great weight to federal courts' interpretations of Federal Rule of Civil Procedure governing motion for relief from judgment in interpreting identical text of Arizona Rule of Civil Procedure, *Estate of Page v. Litzenburg,* 852 P.2d 128, review denied (Ariz.App. Div. 1, 1998).

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner v. Shalala,* 30 F.3d 1307, (Colo. 1994).

In *Stoesel v. American Home,* 362 Sel. 350, and 199 N.E. 798 (1935), the court ruled and determined that, "Under Illinois Law and Federal Law, when any officer of the Court has committed "fraud on the Court", the order and judgment of that court are void and of no legal force and effect." In *Sparks v. Duval County*

Ranch, 604 F.2d 976 (1979), the court ruled and determined that, "No immunity exists for co-conspirators of judge. There is no derivative immunity for extra-judicial actions of fraud, deceit and collusion." In *Edwards v. Wiley,* 374 P.2d 284, the court ruled and determined that, "Judicial officers are not liable for erroneous exercise of judicial powers vested in them, but they are not immune from liability when they act wholly in excess of jurisdiction." See also, *Vickery v. Dunnivan,* 279 P.2d 853, (1955). In *Beall v. Reidy,* 457 P.2d 376, the court ruled and determined, "Except by consent of all parties a judge is disqualified to sit in trial of a case if he comes within any of the grounds of disqualification named in the Constitution. In *Taylor v. O'Grady,* 888 F.2d 1189, 7th Cir. (1989), the circuit ruled, "Further, the judge has a legal duty to disqualify, even if there is no motion asking for his disqualification." Also, when a lower court has no jurisdiction to enter judgment, the question of jurisdiction may be raised for the first time on appeal. See *DeBaca v. Wilcox,* 68 P. 922. The right to a tribunal free from bias and prejudice is based on the Due Process Clause. Should a judge issue any order after he has been disqualified by law, and if the party has been denied of any of his/her property, then the judge has engaged in the crime of interference with interstate commerce; the judge has acted in his/her personal capacity and not in the judge's judicial capacity. See *U.S. v. Scinto,* 521 F.2d 842 at page 845, 7th circuit, 1996. Party can attack subject matter jurisdiction at anytime in the proceeding, even raising jurisdiction for the first time on appeal, *State v. Begay,* 734 P.2d 278. "A prejudiced, biased judge who tries a case deprives a party adversely affected of due process." See *Nelson v. Cox,* 66 N.M. 397.

---Again case law on void judgments and judgements grounded on fraud---

Brian is entitled to relief in his 2255 Motion. Brian has shown that his confession was false; Brian has shown that there was frauds upon the court by the adverse

attorney. The adverse attorney made no effort to correct any frauds, and made no efforts to correct the false information on record against Brian David Hill.

The party of the United States of America has no merit in this case. How can there be merit for a habitual liar caught lying over and over again?

There needs to be no more criminal proceedings and no more punishments against Petitioner as he has long shown that he is indeed entitled to relief.

Actual Innocence and the miscarriage of justice gateway is not subject to the time-bar of the Anti-Terrorism and Effective Death Penalty Act (AEDPA).

Brian's "GROUND ONE: Actual Innocence"claim has been proven and fraud upon the court has been proven. When the adverse party does not respond when given an opportunity by the Clerk to respond to the allegations of fraud in Brian's motions, then Brian is entitled to relief as a matter of law and as a matter of the inherit powers of all federal and state courts. Brian is entitled to relief as a matter of law.

Brian David Hill is entitled to relief of voidable judgments, As Soon As Possible.

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that the Court grant this motion for sanctions and default judgment in Brian David Hill's favor;

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that the Court enter a vacatur of judgment under Document #54 for fraud upon the court and that it be ruled as a VOID judgment and can no longer be used against Brian David Hill (Petitioner/Defendant);

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that the Court enter default judgment in Brian David Hill's favor in the

2255 case for the ground of "Actual Innocence" and fraud upon the court as a matter of law, as a sanction against the offending party: The United States of America;

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that the Court enter dismissal of the grand jury indictment and dismiss this criminal case with prejudice and end all sentences against Brian David Hill;

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that the Court vacate any and all orders of imprisonment including any sentences that have not been completely served;

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that Anand Prakash Ramaswamy pay any and all legal fees of Brian David Hill in the cost of his pro se filings, printer ink, printer paper, and legal mailings in the fight against the deceptions and frauds by Ramaswamy;

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that Anand Prakash Ramaswamy be reported to the North Carolina State Bar Council disciplinary staff for an investigation then possible disciplinary action; be reported to the U.S. Merit Systems Protection Board for an investigation into his misconduct and to face possible disciplinary action; and be given any other appropriate sanctions;

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests that after default judgment is granted, that Brian David Hill be given a certificate of innocence in this case certifying his actual innocence in this case;

WHEREFORE, Petitioner and Criminal Defendant Brian David Hill requests any other relief that the Court deems necessary and proper for the interests of justice that so require.

Respectfully filed with the Court, this the 20th day of November, 2019.

Supplement listings for this MOTION:

Supplement 1: RESPONSE BY UNITED STATES TO EMERGENCY MOTION FOR STAY OF IMPRISONMENT PENDING APPEAL, Document #19, U.S. Court of Appeals, Fourth Circuit, case no. 19-4758. – 11 pages total

Exhibit 1: A photo taken from Google Street view by one of Brian's family members. Depicts where Burger King was. The road to the left from VA-57 is Hooker Street. Photo taken from the daytime and does not represent what was at night. – 1 page

Exhibit 2: A photo taken from Google Street view by one of Brian's family members. Depicts the road of Hooker Street which shows that the road goes downward and not at the same level. Anyone who is at Burger King or the 24-hour laundromat cannot possibly see anybody on Hooker Street or even the Dick and Willie trail. Photo taken from the daytime and does not represent what was at night. – 1 page

Exhibit 3: A photo taken from Google Street view by one of Brian's family members. Depicts the road of Hooker Street going downward with a factory or warehouse building to the right and there was a hiking trail to the left lower down and cannot be seen from the top of Hooker Street as trees are blocking that upper area. Photo taken from the daytime and does not represent what was at night. The trail cannot be seen from that spot. - 1 page

Exhibit 4: A photo taken from Google Street view by one of Brian's family members. Depicts the road of Hooker Street going downward with a factory or

warehouse building to the right and the hiking trail was to the left but the trail cannot be seen from that spot. – 1 page

Exhibit 5: A photo taken from Google Street view by one of Brian's family members. Depicts the bridge that goes over the Dick and Willie trail, and to the right of the bridge was Hooker Street where the road goes downward. The trail cannot be seen from that spot at night. A fence makes is difficult to see the trail underneath. – 1 page

Exhibit 6: A photo taken from Google Street view by one of Brian's family members. Depicts the Wal-Mart intersection where Monro tires and Hill's chiropractor was on that main road. Shows Wal-mart in the distance. The Dick and Willie hiking trail cannot be seen from Wal-Mart, cannot be seen from Monro ties, and cannot be seen from Hill's chiropractor. The photo was from the daytime. Traffic is not heavy at night from what I remember. Traffic is not heavy at night, so the photo should be taken at discretion cautiously.– 1 page

Exhibit 7: A photo taken from Google Street view by one of Brian's family members. Depicts the other side of US 220 BUS. Traffic was not heavy at night as heavy traffic was shown in the daytime picture. The Dick and Willie trail cannot be seen from the area the photo was taken. The photo was from the daytime. Traffic is not heavy at night from what I remember. Traffic is not heavy at night, so the photo should be taken at discretion cautiously.– 1 page

Exhibit 8: A photo taken from Google Street view by one of Brian's family members. Depicts the other side of US 220 BUS. Traffic was not heavy at night as heavy traffic was shown in the daytime picture. The Dick and Willie trail cannot be seen from the area the photo was taken. The photo was from the daytime. Traffic is

not heavy at night from what I remember. Traffic is not heavy at night, so the photo should be taken at discretion cautiously.– 1 page

Exhibit 9: A photo taken from Google Street view by one of Brian's family members. Depicts the other side of US 220 BUS. Traffic was not heavy at night as heavy traffic was shown in the daytime picture. The Dick and Willie trail cannot be seen from the area the photo was taken. The photo was from the daytime. Traffic is not heavy at night from what I remember. Traffic is not heavy at night, so the photo should be taken at discretion cautiously. Shows Greene Co. Inc. in the distance to the right at a lower ground level from the road and bridge.– 1 page

Exhibit 10: A photo taken from Google Street view by one of Brian's family members. Depicts the Greene Co. Inc. building to the left of the Dick and Willie hiking trail. The trail is not where anybody can see from the main road of US 220 BUS or 1157 Virginia Ave at nighttime. The hiking trail is below the bridge and not at the same level as the road where the Wal-Mart intersection is.– 1 page

Respectfully submitted,

Brian D. Hill
Signed

Signed
Brian D. Hill (Pro Se)
310 Forest Street, Apartment 1
Martinsville, Virginia 24112
Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter
I stand with QANON/Donald-Trump – Drain the Swamp
I ask Qanon and Donald John Trump for Assistance (S.O.S.)
Make America Great Again

Petitioner also requests with the Court that a copy of this pleading be served upon the Government as stated in 28 U.S.C.§ 1915(d), that "The officers of the court shall issue and serve all process, and preform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases". Petitioner requests that copies be served with the U.S. Attorney office of Greensboro, NC via CM/ECF Notice of Electronic Filing ("NEF") email, by facsimile if the Government consents, or upon U.S. Mail. Thank You!

CERTIFICATE OF SERVICE

Petitioner/Defendant hereby certifies that on November 20, 2019, service was made by mailing the original of the foregoing:

"Petitioner's Third Motion for Sanctions, Motion for Default Judgment in 2255 case and to Vacate Judgment that was in Plaintiff's/Respondent's Favor -- Motion and Brief/Memorandum of Law in support of Requesting the Honorable Court in this case grant request for Default Judgment and Vacate Fraudulent begotten Judgment or Judgments"

by deposit in the United States Post Office, in an envelope (Certified Mail), Postage prepaid, on November 20, 2019 addressed to the Clerk of the Court in the U.S. District Court, for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401.

Then pursuant to 28 U.S.C. §1915(d), Petitioner requests that the Clerk of the Court move to electronically file the foregoing using the CMIECF system which will send notification of such filing to the following parties to be served in this action:

Anand Prakash Ramaswamy U.S. Attorney Office Civil Case # 1:17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 Anand.Ramaswamy@usdoj.gov	Angela Hewlett Miller U.S. Attorney Office Civil Case # 1: 17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 angela.miller@usdoj.gov
JOHN M. ALSUP U.S. Attorney Office 101 South Edgeworth Street, 4th	

Floor, Greensboro, NC 27401 john.alsup@usdoj.gov	

This is pursuant to Petitioner's "In forma Pauperis" ("IFP") status, 28 U.S.C. §1915(d) that "The officers of the court shall issue and serve all process, and perform all duties in such cases ... "the Clerk shall serve process via CM/ECF to serve process with all parties.

Date of signing: 11/20/2019	Respectfully submitted, Brian D. Hill Signed Signed Brian D. Hill (Pro Se) 310 Forest Street, Apartment 1 Martinsville, Virginia 24112 Phone #: (276) 790-3505 U.S.W.G.O. I stand with QANON/Donald-Trump – Drain the Swamp I ask Qanon and Donald John Trump for Assistance (S.O.S.) Make America Great Again

I ask Department of Defense ("DOD") military Constitutional oath keepers, alliance, Qanon for help in protecting me from corruption and criminal behavior of Government.

Certified Mail tracking no: 7019-1120-0001-4751-4627

Friend's justice site: JusticeForUSWGO.wordpress.com

Qanon S.O.S help me!

Exhibit 1

USWGO
QANON // DRAIN THE SWAMP

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
UNITED STATES DISTRICT COURT CASE NO. 1:17-CV-1036
MIDDLE DISTRICT OF NORTH CAROLINA

Exhibit in attachment to "Petitioner's Third Motion for Sanctions, Motion for Default Judgment in 2255 case and to Vacate Judgment that was in Plaintiff's/Respondent's Favor -- Motion and Brief/Memorandum of Law in support of Requesting the Honorable Court in this case grant request for Default Judgment and Vacate Fraudulent begotten Judgment or Judgments"

Exhibit 2

USWGO
QANON // DRAIN THE SWAMP

U.S.W.G.O.

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Exhibit 3

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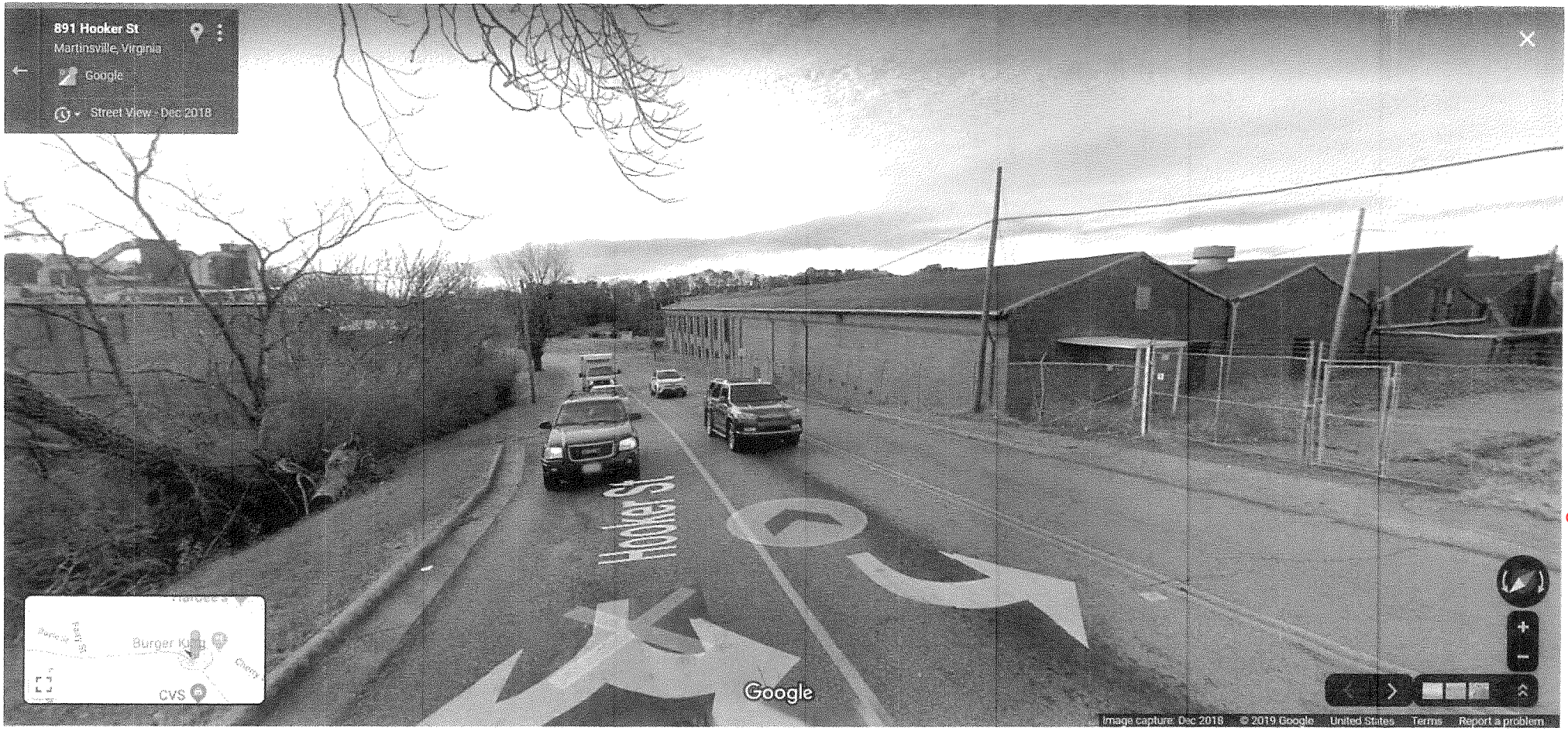

Exhibit 5

USWGO
QANON // DRAIN THE SWAMP

U.S.W.G.O.

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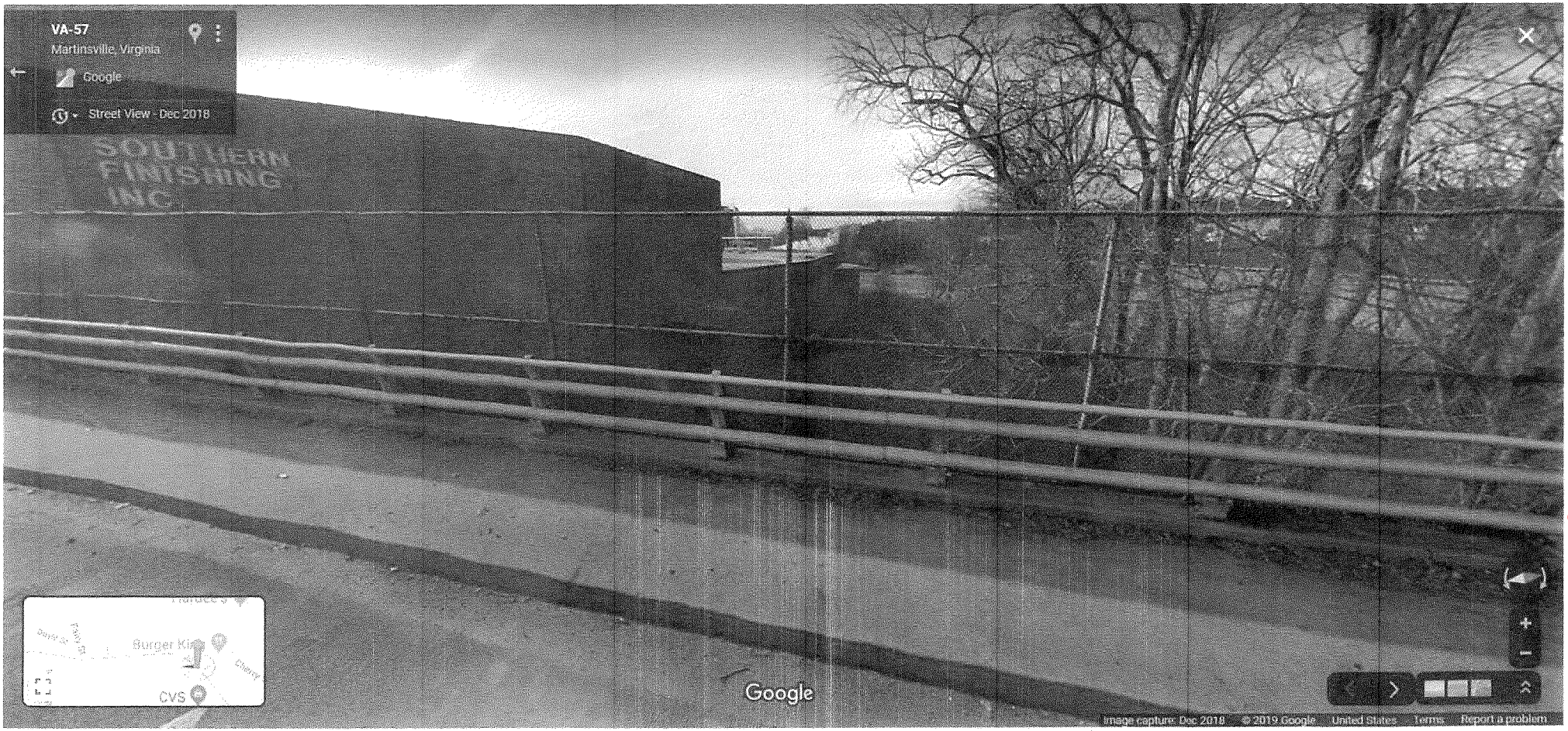

Exhibit 6

USWGO
QANON // DRAIN THE SWAMP

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
UNITED STATES DISTRICT COURT CASE NO. 1:17-CV-1036
MIDDLE DISTRICT OF NORTH CAROLINA

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Exhibit 7

USWGO
QANON // DRAIN THE SWAMP

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
UNITED STATES DISTRICT COURT CASE NO. 1:17-CV-1036
MIDDLE DISTRICT OF NORTH CAROLINA

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Exhibit 8

USWGO
QANON // DRAIN THE SWAMP

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US-220 BUS
Martinsville, Virginia
Google
Street View - Dec 2018
US-220 BUS
SPEED LIMIT 35
Google
Virginia Inc
ABC
Holiwood
Image capture: Dec 2018 © 2019 Google United States Terms Report a problem

Exhibit 9

USWGO
QANON // DRAIN THE SWAMP

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
UNITED STATES DISTRICT COURT CASE NO. 1:17-CV-1036
MIDDLE DISTRICT OF NORTH CAROLINA

Exhibit in attachment to "Petitioner's Third Motion for Sanctions, Motion for Default Judgment in 2255 case and to Vacate Judgment that was in Plaintiff's/Respondent's Favor -- Motion and Brief/Memorandum of Law in support of Requesting the Honorable Court in this case grant request for Default Judgment and Vacate Fraudulent begotten Judgment or Judgments"

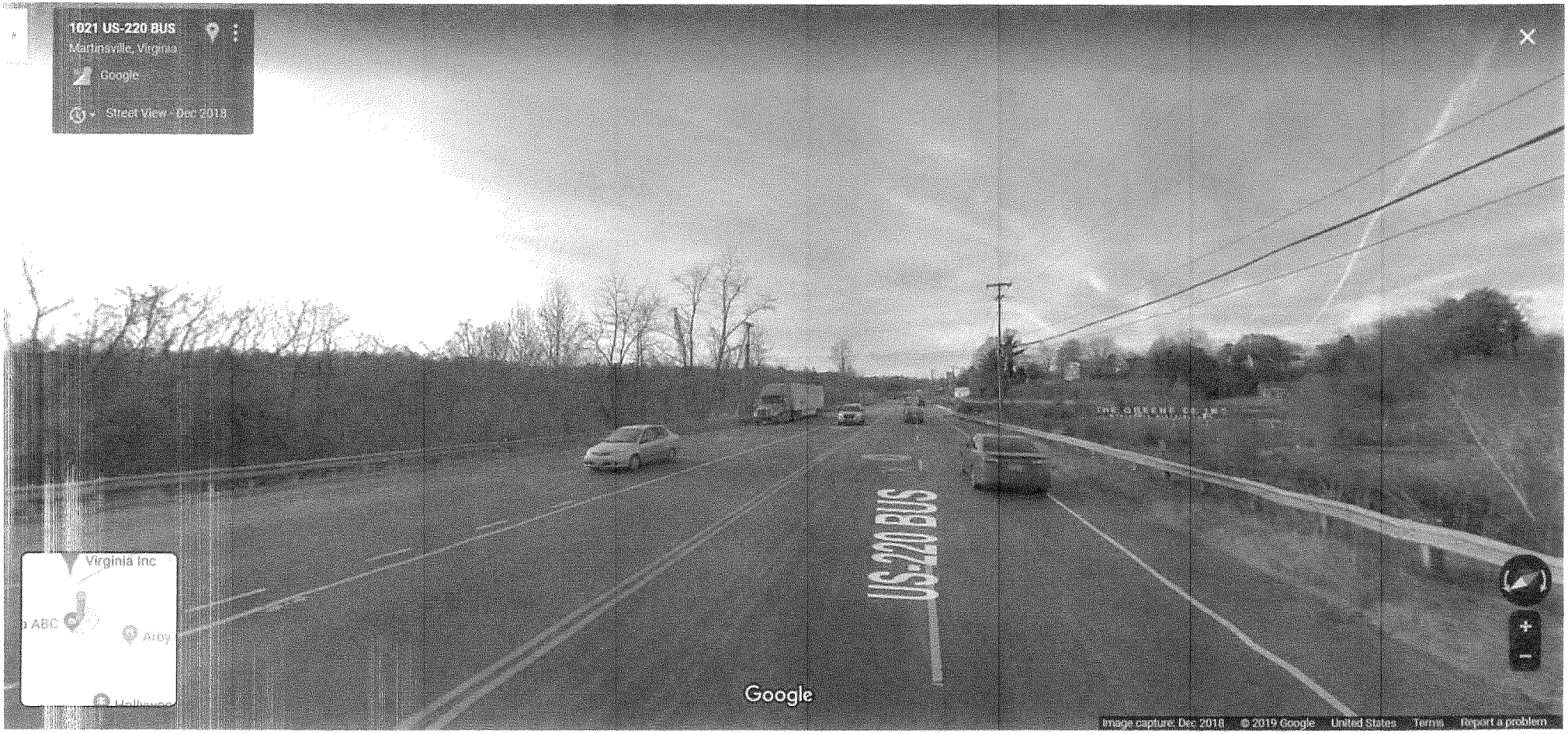
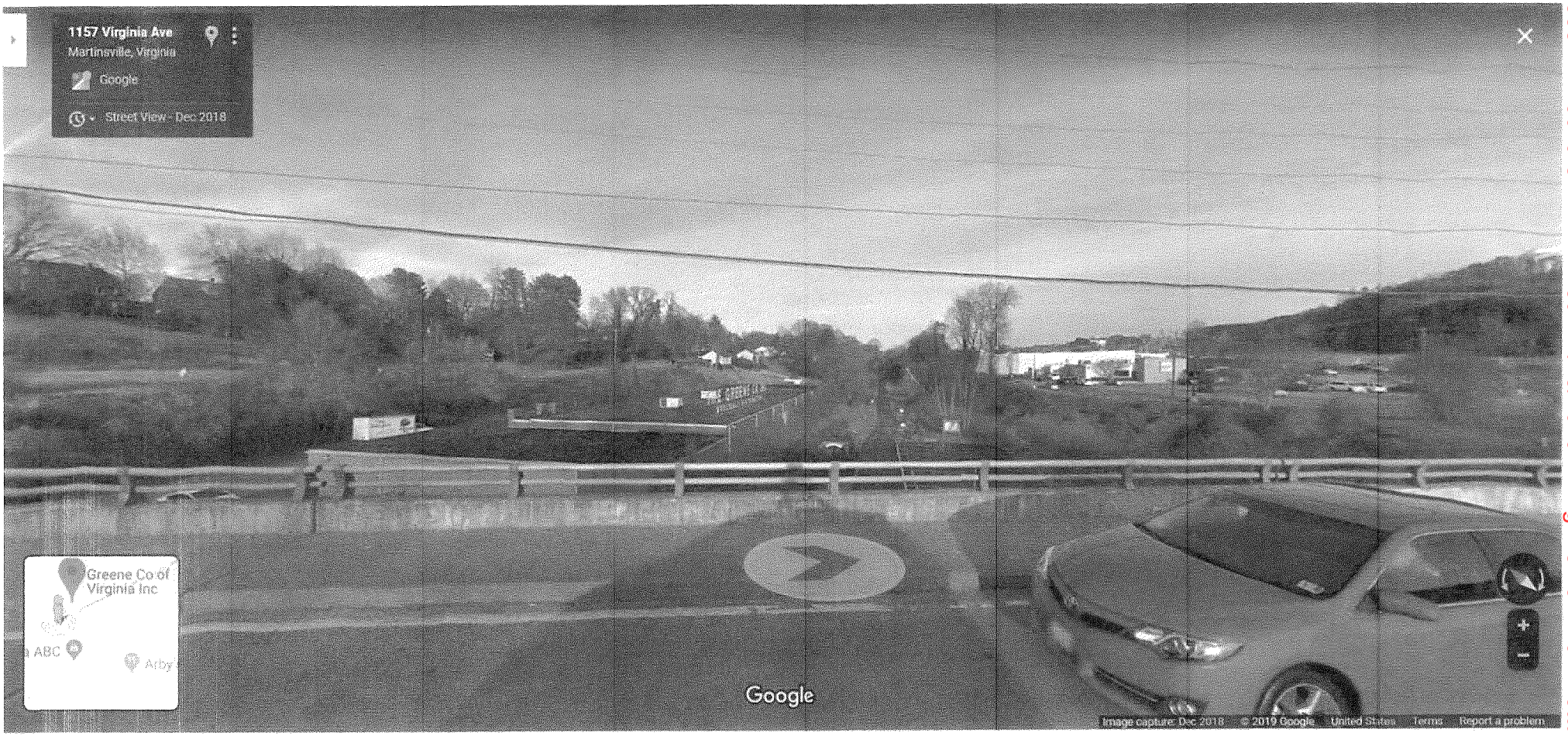


Exhibit 10

USWGO
QANON // DRAIN THE SWAMP

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
UNITED STATES DISTRICT COURT CASE NO. 1:17-CV-1036
MIDDLE DISTRICT OF NORTH CAROLINA

Exhibit in attachment to "Petitioner's Third Motion for Sanctions, Motion for Default Judgment in 2255 case and to Vacate Judgment that was in Plaintiffs/Respondent's Favor -- Motion and Brief/Memorandum of Law in support of Requesting the Honorable Court in this case grant request for Default Judgment and Vacate Fraudulent begotten Judgment or Judgments"



Supplement 1

USWGO
QANON // DRAIN THE SWAMP

U.S.W.G.O.

UNITED STATES DISTRICT COURT CASE NO. 1:13-CR-435-1
UNITED STATES DISTRICT COURT CASE NO. 1:17-CV-1036
MIDDLE DISTRICT OF NORTH CAROLINA

Exhibit in attachment to "Petitioner's Third Motion for Sanctions, Motion for Default Judgment in 2255 case and to Vacate Judgment that was in Plaintiff's/Respondent's Favor -- Motion and Brief/Memorandum of Law in support of Requesting the Honorable Court in this case grant request for Default Judgment and Vacate Fraudulent begotten Judgment or Judgments"

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 19-4758

UNITED STATES OF AMERICA,	)	
	)	
Appellee,	)	
	)	
v.	)	RESPONSE BY UNITED
	)	STATES TO EMERGENCY
BRIAN DAVID HILL,	)	MOTION FOR STAY OF
	)	IMPRISONMENT PENDING
Appellant.	)	APPEAL
	)	

The United States of America, by and through the United States Attorney for the Middle District of North Carolina, hereby responds to defendant Brian David Hill's "Emergency Motion for Stay of Imprisonment Pending Appeal" (Docket Entry #13 in Case No. 19-4758). The United States opposes the motion as set forth below.

Procedural history regarding Defendant Hill's Motion

Brian David Hill was originally sentenced to 10 months and twenty days, but not less than time served, in Middle District of North Carolina case 1:13CR435-1, having been convicted of possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B) and (b)(2). [*See* Docket Entry[1] ("DE")

[1] References to docket entries MDNC Case 1:13CR435-1 will appear as "DE"

#200 in MDNC Case 1:13CR435-1, incorporating the judgment from that case]. Following allegations that Hill violated conditions of his supervised release by committing a misdemeanor offense in Virginia, Hill was arrested on December 22, 2018, with his release authorized by order from that District on May 14, 2019. [DE #157-160, #176-2.]. The revocation hearing was continued on Defendant Hill's motion from August 9, 2019, to September 12, 2019. [DE #183].

Following a revocation hearing on September 12, 2019, during which the government presented a witness and exhibits, Hill was found to be in willful violation of conditions of supervised release by the Honorable Thomas D. Schroeder. [DE #186 and Docket Entry Text for 09/12/2019]. Hill was sentenced to 9 months imprisonment followed by 9 years of supervised release. *Id.* Hill later gave notice of appeal from the district court's revocation of his supervised release. [DE #203, #207]. Hill now moves this Court for a stay of his remaining custodial sentence pending the appeal, claiming the appeal will raise substantial questions of law and fact which are likely to result in a

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without further reference to the case number. *See* Fed. R. App. P. 10(a). References to docket entries in the instant case will use the Fourth Circuit case number within the reference.

reversal, an order for a new trial, or a sentence that does not include incarceration, citing *United States v. Haymond*, 139 S. Ct. 2369 (2019). [Docket Entry #13 in Case No. 19-4758].

Standard regarding release pending appeal

Release pending appeal is governed by 18 U.S.C. § 3143(b), which states, in part, as follows:

> (b) Release or detention pending appeal by the defendant.—(1) Except as provided in paragraph (2) [which addresses circumstances where detention is mandatory], the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for writ of certiorari, be detained, unless the judicial officer finds--
>
> (A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and
>
> (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—
>
> (i) reversal,
>
> (ii) an order for a new trial,
>
> (iii) a sentence that does not include a term of imprisonment, or
>
> (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

Id.

Rules Regarding Stay or Injunction Pending Appeal

Parties must ordinarily move first in the district court for a stay of the judgment or order of a district court pending appeal. Fed. R. App. P. 8. If a defendant is released from a sentence of imprisonment pending appeal, the court must stay a sentence of imprisonment. Fed. R. Crim. P. 38(b)(1). If the defendant is not released pending appeal, the court may recommend to the Attorney General that the defendant be confined near the place of the trial or appeal for a period reasonably necessary to permit the defendant to assist in preparing the appeal. Fed. R. Crim. P. 38(b)(2). Motions seeking relief including the stay of a judgment or order pending appeal must:

> (i) show that moving first in the district court would be impracticable; or
> (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.
>
> (B) The motion must also include:
>
> (i) the reasons for granting the relief requested and the facts relied on;
> (ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and
> (iii) relevant parts of the record.
>
> (C) The moving party must give reasonable notice of the motion to all parties.
>
> (D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

> (E) The court may condition relief on a party's filing a bond or other security in the district court.

Fed. R. App. P. 8(a)(2).

Basis of Defendant Hill's Motion: Likelihood of Reversal/Order for New Trial/Non-Custodial Sentence Upon Appeal

Defendant Hill cites *United States v. Haymond*, 139 S. Ct. 2369 (2019), stating it created "a paradigm shift in the law by establishing that the Sixth Amendment right to trial by jury also applies to supervised release revocation hearings." [Docket Entry #13 in Case No. 19-4758]. In *Haymond*, the Supreme Court held in a split 4-1-4 decision that 18 U.S.C. § 3583(k) (which imposes a five-year mandatory minimum on certain sex offenders who violate their supervised release by committing another enumerated federal sex crime) violates the Fifth and Sixth Amendment rights to a jury trial. *Haymond*, 139 S. Ct. at 2378. Like the defendant in *Haymond*, Hill was convicted of possession of child pornography, but importantly, Hill was *not* subject to any mandatory sentence upon revocation. Defendant Hill appears to contend in his Motion that *Haymond* is applicable beyond revocations under 18 U.S.C. § 3583(k), encompassing all supervised release revocations regarding the rights to a jury trial. However, the Supreme Court in *Haymond* stated, "As we have emphasized, our decision is limited to § 3583(k)—an unusual provision enacted

little more than a decade ago—and the *Alleyne* problem raised by its 5-year mandatory minimum term of imprisonment." *Id.* at 2383. Similarly, this Court has not extended *Haymond* beyond the scope of § 3583(k) revocations and sentencings in recent unpublished decisions. *See United States v. Moore*, 775 F. App'x 94, 94 (4th Cir. 2019)(unpub.); *United States v. Chimaera-El*, 780 F. App'x 61, 62 (4th Cir. 2019)(unpub.)("Because the plurality in *Haymond* expressly limited its holding to § 3583(k) ... we conclude that this decision does not provide a basis for finding [defendant]'s judgment invalid."); *United States v. Rhodes*, No. 18-4733, 2019 WL 4942268, at *2 (4th Cir. Oct. 8, 2019)(unpub.); *United States v. Mooney*, 776 F. App'x 171, 171 (4th Cir. 2019)(unpub.). The undersigned has not found any case in any sister Circuit extending the holding in *Haymond* beyond the context of revocations under 18 U.S.C. § 3583(k), nor does the Defendant Hill cite any such case. Defendant Hill thus fails to carry the burden of showing a likelihood of reversal, order for a new trial, or sentence that does not include incarceration. [Docket Entry #13 in 19-4758]. Defendant Hill fails to demonstrate that his appeal raises a substantial question of law or fact likely to result in the types of relief listed in 18 U.S.C. § 3143(b)(1)(B). This Court has defined a "substantial question" as "a close question or one that very well could be decided the other way." *United States v. Steinhorn*, 927 F.2d 195,

196 (4th Cir. 1991) (internal quotation marks omitted). "There are no blanket categories for what questions do or do not constitute substantial ones. Whether a question is substantial must be decided on a case-by-case basis." *Steinhorn*, 927 F.2d at 196 (internal quotation marks omitted).

Form of Defendant Hill's Motion

Defendant Hill's Motion is insufficient under Fed. R. App. P. 8, in that it fails to show why first moving in the district court would have be impracticable, and fails to be supported by any affidavit supporting the facts in dispute or relevant parts of the record.

Basis of the Government's Opposition to Defendant's Motion

Because the facts underlying the Government's opposition to Defendant Hill's Motion necessitate reference to the record of the proceedings (DE #215[2], Transcript of the Supervised Release Hearing dated September 12, 2019 ("Transcript")). Summarizing, after Sergeant Jones of the Martinsville, VA, Police Department received a call at 3:12 a.m. on the evening of September 21,

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[2] While Defendant Hill has filed, pro se, a "Motion to Correct or Modify the Record Pursuant to Appellate Rule 10(e)" [DE #216], that document does not appear to request redactions as explained in the accompanying text for the transcript docket entry in DE #215, but rather asserts there are omissions. Reference is made to the Transcript as appearing as part of the record in DE #215 are made pursuant to Fed. R. App. P. 10(a)(2).

2018, that an unclothed male was running down Hooker Street, he eventually encountered and arrested Hill. [Transcript at 15-17, 26]. Sergeant Jones testified that Hill was on a Martinsville city trail several miles in length, and Hill was "naked other than a backpack, his tennis shoes and socks, and a stocking cap." [Transcript at 12-14]. Hill possessed a camera with a memory card later found to have photographs of Hill naked at various sites on or near the trail. [Transcript at 17-19]. Time stamps on the photographs begin at 12:29 a.m. [Transcript at 20]. Hill claimed an unknown person gave him a camera and forced him by threats to take photos of himself naked. [Transcript at 15-16]. Examination of the camera's memory card showed that it contained a document: a monthly supervision report for August 2018, for Brian D. Hill. [Transcript at 27, 43]. At the conclusion of the hearing, the district court found by a preponderance of the evidence that Hill violated Virginia law by indecently exposing himself as alleged. [Transcript at 61-62]. The district court imposed a nine-month within-Guidelines range sentence, noting that Hill would likely serve about three months due to credit for time served while in federal custody. [Transcript at 73-74]. Over the government's objection, Hill was allowed to remain out of custody and self-report by December 6, 2019, for the purpose of his state jury trial on the underlying indecent exposure offense,

having appealed from a bench trial for that offense. [Transcript at 29, 75-77]. The district court added conditions of GPS monitoring, finding that with such conditions that Hill was "not likely to flee or pose a danger to the community under circumstances where [Hill is] on GPS monitoring." [Transcript at 76]. Notwithstanding this, the Government respectfully submits that Hill's release following revocation was an accommodation by the district court and limited to Hill's state court obligation.

In summary, Defendant Hill has failed to meet the applicable standards under 18 U.S.C. § 3143(b), Fed. R. App. P. 8(a)(2), or Fed. R. Crim. P. 38. If this Court were to consider Defendant Hill's Motion under 18 U.S.C. § 3145, review and appeal of a release or detention order, Defendant Hill fails to show exceptional reasons why his detention would not be appropriate, and the government submits that the transcript of hearing supports Hill's detention as a danger to the community, based on the conduct of his violation.

WHEREFORE, the United States respectfully requests that the Court deny Hill's "Emergency Motion for Stay of Imprisonment Pending Appeal."

This, the 15th day of November, 2019.

Respectfully submitted,

MATTHEW G.T. MARTIN
UNITED STATES ATTORNEY

/S/ ANAND P. RAMASWAMY
Assistant United States Attorney
NCSB #24991
United States Attorney's Office
Middle District of North Carolina
4th Floor, 101 South Edgeworth Street
Greensboro, NC 27401-6024
Phone: (336) 332-6340

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Appellee,	)	
	)	
v.	)	NO. 19-4758
	)	
BRIAN DAVID HILL,	)	
	)	
Appellant.	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2019, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system with notice to Appellant's Counsel:

E. Ryan Kennedy, Esq.

Respectfully submitted,
MATTHEW G.T. MARTIN
UNITED STATES ATTORNEY

/S/ ANAND P. RAMASWAMY
Assistant United States Attorney
NCSB #24991
United States Attorney's Office
Middle District of North Carolina
4th Floor, 101 South Edgeworth Street
Greensboro, NC 27401-6024
Phone: (336) 332-6340