actions. In considering the issue, Supreme Court found that a reading of dictionary definitions of the words used by Elonis clearly conveyed a threat; however, the definitions only speak to what the words convey and mean literally; they do not prove the mental state of the author. Id at 10.

Wrongdoing must be conscious to be criminal. Morissette v. United States, 342 U.S. 246, 250, 72 S. Ct. 240, 96 L. Ed. 288 (1952). Justice Jackson, in Morissette, wrote that a defendant must be "blameworthy in mind" before he can be found guilty, a concept courts have expressed over time through various terms such as *mens rea*, scienter, malice aforethought, guilty knowledge and the like. Id. at 252, 72 S. Ct. 240, 96 L. Ed. 288; 1 W. La Fave, Substantive Criminal Law § 5.1, pp. 332-333 (2d ed. 2003). A defendant must know and intend the facts which make his conduct a criminal act. Staples v. United States, 511 U.S. 600, 608, n. 3, 114 S. Ct. 1793, 128 L. Ed. 608 (1994).

In Morissette, for example, the defendant had taken spent shell casings from a government bombing range, believing them to be abandoned. During his trial for "knowingly converting" property of the United States, the Judge instructed the jury that the only question was whether the defendant had knowingly taken the property without authorization. Id. supra. at 248-249. The Court reversed the defendant's conviction, ruling that he had to not only know that he was taking the casings, but that

someone else still had the property rights in them. He could not be held liable "if he truly believed the casings to be abandoned." Id. at 271, 72 S. Ct. 240, 96 L. Ed. 288; see Id. at 276, 72 S. Ct. 240, 96 L. Ed. 288.

The highest court of our land has consistently interpreted statutes to ***require a defendant's knowledge*** that his actions were criminal or that ***he intended the criminal consequences*** from his acts. They would never permit a "broad range of innocent conduct" to sweep individuals into criminality. Liparota v. United States, 471, U.S. 419, 420, 105 S. Ct. 2084, 85 L. Ed. 2d 434 (1985). Id. at 426.

Another example is the Supreme Court's holding on Posters "N" Things, Ltd. v. United States, 511 U.S. 513, 114 S. Ct. 1747, 128 L. Ed. 2d 539 (1994). There, the Court interpreted a federal statute prohibiting the sale of drug paraphernalia. The Court considered whether the items seized qualified as drug paraphernalia was an objective question which did not depend on the defendant's state of mind. Id., at 517-522, 14 S. Ct. 1747, 128 L. Ed. 2d 539. In other words, whether the mere possession of the items which were considered drug paraphernalia under the law was sufficient to convict without proof that the defendant knew that the items were likely to be used as paraphernalia.

The Court held that an individual could not be convicted of selling such paraphernalia unless he "knew that the items at

issue were likely to be used with illegal drugs." Id. at 524, 14 S. Ct. 1747, 128 L. Ed. 539. Such a showing was necessary to establish the defendant's state of mind. (emphasis added)

The burden imposed upon the prosecution is to prove, beyond a reasonable doubt, that a defendant was not legally innocent, but that his conduct was wrongful. X-Citement Video v. United States, 513 U.S. 64, 70, 115 S. Ct. 464, 130 L. Ed. 2d 372 (1994). Requiring only that a defendant act knowingly "would fail to protect the "innocent actor." Carter v. United States, 530 U.S. 255, 269, 120 S. Ct. 2159, 147 L. Ed. 2d 203 (2000). The "presumption in favor of the scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct." X-Citement Video, 513 U.S. at 72, 115 S. Ct. 464, 130 L. Ed. 2d 372.

Although the statute at issue in Elonis pertained involved a charge of making threatening communications under 18 U.S.C.S § 875 (c), its holding is not limited to "threatened communication" cases. The basis of the Court's decision to reverse Elonis's conviction was a First Amendment analysis. The essence of the Court's holding is that speech, no matter how offensive it is or how it is interpreted by others, cannot be criminalized without proof of the speaker's intent.

Accordingly, the holding and analysis in Elonis' applies to cases where intent and mental state is an element of proof, and,

in particular, where the criminal act charged is based upon words used by a defendant. Such is the case here.

To limit Elonis's holding would improperly result in "having liability turn on a 'reasonable person' standard" and "permit[ing] criminal convictions [to be] premised on mistakes--mistaken assessment by a speaker about how others will react to his words." United States v. Houston, 2015 BL219153, 6th Cir. No 14-5295 (6th Cir 2015).

E. Instructing the Jury to Apply the Wrong Standard of Proof of Intent Extremely Prejudiced Petitioner, Infected the Entire Trial, and Undermined Confidence in the Jury's Verdict.

The facts in Elonis are analogous to the facts, sub judice. In Petitioner's case, the prosecution and Court took words, without action or other proof of intent, and clearly argued and instructed the finder of fact to apply a "reasonable person" standard -- a burden of proof unequivocally impermissible and in contravention of law. Staples, 511 U.S. at 606-607, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (quoting United States v. Dotterweich, 320 U.S. 277, 281, 64 S. Ct. 134, 88 L. Ed. 48 (1943).

The district court had a *sua sponte* obligation to correctly instruct the jury on the elements of proof. But the Court consistently and improperly directed the jury to use their "common sense," and "objective reasoning" in their understanding

of the facts and to and what a "reasonable person" would believe by Petitioner's statements on the Kemo and Cordova-Esteves' cases."

The Court failed to specifically instruct the jury, that they must consider *Petitioner's subjective intent*: What did Petitioner mean? What did Petitioner intend? And, if the government failed to meet their burden of proof beyond a reasonable doubt in proving Petitioner's intent/intended conduct; they must acquit him. Had this charge been given, it would have resulted in Petitioner's acquittal.

In both the Kemo and Esteves' cases, *Petitioner's* intent was the most critical element to be proven in the case. Improperly instructing the jury on the requisite *mens rea*, scienter, and culpability had fatal consequences for Petitioner's defense.

With regard to the Kemo related counts, it is not disputed that Petitioner was NOT present, consulted nor cognizant of what was decided AFTER he left this alleged meeting. The fact the decision occurred out of Petitioner's presence is probably the only consistent fact in all of Young's testimony at the various trials. The government does not refute this fact. It would be a travesty of justice to wrongfully permit Petitioner's conviction to rest upon Young's perception of what Petitioner intended.

This is precisely why the government had Young originally testify that Petitioner used the word "kill;" a clear subornation of perjury. The conflicting testimony in the 2007, 2011 and the 2013 trials leaves complete ambiguity in how the words could be interpreted. But the jury was not properly instructed that the mere statements were not, by themselves, sufficient proof to convict, regardless of how they were interpreted by listeners or the effect the statements had on others' decisions and actions.

In considering if the government met its burden of proof, the jury should have been instructed that it needed to find sufficient evidence of Petitioner's subjective intent. The jury should have been instructed to consider if the government's evidence proved, beyond a reasonable doubt, *Petitioner's mens rea* and *scienter -- the specific intent requirement of the substantive offense.* Using another person's interpretation of Petitioner's words and the effects of those words is just not enough under the law to prove criminal culpability.

Improperly instructing the jury to apply an objective or "reasonable person" standard was an error of constitutional magnitude. If the jury had been properly instructed, Petitioner would have been acquitted as the facts, his conduct, and his inaction exculpated him.

Because the jury was erroneously directed to apply the objective legal standard of intent, Petitioner's convictions must be set aside.

VIII. THE GOVERNMENT OBSTRUCTED JUSTICE, COMMITTED OUTRAGEOUS MISCONDUCT, SUBORNED PERJURY, PROVIDED FALSE AND MISLEADING TESTIMONY AND EVISCERATED THE CONSTITUTION'S DUE PROCESS CLAUSE.

I, Paul Bergrin, do hereby swear to the accuracy of these facts under penalty of perjury.

Bergrin hereby incorporates by reference all facts delineated within this post-conviction relief petition. More importantly, he incorporates by reference the 28 U.S.C. 2255 motion, affidavit in support of motion and reply brief filed by William Baskerville, in the United States District Court, District of New Jersey, Civil No.: 13-5881; including submissions dated November 23, 2015, and filed before the Honorable Judge Peter G. Sheriden, United States District Court, District of New Jersey and entitled Pro-Se Supplemental Letter Brief.

With this motion, filings and submissions, this Court will bear witness to the most outrageous acts of governmental misconduct observed in its illustrious career. This case is laden and riddled with extraordinary incidents and violations of the Constitution's Due Process Clause, Rules of Professional Responsibility and suborned perjury. The knowing and deliberate use of false, fabricated, and contrived testimony is inordinate; and acts of misconduct disheartening.

The objective evidence that this motion point will conclusively establish, I pray will not only reverse Bergrin's convictions, but will compel this Honorable Court to present its findings to the Office of Professional Responsibility and Inspector General, Untied States Department of Justice.

Assistant United States Attorney and lead prosecutor against Bergrin, John Gay, failed to meet his Title III statutory obligations, during a wiretap investigation of Hakeem Curry (Curry Investigation) and Ishmael Pray, resulting in suppression of thousands of conversations and making them legally inadmissible. There were approximately 40,000 wiretap recordings during the course of the Curry investigation. Again, the targets of the investigation were Curry and Pray and their alleged narcotics trafficking organization and there was not one (emphasis added) conversation, chatter nor clandestine discussion depicting any meeting with Bergrin, subsequent to William Baskerville (Will's) arrest on November 25, 2003 as described and testified by Anthony Young (Young).

There exists not a shred of evidence Bergrin ever attended a meeting with Young, Curry, Rakeem, and Jamal Baskerville (Rakeem-Jamal), and Jamal McNeil; or that he ever advised, counseled or informed this group that ("No Kemo, no case); without Keno as a witness, the government would not be able to

prosecute Will and he would thus receive bail, go home and Bergrin would win the case.

Moreover, there is not a scintilla of evidence of this meeting being held and/or Bergrin ever stating Will would receive life in prison for his de-minimis sales of small quantities of crack cocaine. The sole and exclusive witness inculpating Bergrin in Kemo Deshawn McCray ("Kemo") murder was the word of Young.

As absolute facts: The recorded evidence contained in the interceptions, clearly, unequivocally and categorically prove that Young lied during government proffer sessions; perjured himself at trial; contrived and manufactured evidence; distorted facts; was wrongfully and illegally coached to lie, that testimony was suggested and he was suborned by the federal prosecutor's to commit perjury; and this created blatant <u>material</u> (emphasis added) inconsistencies in his testimonies, that would be clearly visible to any prosecutor or law enforcement agent.

Despite acute knowledge of misconduct and wrong doing by its exclusive witnesses, that was objectively apparent through actual recorded conversations, the government became a party to the subversion of justice and became intertwined with this outrageousness; thereby trampling Bergrin's Constitutional rights to Due Process of Law and any semblance of a fair trial.

This may be their justification for intentionally burying the CDs containing the Curry investigation recordings amongst 20,000 plus pages of discovery and misrepresenting to all concerned that there is no Brady nor Giglio material in the recordings and it would be a waste of time to review them. THE GOVERNMENT KNEW THE EXPLOSIVE SUBSTANCE OF THE RECORDINGS AND THEIR MONUMENTAL IMPACT ON THE CREDIBILITY OF THEIR CASE. (emphasis added)

The government abdicated their obligation to seek justice and perform within the parameters of the law and Rules of Professional Responsibility. Their flagrant and incessant failure to turn a "blind eye" and ignore the incredulous statements and inconsistencies resulted in a grave miscarriage of justice; which must be remedied as a matter of law, by this Honorable Court.

Moreover, this Court will become acutely aware of the deliberate disregard of the truth seeking process by the government's failure to investigate, ascertain the truth, and appalling misrepresentation of evidence.

Bergrin submits that the Kemo prosecution was so inflammatory and prejudicial to him and the Indictment that these overwhelming accusations, controlled and caused the guilty verdicts in all the other counts. The government knew the effects the Kemo prosecution would have on obtaining a guilty

verdict on the other counts of the indictment and their objective, was to present evidence on it.

Preliminarily, the following interceptions, not summarized in previous motions, (emphasis added) establish without any doubt, that Young lied and fabricated his knowledge and evidence in this case; from the date it evolved and commenced.

The prime date is November 25, 2003, the date of Will's arrest, search of his home in Westfield, New Jersey, seizure of all his and his wife Deidre Baskerville (Deidre) motor vehicles and R. 5, Fed. R. Crim. P., Initial Appearance. This Court must be cognizant of the Star Ledger newspaper articles that resulted from this case; especially the one attached hereto which includes the substance of a communication between Bergrin and Curry, on November 25th wherein the name "KEMO" was used.

The Curry intercepts establish to an absolute certainty (emphasis added), Young manufactured evidence.

(a) Young repeatedly testified that he attended a meeting, on November 25, at approximately 0930-1000 hours, at the home of Jamal Baskerville, 17th Street and Avon Avenue, Newark, New Jersey. Also in attendance was Curry, Rakeem, Jamal McNeil, and Deidre Baskerville. The objective of this meeting was to discuss Will's arrest by the FBI that morning, whether they will also be arrested and how best to help Will. He even went as far as to testify that he entered Rakeem's van with Deidre and Rakeem,

leaving all the others alone on the sidewalk to privately discuss Will's dilemma; and that Deidre was laughing and had to be scolded by Rakeem. He began this testimony at the Baskerville trial in 2007, T. 4341-4343 and it continued through Bergrin's trials.

What is pre-eminent in these facts is that their false accusations caused multiple witnesses to assert their 5th Amendment right against self-incriminations (RIGHTS); thus precluding Bergrin from calling them as defense witnesses to dispute Yong's credibility. Even though the government possessed evidence Young was falsifying evidence, they assisted in its presentation and refused to grant immunity to any witness; which was simply unjust, unfair and illegal.

Young testified that Curry commenced contacting Bergrin, in Young's presence at 10-10:30 a.m. to ask Bergrin to check on Will, as Curry was concerned and worried. He also wanted Bergrin to get Will bail. Baskerville, T. 4349-4350. Young repeatedly proffered and swore, that he, Curry and Rakeem were all present in Curry's Range Rover vehicle each time Curry spoke to Bergin that morning and AGAIN AT 4:00 p.m. (emphasis added).

Young testified that Curry placed the Bergrin calls on speakerphone, so they could overhear the conversation. He later changed this proffered and testified to facts about the

speakerphone; to Curry repeating in his and Rakeem's presence in the auto, the substance of Bergrin's comments.

Young swore that Curry had the Range Rover parked on 17th Street and Avon Avenue, Newark, New Jersey at the time he and Rakeem were inside and listening to Curry repeat the conversation. He further swore he heard Curry repeat the name "KAMO" and it was HE and RAKEEM whom figured out exactly who "KAMO" was; and it was actually Kemo. He said that at this moment he made the decision to get rid of Kemo because he informed against a Baskerville (Baskerville, T. 4349-4353) (Emphasis added). Young further clearly testified that Curry informed him at this time, that Will was facing life in prison.

The recordings prove:

That Young, Curry and Rakeem were never present together during any conversation November 25, 2003, and were never in Curry's Range Rover that day. Most importantly, Young never deciphered with Rakeem that "Kamo" was in fact Kemo Deshawn McCray and no determination was ever made by Young, nor anyone else at the time, to get rid of Kemo. Young contrived his presence in Curry's vehicle, Rakeem's presence in the vehicle and the fact that they all sat in Curry's Range Rover automobile on 17th Street and Avon Avenue, Newark.

This began a progression of lies, fabrications and incriminations. Young incriminated Bergrin and Rakeem and caused

innocuous, harmless conversations and information that was informative, into a criminal murder indictment.

Additionally, the recordings established that there was never any meetings the morning of November 25th with Young, Curry or anyone else. This was completely contrived by Young.

What is deplorable and despicable is the fact that Young did not contact the FBI to cooperate until after he was arrested for weapons offenses as a career criminal. This was approximately nine (9) months subsequent to Kemo's murder and a plethora of newspaper articles detailing the killing; including Bergrin's conversations with Curry and the name "Kemo." The government was aware of these facts and the recordings evinced that Young was lying and they endorsed it and let him testify.

November 25, 2003

(a) The recordings from 11:58:58 a.m. to 12:08:19, calls 09218-09228, clearly prove Curry was at home and that he never left his home until after 12:00 p.m. At this time he was heading directly to his store "The Closet," in Union, New Jersey. Henceforth, there was no meeting at the Baskerville residence with Curry and others to discuss Will, there was no concern by Curry about Will's arrest and Young was never present during telephone conversations, as he described and swore under oath. (T. 4343 Baskerville)

(b) The recordings evince that on November 25, Curry had no information nor contact with anyone pertaining to Will's early morning arrest, until approximately 12:30 p.m., when he was telephoned for the first time by Maurice Lowe a/k/a "Face." Call no. 09241 at little past 12:30 p.m. clearly reflects Lowe speaking to Curry and the following conversation occurring. Lowe asking Curry, "Did you speak to Hamid (Hamid Baskerville, Will's brother)? Curry, "No. What happened?"

Lowe advises Curry that he spoke to Hamid and was informed that "the boys with the three letters got Walee Cheeb (Will)". (The boys with three letters obviously meaning FBI). Curry then inquiries from Lowe "Where had William Baskerville been arrested". Lowe states, "That he did not know because someone else called Hamid and told him this, but Hamid did not know, where Will was arrested or what happened." (Emphasis added).

Despite conclusive proof in the government's possession that Young was manufacturing and contriving material facts, which may have inculpated multiple parties, they ignored this completely. They knew Young was not present with Rakeem in Curry's vehicle as he testified. They knew there never was a meeting between Curry, Hamid, Rakeem, Deidre, Hanif, Jemal McNeil and Jamal Baskerville nor anyone else on the morning of

November 25th and at the Baskerville residence. They knew Young never heard nor observed Curry contact Bergrin in the morning, nor was Young present with Curry and Rakeem or anyone else, to overhear any conversations between Bergrin and Curry. They knew that Young had to have learned facts from reading newspaper accounts and overhearing other conversations. They also possessed proof that Deidre never showed up, for any meetings, laughed and was chided by Rakeem.

With all these proofs, Prosecutor Minish summarizes the government's case to the jury and argues, "Then he (BERGRIN) said that Will told him the informant is a guy named K-Mo. Then what happens? Anthony Young and Rakeem Baskerville (corroborating and vouching for Young's contrived and false allegations that Curry, Young and Rakeem were present in Curry's Range Rover), overheard the Bergrin call and figured out who the informant was. (Emphasis added). Young tells you, said K-Mo no you mean Kemo, Okay, can you imagine Anthony Young making that up, that detail?" T. at pages 5713.

The government improperly and continually argued to the jury that they had to treat Young, because he could not have known certain facts, unless he was present and witnessed them; all the time having evidence that was false and that all these facts appeared in the newspaper, which Young acknowledged he had read. This tactic undermines the equity of seeking justice and

the truth, which is underlying foundation of due process. Again, by Young testifying to the process he used to identify Kemo with Rakeem, he was attempting to make innocent, defense attorney obligation of informing family members as to the substance of a Criminal Complaint, and all parties involved, into a nefarious motive; when all parties assistance his creditability of learning facts from the parties. When all parties know this could not be true.

On November 25, at 1:22 p.m., call no. 1339406, places Curry, still inside his home and having never left. He also advises the caller that he plans on attending a New York City concert that evening and that he is leaving for North Carolina tomorrow (November 26) for the remainder of the Thanksgiving holidays (Emphasis added).

Call no. 711475 at 1:31:26 Hanif Baskerville as the caller and, another one of Will's brothers, whom was allegedly at Young's contrived morning strategy meeting. This call is important, not only because it again proves Young lied about Hanif also being at the meeting, but Hanif is informing Curry of Will's arrest and Curry is surprised to learn the details.

Even though these calls are clear, the government through their direct examination of Young, encouraged him to perjure himself about having an important strategy meeting on November 25, in the morning at the Baskerville residence, about Curry's

and Rakeem's reactions, plans and comments upon hearing from Bergrin and about Young's connections to all the alleged integral parties. T. 4350 - 4360, Baskerville.

The government knew from interceptions that Curry not only remained home past 1:00 p.m. but that he was not even in possession nor driving his Range Rover vehicle on this date. Call no. 09266, at approximately 1:00 p.m., call no. 09272 at 1:37 p.m. and calls 09273-09282, ending at 1:50 p.m. all prove Young was never in Curry's vehicle and driving around with him, from the time of the morning meeting to Bergrin's approximate 4:00 p.m. call. As a matter of fact the calls reflect that Curry left his home and drove to his store in Union, New Jersey where he awaited Pray to pick him up.

Calls 09302-09343, commencing at approximately 2:40 to 3:44 p.m. also proves Young was not truthful when he testified he was sitting in Curry's Range Rover, on 17th Street and Avon Avenue, Newark, by the Baskerville residence and had spent the day with Curry. T. 4350-4353. Young was fabricating and exaggerating the closeness of his relationship to Curry, the Baskerville's and this cause. This way he could establish credibility when he lied about his vast knowledge of Kemo plans and him being the assassin of Kemo. The government knew all this evidence was untruthful and with almost 40,000 interceptions, not one contained any party conversing with Young nor even mentioning

his name; they knew he was not close to the Baskerville's nor Curry and they would never confide in him, unless they created this aura of nexus Young began with Curry and the Baskerville's.

Despite the government's proof that Curry was obtaining a hair-cut at a barber shop, next to the Boston Market on Central Avenue, East Orange, New Jersey (Calls numbers, 09302 to 9943, commencing at 2:40 p.m. and continuing to almost 4:00 p.m.), they continue to promote and endorse Young's lies and blatant perjury. They know, with certainty that Young was not with Curry during his conversation with Bergrin at approximately 4:00 p.m. The government had these conversations, their transcriptions and even summaries in the palm of their hands; but they continued in their suborning of Young's perjury. Young vehemently and unhesitatingly swore before jury after jury that he was seated in Curry's Range Rover with Rakeem when Bergrin called Curry, upon leaving federal court. That he was heard Curry repeating Bergrin's explanation of the allegations, the name Kemo, the figuring out the informant was Kemo, etc. Bergrin brings up this point in excruciating detail again because it took Bergrin's confrontation with Young, during cross-examination and Young's viewing of a call summary, before he admitted it was <u>not</u> Rakeem in Curry's Range Rover but Jamal. Young never acquiesced in inculpating Rakeem, until Bergrin proved he was lying. Call numbers 09351-09365 from 4:02 p.m. to 4:21 p.m., prove he was

contriving his story about Rakeem. This government knew this fact was false but did nothing about Young's perjury and actually solicited it, through their examinations and arguments. They further knew that call number 09354 at 4:10 p.m., minutes after the alleged conversation with Bergrin, evinces a conversation between Curry and Pray, with Curry waiting to be picked up by one Norm, aka Howard Sanders, They knew Curry was with Young on November 25 late afternoon.

Further recordings of the wiretap, concluded that Young also fabricated Hamid Baskerville's presence at the fictitious early morning meeting. It further enforces the crucial fact that neither Curry not the Baskerville brothers of Will, had any clue whom Kemo was; Proving Young never figured out whom KEMO was with either Rakeem or anyone else that all Young's testimony about him and Rakeem knowing Kemo was false. At 4:24 p.m., Curry is intercepted conversing with Hamid and telling him, "I have not seen nor heard from you all day." (Emphasis added). Most importantly, Curry tells Hamid he has no idea who this Kemo is, thus dismissing Young's testimony that he and Rakeem advised Curry as to who the informant was; after hearing Bergrin's call at 4:00 p.m. Specifically, Curry states: "Who the FUCK IS KEMO OR SOME SHIT." Hamid replies, "I don't know who the fuck is that." Curry most importantly states; "I AIN'T TALK TO NOBODY. I talk to Roc (Rakeem Baskerville) for a hot minute. Curry then

states: Paul Bergrin read me five dates of sales and surveillance, it's like five different dates he seen the guy. The guy (Kemo) started with 5, then 16, then 28 and then something else." Curry then continues, (MOST VITALLY CRUCIAL), I'M SITTING HERE IN MY CAR BY MYSELF, thinking about shit just waiting...for Norm to come. (Emphasis added._) Curry also recounts his whereabouts and what he did on this critical day of 25 November and until the call with Hamid; which occurred minutes after Bergrin. Curry informs Hamid he left his jacket in PRAY'S RENTAL CAR (NOT THE RANGE ROVER and then got a haircut. (Emphasis added). (Call number 4461206 at 5:34 p.m. Young just cemented everything he did, heard and witnessed on November 25.

Bergin cannot begin to accentuate the significance and magnitude of these last several conversations. They conclusively prove Young's perjury and the government's subornation. The problem is the government's international misconduct and outrageous use they made of this false evidence. They wrongfully used these facts to not only incriminate Bergrin but to misleadingly convince the jury of Young's special relationship with the Baskerville's and Curry. They also used it to lead the jury to believe Young's presence with the Baskerville's and Curry and especially Rakeem and his hearing of these communications, enable him to decipher Bergrin's intent.

Finally, as it pertains to the data of 25 November and in a succession of calls, number 09396 at 4:53 p.m., Curry specifies that he was driving a blue HONDA ACCORD motor vehicle, and not a Range Rover, as Young just completely contrived. What may appear insignificant is important because it shows that Young just consistently made up facts and was never checked by the prosecutor. For instance, call 09298 at 1:24 p.m., is magnanimous in that Bergrin advises Curry that bail is not a possibility for Baskerville, in these kind of cases; thereby discrediting their theory and Young; that Bergrin promised to get Will bail and win the case. This call also not only informed Curry of his cousin Will's complaint allegations, but the statutory maximum of LIFE in prison; and the overwhelming evidence against Will for conviction. Again, the compelling materiality of this call confronts Young with rampant perjury and the government's subornation. Young swore at every Bergrin trial that he and all the alleged participants of this Bergrin meeting, were shocked and awed that Will faced life in prison until Bergrin informed them at this street meeting. This was the first time they became aware of the consequences; but the recordings conclusively prove otherwise. The government then used this perjury to establish Bergrin's involvement to save Will from life in prison.

This Court must view the nature of this recording and its effect on Young's verdict and the government's proofs. The government firmly contended that once the participants of Bergrin's meeting learned Will was facing life, they decided to kill Kemo. This decision was reacted upon Bergrin leaving the session when Young swore in 2007 that Curry advised him Will faced life on 25 November in Curry's auto and on this same date he decided to kill Kemo. The dichotomies are just too great and contradictory. This Court must also consider the fact that Bergrin advised Curry during the recordings of the overwhelming evidence verses Will and, thus, that the case could be easily proved independent of Kemo. It is just one incident after another of falsities and a trial process that was contravened.

Other calls succeeding Curry's conversation with Bergrin never considered the truth searching process. Call 3496671 at 5:05, has Curry contacting Rakeem to ask him "Who is some guy named Kemo?" This call occurred within minutes of the second and final communication on 25 November between Curry and Bergrin. It again supports the proposition that the government knew and permitted Young being in Curry's vehicle when Bergrin called (2) about Young and Rakeem deciphering and knowing KEMO's identity as Kemo McCray. A story Young gave during all his proffer sessions and sworn testimony in 2007. Repeatedly, the government had "actual knowledge." Young was lying because Gay, referred to

conversations between Curry and Rakeem in a 2004 motion to recuse Bergrin's representations of Will. There was no confusion that Rakeem never knew me determined who Cam was. Rakeem made it clear in this interception that he did not know KEMO nor KEMO, when he tells Curry. "I DON'T KNOW HIM. I THINK HE'S FROM IRVINGTON." Rhetorically, how can the government permit Young to testify that Rakeem knew Kemo, identified him along with Young in Curry's Range Rover on November 25, while possessing this recording.

Curry contacts other family members of Will and informs them of the change and statutory maximum of life on November 25, not at some street with Bergrin.

In the government's intentional abandonment of seeking justice, they used Young to create the false impression that it was Bergrin whom intimidated, coerced and influenced this group to take action against Kemo and save him from a commitment of life in prison; when this was purely fiction.

Additional intercepted telephone conversations, are known by federal prosecutors corroborate Bergrin's accusations of outrageous government misconduct.

On 26 November, at 4:30 p.m. (approximately), call number 231475 between Al - Hamid and Curry confirms that Curry is on his way to Bergrin's OFFICE (emphasis added), to find out what is happening with Will and his case. It is Will's first cousin

and closest blood relative Curry whom is seeking information for Will's mother, wife and brothers.

This call is less than 24 hours from the time of Will's arrest and clearly depicts that it would be absurd for Bergrin to hold any other meetings, besides this one and at his office; especially one in the middle of a high narcotic, heavily patrolled by law enforcement area, as described by witnesses. (17th Street and Avon Avenue) Call 12778, at 5:00 p.m. is of Bergrin advising Curry he will be at his office in 15 minutes.

Curry met Bergrin in his office, 572 Market Street, Newark, New Jersey and they discussed Will's case; especially Bergrin expert opinion as to the sentencing exposure of Will; the subsequent recordings conclusively discrediting Young as to any street meeting, subsequent to December 4, wherein Bergrin informed this alleged group, Will would receive life in prison and to not let Kemo testify. This Court must also accept the fact that Bergrin, as an experienced former State and Federal Prosecutor and distinguished defense counsel, and would understand the magnitude of that Will make 5 hand to hand crack sales, to an informant, under constant surveillance by police and wearing a recorder. Moreover, the transactions were set up with recorded conversations and videotaped. Consequently Kemo's lack of testimony would have absolutely no impact on the resolution of Will's case.

Call number 995926, at approximately 5:40 p.m., Curry informs his confident and ally Jarvis Webb, an alleged organization superior, that he has just left Bergrin's office where he discussed Will's case. Jarvis asks Curry, what did Bergrin say and Curry responds: "I asked him what kind of time Will faced and he said 20 years." Curry then said to Bergrin, "What's he really facing and Bergrin states about (12) twelve years." Bergrin then explained that Will sold a total of about 100 grams of crack cocaine. Jarvis informed Curry, "that Will would only have to serve about 10 total years on a 12 year sentence. No one ever expected, anticipated nor ever discussed Will doing life, as reflected in the "spoken word" of the recording. Only the devious, scheming mind of Young and the government.

This Court cannot see how not only did Young fabricate, contrive and perjure himself about the entire chronology and progression of what took place on November 25; but also as to a meeting on 17th Street and Avon Avenue with Bergrin, hearing for the first time at this phantom meeting Will was going to be sentenced to life in prison, that without Kemo there would be no government case for prosecution, that Bergrin intended to go to trial in this case and that the meting occurred 4-5 days after Will's arrest or on December 4, alternatively.

The government was cognizant of 244,900 at 6:56 hours wherein Curry is on his way to North Carolina for the Thanksgiving holiday; yet they never queried Young as to his proffer assertion and sworn trial testimony of this Bergrin meeting 4-5 days after Will's arrest.

In an attempt to cover up Young's blatant and incessant perjury and their own misconduct, the government had the audacity to plead with the jury, during summation in Bergrin's case to accept December 4, 2003, as the date of this meeting with Bergrin; and just forget about Young's one and a half years of proffers and cooperation statements that it occurred 4-5 days after Will's arrest; and also his sworn trial testimony in Baskerville. They then continued in their outrageous misconduct argued in summation, that the telephone records confirm the 4 December date; knowing this was absolutely inaccurate and relying on Bergrin's ignorance as to the substance of the recordings.

December 4, 2003, was the date of Will's detention hearing, and several hours after the hearing, Bergrin was recorded telling Curry Will was detained and all bail applications denied. The call to Curry was at 7:15 p.m. and Bergrin stated: "<u>the evidence is very strong against Will</u> and Will was realistically looking at one approximately "13 years plea deal"; (in which he would only do about 10 years in custody). The same

as previously discussed between Bergrin and Curry. Bergrin also tells Curry he would call him tomorrow. Additionally, in post-trial motions, the government conceded and stipulated that no meeting occurred on 4 December, as they wrongfully argued during summation.

Henceforth, only one conclusion can be reached as to why Young completely charged his proffered statements and prior testimonies, to the new 4 December date; that logical conclusion is wrongful coaching and suborned perjury by the government. This was a deliberately calculated by prosecutor's to cover-up the proofs which establish that Bergrin had the proofs to discredit Young's 4-5 day after Will's arrest and December 4 date.

Additional recordings dated 7 December 2003, 18 February and 20 February 2004, were possessed by the government as intercepted conversations and expressed the following:

(a) That Rakeem was disappointed and disgusted at Bergrin sharing information on his criminal file, with a third party. As a matter of fact on this date 7 DECEMBER 2003, (emphasis added), Rakeem is interrupted emphatically advising Curry that "he ain't using nor fucking with Bergrin anymore." Rakeem is very upset. What is pertinent is if the government conceded there was no meeting on December 4 and absolutely no evidence of any meetings on the 5th or 6th of December, then Bergrin's excoriation and

alienation by the parties, further facilitates the fact there never was a Bergrin meeting. Additionally, this Court can assume there is no chance of Curry and Rakeem breaking all ties with Bergrin if he had knowledge of a murder conspiracy.

On February 18, 2004, two short weeks before Kemo's murder, call 1032806, reflects Curry advising an unidentified black male not to use Bergin as an attorney because Curry, "AINT FUCKING WITH BERGRIN ANYMORE; HE DOES NOT TRUST HIM." The icing on the case as to Bergrin's innocence and the never being any meeting is an intercepted wiretap call on 20 February 2004, call number 1203305. In this call, Curry is infuriated with Bergrin and berates him for taking money from clients and doing nothing but "PLEADING GUILTY." (Emphasis added). Also, that Curry wants "BERGRIN OFF WILL'S CASE."

There can be no greater proof of outrageous government misconduct, suborned perjury and constitutional violations against Bergrin. The word of Curry is crystal clear. Bergrin would never advise anyone to murder or get rid of Kemo under these circumstances; nor would Curry trust him. It is inconsistence with logic and unrealistic. This is firm proof Bergrin always intended that a plea of guilty was in Will's best interests, that he was never trusted by these individuals and there was never any secret plans and meetings, to do violence to

Kemo; there would be negative consequences and absolutely no benefits.

The government's outrageous misconduct and violation of Bergrin's Due Process Constitutional rights were highlighted by their failure to investigate the causation and existence of an inordinate amount of atrocious material inconsistencies in Young's proffers and then trial testimonies Bergrin implores this Honorable Court to be cognizant of the fact that Young met with the FBI for the first time in January, 2005 and wrongfully misidentified Jamal McNeil as the murderer of Kemo. Furthermore he positively identified him through a photo and expressed a willingness to testify against him, even if it meant McNeil receiving the death penalty or life without parole in prison. Young was steadfast in this fabrication for about a year and through multiple proffer session (estimated at from 8-12). (To date only Will Baskerville and Bergrin have ever been indicted for the murder). Young then gave a second fabricated various on incriminating Rakeem Baskerville of being at the scene and part of the murder and exculpating himself; even going so far as stating he was informed of facts from Rakeem and was never even present at the crime scene. His final version was an admission that he - Young was the actual murderer; again giving multiple versions of who paid him, how much he was paid, the motivations and why he has come forward.

At the time Young contacted the FBI in January 2005, he was arrested and charged with serious weapon offenses, and was a career criminal with approximately 17 prior felony convictions. His fiancé, at the time, was a Newark Board of Education teacher named Rasheeda Tarver. She testified at Bergrin's trials, swearing that Young pleaded with her to enter witness protection with him, and advising her he is going to receive money and a home from the government and not have to serve any jail time, for his open crimes. Additionally, he gave her multiple versions of the Kemo shooting and inculpated several different individuals as the shooters.

From the date of the Baskerville trial in 2007 to Bergrin's in 2011, 2013 the government kept changing their theories for Kemo's murder. Compare, T. 3265, 3275-3276, 3291, Baskerville; with Bergrin, 10-17-11, T. at 4-7, 16, 17, 19, 29-30. This is extraordinarily important, because Young's testimony also differed; his testimonies changes, as did the testimonies of other witnesses to corroborate the government's changed motives and only after so-called trial preparation sessions with prosecutors.

During the Baskerville trial in 2007, the government firmly argued to the jury that Will would never under any circumstances, cooperate with law enforcement. They implored the jury to believe it was never a consideration because it would

never happen. They argued that it was Will whom ordered and demanded Kemo's killing because he feared that Kemo would testify against him and that Will was the only individual who would ever benefit from killing Kemo.

At Bergrin's trials Minish completely lied and deceived the jury by suggesting that Bergrin had Kemo killed, because of fear that Will would cooperate against him and Curry and expose the drug organization. This point is important because, low and behold, in 2007 Young testified that no one every believed, under any circumstances, nor suspected ever, that Will would cooperate. Will would never do this and everyone knew this to be an undisputable fact; and so the government argued consistently with this. The government's coaching of Young was clearly apparent, when he dichotomously changed his testimony for Bergrin's to Curry and Bergrin fearing Will's cooperation against them. The strength in the belief Will would never cooperate and no parties ever believed he ever would, was apparently in the words and arguments by federal prosecutors. But, they had to fabricate a theory of why Bergrin would get involved in Kemo's murder; especially since not a scintilla of credible evidence was ever presented of this fact and the intercepted conversations, unequivocally prove, Bergrin never believed this case would be tried. He strongly believed Will would never serve more than (10) TEN years in prison that the

evidence was indefensible against Will and Bergrin knew that Kemo was not an essential witness to convict Will. The governments evidence depicted that they observed and surveillance every drug transaction, had strong recordings setting up the deals, recorded the accrual meetings and drugs being exchanged, videotaped the transactions, searched Kemp prior to meeting with Will, arched him meet Will, get handed the drugs and immediately turn it over to law enforcement, with them never losing surveillance. Bergrin always believed that if he was prosecuting Will, he would never even call Kemo to testify. No prosecutor would. He was not needed.

The recordings subsequent to the November 25th R. 5 Initial Appearance, are vital to this Court's determination of whether Bergrin's Due Process rights were violated; especially taking into consideration that the government knew Bergrin had no opportunity to review them.

A. Exculpatory Recordings from the DEA's Curry investigation.

(1) November 25 recordings evince:

(a) Call number 1339406, 1:22 p.m.

Curry was going away to North Carolina for thanksgiving, which was Thursday. Will was arrested on Tuesday, November 25. They know Young lied about the Bergrin meeting occurring 4-5 days after Will's arrest as Curry was in North Carolina until the 2nd of December, as recordings prove. Yet, the government

suborned his perjury and Young swore to this fact in 2007. This was also the only date he used (4-5 days later), during years of proffers and pre-trial preparations.

(b) <u>Call number 711475, 1:31 p.m.</u>

Hanif Baskerville notifies Curry, whom was ignorant of this information that Will was arrested that morning. Curry is stunned.

They know Young lied about being with Curry and the Baskerville family (Al Hamid, Jamal, Rakeem, Hanif and Deidre), the morning of Will's arrest, about Young having a private meeting with Deidre and Rakeem in Rakeem's can, that Deidre was laughing, that Curry was frightened and worried that Curry immediately called Bergrin and that Curry, Rakeem and Young drove around in Curry's Range Rover, eventually parking on 17th Street and Avon Avenue, Newark. All facts fabricated by Young, which the recordings proved never happened; yet Young was suborned to commit perjury and lie.

(c) <u>Call between Curry and Bergrin, at 5:01 p.m.</u>

They knew Bergrin advised Curry of the facts in Complaint, (5 hand to hand sales-transactions of crack cocaine, to an informant whom Bergrin believed was named Kemo), that the evidence was overwhelming and the statutory maximum Will faced was <u>life</u> in prison.

Despite this recording, they suborned Young's perjury and through their examination permitted him to testify he was with Rakeem in Curry's Range Rover, that Curry placed the call on speaker telephone, or that Curry repeated what Bergrin was stating, that they were parked by 17th Street and Avon Avenue, that Rakeem and Young knew Kemo and deciphered whom the informant was, that Young at this time decided to kill Kemo, because you get rid of informants whom turn against the Baskerville's, that Curry informed him Will faced life, at this time. Being cognizant of all the recordings, telephone records and proofs, they presented testimony; but drastically altered it at Bergrin trial to include that they were shocked to learn for the first time only when Bergrin informed that at the street meeting that Will faced life in prison, that not until Bergrin left the meeting did they decide to kill Kemo, that Bergrin informed them, at this meeting that without Kemo Will would get bail and he would win the trial.

(e) <u>Call 346671 at 5:02 p.m. (One minute after the Bergrin call with Curry)</u>

Curry telephones Rakeem to ask him, who is some guy named "KEMO", to which Rakeem responds he does not have any idea.

Based upon this interception the government knew Young lied about being with Rakeem, about them collectively determining

whom Kemo was; and despite this they suborned Young's continued perjury testifying facts that were blatantly false.

(5) Call 4461206 at 5:34 p.m.

Curry telephones Al-Hamid Baskerville and confirms that there was no meeting that morning with all the other facts Young lied about. Curry tells him, I have not seen nor spoken to you for a long time. Curry tells him his brother was arrested and that no one knows whom Will's informant is. What is very important is in a preceding call, when Curry spoke to Hamid at about 4:30 p.m., he informs him that the Criminal Complaint charges Will with offenses carrying life in prison. So why would they let Young testify, Curry and he had no idea Will faced life until the street meeting with Bergrin.

These recordings prove the government sponsored Young's perjury pertaining to Bergrin, the "shocking" effect of Bergrin's group meeting and their alleged continued motivation to kill Kemo; that Bergrin inspired them by telling them at this alleged meeting, for the first time, that Will faced life in prison. The recordings clearly prove they know all the facts for a month.

(2) November 26, 2003

These other recordings clearly prove government sponsored perjury.

(a) Call numbers - 231475 and 127781

Curry is meeting Bergrin at his office, not on some street corner.

(b) Call number 995926

Curry has just left Bergrin's office and was advised by Bergrin that at worst Will would serve approximately 10 years in prison; not life as fabricated by Young.

(c) Call number 244900

Curry is on his way to North Carolina, for the Thanksgiving holidays; consequently, no street level meetings could have ever occurred 4-5 days post Will arrest.

(3) December 4, 2003 Very critical call

(1) Bergrin confirms to Curry, after Will's detention hearing and arraignment on indictment that, again, at worst Will would only serve approximately 10 years in prison; and that Bergrin will contact Curry telephonically tomorrow. The government audaciously argued and Young testified the meeting with Bergrin and the parties occurred this date and Bergrin allegedly advised the group Will would get life, knowing they possessed this recording which clearly disproves these Young lies.

(4) December 7, 2003

Curry and Rakeem are very upset with Bergrin for permitting another client to read Rakeem's criminal case file, at Bergrin

office. Rakeem calls Bergrin a "dump motherfucker" whom he wants nothing to ever do with again nor deal with.

Bergrin is not someone you will let guide, advise and counsel to do anything with, especially a murder, of an FBI informant.

Also, Bergrin is alienated, demeaned and obviously not someone whom you will trust your liberty. Bergrin is not a trusted confident as this recording proves and this alleged street meting has yet to occur.

(5) (a) February 18, 2004, call number 1032806

Two weeks pre-Kemo murder Curry and unidentified black male, wherein Curry is advising him to not use Bergrin; thereby alienating and frantically harming someone where you allegedly place your life and liberty in.

(b) Call number 1143277

Curry informs black male that he Curry, is not fucking with Bergrin anymore. That he does not recommend him.

(6) FEBRUARY 20, 2004 Two weeks pre-Kemo shooting (Emphasis added). Call number 1203305.

Curry is very angry and upset at Bergrin and classified Bergrin as an attorney whom plead all his clients guilty - Curry wants Bergrin off of Will's case.

This recording absolutely proves the government was cognizant that Bergrin was not a party to Kemo's murder, never

intended for Kemo to get killed or hurt, as he desired and only was intended in Will pleading guilty and was not a trusted member of any Curry organization.

The diametrically inconsistent and dramatically changed testimony of Young, wholly opposite to the recorded word and intercepted conversations, always occurred after Young met with federal prosecutors for trial preparations and especially subsequent to the government being cognizant that the wiretap conversations were never received. Ramon Jimenez, another government cooperating witness against Bergrin, summarized trial preparation and proffer sessions with the prosecutors of Bergrin through a letter he composed and sent to the New Jersey's Ethics Committee. He wrote that the government "intimidated" "coerced" "unethically" and improperly influenced his testimony against Bergrin; they yelled suggested, coached and asked the same question repeatedly until he responded with the answer they wanted to hear. The government was obsessed with willing at all costs and abandoned their integrity, mortality and any semblance of dignity. They mortified a prosecutor's mandated code of conduct, yet attempted to portray righteous indignation.

Cooperating witness, Yolanda Jauregui, whom also received a downward department from the United States, Sentencing Guidelines due to her substantial cooperation, was interviewed <u>fifty</u> (50) times before she was accepted as a cooperator. This

is just a minute example of what Bergrin had to confront at trial.

Young testified in Baskerville, 2007 that Will's wife, Deidre Baskerville, was present at a meeting on November 25, 2003, (Baskerville, Tr. 4343) but left her out in Bergrin 2011, T. 10-27-11 at 122-129, but then included her in the 2013 re-trial. The government never even attempted to interview her, if they did they would have learned she never even met Young and was never present at any meeting. Just another person, another meeting, another event, that Young contrived.

The government knew that they had seized all (emphasis added) Will's and Deidre's motor vehicles on 11-25 in Westfield, New Jersey when they arrested Will and that telephone records in their possession confirmed that Deidre called Bergrin FROM HER HOME LAND-LINE TELEPHONE during the time this Young meeting was testified to had occurred. They just never cared.

In 2007, Young swore that he first learned of Will's arrest through the mouth of Deidre and Rakeem Baskerville, at the morning meeting. T. 4341. At Bergrin's trial Rakeem informed him alone. T. 10-27-11, at 122.

I remind this Honorable Court, that Young was absolutely certain Rakeem was sitting in the front seat of Curry's Range Rover on 11-25. He never equivocated to this fact, when he and Rakeem allegedly overheard, what they discussed and decisions

they both made. T. 3450. Young never changed his proffered statements and trial testimony, until a call chronology proved he perjured himself; the same telephone records and recordings the government held in their hand when Young first lied proved that he manufactured evidence. Only after confrontation with this absolute evidence did Jamal end up in the front seat of Curry's Range Rover and not Rakeem; a fact Jamal profusely denied. The telephone recordings and recordings clearly evidenced all these facts were fabricated by Young. This is why A.U.S.A. Gay screamed for Jamal to be given his 5th Am. rights, appointed counsel and refused him immunity -- a means the government consistently used to suppress the truth.

In 2007, and pre-trial proffer sessions, Young was positive the alleged Bergrin street meeting occurred **four or five days after Will's arrest**. {Emphasis added}. He swore to the truth of this fact without hesitation. The meeting was ALWAYS during this time frame.

Only subsequent to the government's magical trial preparation, does Young (coincidentally) change his sworn testimony of the meeting date with Bergrin from 4-5 days post Will arrest, to December 4, the date of the detention hearing. The government was well aware that evidence proved there was no meeting four to five days after Will was arrested or even on December 4. The recordings conclusively confirmed this. This

Court must inquire as to why they elicited these responses by sworn testimony before separate juries, in 2007, 2011, and again in 2013. The government knew the testimony was false and fabricated.

During trial in 2007, Young swore to the jury that there was never any agreement nor decision made as to whom was going to kill Kemo, if he was located T. 4362-63. At Bergrin's trial in 2011 and for the first time ever, he remembered that immediately after the group met Bergrin, four to five days after Will's arrest, he was offered and accepted $15,000.00 to kill Kemo. A fact of great consequence, which could never be forgotten, except by Young. T. 10-27-11, at 147.

For the very first time at Bergrin's trial in 2011 and, after Bergrin accentuates the lack of physical, forensic and scientific evidence in his opening statement does Young have a drastic change in memory and recollection. He, for the very first time, remembers that he had put on a pair of gloves to retrieve the murder weapon and that he removed every single bullet and wiped them clean of all possible DNA and prints. The facts introduced at trial consisted of a government eye witness named Johnny Davis, whom was so close to the killing of Kemo that he was burned by the gun powder spray. At the scene and within minutes of Kemo's murder, Davis, Kemo's stepfather, described the shooter as a black male with shoulder length

dreadlocks. Young had a bald head on March 2nd, 2004 (and was wearing a NY Yankee cap, according to Young). Furthermore, Davis was threatened and an attempt to intimidate him against identifying the shooter, was made within 48 hours of the murder, by the shooter himself. Davis gave a sworn statement that he was 100% positive Young was <u>NOT</u> the shooter nor the person whom murdered his son Kemo (emphasis added). Davis identified a photo of one Malik Lattimore as the shooter <u>AND</u> person whom threatened him the next day, which reconfirmed his positive identification.

For the very first time and at Bergrin's trial, Young swore that every gun he used, owned and that Curry and members of the Curry Organization used, were converted to automatic. That the weapon he killed Kemo with was an automatic handgun; a great big difference from a semi-automatic and fact a shooter would have revealed at his first proffer session in 2005, and certainly testified to in 2007. The government had knowledge that Young was again perjuring himself, as they charged him with a federal weapons offense involving a SEMI-AUTOMATIC HANDGUN and he plead guilty to possessing and killing Kemo with a semi-automatic weapon - a 9mm. Additionally, Lachoy Walker another government witness was allegedly holding weapons for Curry and all these were handguns ALL SEMI-AUTOMATIC. Several Curry associates were arrested for weapons offenses and weapons were seized; all SEMI-

AUTOMATIC'S. NOT ONE WEAPON THE GOVERNMENT EVER SEIZED FROM YOUNG or a Curry Associate, was a semi-automatic or even modified. T. 225-28, 11-2-11. Furthermore, physical evidence, shell casings located at the Kemo scene depicted a pattern of being fired from a semi-automatic weapon, according to the government's own expert.

While Bergrin cross-examined Young, Prosecutor Minish stipulated that Young never mentioned any gun being "automatic," nor altered. T 11-2-11, 225-28. (Multiple emphasis added). The government had absolute proof of Young's fabrications, but elicited the responses anyway.

In 2007, Young swore that Curry drove past Kemo's deceased body, and never exited his vehicle. T. 4408-09. At Bergrin's trial, Young swore that he observed Curry stop his vehicle, get out and check to make sure Kemo was dead. T. 10-27-11, 174-75. The government again had to have known these facts were fabricated as Young had previously sworn he left the scene imminently and Curry was a drug kingpin, well known in the area and would have been identified; It would be absurd for him to or never risk being seen next to Kemo's body and law enforcement responded within seconds of the murder; and no one ever observed any of this, not even Johnny Davis.

For the very first time at Bergrin's trial, Young remembered that there was Kemo's blood on his jacket and that he

placed his gloves inside the jacket; and rolled it up, into a ball. Another fact a cooperating witness interviewed meticulously and incessantly would have revealed. T. 10-27-11, at 205-07. Yet Young testifies and lies about this at Bergrin's trial with the government's blessing.

In 2007, Young described, ad nausea how he killed Kemo, including how he fired his handgun three (3) to four (4) times while pressing it against Kemo's head. In 2011, his testimony preposterously changes for the very first time, revealing both the automatic nature of the weapon and him pulling the trigger only one time. The government knew from physical, forensic and expert ballistics that this was highly unlikely. T. 10-27-11, at 192. They also knew Young lied about Young, Curry and anyone associated with Curry possessing or using automatic weapons, as stated.

During Baskerville's trial, Young was certain that after he shot Kemo, he jumped over his body and Rakeem drove the getaway car up to the body. T. 4400-01. The government knew this fact to be false from Johnny Davis' recollection and other scene witnesses; whom denied the shooter jumped over the body and that the getaway car ever moved from a stationary position; nor did it ever pull up to Kemo's body. Davis even remembered the exact location where the getaway car was parked. Completely inconsistent to Young's new version. Coincidentally, during

trial preparation his new testimony in 2011 and 2013 was that he never jumped over the body and ran to the car. T. 10-27-11, at 199.

In 2007, Young swore he went to Ben's Body Shop to melt the murder weapon on the night of the shooting, and only drove there one time. An extremely pertinent admission that one would surely remember. T. 4413-18. During government proffer sessions, Young stated he went to Ben's the day AFTER the Kemo killing and in Bergrin's 2011 trial he testified for the first time how he made several trips to Ben's. T. 10-27-11, at 212-213, 215-18. The government just smiled as Young continued to lie.

While testifying against Baskerville, Young incriminated Ben's nephew and an unidentified black male, as the people whom melted the murder weapon with a torch. T. 4416-19. At Bergrin's trial, when the government believed Ben was unavailable as a witness, to prove Young was lying, Young incriminated Ben as the gun melter. Ben testified via stipulation that was a complete lie. T. 10-27-11, 217-18.

After years of proffer sessions, trial preparation and sworn trial testimony in Baskerville 2007, wherein Young never mentioned throwing away articles of clothing;. Young finally recalled in Bergrin 2011, that he threw his bloody gloves and the actual partly melted murder weapon in a dumpster close to Ben's Service Station; a fact no one would ever forget and that

should have been known and disclosed for years and testified to in 2007. T. 10-27-11, 216-18. (If it had occurred)

Subsequent to Young incriminating Will in the trial of 2007 as the one whom "DEMANDED" Kemo be killed; he then completely changed his testimony in 2011 to: "only after Bergrin left the street meeting was a decision made to kill Kemo." His testimony drastically changed on behalf of the government and wherever need to assist their theories.

This Court could envision that the government sponsored and suborned this perjured testimony. Young and the government had to focus on Bergrin and make it appear his actions resulted in Kemo's death. If Will had ordered and demanded Kemo's murder on 25 November, as Young originally swore and proffered and testified in 2007, then it would prove Bergrin was innocent. T. 11-2-11, 107-16. Young changed his testimony, with the government's assistance to help them wrongfully convict Bergrin.

For the very first time and only subsequent to Bergrin's vigorous cross-examination, did Young admit that Bergrin never told the "street" group to kill Kemo or that he wanted him dead. He was adamant in his 2007 Baskerville testimony that the exact words Bergrin used was, "If Kemo was dead, that Will Baskerville would definitely come home from jail." T. 4361. There was neither hesitation nor equivocation as to what Bergrin allegedly said in 2007. Rhetorically, how could the government permit

testimony of this magnitude, that jeopardized the entire natural life of another human being, without demanding the truth, and meticulously scrutinizing it only after SIX (6) years subsequent to commencement of Young's cooperation, did he finally admit Bergrin never used these words. (Emphasis added). But, the government, in reckless disregard for due process elicited these words from Young in 2007. T. 175-179, 11-2-11. Most importantly, when Young admitted he lied as to what Bergrin said, why didn't the government take any action.

Devoid of redundancy, Bergrin was provided with a "call chronology, prepared by lead case agent Shawn Brokos, FBI. This chronology evinced that Bergrin was contacted by Deidre and not Curry, to assist Will. This is important because it defied logic that Bergrin would be an instrumental link to Curry when in fact Curry never contacted him and it was Bergrin whom actually called Curry. It also proved Deidre was at home when she called Bergrin and without transportation on 11-25 and never attended any morning meetings; all as falsely alleged by Young. The point, is the fact that the government elicited all these facts improperly on direct examination of Young, knowing they were false and fabricated. T. 4342-48, 4350-53 (2007). Bergrin. T. 10-19-11, 154-68; 10-28-11 at 149-161.

Material conflicts in Young's testimony were shown as to when Young allegedly ascertained Will was facing a term of life

in prison and made the decision to kill Kemo. It ended up being crucial and the government's coached testimony on this issue to create a motive for Kemo's murder. If the motive was determined prior to this phantom Bergrin meeting, then there would be no liability or culpability of Bergrin. The evidence clearly delineates that on November 25, and prior to any alleged meeting with Bergrin, this decision had been made according to Young's own words in 2007; and Bergrin had no involvement.

As a matter of fact in the Baskerville case opening statement, the government instructed the jury: "What Kemo did not know was BACK IN NOVEMBER, three months earlier, when the defendant was arrested (obviously Will Baskerville and on November 25, 2003), HE (Will Baskerville), hatched a plan to have Kemo killed...What you will learn during the course of this trial is that NONE of the members, these or others of the conspiracy could hope to gain anything from Kemo's murder. EXCEPT the DEFENDANT (Will Baskerville) T. at 3265 (Emphasis added).

This is one of the most pertinent proofs that Bergrin was innocent and the government had studied the recordings of the Curry wiretap. They knew that Bergin had nothing to do with Kemo's murder, that it was Will, if anyone, and that the alleged decision was made on November 25, 2003; the date Will was arrested. Most importantly, no other individual had any reason

to harm Kemo, especially Bergrin. The government must argue in good faith and what the evidence depicts. This statement from the mouth of Prosecutor Minish, proved that in order to convict Bergrin, testimonies had to change, witnesses coached and coerced to testify falsely and differently from Baskerville's 2007 trial and evidence fabricated. Exactly what they did and all in violation of Bergrin's due process.

In 2011 and 2013, the government wrongfully and illegally created a new theory for Kemo's murder for Bergrin; and never considered seeking justice through the truth. They argued to the jury a new motive wholly dichotomous to their 2007 theory. The government opened Bergrin's trials stating: "Kemo was killed because he had provided information to the government about a drug-trafficking organization that the defendant was associated with. You will hear that because Kemo had infiltrated this organization, he posed a threat not only to the organization that was on the line, it was Paul Bergrin himself and because of that, in Paul Bergrin's world Kemo had to die". T. 10-17-11 at pages 4-5, same as falsely alleged in 2013.

This fabricated, meritless and baseless accusations, in the government's Bergrin opening was non-existent in the credible evidence submitted to the jury, and could not be even close to the truth; if one considers the wiretap interceptions and government's 2007 Baskerville opening. If Will made the decision

in November to kill Kemo as the government argued in 2007, because Kemo was a witness against him and the decision to kill Kemo was made by Will on the date of arrest, and no other co-conspirator had any motive, then Bergrin could not be involved. (Emphasis added). These words came out of the mouth of the federal government.

Moreover, the prosecution cannot explain nor reconcile their 2007 summation, in Baskerville, with their fictitious arguments against Bergrin. They cried out to the jury to convict Will Baskerville and even sought to sentence him to death "because Will DEMANDED KEMO DIE ON NOVEMBER 25 AND THERE WAS NO CONCERNS THAT WILL WOULD EVER COOPERATE. T. 5724-25 specifically, the government instructed the jury that Will, Rakeem and Curry had no motive to kill Kemo, other than to keep him off the witness stand." THEY (Curry and Rakeem) were NOT concerned that they were going to be in trouble because THEY KNEW THAT WILL WOULD NEVER RAT THEM OUT, NOT IN A MILLION YEARS. YOU JUST DO NOT DO THAT... The only motive for Rakeem Baskerville and Hakim Curry was to help Will in his request and his demand to get Will out of trouble. THEY WERE NOT CONCERNED THAT WE BETTER KNOCK THIS GUY OFF BECAUSE WILL WAS GOING TO COOPERATE, and get them in trouble. T. 5724-25 (Emphasis added). The government knew that Will Baskerville WOULD NEVER cooperate against anyone.

I implore, plead and beg this Honorable Court to realize the magnitude of these prosecutorial statements. The prosecution knew to an ABSOLUTE AND INFINITE CERTAINTY (emphasis again added) that there was no chance Will would cooperate and turn against anyone; Anyone. That means ANYONE. It was not even a matter of thought and consideration. There was never any indication, evidence or even though concerning this for the prosecution to argue so precisely and vociferously in 2007. If this is the case, then their entire theory about Bergrin's complicity was contrived, fabricated and non-existent. They acted in bad faith in making the case and motive argument against Bergrin; that Bergrin feared Will would turn against him and the organization, after Kemo penetrated it. A fact that they and Bergrin knew would never happen.

NEVER - NOT IN A MILLION YEARS - as Minish told the jury in 2007. They knew Bergrin was innocent and had to fabricate or create some justification for his complicity.

In lieu of the government's strenuous arguments and the PROOFS in 2007, this Court must be disturbed and appalled by their arguments to the Bergrin juries, about Will cooperating. During Bergrin's trials the government also suborned the perjury of FBI Special Agent Brokos, when she falsely testified that upon Will's arrest, on November 25, 2003, he was willing to cooperate, but Bergrin convinced him not to. T. 11-14-11 at 16-

17. Same testimony and arguments in 2013. Brokos perjured herself to support their absurd theory of Will cooperating against the Curry organization, including Bergrin. Is this Due Process of Law that our Founding Father's envisioned? Absolutely not, it is repugnant to everything this Country stands for. Brokos actually swore, "He (Will Baskerville) was given time to consider his options. And after he had sufficient time to think... he said he is interested in talking . . . but after he spoke to his attorney, Mr. Bergrin, he said Paul Bergrin told him not to cooperate. T. 11-14-11, 16-17 and 2013. This Court must realize that the government would not have made the adamant opening arguments about Will never cooperating in 2007, if this was true. Also, that a career criminal like Will would never accept the word of Bergrin and no one could ever convince him not to come fourth if that is what he was willing to do. Will vehemently denies Brokos' perjury.

The government's proof concerning Young never changed, yet Young's testimony, their theories and motives, did, like the weather. This is not a case of mere failed memories, which created vast inconsistencies or misspeaking. On every major element, material fact, theory, motive, testimonies changed and words twisted.

You could see the pattern of misconduct which is outrageous, upon reading the transcripts. For example, Brokos

was ardent in her 2007, testimony that she had no leads in the Kemo murder, until Young came forward; (T. 3887) when she knew Malik Lattimore had been identified by Johnny Davis and confessed to an informant, named Roderick Boyd. When she testified against Bergrin and in an attempt to bolster Young's veracity (since he was the exclusive witness against Bergrin), she testified there were several leads that Young murdered Kemo. T. 10-18-11, 160-63; 10-19-11, 215-221. Testimony relevant and critical to this question could have only been answered one way. Either you have leads or you do not. In Baskerville, she swore "we did not know Young was involved in Kemo's murder." T. 3890.

Brokos further testified that both she and Melissa Hawkins-Taylor, Young's attorney instructed Young on several occasions to tell the truth; during his multiple proffer sessions. Yet, when Young was asked this question on the witness stand, he stated that his attorney's never counseled, instructed nor advised him to tell the truth and if they had he would have; instead of all the lies he told and different versions on Kemo's murder he gave. The government never corrected this, nor went to side bar so the Court could instruct the jury Young was lying.

When Rasheeda Tarver, Young's fiancé testified as to all the different versions of Kemo's murder Young gave her, and also that Young set her house on fire and threatened to kill her with a gun; the prosecution laughed at her and ignored Young's

perjury and denials; even though Tarver further testified Young has no credibility because he expects to go free, receive a new house and money, as part of witness protection; the government laughed and never even attempted to decipher the truth. T. 11-9-11, 37-51.

When prosecutor Minish deliberately lied to the jury, with the specific intent to deceive them, and bolster Young's credibility against Bergrin, you have flagrant and material due process violations. Minish falsely argued to the jury during the Bergrin case summation, that the street meeting with Young and Bergrin took place on 4 December 2003. Inferring the government had evidence of this fact, when they knew this was false. Minish further argued that during this meeting on 4 December, the group for the first time shockingly learned Will was facing life in prison, you become cognizant of the dire prosecutorial misconduct and constitutional violations. It is the same as when Minish argued that no one would kill Kemo, if Will was only facing TEN (10) years; when this was exactly would Bergrin stated in wiretap interceptions. The flagrant instances of outrageous government misconduct caused constitutional Due Process violations. They were in total disregard of the truth seeking process. It represents a concise pattern of outrageous misconduct by the government. It also occurred with a multitude of other witnesses:

B. Yolanda Jauregui

Yolanda Jauregui was a cooperating government witness who received a downward departure motion for her substantial assistance to the government. What is disturbing is the fact that she was compelled to proffer approximately fifty (50) times with the government, not including her trial preparation. There were promises made to her such as a new home, money and cars in exchange for her cooperation, which were never memorialized in the plan agreement. Moreover, she made a sale of a kilogram of cocaine to fellow cooperating witness, Maria Correia. Prior to the transfer of cocaine, Yolanda had Correia searched by her mother, Gladys Bracero and niece, Alejandra Jimenez; none of whom were ever charged as a benefit for Yolanda's cooperation. Yet all these facts were never disclosed to defense counsel and purposely concealed. Moreover, Yolanda agreed to forfeit her residence, a one family residence at 348 Little Street, Belleville, New Jersey; but this house was never forfeited nor did title ever exchange hands nor change to the government for this property or her other property at 710 Summer Avenue, Newark, New Jersey; which she also agreed to forfeit. As a matter of fact her entire family, including her mother and niece, Alejandra Jimenez, continue to live in Belleville. These were benefits of cooperation the government never revealed nor did they truly intend to execute.

Yolanda gave a statement declaring that she made a (7) seven kilogram cocaine transaction, with co-operating co-defendant Abdul Mutallic Williams; while Yolanda was free on bail in the Bergrin case and Williams incarcerated at the Hudson County Jail, Kearny, New Jersey. Yolanda confirmed in her statement that the transfer of cocaine was made to William's and his cousin, on the command of Williams and as agreed. When Williams testified against Bergrin he perjured himself and denied any such deal and the government knew that, he in fact was lying; as they vouched for Yolanda's truthfulness with their 5K1.1, United States Sentencing Guidelines motion. Moreover, the government had evidence that Williams and Yolanda were romantically intimate, which was one of the motivations for their lies against Bergrin, yet they failed to reveal this. Additionally, when Brokos was on the witness stand she denied Yolanda ever consummated the 7 kilogram cocaine deal with Williams; because Brokos knew it would impeach Williams credibility. Yet, Brokos interviewed Yolanda and clearly contained within her FBI 302, was Yolanda's statement that the transaction occurred; and that it even involved William's father.

Williams perjured himself against Bergrin and Yolanda, testifying that he was hired as a courier-taxi driver, by them, to deliver multi kilograms of cocaine to their customers. This

was a complete fabrication, which resulted in Bergrin being sentenced to life in prison for these charges. Yolanda vehemently denied these fabricated allegations and the government had her on their witness list. At the end of the government's case they revealed that they decided not to call her; it was only because she would have discredited and impeached the credibility of William's and co-operators Rondre Kelly and also Eugene Braswell; and exculpated Bergrin of drug charges which caused him to suffer immeasurably with life sentences. Bergrin wanted to call Yolanda as a defense witness but was informed by her counsel, she would assert her 5th Amendment privilege and refuse to testify. Furthermore, Williams was a career criminal and suspect in an open Newark, New Jersey murder, he had 17 prior felony convictions and was facing life in prison. The government possessed evidence of Williams' involvement in the murder, but withheld it, so Bergrin could not investigate.

Rondre Kelly, another cooperating witness, testified that he dealt cocaine with Bergrin, Yolanda and Mexican Cartel members. He further swore Bergrin was their leader, all decisions of any relevance about drug trafficking were made by Bergrin, including the settling of any disputes or controversies. Bergrin submits this testimony involving his drug trafficking was a complete fabrication. Yolanda gave a

statement in her proffer with the government, which was included in an FBI 302 that; she contacted Kelly behind Bergrin's back and without Bergrin's knowledge. She would have completely repudiated and disputed Kelly's testimony. Although the government informed defense they were calling Yolanda as a witness, they never did. In the interests of justice, Yolanda would have impeached the veracity of Williams and Kelly and due process would demand her being called now at a hearing. Furthermore, Kelly contrived the facts that Bergrin was selling and transferring multi kilograms of cocaine to him from his law office, at 572 Market Street, Newark, New Jersey, and that Yolanda's brother Ramon Jimenez, was personally delivering these multi-kilograms to him, for Bergrin. Both Yolanda and Ramon knew this to be complete perjury. Yet, during the supposedly truth seeking process, both Yolanda and Ramon were never called as witnesses; nor would immunity be given to them by the government, in the interests of justice and to ensure their testimony.

Again, the government vouched for both Yolanda and Ramon's veraciousness, in their motions for a reduced sentence.

C. Thomas Moran

Thomas Moran was a cooperating government witness whom testified against Bergrin. He swore that he traveled to 710 Summer Avenue, Newark, New Jersey, to a building-restaurant, co-

owned by Bergrin and Yolanda. While at this building, Moran alleged that Bergrin called co-conspirator and Mexican Cartel member, Alejandro Castro, to open the basement doors which were locked and so the building could be inspected, by a Subway Franchise representative; because Bergrin was going to open a Subway Sandwich Franchise at this location. The government also wanted to prove Bergrin maintained this facility as a narcotic storage building because on May 21, 2004, the day after Bergrin was arrested, 57 kilograms of cocaine was placed in the building's basement, while under DEA surveillance, by Castro. The government knew that Moran completely fabricated this fact because Yolanda had informed them Moran was lying.

The government, further knew, that neither Bergrin nor Yolanda ever contacted Subway's and there were no doors nor locks prohibiting entry to the basement. Nonetheless, the government enticed, procured and suborned Moran's perjury. The jury found Bergrin guilty of maintaining a narcotics facility, the possession of the cocaine in the basement and the government knew it was based on false and manufactured evidence. An independent investigation by simply contacting Subway's Franchise Management would have proved the falsity of this evidence; yet to pervert due process, the government never placed any of Moran's alleged knowledge in any report so Bergrin could disprove.

Bergrin learned of Moran's testimony pertaining to these lies, as he was on the witness stand; thereby divesting the defense of any opportunity to prove the falsity.

The government further allowed Moran to falsely testify pertaining to Bergrin's interests in Moran becoming a law partner of his; when they possessed evidence through their investigation and interview of law firm employees that Bergrin was in the process of terminating his relationship with Moran; due to Moran's alcoholism and drug addiction.

D. Ramon Jimenez

Ramon Jimenez is the brother of Yolanda Jaureui and was serving a sentence in state prison, on a crack-cocaine trafficking charge, when he contacted the FBI in Newark, New Jersey. He desired to cooperate against Alejandro Castro and the Mexican Drug Cartel. Jimenez met with agents of the FBI and they informed him of the following: (Brokos), "We need a witness against Paul Bergrin and you are our man." Jimenez contacted the FBI and was willing to enunciate all the information he knew and even willing to inculpate his own sister in a major narcotic trafficking conspiracy; as well as himself. The government, represented Gay and Brokos, promised him he would not be prosecuted for drug dealing, as long as he incriminated the right people.

For multiple proffer sessions, meetings and after exclusive de-briefings, Jimenez never incriminated Bergrin in any drug dealing; to the contrary, Jimenez exculpated Bergrin and swore he had neither knowledge nor involvement. Jimenez was appointed an attorney pursuant to the Criminal Justice Act (CJA). That attorney was John Azzarello, one of Gay's best friends and a former comrade at the Newark, New Jersey Office of the United States.

Gay and Jimenez's attorney brought Jiminez into the Office of the United States Attorney, Newark, New Jersey and, according to a letter Jimenez sent to Gay and the Office of Attorney Ethics, Professional Responsibility Unit; the prosecutor Gay and attorney Azzarello intimidated, coerced and coached him to fabricate evidence incriminating Bergrin.

They took turns screaming at Jimenez, calling him a liar and asked him the same question so many times and repeatedly, that he knew exactly what they wanted to hear. Jimenez continued in his adamant denial that Bergrin had no involvement in drug dealing and was then, unexpectedly and shockingly indicted; and as a career criminal, he was now facing life in prison. Immediately after indictment, Jimenez implicated Bergrin. **What benefits he received?**

Jiminez was on the government's witness list and Prosecutor Gay announced he would testify. At the last minute, Gay

refused to call Jiminez and Jauregui and Bergrin was informed that they would both invoke their 5th Amendment right.

E. Rondre Kelly

Rondre Kelly was a former client of Bergrin's who was represented by attorney Richard Roberts. Initially, upon being sworn in as a government witness, Kelly was wrongfully coached to perjure himself and testify that Roberts refused to represent him, because he wanted to cooperate against Bergrin -- a complete lie. Both Kelly and the government knew this claim was false, as Roberts had represented more cooperators then any attorney in the history of New Jersey.

Moreover, in Bergrin's case alone, Roberts consulted and visited more than half of the government's cooperating witnesses and had contact with many more of Bergrin clients. In addition to Kelly, Roberts visited Yolanda Jauregui in detention and implored her to cooperate. The government's major cooperating witness Maria Correia retained Roberts to represent Albert Castro who Roberts then arranged to become a cooperating witness against Bergrin. Roberts also represented cooperating witnesses Abdul Williams. He was consulted by cooperator Eugene Braswell, whom he recommended to cooperate.

The government has legal, ethical and moral obligations to the American people to follow the rule of law in pursuing any prosecution. Yet, instead of doing so in Bergrin's case, the

government suborned perjury during its direct examination of Kelly. The government had "actual" knowledge that Roberts contacted the government for Kelly to meet with them for the exclusive objective of proffering for cooperation against Bergrin and a sentence reduction. Roberts set up the proffer meeting at the Allegheny County Jail, Pittsburg, Pennsylvania, drove (8) eight hours to be present at the proffer session and also was intricately involved in Kelly's cooperation and de-briefings. Roberts was the catalyst for Kelly's cooperation.

The government copiously debriefed, at least (50-fifty) times Yolanda Jauregui and Ramon Jimenez, relevant to Kelly. In doing so, it had conclusive evidence that Kelly was fabricating evidence against Bergrin; especially inflammatory evidence of Bergrin drug trafficking in multiple kilograms of cocaine from his Newark, New Jersey law firm; Jimenez being his courier to Kelly; and Bergrin's involvement with Yolanda, Castro and others as the leader, manager and organizer of a drug distribution organization. All this testimony was false, to an absolute certainty and the government knew it; especially since they vouched for Jimenez and Yolanda's credibility as truthful cooperators.

E. Albert Castro

Alberto Castro is another government cooperating witness who the prosecution, along with Roberts, was complicit in

fabricating evidence, suborning perjury and outrageous misconduct; clear and unequivocal Due Process violations.

Subsequent to an extensive and exhaustive investigation by the Essex County Prosecutor's Office, Narcotics Task Force, Newark, New Jersey, Castro was arrested and charged with a multitude of very serious narcotic trafficking offenses, weapons charges and the attempted murder of a Newark Police Detective. Additionally, while on bail, Castro was re-arrested on serious robbery charges.

Bergrin represented Castro and worked out a plea of guilty before the Honorable Judge Stephen Bernstein, Essex County Superior Court, Newark, New Jersey. Castro was a career criminal facing life in prison and a very favorable plea was negotiated by Bergrin. Also, seized from Castro was approximately $750,000 in United Sates currency, multiple kilograms of cocaine, a handgun that he placed beneath the vest of an arresting Detective and attempted to pull the trigger, as well as other property. The plea negotiated for career criminal Castro was 15 years with 5 years of parole ineligibility.

Maria Correia was a cooperating government witness who knew attorney Richard Roberts. She was also acting in a pro-active cooperation role for Brokos and the federal prosecutors. Correia stole undercover money which was given to her by Brokos and retained Roberts to represent Castro. Correia stole the

money and falsely alleged she was bribing Bergrin. The objective of the government and Roberts was to convince Castro to cooperate against Bergrin, federally, and then receive a state sentence reduction; Roberts scheduled a proffer session with Castro and the government prior to Castro meeting the government. Correia and her boyfriend Carlos Tavares visited Castro, at the Essex County Jail and coached him what to say. Castro was to fabricate a version of facts against Bergrin and testify that Bergrin offered him $10,000 to kill Kemo--pure fabrication of which both Correia and Roberts were well aware. Correia has now admitted to all this contrived evidence.

The lies were so blatant that, while Castro was testifying, the Honorable Judge William Martini interrupted trial and scolded the government for Castro's false testimony. He saw right through it. **Da**

During Bergrin's cross-examination of Castro, Castro admitted that during a proffer session with the government and in trial preparation, the government coerced Castro to lie under oath, before Superior Court Judge Bernstein and agree to accept the facts of his plea, which Castro swore were false. The government threatened Castro that they would not accept him as a cooperating witness and he would forfeit its benefits if he told the truth. In other words, the government suborned Castro's perjury.

What is paramount is that the government possessed the Essex County Jail visitation records, delineating Correia's and her boyfriend Carlo Tavares' connection and visits with Castro,(which Bergrin had no idea about), immediately before the first proffer session; but concealed these. Gay did not turn them over until after Bergrin's 2011 mistrial verdict; apologetically and cowardly, Gay informed Lawrence Lustberg, Esq., that he inadvertently forgot to turn these records over. Gay's dubious claim of forgetfulness denied Bergrin the ability to cross-examine Castro during trial and clearly violated Bergrin's due process rights. But most significantly, the records could have meant the difference between Bergrin being acquitted or the jury being hung on the Kemo allegations.

Bergrin wanted to call Correia as a trial witness, but was informed by her attorney she would assert her privilege against self-incrimination; since the government; refused to resolve her open charges until after the Bergrin trial was over; Even though Correia was not going to be used as a government witness. The government did this with all witnesses. They wrongfully, withheld and postpone resolution of their cases, so they invoked the 5th Amendment and then refused immunity. The government did this in bad faith and in violation of Bergrin's Due Process Rights, as they never intended to offer "use immunity.'

Additionally, Correia was informed by Bergrin that he knew Oscar Cordova, a government cooperating witness, was an informant. Correia informed the government of Bergrin's knowledge about Oscar, but they concealed this fact. The government was cognizant that if the jury was aware Bergrin had knowledge about Oscar being an informant then the credibility of their entire case for the attempted murder of a witness, would require dismissal. The government used these charges to inflame the jurors' passions and create disdain and distaste for Bergrin. As a matter of fact Gay and the government repeatedly prejudiced Bergrin by continuously using the phrase, "make it look like a home invasion and not a hit," a phrase Bergrin allegedly used, during these charges.

G. The Corrupt Government:

1. Subornation of Oscar Cordova's Perjury and false claim of death threats.

During the government's rebuttal and last word to the jury, in Bergrin 2013, the government had actual knowledge Oscar Cordova committed perjury, but continued to elicit responses to questions, thereby suborning it. As referenced, supra, Cordova was a cooperating witness who falsely informed the government he had knowledge about 13 murders,[23] had been solicited by cooperating witness Vincente Esteves to kill witnesses, had been

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[23] None of which had anything to do with Bergrin.

involved in the sexual assaults of females and witnesses and a multitude of other violent crimes; all complete lies.

Quite shockingly, after putting Cordova on the stand, the government elicited testimony from him that his life currently was in jeopardy, thus requiring around the clock law enforcement protection; and that he had recently received viable and violent threats against his life. Their sole purpose was to have the jury infer that it was Bergrin who created and caused these threats and protective measures; and to significantly prejudice Bergrin. The FBI, U.S. Marshalls and the government provided Cordova this protection for weeks, costing tax payers' extraordinary dollars.

Without any attempt to corroborate the threats alleged by Cordova --a man with serious psychiatric illness, delusions, addiction and substance abuse problems --the government took Cordova's word and never investigated these suspicious allegations. They never reviewed Cordova's phone records, nor did any investigation whatsoever to verify Cordova's claims. The government was well aware that Cordova was shown to have perjured himself multiple times during cross examination and the government did not want Cordova's credibility and truthfulness to be placed into issue any more than it already was.

After Cordova testified, the United States Marshall's Protection detail ordered him to turn over his telephone

records--something Agent Brokos failed to do when Cordova made these allegations. The Marshalls' investigation rather quickly ascertained that Cordova completely made up these alleged death threats, etc., to make it appear that Bergrin was attempting to intimidate him and to make Bergrin appear more dangerous than the government's propaganda had already portrayed Bergrin to be.

The government knew and should well have known Cordova was not telling the truth. All it would have taken was minimal time, effort and a simple investigation. Instead, they chose to ignore all signs of Cordova's lying and refused to discover the truth. Instead, they fostered and suborned perjury. The government never counted on the U.S. Marshalls exposing Cordova's lies for the obvious lie it was.

Once the lie was exposed, Gay argued to the jury that Cordova faces perjury charges for lying, well knowing they had no intention to ever charge him with anything; which they never did. Instead, Cordova was paid thousands of dollars for his misconduct and perjury.

2. Lying in Closing Argument Rebuttals that Bergrin did not know of the discovery detailing Esteves' early-on cooperation with law enforcement prior to Oscar

Vincente Esteves was a very important cooperating government witness against Bergrin. Esteves was the leader of a

large scale, complex, multi-national and international multi-million dollar drug organization. He was under State indictment as a drug kingpin and facing a sentence of 25 to life. Esteves had a prior drug conviction.

Esteves retained Bergrin as his lawyer. On the date of Esteves' arrest, Esteves made the informed decision to cooperate with State and Federal Task Force authorities and give a sworn videotaped statement and confession.

As a convicted drug trafficker who had already served State imprisonment, Esteves knew the criminal justice system well. During the recorded interview, Esteves meticulously and copiously outlined and gave details, ad nauseam of his history, his drug organization and even incriminated his beloved wife and his brother in law, Cesar Cubiero. He delineated the roles of every member of his organization, connections to obtain drugs, nationally and internationally, drug distribution routes, places of distribution, financial data, money laundering, tax evasion and all his methodology. The details were exhaustive. He incriminated major organized crime figures, in dangerous international cartels and Bergrin knew about everything Esteves said to law enforcement authorities. After all, Bergrin was his attorney and was representing Esteves for almost two months when the Oscar Cordova, attempted murder of a witness cases commenced.

Esteves admitted on cross-examination that Bergrin knew everything he confessed and cooperated about, and all its details; and had reviewed the discovery on his case; prior to the Oscar case. What is crucial is that these facts, in conjunction with Bergrin's innate awareness, as expressed to Correia, that Oscar was a known-informant, made it factually absurd and ludicrous that Bergrin would agree to either deal drugs with Esteves or kill a witness in complicity with Oscar and Esteves. It would never happen as the government falsely alleged. Esteves gave up his own brother, Cubiero and the wife of his infant son. Neither Bergrin, nor anyone else, would ever trust Esteves or Cordova.

With Esteves' trial admission that Bergrin and him reviewed his confession and were cognizant of all evidence against him, the government had to scramble to attempt to hide this fact and hope the jury did not remember Esteves testimony and admissions. The government had the last word in trial rebuttal summation and Gay intentionally, knowingly and deliberately lied to the jury. He argued in rebuttal that Bergrin got involved in the attempted murder of a witness because he never saw Esteves' discovery or knew about his confession. All the time knowing this was **ABSOLUTELY UNTRUE** and praying the jury would not remember Esteves' testimony in a long, complex and drawn out trial.

This was just another perversion of justice by the government. A blatant lie to the triers of act, in a win-at-all costs trial, for the prosecution.

What is also very disturbing is the government's coaching and suborning Moran to perjuriously testify, that he was co-counsel on the Esteves case with Bergrin and that Esteves' confession was not known. Complete perjury, as proven through the mouth and words of Esteves himself and logic. There is absolutely no way an attorney is not going to know his client cooperated and confessed. The government knew this. Moran knew this!

These factual depictions cannot be neither disputed nor controverted. The government sought to win "AT ALL COSTS" and never considered the Constitutional rights of Bergrin, nor their professional ethics responsibilities. This case must be reversed.

3. **Lachoy Walker Impeachment Evidence Withheld**

Lachoy Walker was the main cooperator against Curry and, although a career criminal facing life in prison, Curry's District Court Judge sentenced him to time served.

The government called Walker as a witness in Bergrin's case. Although Walker dealt an extraordinary amount of cocaine and heroin for Curry, he never had contact with Bergrin pertaining to drugs. Walker had been a material witness and the

primary cooperator against Curry and was considered an upper echelon member of Curry's alleged drug organization.

Walker had not only been a cooperator since March 2004, but had been debriefed and proffered, with the government, hundreds of times. Despite these many meetings, no statements, 302s, proffer session summaries were provided to Bergrin by the government.

Walker swore at Bergrin's trial, that while he was located at an apartment known as "the dungeon," he assisted Curry in counting money and that Curry made a passing remark, "that he is giving the money to Paul's connect, to purchase cocaine." Although Walker was intricately involved with Curry and the entire drug operation, he had never heard of, witnessed, nor known of Paul being involved in drugs.

Most importantly, Walker testified that since March, 2004 and until Bergrin's trials in 2013, he had never informed, told, nor even mentioned Curry's statement about Paul's alleged connect to anyone, especially law enforcement. This is again subsequent to methodical, copious and meticulous cooperation sessions, debriefings and testimony at the Curry trial, wherein Walker was on the witness stand during direct and cross examination, for weeks. The government used this as the "ONLY" evidence to link Bergrin to the Curry drug organization.

Walker never heard the last name of this PAUL and had no other involvement, connection, nor testimony pertaining to PAUL.

There was serious contentions as to Walker's role in the Curry organization, his role in an "open Essex County murder case" that coincidentally and mysteriously was never prosecuted, the level of his own narcotic activities and Walker's credibility. "The dungeon" was allegedly a stash house or flop house for Curry and his organization and alleged records of drug transactions were seized there. The government possessed records that Walker had been previously convicted of kidnapping and aggravated assault which they never disclosed. Additionally, there were records of a lease for the "dungeon apartment" that was executed by Walker. They were also aware that Walker's fiancé had informed them that Walker lived there and it was actually his apartment; all of this evidence seriously placing Walker's credibility in question and devoid of it, dismantling any chance of Bergrin receiving a fair trial.

They withheld the lease evidence and information on all these critical convictions and credibility issues--all in violation of Bergrin's constitutional rights.

4. **Eugene Braswell**

Eugene Braswell was a New Jersey State Correctional Officer, employed at Northern State Prison, Newark, N.J. He was involved in a fatal shooting and, just, coincidentally the victim was a drug dealing inmate Braswell guarded at the prison. Bergrin represented Braswell on the shooting allegations retained as the Patrolman Benevolent Association (PBA) attorney for New Jersey Correction Officers. Additionally, Braswell was intercepted by New Jersey State Police in possession of multiple kilograms of cocaine, he had purchased in Texas.

Braswell had been under extensive investigation by the New Jersey Attorney General's Office and State Police. He was arrested and charged as a drug king pin, facing a minimum sentence of 25 years and potentially life. While released on bail, Braswell negotiated a major drug deal and was arrested and charged federally, facing a 10 year statutory minimum and maximum of life in prison. He was lodged at the Hudson County Jail, Kearney, New Jersey together with Abdul Mutallic Williams, and after a period of time, decided to cooperate with the government. He was released on bail and committed a third federal drug offense.

After being federally indicted, Braswell made allegations that he purchased kilograms of cocaine from Bergrin; who stored them in the ceiling of his law office. Furthermore, he accused Ramon Jiminez of introducing him to Peruvians who sold him

cocaine; a fact Jiminez profusely denied. The government knew Ramon's wife Julia was Peruvian, and that, in 2011, she had called the Chambers of the Honorable William J. Martini, United States District Court, N.J. and during Bergrin's trial; Julia accused the government of misconduct against Ramon.

Abdul Williams also knew Julia since he worked with Ramon at Bergrin's law office. The government knew that Ramon, (a credible cooperator, according to the government), denied Braswell's allegations, but concealed this fact from Bergrin. No Peruvians were ever located, investigated nor identified. The government refused to provide Bergrin with any evidence, reports, or investigation concerning Braswell's shooting; although they knew it was actually a murder and that Braswell shot and killed this individual over a drug debt, accumulated while Braswell was working as a C.O. at Northern State and dealing with the victim. Most importantly, the government knew Bergrin was cognizant of the shooting facts and Braswell was motivated to destroy Bergrin's credibility or face potential murder charges. There was not an iota of evidence, by the way, to substantiate Braswell's allegations against Bergrin—only the uncorroborated word of Braswell. Just another shining example of subverting Bergrin's due process and any hopes of Bergrin receiving a fair trial.

ARGUMENT

In the case, sub judice, the government had an abundance of objective facts which proved that their material and key witnesses lied; especially Anthony Young, their sole and exclusive witness in the murder of "Kemo" allegations and trial of United States v. Paul W. Bergrin. The government had to know or should have known that Young's accusations and allegations were baseless, meritless and incredulous and most importantly required further scrutiny. They had an obligation, both morally and professionally, to further investigate.

More importantly, the Government had actual notice that testimony in United States v. Baskerville was inherently false and that in Bergrin's trials was diametrically opposed to prior statements. Yet, despite this plethora of signs, the Government failed to do anything about it, nor even attempt to search for the truth. Most disturbing is the proven fact that the government conspired to obstruct justice and suborn perjury on many occasions. A fact that is well proven and has become obvious.

The fundamental principles of justice upon which we rely to protect the liberty of the accused as well as the welfare of society, are to ascertain the factual truth and to do so in a manner that comports with due process of law as defined by our Constitution. It is not to "obtain a conviction" at all costs. This important mission is utterly derailed by permitting

witnesses to lie, failing to scrutinize or investigate accusations that appear incredulous and allowing law enforcement officers or prosecutor's to continue thinking they are above the law; and not accountable to anyone because they find it tactically advantageous to turn a blind eye to the manifest potential for malevolent disinformation. United States v. Wallach, 935 F. 2d 445 (2d Cir. 1991). Indeed, if it is established as has been done in Bergrin's case that the government knowingly permitted the introduction of false testimony reversal is virtually automatic.

The Supreme Court has historically been vigilant in the Constitutions "overriding concern with the justice of finding guilt." United States v. Agurs, 427 U.S. 97, 112 (1976). The due process clause guarantees that every American- every defendant-every accused have the right to a trial that comports with basic tenets fundamental fairness. Lassiter v. Department of Social Services, 452, U.S. 18, 24-25 (1981). Most importantly, our Supreme Court has recognized that the prosecutor is in a peculiar and very definite sense the servant of the law, whose primary objectives which are that the guilt shall not escape nor innocence suffer…, it is the prosecutor's duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate method to

bring about one. Berger v. United States, 295 U.S. 78, 88 (1935).

Lawyers representing the government in criminal cases serve truth and justice first. The prosecutor's job is not just to win, but to win fairly, staying well within the rules. See United States v. Kattar, 840 F. 2d 118, 127 (1st Cir 1988). A prosecutor must honor the truth, not subvert it, as in the case sub judice. This is so because "society wins not only when the guilty are convicted, but when criminal trials are fair. Our system of justice suffers and fails when any accused is treated unfairly. See Brady v. Maryland, 373 U.S. 83, 87 (1963).

In Bergrin's case, the prosecution was the architect of a proceeding that did not comport with our ingrained standards of justice. The prosecutor eviscerated and trampled Bergrin's due process rights and presented knowingly false evidence-testimony, by presenting fabricated testimony and facts- - that went to both the merits of the case and to bolster a witnesses credibility or their theory of the case. See Thompson v. Calderon,

120 F. 3d. 1045, 1058 (9th Cir. 1997); citing Napue v. Illinois, 360 U.S. 264 (1959); Mooney v. Holohan, 294 U.S. 103 (1935). More importantly, the prosecutor has a constitutional duty to correct evidence he knows is false, even if he did not intentionally submit it. Giles v. Maryland, 386 U.S. 66 (1967).

Because of the gravity of depriving a person of liberty on the basis of false testimony, the Supreme Court and the United States Court of Appeals have fashioned over the years, a workable set of precise rules designed not only to remedy egregious wrongs that have already occurred, but also prophylactically to prevent damaging false testimony from happening in the first place. Mooney v. Holohan, at 104. The Government may not use false or perjured testimony that bears upon the reliability and credibility of a witness to obtain a conviction. Giglio v. United States, 405 U.S. 150, 154 (1972); Napue v. Illinois, 360 U.S. 264, 271 (1959); Mooney, 294 U.S. 103 (1935); See also, Lambert v. Blackwell, 387 F. 3d 210,242 (3d Cir. 2004).

Upon this honorable Court's scrutiny of the recordings, which are crystal clear and devoid of the government's distorted interpretations and nefarious twisting of words, as well as the proven fabrications of Young, as well as the other witnesses delineated; you must find that the Government encouraged, enticed, coerced, intimidated and knew that the testimonies were false, perjured and molded into the prosecution's theory. The evinced facts and what was done in the Bergrin case is nothing short of outrageous and reprehensible. Reversal must be the only remedy. Most importantly, the Government's use of evidence they knew and should have known through an objective and

thorough investigation would have proven to be false, resulted in a manifest denial of justice, liberty and due process of law, to Bergrin. This court must not permit such an injustice. You cannot sit idly by and watch Bergrin die in prison, when he never received a fair trial, nor due process of law.

Accentuating limited facts in the Kemo case alone and to avoid rampant redundancy and repetition, Bergrin presented the following: The government's case against Bergrin rested upon one witness, Anthony Young. The government met with Young in approximately eight to ten proffer sessions, Young swore to the government for almost this entire period of time that Jamal McNeil was the murderer of Kemo. Young positively identified McNeil multiple times as the shooter and was anxious to falsely testify against him at trial and the death penalty stage. He also informed the government during these proffer sessions and even falsely swore, that Bergrin appeared at a meeting, four to five days after Will Baskerville was arrested on November 25, 2003, at approximately 9:00pm on 17th Street and Avon Avenue, Newark, a high crime area, heavily patrolled by police; and that Jamal and Rakeem Baskerville, Curry and McNeil, were present with him. That Bergrin informed this group that Will would receive life in prison if Kemo testifies, that they cannot let Kemo testify and if Kemo does not testify, then Will would receive bail and Bergrin would win the case; that at this

Bergrin meeting they all learned for the first time that Will was facing life in prison. They were all shocked. All facts that no defense counsel, with any knowledge of the criminal law, would ever utter. Blatant lies that we know are fabricated and contrived, in accord with the objective recorded evidence.

Young also testified and was proven to have committed perjury when he said that Rakeem Baskerville was sitting in the front seat of Curry's car, during telephone conversations with Bergrin, the he and Rakeem knew the informant, and that jointly they deciphered that "Kemo" was Kemo DeShawn McCray. This determination, according to Young, occurred on November 25, 2003, and that Bergrin used the words "Kemo dead," that Bergrin told this group that the only sentence they can anticipate for Will was life in prison.

Even when Young changed his testimony, they should have known it was perjured, when he subsequently swore that the meeting occurred not four to five days after Will's arrest, but on December 10, that Young met the morning of November 25, at the Baskerville residence with Deidre Baskerville, Curry, Al Hamid, Hanif, Jamal and Rakeem Baskerville, that he was riding around since morning with Curry and Rakeem in Curry's Range Rover, that Curry parked his vehicle on 17th Street and Avon Avenue, that he was informed of Will's arrest by Deidre…Every

word that came out of his mouth was false, perjured, contrived and manufactured.

Besides Young misidentifying McNeil as the shooter for almost two years, regardless of the consequences to McNeil, the government never attempted to interview McNeil, nor any person whom was allegedly at the Bergrin meeting. They abdicated their professional, statutory and constitutionally mandated responsibilities.

Young believed that no matter what he stated he would never be prosecuted; but instead, he would receive witness protection, a house, a car and money, from a desperate government team that encouraged him to change his testimony a second and third time and commit perjury. His excuse for changing his testimony was because Brokos was lying to him by promising his prison release.

Young's second version of the story was that he was not present at the Kemo murder scene was just another deliberate, purposeful and knowing lie; as well as just another false incrimination of multiple individuals in capital murder. His words, accusations and allegations should have been seriously and methodically investigated. It is absurd that they were not. Additionally, he should have been given an investigative polygraph, which Bergrin's stand-by counsel Lawrence Lustberg pleaded with the government to do; and volunteered Bergrin for one to prove his innocence. But the government KNEW Young would

fail and be proven deceptive and that Bergrin would pass, so they denied this reasonable request.

Young's perjury and lies could have been revealed if the government interviewed prominent attorney's Melinda Hawkins Taylor and Paul Feinberg, whom Young swore never told him to tell the truth to the FBI and during proffer sessions; Hawkins Taylor did so in the presence of Brokos, as Brokos so testified. Feinberg swore he did also. What is very troubling is Young's perjury that if he was told to tell the truth he would have .RANK PERJURY. Failure to even attempt to interview these attorney's shows the government's lack of concern for finding the truth and utter disregard for undertaking a thorough, competent and unbiased investigation, as required by law; and their sworn duties as law enforcement officers. Utter disregard for the recordings and never confronting Young with them along with their blatant failure to bring them to the attention to the Court and Bergrin, when they knew Young was fabricating evidence and perjuring himself, makes the government complicit in suborning perjury.

Young's perverted representation and sworn testimony that his attorney's malfeasance inspired him to wrongfully inculpate McNeil, should have shocked the government into immediately contacting these two actively practicing attorneys, through a simple phone call; to determine where the truth lies. It was

the basic foundation upon which Young's contrived and manufactured evidence was built. It would have immediately discredited him and convincingly proved he was a liar who should not be believed.

When Young testified and provided evidence and information concerning a meeting with Bergrin and during a proffer session gave inconsistent statements, as to when and where it was held, identified whom was allegedly present and what Bergrin supposedly stated; the government knew exactly where Jamal's McNeil and Baskerville were and although they never arrested nor charged any of them with anything, they never even attempted to interview them. Additionally, Young falsely accused both of these individuals with the killing of an innocent female bystander in Irvington, New Jersey and that this was his motive for originally contacting the FBI. To date, eleven years subsequent to Bergrin's alleged meeting and the Irvington killing, these men have not been interviewed, charged nor ever arrested for any of Young's allegations for any of Young's allegations. A cursory interview and investigation would have proven Young not only contrived his motive and inculpated/incriminated innocent men, but that Bergrin never met these individuals in his life.

Affidavits submitted in the Will Baskerville, 28 USC 2255 motion emphatically represent this. The fact that both these

men are still walking the streets of our community, after committing, according to Young, two murders makes Young's accusations incredulous. The government just never cared about the truth seeking process. The government should have also known that Young was lying about McNeil and him being the shooter when Johnny Davis swore that McNeil and Young never shot his son Kemo. Furthermore, Young falsely incriminated Horatio Joines in Kemo's murder, when the government knew that this fact also was fabricated. Young went so far as swearing that Joines was at the Kemo murder scene, in March of 2004, and identified Kemo, so he could be killed -- an absolute proven lie.

Subsequent to Young's proffered testimony and him taking the witness stand in the Baskerville trial, detailing his ex-fiancée, Rasheeda Tarver's intricate relationship in Young's motivation for contacting the FBI in or about January, 2005; in that Young allegedly confessed to her Jamal McNeil and Baskerville's killing in Irvington, New Jersey and her informing the Baskerville family of Young's statements; the FBI never queried Tarver as to whether Young ever informed her of his motive for seeking FBI assistance. The Honorable Judge William Martini, Judge District Court of New Jersey found this fact unbelievable and, if true, deplorable. He personally queried Brokos as to why she never investigated this fact, which supposedly established Young's motive for cooperating. It is

clearly an example of the government usurping due process and deliberately seeking to hide the truth.

Tarver is a Newark elementary education teacher, with an impeccable reputation and no criminal record. Young accused and implicated her of obstruction of justice; yet, this was never investigated. Yet, Tarver was interviewed about these facts, according to Tarver.

In the 2007 U.S. v. Baskerville trial, Young swore that Tarver, unbeknownst to her and devoid of knowledge, drove both Young and Rakeem, one time, to Ben's Garage to melt the murder weapon, on the day Kemo was killed; although in his proffer session he said he melted the gun, the day after the Kemo murder.

In 2011 and 2013, Bergrin subpoenaed Tarver and compelled her testimony at trial. When Young took the witness stand, his coached and fabricated evidence took a dichotomous route on this material fact; and it was obvious from the direct examination of the government, that their plan was to attempt to impeach Tarver as a witness, before she testified, even if it meant suborning perjury. Young now swore that Tarver knew exactly why she was driving Young and Rakeem to Ben's Garage; in order to melt the gun. Moreover, Young now testified and revealed for the first time that Rakeem had the Kemo murder weapon on his lap as they drove to Ben's, that Tarver saw it and that she even drove them

twice. Young also falsely swore that he never threatened Tarver with a gun nor set fire to her house.

A cursory investigation would have proven that Young falsified his testimony against Tarver, in that she never drove Rakeem anywhere in her car and that Young did in fact assault her with a deadly weapon and set fire to her home. There were independent witnesses to corroborate these facts.

Young also swore in proofer sessions and at Bergrin's trials, that he never expected any benefits from the witness protections program, nor to receive a deal that did not include prison. The government knew and should have known that Yong's pre-deal expectations, as he relayed them to cooperating witness Hassan Miller, whom they debriefed and who wore a recording device, while at the Hudson County Jail, Kearney, N.J. Even though the government had made no binding promises, a witnesses attempt to obtain a deal before testifying was material because the jury "might well have concluded that the witness had fabricated testimony in order to curry the prosecution's favor." It undermines the jury's verdict, especially as it relates to Jauregui, Young and others. Smith v. Cain, 565 U.S. 73, ___ ___ (2012) (slip op., at 2, 3).

With witness Johnny Davis, the government foresaw a witness whose description of the murder and shooter of his son, Kemo, was diametrically opposed to Young. Davis identified William

Malik Lattimore, whom also fit his description. Approximately two months subsequent to the Kemo shooting, Davis identified Lattimore through a Newark Homicide Division photo identification procedure. Davis, who is uneducated, used the word that Lattimore "resembled" the individual who killed Kemo. Davis was under the belief he made an absolute and unequivocal identification, as he testified in Bergrin's trials. The government made sure that they removed the homicide investigation from the Newark Police Department and the Essex County Prosecutor's Office who clearly who had far more experience investigating homicide cases than the FBI.

The government NEVER queried Davis, as to what he meant by "resembled." {*emphasis added*}. What is deplorable, deliberate and a travesty of justice, is the government concealed the fact that they had shown Davis a photograph of Young; and he swore that Young was not the shooter. They also failed to inquire with Davis as to him ever seeing Lattimore subsequent to the Kemo murder on March 2, 2004.

An objective and sincere homicide investigation would have revealed that twenty-four hours after his son's murder, Davis was confronted by Lattimore, who threatened him about cooperating with the police and identifying him for shooting Kemo. During investigation for Bergrin's case, Davis identified

a photo of Lattimore, stating he was 1000% positive Lattimore was the shooter and that he was 1000% sure Young was not.

Additionally, on March 6, 2004, four days after Kemo was killed, Christopher Spruill an FBI informant, was at Kemo's make shift grave site, when he was mistaken for Johnny Davis and threatened by two men, "to keep his mouth shut about what he witnessed." To date, law enforcement have never shown Young's or Lattimore's photos to Spruill. These examples, although horrifying, would have eviscerated Young's credibility. It was a deliberate reaction by the government to subvert any witnesses and evidence impeaching Young; in clear derivation of Bergrin's due process rights. Simply put, the government never sought the truth, the whole truth and nothing but the truth. There is no other way to explain their inaction and lack of diligence.

Also, witnesses to the shooting who were present at the Kemo murder, Fred Lowry and Stacey Williams, were never shown photos of either Young or Lattimore; even though Williams had informed police that he may be able to identify the shooter. Now Williams is deceased and unavailable and the government's incessant failure to seek out the truth, significantly and detrimentally affecting Bergrin.

In Ex Parte Dale Adams, the police improperly coached a witness to identify a different person accused of murder. 768 S.W. 2d 281 (Tex. Cr. App. 1989). The police said, "This is the

man," after the witness identified someone else. The Court, citing Stovell v. Denno, held that a conviction which results from a bad identification is a gross miscarriage of justice. 388 U.S. 293,297 (1967). The government's abysmal actions and apathy resulted in a gross injustice to Bergrin.

It is inconceivable that the Government would seek to administer capital punishment upon William Baskerville, if they did not believe both of the statements allegedly made by these jail house informants; Erick Dock and Troy Bell. Both of these witnesses unequivocally stated that William "Malik" Lattimore was the person whom was searching for Kemo to kill him. They even wrote this in a diary they kept.

Moreover, they stated and testified that Lattimore was the only one tasked with carrying out the shooting. This is the same Lattimore that eye witness Johnny Davis had the confrontation with the day after the shooting and whom was positively identified with 1000% certainty by Davis; and the individual Davis identified to law enforcement as "resembling" the shooter, when shown 6 photo arrays by Newark Police. This Court must take notice that when Troy Bell testified in Bergrin 2013, he was coached and coerced by the government to initially swear, during direct examination, that Will was speaking about Lattimore doing the killing of another witness in another case, named Derrick Berrian. It was the government's deviousness and

sleazy way to slip the Berrian murder into Bergin's trial; as Berrian was a witness in another case and Bergrin represented the defendant, to whom he cooperated against. It also was an attempt by the government to wrongfully corroborate Young. (No one was ever charged with Berrian's murder.)

Most importantly, is the fact that, upon further examination and on cross-examination, Bell admitted he did not tell the truth on direct examination and that it was the murder of Kemo, that Will Baskerville referred to, when discussing Lattimore. It would be an insult to the intelligence and honor of this Court to assume, infer or suggest the government had no involvement in suborning Bell's perjury.

Bell admitted in Bergrin 2013, that he did not tell the truth about Lattimore; he would not have known about nor testified concerning Berrian and Lattimore without the government's influence. **Da**

The aforementioned government misconduct exposes the use of perjured testimony to substantiate Young's involvement in the Kemo murder; and enabled the government to mislead the trier of fact and Court; that Lattimore was not the shooter. This resulted in a violation of Bergrin's due process rights and an unfair trial.

In Pyle v. Kansas, the Supreme Court emphasized due process violations when prosecutor's deliberately suppressed evidence

favorable to an accused and subverted justice, 317 U.S.213 (1992). This factual synopsis is equivalent to the government's argument in Middle v. Pale, that red paint stained shirts were riddled with blood. 386 U.S. 1 (1967).

In Napue v. Illinois, a seminal case on government misconduct, Chief Justice Warren, reinforced the Constitution's impact by quoting from the New York Court of Appeals, "A lie is a lie no matter what it's subject and if it is in any way relevant to the case, the prosecution has a duty to disclose it and correct what he knows to be false and elicit the truth." 360 U.S. 264 (1959).

When Young swore, without hesitation in Baskerville and Bergin's trials, that he denied being at the homicide scene and was devoid of any knowledge of what occurred; because Agent Brokos promised him he would be released from jail and go home, the government had a sworn duty to make this lie and perjury known to the District Court and jury, immediately. It should have also sounded an alarm and warned the government, that Young's false accusations are intolerable; and that they needed to objectively corroborate Young's allegations against Bergrin. The government did neither. Instead, they did nothing. They simply permitted Young to commit perjury under their direct examination.

The prosecutors represented a sovereign whose obligation was to govern impartially and whose interest is not to win at all costs, but to seek justice. The Government had a sworn duty to ensure that Bergrin enjoyed a fair and impartial trial; not one riddled with contrived, fabricated, perjured and wrongfully coached evidence. United States v. La Paige, 231 F. 3d 488 (9th Cir. 2000).

The government's venom against Bergrin stems from its embarrassing and unacceptable negligence in failing to protect Kemo DeShawn McCray. Clearly, it blurred their impartiality and has resulted in egregious due process violations and nefarious conduct. They had to divert attention and consideration away from the fact that they never prosecuted and imprisoned a violent convicted felon like Kemo, who possessed a sawed off shotgun; and then, while working as an FBI informant, stole under-cover funds and was dealing heroin, cocaine and marijuana under the eyes and guise of his handler Agent Brokos. Kemo was an informant whom sought help and protection from the government but, instead, was castigated and ignored. Bergrin paid the inexcusable price for Brokos and the Government's policy violations and had due process rights trampled upon.

The manner in which the government turned a blind eye to blatantly contradictory evidence because it would have shattered and destroyed Young's credibility, is just an abomination of due

process. The due process violations resulted in Bergrin's wrongful conviction that must now be remedied. Miller v. Vasquez, 868 F. 2d 1116, 1120 (9th Cir. 1989), relying on Arizona v. Youngblood, 488 U.S. 51 (1988). Courts at all levels and in all jurisdictions have made it abundantly clear that due process requires law enforcement, not just to preserve evidence already in hand, like the recordings, but to also gather and collect evidence in which the police themselves by their conducts indicate that the --- court form a basis for exonerating the defendant. Miller, 868 F. 2d at 1121 (citing Youngblood, 488 U.S. at 58). Cf, Kyles v. Whitley, 514 U.S. 419, 437 (1995). The threesome prosecution team had a "duty to learn of any favorable evidence known to others acting on the Government's behalf in the case, including the police."

The Government worked in tandem with the Newark Police Department Homicide Section in the Kemo murder case. For the first several months witnesses were shown photos of black males with shoulder length dreadlocks and not bald males, as contrived factually by Young. These were experienced homicide detectives whom had hundreds of investigations between them. When the government and FBI decided exclusivity in the investigation, witnesses interviewed such as Stacey Williams, Fred Lowry, and many more never were shown Young's photograph. Additionally,

Lattimore and Young's photos were never shown nor canvassed in the area of the crime.

The government also leaked information to the media, such as the conversations Bergrin had with Curry and its substances in detail. Henceforth, Young had meticulous details of the Kemo incident from the news accounts, prior to his initial contact and proffer with the government; as did Thomas Moran and all the others. The government further concealed the fact, that their cooperating witness Moran, was being sent newspaper clippings on the Kemo murder and Bergrin; prior to his proofers with the government, as Moran revealed during cross in 2013. **Da**

The prosecution has an obligation to collect potentially exculpatory evidence, to prevent fraud upon the court and to elicit the truth by investigating thoroughly, impartially and meticulously. They must not ignore evidence they do not investigate nor potential evidence that would undermine their case. Napue, 360 U.S. at 269, 270, requires a prosecutor to act when put on notice of the real probability that there may be false testimony. This duty is not discharged by attempting to finesse the problem and pressing ahead without a diligent and good faith attempt to resolve it. A prosecutor cannot avoid this obligation by refusing to search for the truth and remaining ignorant of the facts. This applies not only to Young, but to Moran's fabrications concerning his travelling to Summer Avenue

and his presence when Alejandro Castro allegedly opened locks to the basement doors; which the government knew never existed; or his witnessing a meeting with a Subway Franchise executive and Bergrin, when they knew, if verified, it would prove false. Additionally, Moran's fabricated allegations of Bergrin making him a partner, when Bergrin loathed his drug addiction and alcoholism and was on the verge of terminating his employment. Lastly, Moran's absurd and contrived allegations concerning Baskerville and Kemo, when he admitted he read the Star Ledger article and was familiar with it. If the government had merely reviewed Moran's telephone messages, e-mails or communications, they would have known his evidence was perjured.

The same applies to Williams, Kelly, Braswell and other witnesses whom were contacted or represented by attorney Richard Roberts. Their material inconsistencies and the actual assertion of perjury, by other cooperating witnesses, would have proven fatal to the government's prosecution of Bergrin.

In the case, sub judice, the prosecution pressed ahead with Young, as their key witness against Bergrin and failed to investigate evidence and witnesses critical to determining his truth and veracity; as they continued to do in a pattern of misconduct, with all their cooperators. For instance, Bergrin provided the government with affidavits from Syed Rehman and Drew Rahoo, whom were incarcerated with Williams at the Hudson

County Jail and had no relationship whatsoever to Bergrin. They would have both confirmed that William's allegations against Bergrin were contrived, schemed, manufactured and perjured. They were witnesses with actual knowledge of perjury, governmental and attorney misconduct and Bergrin's injustice. But the government intentionally ignored them. Better yet, Bergrin requested them as witnesses and of course, had no control of their court attendance, as they were both in federal custody. The U.S. Marshalls failed to get them to court on time and they were precluded from ever testifying. The government knew their proffered testimony, was elated and never sought their admission. Despite this, absolutely no investigation of these two witnesses was ever undertaken.

Other documented incidents wherein the government knowingly failed to even attempt to interview critical, exculpatory Bergrin witnesses, were not limited to eye witnesses at the Kemo murder scene such as Webb, Lowry, Spruill and McPhall; but include Young's attorney's Melinda Hawkins-Taylor and attorney Paul Feinberg, members of the Baskerville family, Jamal, Deidre, Hamid, Al-Hanif or even Rakeem. Also, Tarver, Curry and a plethora of others. They failed to scrutinize the physical, forensic or scientific evidence competently and expertly compare it to Young's warped and disturbed incident versions. The government must be precluded from arguing that Young was subject

to full cross-examination at trial, because that point would evade their free standing constitutional duty to protect the system against false testimony. The government's mindset is that the ends justify the means and that all accomplices are responsible anyway. This attitude and path to injustice is also incompatible with ordered liberty. See Rochin v. California, 342 U.S. 165, 169 (1952). When the government becomes a lawbreaker, as in the case at hand, it breeds contempt for the law, it invites every man to become a law unto himself. Olmstead v. United States, 277 U.S. 438, 485 (1928).

The government must verify the credibility of its witnesses. {emphasis added} Due process demands protective safeguards against system corruption, caused by fraud and insensitive schemes that deprive a man of his life and liberty. The government was mandated to investigate, pre-trial, Young's veracity; and once he testified at trial there should have been additional scrutiny. They circumvented due process of law. Commonwealth of the North Marianna Island v. Bowie, 243 F. 3d 1109 (9th Cir. 2001).

The prosecution has a duty to investigate when they have a strong suspicion that a witness has committed perjury. Bergrin has espoused with ad nausea example upon example of "actual", not only suspected, perjury. But the government just ignored it, because it would detrimentally impact their case. This

Court, in good conscience, cannot ignore and overlook it. See Morris v. Ylst, 447 F. 3d 735-744 (9th Cir. 2006), Bowie, Id. at 117. "A trial is not a mere 'sporting event' it is a quest for the truth in which the prosecutor, by virtue of his office, must seek truth even as he seeks victory. Monroe v. Blackburn, 476 U.S. 1145, 1148 (1986). The government miserably failed on all account.

Brady v. Maryland, 373 U.S. 83 (1963), claims are especially cognizable in habeas corpus proceedings, like this. See also, United States v. Biberfield, 957 F. 2d 98, 103 (3d Cir 1992); United States v. Pellullo, 110 F. 3d 117, 122 (3d Cir. 1997). The abundance of Brady violations alone requires case reversal. Especially the government's withholding the Essex Jail visitation records of Albert Castro until after Bergrin's trial, concealment of the recordings which evince "actual innocence, the information from cooperating witness Hassan Miller, that he informed the government that Young admitted to him he was manufacturing Bergrin's guilt, the evidence from cooperating witness Maria Correia, that Bergrin was cognizant Oscar Cordova was not the son of Latin King leader Lord Gino and was himself an informant acting on behalf of the government, the various conflicted attorney representation, Attorney Richard Roberts' conflicted interactions, connections and involvement with the government, as the agent and New Jersey Ethics pending

actions, as well as his criminal conduct, Lachoy Walker being the lessor of "the dungeon" and having a prior conviction for kidnapping and aggravated assault and the government's decision not to prosecute Jamal Baskerville, Jamal McNeil nor any other party for the death of Kemo. Lastly, the fact that government informant Christopher Spruill positively identified William "Malik" Lattimore, as the individual whom confronted him on March 6, 2004, at Kemo's make shift grave and threatened to kill him if he was to incriminate him for Kemo's murder.

As enunciated supra, the Government's theory of motive for the McCray-"Kemo" murder was wholly dichotomous between Baskerville and Bergrin's trials, in violation of Bergrin's due process of law. It is absolute lunacy for the government to audaciously assert that they merely stressed and focused on the target of the trial. Bergrin and Baskerville faced the exact same scenario, in the murder allegations. The conspiracy to murder a witness in violation of 18 U.S.C. § 1512(k). Courts have recognized and held violative of due process such inconsistencies. See Thompson v. Calderon, 120 F. 3d 1045, 1058-59 (9th Cir. 1997), a case wherein the prosecution was rebuked for arguing different motives, theories and distorting or disingenuously lying about facts. In the Bergrin case, the government had already strenuously argued in 2007 that no one could hope to gain anything from murder of Kemo except William

Baskerville. That Kemo would never have been killed if Will was only facing ten years and that there was absolutely no chance whatsoever that Will Baskerville would ever cooperate with the government. All parties knew this and it would never happen under any circumstances and was never to even be contemplated or considered. T. Baskerville, 3265, 5724-25. How can the government get away with telling the Bergrin juries that Kemo was killed by Bergrin because he had infiltrated a drug trafficking organization, that Bergrin and Curry feared Will Baskerville cooperating against them and then suborning perjury through their witnesses, to support motives they knew were fabricated, contrived, false, manufactured and blatant lies. Rhetorically, how can Brokos and Young get away with perjury by telling the Bergrin jury Bergrin feared and convinced Will not to testify? The government would never have opened and argued in Baskerville the way they did, if there existed a scintilla, shred or iota of facts to support this argument. They also knew that Bergrin was recorded and intercepted vehemently stating, "Will would never receive more than ten years and this was understood by Curry and members of Curry's organization, because Curry was intercepted repeating this. T. Bergrin I., 10-17-11, at 4-5, 6-7, 29 also 11-14-11 at 16-17, 25, 144-45.

The government's use of factually contradictory theories and false and fabricated arguments and testimony, is what

violates Bergrin's due process rights. Napue, Id., Brady, Id; Giglio; Id; Commonwealth v. Bowie, Id., Northern Marianna Islands, Id. In Darden v. Wainwright, 477 U.S. 168, 181 (1986), the Supreme Court held that, "unethical behavior or improper methods by the prosecutor may result in a reversal of a conviction, when, as here, it infects the trial with unfairness as to make the resulting conviction a denial of due process."

Commonwealth v. Bowie, 243 F. 3d 1109 (9th Cir. 2001), is an example, analogous to Bergrin's dilemma wherein the Appellate Court emphatically held intolerance for deceptive, misleading and unprofessional prosecutorial conduct. Mooney v. Holohan, 294 U.S. 103, 104 (1935), emphasized the gravity of error in depriving a person of liberty on the basis of false and misleading arguments and testimonies. Bergrin's imprisonment has resulted from perjured testimony. It cannot be tolerated. It must not be permitted. Pyle v. Kansas, 317 U.S. 213 (1942). See also, Smith v. Goose, 205 F. 3d 1045, 1052 (8th Cir. 2000), "the use of inherently factually contradictory theories violates the principles of due process." The inconsistencies Bergrin has clearly set forth undermine the CORE of the prosecutor's case, making the only remedy reversal. Clay v. Bowersox, 367 F. 3d 993, 1004 (8th Cir 2004).

For the aforementioned reasons, Bergrin implores reversal of his convictions.

IX. THE GOVERNMENT FAILED TO DISCLOSE FAVORABLE EVIDENCE VIOLATING BERGRIN'S RIGHTS TO DUE PROCESS UNDER THE UNITED STATES CONSTITUTION.

Bergrin re-alleges all facts, arguments and evidence previously asserted in this motion and incorporates them by reference as if set for in their entirety. He also incorporates by reference all facts and arguments contained in the motion in accord with 28 U.S.C. 2255, submitted by William Baskerville.

The Fifth and Fourteenth Amendments requires the government to disclose specific types of evidence to defendants. In Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, the Supreme Court held that due process requires the prosecution to disclose evidence favorable to an accused person when such evidence is material to guilt or punishment. Evidence favorable to an accused includes not only exculpatory evidence, but evidence that impeaches a government witness. U.S v. Bagley, 473 U.S. 667, 676 (1985) (quoting Brady, 373 U.S. at 87). A Brady violation occurs when: 1) evidence is favorable to the accused because it is exculpatory or impeaching; 2) evidence was suppressed by the prosecution, either willfully or inadvertently; and 3) prejudiced. Strickler v. Greene, 527 U.S. 263, 281-282 (1999); Cone v. Bell, 566 U.S. 449, 469 (2009). When the prosecution withholds from a criminal defendant

evidence that is material to his guilt or punishment it violates his due process right, and reversal of his conviction must be ordered, in accord with the constitution; "A reasonable probability under Begley is a "probability" sufficient to undermine confidence in the outcome." 473 U.S. at 678, 682. (Evidence is material when there is a reasonable probability that the withheld evidence would have altered at least one juror' assessment of the case. Kyle v. Whitley, 514 U.S. 419, 434 (1995). Bergrin is prepared to specifically delineate a plethora of Brady violations pertaining to material evidence; and there is not a logical, credible nor believable argument that could be adduced which is convincing to negate the fact in that the withheld evidence would not have affected at least one juror. Most importantly, when assessing materiality, the issue is "reasonability" of a different result….The question is not whether the defended would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial; understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial". Lambert v. Blackwell, 387 F. 3d 210, 252 (3d Cr. 2004).

Bergrin cannot accentuate enough that when assessing evidence's materiality; this court must take into account the cumulative effect of the suppressed evidence, in light of other evidence, not merely the probative value of the suppressed evidence standing alone. See Kyles, 514, U.S. at 436; U.S. v. Tykarsky, 446 F.3d 458, 478 (3d Cir. 2006). The compelling nature of the consistent and incessant pattern of abuses by the government subverted and prejudiced any opportunity Bergrin had of receiving a fair trial. Moreover, it undermined any ability of one reviewing these substantial and overwhelming amount of constitutional violations, to find that they would not have influenced a jury. The inordinate, extraordinary and plethora of Brady, Giglio and their progeny violations is beyond comprehension. The government fervently ignored their obligations in a deliberate attempt to prejudice Bergrin's ability to defend the charges and to "win at any and all costs."

Material witness Vincente Esteves, Eugene Braswell, Maria Correia, Ramon Jiminez, Alejandro Castro, Yolanda Jauregui, Rondre Kelly, Thomas Moran, Abdul "Mutallic" Williams, Oscar Cordova, Anthony Young and Lachoy Walker all cooperated with the government and were wrongfully induced, solicited and coerced to incriminate Bergrin. They were offered a multitude of concealed and hidden benefits; never revealed to defense, the finders of fact nor the public. Promises, inducements, favors and

motivation to contrive, fabricate and falsify material evidence was deliberately hidden from Bergrin in a knowing and intentional plan and scheme by the government to deprive Bergrin from impeaching witnesses' credibility. Even though several witnesses were not called to testify by the government, such as Jiminez, Correia, Jauregui and Castro; Bergrin was prohibited from their testifying on his behalf by the government's refusal to resolve their cases and or grant them "use immunity". Henceforth, they would have invoked their Fifth Amendment privilege against self-incrimination and refused to testify. What is most important is because of the government's failure to reveal material and essential Brady evidence, concerning all individuals, it stymied and hampered Bergrin's ability to examine other testifying witnesses and resulted in extreme prejudice to the defense. These individuals composed the core of the government's case against Bergrin, who was prepared to call all witnesses the government failed to, in order to prove Brady, Giglio, and Napue issues.

The government witnesses depicted, supra, were all offered the secured witness program and informed by prosecutor's to accept it, whether they desired the program or not; so if Bergrin was to cross-examine the witness it would make him seem dangerous and the witness could mention this fact to the jury. Witnesses, such as Williams and Kelly who received time served,

never intended to use the programs' protections. Additionally, these witnesses were offered benefits such as relocation monies and expenses, family relocation fees, and incarceration in institutions that had lower classification restrictions; thereby offering a better environmental condition of imprisonment. The government never revealed any of those factors to Bergrin. For instance, in Jauregui's case, they relocated her sister Maria Jiminez and nephew Jose Jiminez, gave them $20,000 for expenses, housing and income and never revealed any of these facts; all in exchange for Jauregui's testimony. Additionally, they made promises of benefits to every witness and to date have not disclosed what was offered.

A. Witnesses involved in the Deshawn "Kemo" McCray case and drug trafficking and their Brady violations:

1. Yolanda Jauregui

This cooperating government witness proffered with the government an admitted 35-50 times, not counting pre-trial preparation periods. During the extraordinary amount of conferences spent with the prosecution team, she denied Bergrin's involvement in narcotic trafficking. The government also compelled her to forfeit, on paper only, her home located at 348 Little Street, Belleville, New Jersey and investment property (restaurant with rental apartments) at 710 Summer

Avenue, Newark, New Jersey as part of her plea agreement. To date, no property has ever been forfeited and her family, consisting of her mother Gladys Jiminez, niece Alejandra Jiminez, nephews Michael Jiminez, Joshua and Jeremy Wicks and others continue to live there. The prosecution never intended for her to forfeit these properties and she guaranteed that. All this information was withheld from Bergrin, in violation of Brady. (Jauregui plead guilty in 2010 and has been cooperating ever since.) Furthermore, Jauregui's mother Gladys Bracero and niece Alejandra Jiminez strip searched for recording devices, a government cooperating witness, when Jauregui sold her a kilogram of cocaine, clearly making them complicit in a serious narcotic offense. In exchange for Jauregui's cooperation against Bergrin, they agreed not to prosecute her mother and handicapped niece and failed to reveal any of these facts to Bergrin. They actually intimidated Jauregui from revealing these facts to Bergrin; Bergrin desired to have her called as a witness on his behalf thereby impeaching the veracity of the government's case.

Jauregui also had evidence that Abdul Williams, Rondre Kelly, Ramon Jiminez and Eugene Braswell wholly fabricated, contrived and manufactured Bergrin's culpability in drug trafficking, which she informed the government of. But this evidence purposely was concealed from Bergrin. As a matter of

fact, the FBI 302, prepared on Jauregui's behalf which summarized all alleged meetings with her, was wholly devoid of any statements she proffered, denying Bergrin's culpability.

2. Ramon Jiminez:

The government promised Jiminez they would not prosecute him if "he was to be a witness against Bergrin." They made an undisclosed promise to not bring any criminal charges for the sale of hundreds of kilograms of cocaine, he was involved in. {Emphasis added}. They also threatened him with jail for the rest of his life, unless he inculpated Bergrin and agreed to be a witness against him. Another factor never disclosed. Additionally, they ordered him to the Office of the United States Attorney, Newark, N.J. and intimidated, coerced, threatened and demeaned him using the tag team efforts of a federal prosecutor, along with his Court appointed attorney. Again, never disclosing this meeting at the prosecutor's office and that they informed him he would be indicted if he did not only cooperate, but incriminate Bergrin. Lastly, Jiminez was on Pennsylvania State Parole for life. The government never disclosed that they intended to contact the State Parole Board and request leniency of his behalf, {emphasis added}; or recommended any concurrent terms of imprisonment.

3. Anthony Young

This sole and exclusive witness to the alleged most serious and heinous crime known to humanity that substantially prejudiced the entire jury and inflamed their passions against Bergrin; and, ultimately affected all counts against him, was under psychiatric care since a juvenile. His fabricated testimony concerning the murder of Deshawn "Kemo" McCray was influenced by his mental and psychological instability. Young had been treated in penal institutions for his psychiatric condition and the government knew it. The government knew he was under medical care for his mental illness and disability, had seen Department of Corrections and Bureau of Prisons mental health personnel and was even taking medications to cope with his psychiatric problems. Despite this actual knowledge and records evincing it, they purposely withheld this paramount Brady materials from Bergrin. The government should have also suspected that there was something mentally wrong with Young from all the different versions he gave of the Kemo shooting.

The government investigated Young's false incrimination of Bergrin, Joines McNeil, Curry, Rakeem and Jamal Baskerville and possessed intercepted recordings that proved his version of meetings during the morning house of November 25, 2003 and events of the day were fabricated. They also knew he lied about Bergrin attending a meeting and announcing, "No Kemo, no case",

that William Baskerville would receive life in prison if Kemo testified and that Bergrin intended to litigate the case; from facts in their possession they knew or should have realized Young was ill. They were aware that he falsely incriminated Rakeem Baskerville for identifying Kemo on November 25, 2003, that he was never in Curry's Range Rover and overheard material conversations, yet they never specifically disclosed these facts and the recordings. They also had evidence relevant to accusations Young committed aggravated assault with a deadly weapon against Tarver and arson of her home; which they never disclosed. This evidence would have eviscerated Young's credibility.

The government had specific evidence that Young falsely incriminated Horatio Joines in conspiracy to commit murder, along with the murder of Kemo and that Joines was at the hospital with the mother of his child. The government withheld conclusive evidence of Joines alibi, which would have deleteriously impeached Young's credibility.

The government had specific knowledge that Young falsely contrived his motive to contact the FBI and falsely incriminate Jamal's McNeil and Baskerville, yet they withheld this crucial Brady evidence. The government knew that there existed no killing of a "nuts" girlfriend by these two men and that Rasheeda Tarver, vehemently denied Young ever telling her this;

or her informing anyone of this shooting. S.A. Brokos had travelled to the Irvington Police Department and confirmed that Young had been deceptive and that there was no evidence inculpating Jamal McNeil or Baskerville.

The government possessed evidence that Young confessed to their confidential informant, Hassan Miller, that Bergrin was innocent, but that he was manufacturing incriminating evidence against him, to obtain benefits from the prosecutor's. This critical and astronomically powerful evidence would have resulted in vindication to Bergrin of the Kemo murder and all other charges in the indictment.

The government had evidence that on March 2, 2004, Young did not either possess the Kemo murder weapon or take it to Ben's garage; but they secreted this evidence and failed to meet their Brady obligations. This evidence consisted of conclusive expert polygraph results of Ben Hohn, the owner of Ben's Garage, and other witnesses, who confirmed that Young was never there in March, 2004.

The government possessed specific evidence that both Special Agent Brokos and attorney Melissa Hawkins-Taylor had both instructed Young to speak the truth to the government during one and a half years of false incriminatory proffer sessions. They never revealed these instructions. Instead, they allowed Young to continue with his deceptions and perjuries

and falsely testify and swear under oath he was never informed of this vital fact; and if he would have immediately followed his attorney's advice, told the truth, never falsely incriminated McNeil for murder if he was instructed. This evidence would have clearly and unequivocally impeached Young's veracity, resulting in Bergrin's acquittal of all charges.

The government possessed evidence of Domestic Violence Complaints and sworn affidavits identifying Young as the perpetrator of aggravated assault with a deadly weapon against Tarver and arson investigation reports identifying and incriminating Young for setting fire to Tarver's home; although he falsely and perjuriously denied both incidents. The government withheld all these incident and investigative reports from defense and Bergrin could not effectively impeach Young's credibility at trial; when he lied and denied these facts.

All this evidence existed against Young, was Brady material and, if rightfully turned over to Bergrin, would have resulted in a different verdict.

4. Johnny Davis

This government witness was within inches of his step-son "Kemo" on March 2, 2004 when Kemo was murdered. He was, in

fact, so close he received powder burns from the gunshot residue.

Within minutes of the shooting, police arrived at the scene and Davis gave a brief description of the shooter; that he was a black male, with shoulder length dreadlocks. A day subsequent to the shooting, the shooter looked Davis directly in the eyes and threatened him. (Davis swore at Bergrin's trial he could never forget this face or person.)

Additionally, several months after the shooting, Davis identified Kemo's shooter from a photo array. Davis was shown 6 black males, ALL with shoulder length dreadlocks. The person identified was one Malik Lattimore. The exact same individual William Baskerville had informed two jail house cooperating witnesses, Eric Dock and Troy Bell, was looking for Kemo to kill him. The exact same person whom confessed killing Kemo to Roderick Boyd, at the Passaic County Jail and a law enforcement known hit man.

Davis was shown a photo of Anthony Young by law enforcement officers, after Young became a cooperating federal witness and informed them that Young was NOT the shooter. Young was a bald, black male at the time of the shooting with different skin tone coloring than Lattimore.

Bergrin vehemently argued at trial that Young was not the shooter.

The government NEVER revealed that Davis informed them, in 2004, that Young did not shoot Kemo. Extraordinarily, important Brady material, that would have impeached Young and resulted in Bergrin's acquittal. The lack of any police report made it virtually impossible for Bergrin to effectively and completely impeach testifying law enforcement officers; or to prove through the use of a prior consistent statement, Davis' veraciousness.

2). Christopher Spruill:

Christopher Spruill was a cooperating government witness, whom began living with Kemo's mother, Delphine Smith, upon her break-up with Davis. He also considered himself a surrogate father to Kemo.

On or about March 6, 2004, approximately four days after Kemo's murder, he was praying at a make-shift street memorial where the shooting occurred and tribute to Kemo. As Spruill was leaving the location where Kemo was killed, he was confronted by two individuals; black males with shoulder length dreadlocks. One of the black males mistook him for Johnny Davis, as their appearances are similar, and threatened to kill Spruill if he identified him as Kemo's shooter. The second black male at the scene, who accompanied the male with the handgun, was identified as Lee McPhall. There remained at large, the black male who threatened Spruill with the handgun.

Spruill identified a photograph of Malik Lattimore as the second individual whom threatened him with a gun and fled the scene. This fact was purposely hidden from Bergrin whom was unable to avail himself to this vital impeachment material at trial; suffering enormous prejudice and due process violations.

5. Alejandro Castro

Alejandro Castro was allegedly a non-cooperating government witness, indicted co-conspirator in the narcotics violations, and was represented by attorney David Glazer, CJA counsel. Castro had a prior drug distribution felony conviction, and consequently, faced a 20 year minimum period of incarceration, pursuant to 21 U.S.C. § 851. Castro would have exculpated Bergrin on all drug trafficking allegations, maintenance of a narcotics facility at 710 Summer Avenue, Newark, N.J. and impeached Moran's credibility about Bergrin being paid by Castro to store drugs at 710 Summer Avenue, Newark, New Jersey. He would also deny that Bergrin ever appeared with Moran at this location and summoned Castro to open the locks of the basement for a Subway Sandwich Franchiser. This was the government's main evidence attempting to link Bergrin to the cocaine seized at this location on May 21, 2004. (57 Kilograms)

The government contacted Castro and his attorney and informed them that they would NOT file the 851 enhancement, if Castro inculpates Bergrin during his plea and sentencing colloquy. This fact was never disclosed as Bergrin wanted to compel Castro's testimony at trial, but was informed Castro will not testify since he was yet to be sentenced and he would assert his 5th Amendment rights. This Brady violation curtailed Bergrin's ability to defend his case and must result in reversal.

This is why Bergrin has asked, pleaded, implored and begged for an independent investigation, the Office of Professional Responsibility and Inspector General to get involved at this time and prove, Bergrin never received a fair trial.

6. Hassan Miller

Hassan Miller was a crucial cooperating witness on behalf of the government; who did not testify at trial, but had extraordinarily exculpatory evidence on behalf of Bergrin that the government never disclosed.

Miller was an inmate of the Hudson County Jail, Kearney, New Jersey, and confined to a cell with Young. He was Young's closest friend and confidant, by Young's own admission. Young confided in Miller that he was framing Bergrin and manufacturing incriminatory evidence against him; and that Bergrin was

INNOCENT of having anything to do with the murder of Kemo. Miller, as a paid government informant informed the government whom squelched this evidence of paramount consequences; in derivation of Bergrin's due process rights and Brady. This evidence should reverse Bergrin's convictions alone.

7. Ben Hahn

Ben Hohn was the owner and operator of Ben's Garage, Newark, New Jersey and was interviewed by the government pertinent to the melting of the alleged Kemo murder weapon. Ben initially denied any involvement and knowledge of the gun being melted; and especially ever personally holding the torch to melt it. Although the government vehemently denied, in accord with a specific discovery request by stand-by counsel Lustberg, ever giving any witness a polygraph exam they lied. Ben Hahn was given a polygraph exam that he voluntarily submitted to, a pre-test interview and statement and a post-test interview and statement. There also existed expert polygraph charts of the actual exam. The government withheld all this evidence from Bergrin, which would have enabled him to impeach Young's credibility on important points of examination, query law enforcement personnel on the use of this investigative technique. Most importantly, Brokos ambushed Bergrin during his cross-examination by testifying Hahn was administered a

polygraph and failed it. She failed to reveal the questions poised that would impeach Young's position; especially, as to the time frame when Hahn interacted with Young. Bergrin should have been provided all this impeachment material. It was also extraordinarily important as to when the gun was allegedly brought to Ben's and who was involved; as Ben alleged that Young brought a gun to his shop in October 2004, not March. His employee Devon Jones testified that he personally melted a gun when it was bitter cold and freezing outside. Not 60 degrees as it was on March 2, as Bergrin obtained national weather service reports. This evidence was critical to impeach Young's credibility on whether he was the shooter of Kemo, as he alleged. It would have affected the jury's verdict and been favorable to Bergrin.

5. **Horatio Joines**

Anthony Young falsely informed federal agents that an individual named Horatio Joines, was present at the alleged early morning meeting, on November 25, 2003, and met with Young, Curry, the Baskerville brothers and Will's wife Deidre. That Joines was part of the Curry Organization and even searched for "Kemo" with them; with the intent to kill him. He further advised the government that Joines was at the Kemo murder scene

and in fact identified Kemo for Young and Rakeem so they knew who to kill. Additionally during Young's R. 11, Fed. R. Crim. P. hearing and plea of guilty, Young swore Joines was his co-conspirator and accessory to Kemo's murder. **Da**

The FBI particularly investigated Joines participation in the Kemo murder based exclusively on Young's fabricated statements. Agents interviewed Joines, his fiancé and mother of his son, and checked out his alibi. Joines adamantly proclaimed that his wife/girlfriend was experiencing pregnancy difficulties and he took her to the emergency room at the hospital where he remained until late the night of March, 2, 2004; thereby making it virtually impossible for Young to be telling the truth. Agents confirmed Joines rock solid alibi but never revealed to Bergrin these critical investigative facts, which conclusively impeach Young's credibility, were clearly Brady and would have had to have impacted the government's sole witness in their case against Bergrin. As a matter of fact, the government never revealed any Joines investigation they conducted, including the attempts to record him.

6. **Rasheeda Tarver**

a. ***Motive for Young contacting the FBI and cooperating.***

As previously written, Young contrived and fabricated his motivation for allegedly contacting the FBI and volunteering to

cooperate in the Kemo murder case. Young asserted that he feared retaliation by Jamal McNeil and Jamal Baskerville for allegedly informing his girlfriend/fiancée Rasheeda Tarver, that they shot and killed a young woman in Irvington, N.J. "Nuts" girlfriend. During cross-examination Brokos denied ever asking Tarver about whether Young made this admission to her and if she informed the Baskerville's. Tarver testified that she was in fact interviewed by Brokos and stated that Young lied about the facts and never had any such discussion, nor did she ever tell anyone such things. The government wrongfully failed to reveal this Brady material, which would have proved Young even fabricated his motive for contacting the FBI. Most importantly, Brokos swore at Bergrin's trial that she investigated the fact with Irvington, New Jersey Police Department; that she reviewed reports. None of this impeachment material nor facts were ever provided to the defense.

7. Abdul "Mutallic" Williams

Abdul "Mutallic" Williams was a key and material cooperating witness on behalf of the government. The government had investigative knowledge that he was involved in the sale and distribution of 100s of kilograms of heroin and cocaine and promised they would not prosecute him for commission of these

offenses; carrying life in prison for a career criminal like Williams. They never revealed this Brady material to Bergrin.

Furthermore, Williams was under investigation and a prime suspect in an Essex County murder, involving revenge for the execution of one Maurice Lowe. The investigation ceased once Williams began cooperating and this benefit was never disclosed. As a matter of fact, there was conclusive evidence murder was committed by Williams, never prosecuted because of his cooperation, but never disclosed to Bergrin.

Additionally, Williams conspired and set up (along with his father Earl Williams) the distribution of 7 kilograms of cocaine with Yolanda Jauregui, while he was incarcerated at the Hudson County Jail, Kearny, N.J. The government gave him the benefit of not investigating any of these charges nor prosecuting them in exchange for his cooperation against Bergrin. None of these facts were ever disclosed.

Lastly, the government was cognizant through investigation that Williams, with the assistance of fellow inmates Syed Rehman and Drew Rahoo; while in the Hudson County Jail, manufactured, contrived and fabricated the entire scenario of Bergrin's involvement in his drug distribution; but failed to disclose this Brady evidence; thereby resulting in Bergrin's wrongful conviction for drug distribution.

8. Yolanda Jauregui

The government failed to disclose that Yolanda Jauregui informed them, that Williams was contriving evidence against Bergrin and falsely testifying that Williams acted as a drug courier, delivering large amounts of cocaine for Bergrin and Jauregui's clients; then collecting money and returning it to them. All in violation of Brady.

9. Alejandro Castro

Also, the government failed to reveal exculpatory evidence given by Alejandro Castro disproving that Williams acted as Bergrin's drug delivery courier and then returned funds to Castro, Bergrin or Jauregui. All in violation of Brady.

11. Eugene Braswell

This former Correctional Officer, at Northern State Prison, Newark, New Jersey, was consulted, interviewed and counselled by attorney Gerald Saluti, whom was the partner of Richard Roberts, the compromised, conflicted and corrupt attorney. The government knew this fact and that Saluti advised him to "fuck" Bergrin and cooperate against him, even if you have to lie. The government was aware of this yet never advised Bergrin.

Most importantly, while employed and working as a Correctional Officer, at Northern State Prison, Braswell forged a relationship and made a deal with an inmate wherein Braswell would receive large amounts of drugs on consignment and sell them. When the inmate was given parole-release, he would share the proceeds. The inmate was paroled from prison, contacted Braswell. Braswell invited him to his home to pick up the money he was owed. When the inmate observed Braswell sitting on the porch of his home and in possession of a handgun he knew Braswell had ulterior motives. The inmate also possessed a weapon and there was a shoot-out, with Braswell killing him. Bergrin was retained by the New Jersey State P.B.A (Police Union) to represent Braswell in the shooting and it was eventually declared a justified shooting. Braswell knew that he had to destroy Bergrin whom possessed knowledge that he actually murdered the inmate. The government possessed witness statements, investigative reports and serious impeachment material in accord with Brady, that would have clearly established Braswell's motive for framing/manipulating Bergrin; who had no way of obtaining this discovery to cross examine and impeach Braswell. The government deliberately withheld this impeachment material from Bergrin.

a). Braswell falsely alleged that Ramon Jiminez conspired with him to provide cocaine with the intent to distribute it.

Ramon Jiminez had disclosed to the government Braswell was lying about Ramon introducing him to Peruvian drug dealers and Bergrin's involvement. Despite having this instrumental impeachment material, under Brady, the government never revealed it.

12. Lachoy Walker

This cooperating witness was the main informant and primary witness against Curry and Rakeem Baskerville. He was used extensively by the government in their trial and interpreted a multitude of Title III intercepted conversations; henceforth Gay and the federal prosecutors of Bergrin, were inherently cognizant of the substance of the recordings.

Mr. Walker commenced his cooperation in March, 2004. During a search of his apartment, in Newark, New Jersey the government seized multiple handguns that both Walker alleged and the government argued, he possessed for Curry. Not one of the weapons had been modified to an automatic handgun. The government also possessed, through warrant seizure, multiple weapons from other alleged and assumed Curry Organization members; they also had verified that Anthony Young, as a career convicted felon and armed career criminal, had been arrested in possession of a handgun-**a semi-automatic**; {emphasis added} none of the seized weapons from Walker, nor any Curry organization

member, were ever modified in any manner whatsoever; especially to be fired automatically, as Young alleged. Yet, the government failed to provide any of this impeachment evidence against Young, to Bergrin. Bergrin had no way to investigate this crucial issue, involving the murder of Kemo because Young made this claim for the first time on the witness stand.

The government had firm evidence consisting of ballistic expert reports, which examined a multitude of weapons from Curry himself, Young and other organization members and by the time Young testified in Bergrin 2013, knew there were no automatics or semi-automatic weapons altered. They knew Young committed perjury and lied in a very critical and material component of the trial; one hotly and vigorously tested. The allegation that he was the actual shooter of Kemo. The blatant, fragment, perjury in his description of how he shot Kemo was monstrous to a credibility determination; yet they intentionally withheld firm evidence of his lies- in the ballistic reports and seized weapons. Bergrin was left with a grave disadvantage in impeaching Young's credibility because he never proffered nor testified previously about this fact and it came out during direct examination by the government in the heat of the trial. Clear Brady violations.

Walker was the individual who leased the apartment, known as the dungeon; wherein a multitude of books, ledgers and

records of drug transactions were seized. This was an important factor as the government portrayed Bergrin as a member of the Curry drug organization and wrongfully alleged that this location was where Curry allegedly informed Walker, "This money is for Paul's connect." This is important in that Walker testified he had never mentioned this to anyone dating from his arrest in 2004, until he testified in 2013; his Bergrin trial testimony was his first revelation. Consequently, his credibility was of catastrophic importance and to be able to impeach him with the actual lease for the apartment, which depicted it was Walker's residence and he lied about it being Curry's, was very grave.

Additionally, the government possessed evidence that Walker's fiancée, during interrogation of her by federal agents, had informed them that the apartment was Walker's. They deliberately withheld all this Brady material from Bergrin.

Most importantly, the government deliberately withheld information of Walker's convictions for kidnapping and aggravated assault and the fact that through his cooperation, with the government, they gave up the investigation of him as a prime target and suspect in a serious murder.

Individually, these Brady violations mandate Bergrin's reversal. Collectively they are mountainous.

13. Thomas Moran

Thomas Moran was an important cooperating witness against Bergrin, as he shared office space at Bergrin's law firm and was extensively involved in the Oscar Cordova, Vincente Esteves, attempted murder of a witness, tampering charges. His testimony detrimentally affected Bergrin and Moran falsely corroborated crucial factors in the government's case.

Bergrin recently ascertained that the government possessed and was cognizant that there was evidence pertaining to Moran's mental, emotional, psychological and psychiatric disabilities at the time he commenced cooperation against Bergrin and testified. The government had firm evidence that Moran attempted suicide while in pre-trial detention, this his psychological condition made him desperate to be accepted as a cooperator, especially once he was placed in the Special Housing Unit (SHU) at the Hudson County Jail, Kearney, New Jersey. Moreover, they knew that Moran made statements to his attorney and others, since all his communications were recorded that, "he would do or say anything to get out of the SHU." More importantly, although Moran was placed in an isolated and safe environment in Hudson County, the government used their influence, contacted the Court and United States Marshall's and had Moran transferred to the Bergen County Jail, Hackensack, New Jersey; as an undisclosed benefit for his cooperation against Bergrin; especially since Moran and his family lived and were from Hackensack; and Moran

knew many of the officers at the jail. Additionally, Moran's father was a C.O. and Moran was given preferential treatmen.t Furthermore, they gave him the benefit of his choice of detention and the Bergen Facility was five minutes from his home and family. There was no way for Bergrin to ascertain this impeachment material.

Additionally, Moran was arrested in both Bergen and Monmouth County, New Jersey and had serious open and pending Superior Court felony charges. In Bergen County, he was indicted for second degree eluding the police, after he refused their command to pull over while driving drunk and erratically. He then got into a high speed chase with speeds, according to police, exceeding 95mph. In Monmouth County, while extremely intoxicated, Moran struck a van occupied with a father, mother and their children, causing injuries. The government was in possession of the reports of these incidents, had been in contact with the County prosecutors of Moran's cases and knew their respective positions in resolution of the cases. The government was clearly cognizant of all the facts of the Hudson case and the statutory presumption of seven years imprisonment, for second degree eluding.

They also knew Moran was highly intoxicated. In Monmouth, the government was well aware that due to Moran's intoxication and the injuries the victim's sustained, he was looking at

imprisonment. The government failed to make any revelations of their contacts, discussions, and preferential treatment promises they made with the County Prosecutors and Moran, in exchange for his cooperation against Bergrin.

During cross-examination, Moran perjuriously testified that he was not highly intoxicated in the Hudson County case and denied a high speed chase. In the Monmouth County incident, he denied anyone sustained injuries. He also lied and said he was offered probationary-non-incarceration, in both cases. Most importantly, the government assisted Moran in extensively delaying the disposition of both County cases, until after the Bergrin trial testimony so Moran would not have felony convictions for impeachment purposes and so the state dispositions, would not affect his United States Sentencing Guidelines assessments. All these benefits were concealed from Bergin, as the government continued their evisceration of his due process rights and their Brady violations.

Finally, the government was cognizant that friends, family and counsel of Moran were providing him internet, newspaper and other information, to be used against Bergrin. They also knew through their exhaustive interviews of Jauregui, and federal agents, that Moran contrived and deliberately fabricated his visit to 710 Summer Avenue, Newark, New Jersey and his entire testimony concerning The Subway Sandwich Franchise, Bergrin

telephoning Alejandro Castro to unlock the basement doors and Bergrin's knowledge of drugs at the location. Despite this awareness, they secreted their knowledge from Bergrin and purposely solicited this perjured testimony. They failed to meet their Brady obligations and if they had abided by their Constitutional obligations, Bergrin would have been vindicated from his charges.

Bergrin was inhibited from effectively cross examining Moran due to the government's failure to provide critical discovery materials for impeachment.

14. Maria Correia a/k/a Grace Cruz:

Maria Correia, a/k/a Grace Cruz, was a significant government cooperating witness whom covertly recorded Bergrin and Jauregui. She allegedly stole government funds and retained attorney Richard Roberts to represent Albert Castro. She then wrongfully coached Castro, while visiting him at the Essex County Jail, Newark, New Jersey to lie during his proffer sessions with the government and, eventually when he testified at Bergrin's trial in 2011. Castro perjuriously swore Bergrin offered him $10,000.00 (ten thousand dollars) to kill Kemo. Both Correia and Roberts were involved in this scheme; which the government had knowledge of but violated Brady and never revealed.

The government also possessed Essex County Jail visitation records depicting that both Correia and her boyfriend, Carlos Tavares, visited Castro prior to his government proffer sessions and also subsequent to them. Most importantly, the records reflected Correia's nexus to Castro and Roberts, which Bergrin never knew about it. Prosecutor Gay deliberately withheld this material until after a mistrial was declared, in Bergrin's case in 2011. They have never revealed the suborned perjury and Roberts-Correia scheme. The records would have enabled Bergrin to prove governmental misconduct and constitutional right violations. It prejudiced Bergrin extraordinarily.

Correia was sexually-intimately involved with cooperating witness Oscar Cordova and she informed the government of this fact and, most importantly that Bergrin and Jauregui knew Cordova was not the son of Latin King Leader Lord Gino, as he alleged and that Bergrin was cognizant he was a government informant. These factors were vital to impeach the entire charges involving Cordova, Esteves and the serious felonies involving attempted murder of a witness. Because Bergrin knew Cordova was an informant and Esteves a government cooperator and confessor, then it would prove Bergrin never intended to kill anyone and work with these cooperators and conspirators. The government failed to meet their Brady obligations and effectively diminished any chance Bergrin had to defend these

serious allegations. Bergrin vehemently submits he would have been acquitted of all charges had these facts been revealed. Also, Correia's intimate involvement with Cordova is impeachment material, Bergrin could have used for bias, prejudice and motive during his cross examination of Cordova.

15. Abdul Williams

This cooperating witness sold thousands of kilograms of heroin and cocaine and led a major narcotics distribution network that trafficked and controlled narcotics distribution, in the Bradley Court's Housing Projects. The government negotiated a cooperating plea agreement with, Williams, wherein they would not charge him nor further investigate his drug dealing and his suspected murders, in exchange for cooperating against Bergrin. None of which was disclosed to Bergrin and in violation of Brady. They were also aware that Williams had confessed Bergrin's innocence and the fact he was manufacturing drug trafficking allegations against Bergrin to receive the benefits of cooperation. They knew this information from Syed Rehman and Drew Rahoo, fellow inmates of Williams at the Hudson County Correctional Facility. They also knew that Williams had retained Roberts as his attorney and the conflict this created and affected credibility issues. They failed to meet their Brady obligations and concealed all these facts. Bergrin

submits that the Brady violations severely prejudiced his defense and must result in reversal of his convictions.

16. Rondre Kelly

Rondre Kelly was a cooperating government witness, represented by the corrupt, conflicted and compromised attorney, Richard Roberts. Although he transferred and sold thousands of kilograms of heroin and cocaine, in the District of New Jersey and faced life in prison, he was never charged.

His indictments encompassed Pennsylvania and New York, to which he received a sentence of three year's time served. The Office of the United States Attorney, District of New Jersey negotiated with Kelly, that in exchange for cooperating against Bergrin they would forego prosecution in their jurisdiction; although this was never written, revealed nor disclosed to Bergrin. Bergrin was only provided a copy of the Pennsylvania plea agreement and never even received the New York plea agreement, nor any requested governmental debriefings in Pennsylvania or New York; which could have been used to impeach Kelly's veracity. Prosecutor Minish conceded he had been in contact with federal authorities in New York and Pennsylvania, yet Bergrin was not provided with any rough notes, FBI 302's, DEA 6's nor one word of what Kelly cooperated about in either New York or Pennsylvania, not even background information.

Bergrin submits that Kelly never mentioned Bergrin's name as being involved in his drug business and as a leader of a narcotic organization, as he falsely testified at Bergrin's trial. Consequently, the debriefings from other jurisdictions would have been instrumental in impeaching him and was important Brady evidence; as was the negotiations and deal New Jersey struck with Kelly, but concealed from Bergrin.

B). **Special Agent Gregory Hilton, Newark Field Division of the Drug Enforcement Administration (DEA):**

The government wrongfully and falsely alleged that Bergrin conspired with one Alejandro Castro, to distribute cocaine. They even used cooperating witnesses Williams, Kelly, Moran, Jauregui, and Jiminez to corroborate this falsity; although Jauregui has recanted. The government presented fabricated evidence that Castro was a Mexican Cartel associate yet they theorized Bergrin was his supervisor, leader; and his boss. It was simply absurd.

The government's lead agent for the DEA, wiretap and investigation of the Curry case, was Special Agent Gregory Hilton. On May 20, 2009, the date of Bergrin's arrest, the government seized Bergrin's cellular telephone, the government possessed the seized telephone and the numbers in Bergrin's cellphone memory. One of the listed phone numbers was of Agent

Hilton. Bergrin did not know it by heart and the government never provided this essential Brady evidence.

The government knew that Jiminez introduced Castro, from the Mexican Cartel, to his sister Jauregui, who commenced an intimate sexual relationship with him unbeknownst to Bergrin; and then a business relationship with both Jimenez and Jauregui distributing cocaine. Bergrin had no relationship with Castro but ascertained information about his major drug trafficking.

Bergrin provided evidence to Agent Hilton that Castro and his family were major cocaine traffickers in the New Jersey and Northeast United States. This powerful evidence would have completely and wholly proved the government's case against Bergrin for drug dealing ludicrous; as the government's witnesses alleged Castro was Bergrin's cocaine connection, his drug distribution partner and that they worked closely together; and that Castro assisted Bergrin in earning a fortune. Bergrin's contacting Hilton and providing information would have linked and connected him to a major drug trafficking network. It made no sense.

The records the government possessed of Hilton's telephone number on Bergrin's cellular telephone records, would have disclosed at least 57 contacts and calls, between Hilton and Bergrin and proven Bergrin was telling the truth about contacting the DEA on Castro. The calls to Hilton commenced at

about the same time Castrol was proven to have arrived in New Jersey from a foreign jurisdiction. Bergrin had no other means to prove this, as stand by counsel queried Hilton as to whether Bergrin contacted him and Hilton- coincidentally- stated he did not remember. You do not forget FIFTY SEVEN CONTACTS AND CALLS. That is no coincidence. This Brady evidence was never turned over by the government, nor any reports of Bergrin contacting Hilton. If they had, no reasonable jury could have found him guilty of the drug offenses to which he received multiple life sentences. Furthermore, the government had a Brady responsibility to provide Bergrin's contact information and DEA telephone records and memorandums proving Bergrin contacted the DEA and provided reliable information on the Castro drug Network.

C. **Oscar Cordova**:

Oscar Cordova was a cooperating witness from Chicago, Illinois, who posed as the son of Latin King Leader Lord Gino, who was sentenced to life in prison, and incarcerated at the Federal Supermax Facility, ADX, Florence, Colorado.

During cross-examination of Oscar Cordova, he became emotional and accused Bergrin of attacking his father, Lord Gino, unnecessarily. The District Court precluded Bergrin from

asking additional questions on cross that concerned Lord Gino. The government had evidence Cordova was not Gino's son, was contriving this fact, but never revealed this evidence. This Brady material would have affected the jury's ability to believe Bergrin's theory, that he never believed Cordova and knew he was fraud and confidential informant.

Additionally, Cordova testified that he was under 24 hour protection because of death threats to his life. Although he did not testify they were from Bergrin, his impression wrongfully permitted this inference from the jury. Subsequent to Cordova's testimony, the United States Marshall's seized his cellular telephone and, upon a *de minimis* investigation, it was discovered that Cordova contrived the evidence of the threats and actually telephoned them in himself.

The government recalled him to the witness stand when Bergrin found out about Cordova's perjury and demanded he be put on the witness stand for additional questioning. The government made a clandestine and unrevealed deal essentially immunizing Cordova. Cordova knew he would not face any perjury prosecution. This deal was never revealed to Bergrin and the jury was left with the wrongful impression that Cordova may be prosecuted. This would have impeached his credibility and resulted in a different verdict on the attempted murder of witness, tampering charges.

The government possessed evidence that Cordova was downloading child pornography on his home computer, had been a suspect in sexual assaults, murders, drug distributions that he confessed to upon initial interview by government agents, but provided no evidence for impeachment other than a one sentence cursory statement in a debriefing report. All in violation of Brady. Bergrin asked for any investigative notes, reports of evidence contained in Cordova's briefing report, but was never; provided with any information. The government also made all kinds of payments to Cordova and Brokos intervened when Cordova was stopped for Driving while Intoxicated in Illinois. None of this was ever disclosed in violation of Brady.

D. **Attorney Richard Roberts**:

Corrupt and suspended attorney Richard Roberts committed tax fraud, money laundering, tax evasion and was under investigation by law enforcement for all these crimes. The government knew Roberts was intricately connected and the impetus behind Albert Castro, Rondre Kelly, Maria Correia, Yolanda Jauregui, Eugene Braswell and Abdul Williams' cooperation against Bergrin; yet they concealed the fact that Correia paid Roberts with stolen FBI informant funds to represent Castro, that Roberts had been retained with a $5,000

retainer by Williams, that Roberts had consulted Braswell, with his partner Gerald Saluti for representation and cooperation.

Additionally, the government was well aware that Roberts had Supervisory Assistant United States Attorney, Grady O'Malley, Newark, New Jersey, United States Attorney's Office attend his "*American Gangster*" movie premier. They shared a special relationship that essentially protected and immunized Roberts. Facts that, along with Roberts' extraordinary misconduct and conflicts of interest, should have been revealed as Brady material. As written previously, Roberts convinced witnesses to cooperate against Bergrin, for benefits and favors of non-prosecution. He wrongfully, corruptly and criminally suborned perjury and coached witnesses to lie against Bergrin in order to ingratiate himself with federal prosecutors.

F. The New York Confidential Prostitution Allegations and Related Charges.

The government used two witnesses to prove these allegations-charges. James Cortopassi and Natalie McClendon. Cortopassi was a paralegal employed by the Law Office of Paul Bergrin and later attended law school. Natalie McClendon, known as the number one escort and highest paid prostitute in America, was employed at New York Confidential, as an escort. McClendon earned over a million dollars as an escort, was dealing in

multiple types of drugs, committed acts of tax evasion, money laundering, and many other allegations; as did Cortopassi.

a). Bergrin was never provided with any agreements, plea deals, negotiated benefits and was unable to impeach the credibility of these witnesses, because the government violated their Brady obligations. What is crucial for this Court's consideration is the daily contact and joint agreement between New York State and New Jersey Federal authorities, to work together in prosecuting Bergrin. Henceforth, Bergrin was able to ascertain subsequent to the testimony of these witnesses, that all their criminal offenses and their indictments were dismissed, due to their cooperation against Bergrin.

Cortopassi had been indicted for conspiracy to promote prostitution, prostitution, money laundering and many other offenses. All his charges were dismissed, because of his cooperation against Bergrin and federal authorities were instrumental in this decision. Additionally, federal prosecutors promised and agreed to write a favorable letter to the New Jersey Bar authorities delineating Cortopassi's cooperation against Bergrin. None of this ever revealed, in blatant violation of Brady, as it created a motive for Cortopassi to fabricate evidence against Bergrin; as his bar admission was denied by the character committee and he yearned to receive his law license. .

For McClendon, not only did authorities dismiss her indictment, but she was barred by United States Immigration from re-entry into the United States from her Canadian country, after an unrelated heroin trafficking conviction. Behind Bergrin's back and without revelation to Bergrin, the federal government assisted her reentry into the United States to visit her family as a benefit for her cooperation against Bergrin. The dismissal of felony charges, non-custody for significant felonies and re-entry into the United States was the motivation behind McClendon's perjured testimony. The federally was intricately involved in the resolution of McClendon's case.

Bergrin firmly submits that if the government had not thrown his due process rights away and violated their Brady obligations, he could have effectively impeached the credibility of these criminals and been vindicated of all these charges. Furthermore, the nature of these offenses and allegations of Brady severely prejudiced Bergrin and tainted his ability to receive a fair trial. This crucified Bergrin and was the objective behind the government working so closely with New York authorities and making the misdemeanor offer; in order to convince Bergrin to resolve these New York charges. The Feds and New York County, worked hand in hand, and as New York City Detective Myles Mullady informed Bergrin, "I have been in touch with Agent Brokos every day for over a year to get you."

The government's flagrant suppression of these massive Brady violations, eliminated any chance Bergrin ever had of receiving a fair trial. The government's win at all costs mentality, caused them to burn the United States Constitution and Due Process of Law, against Bergrin.

Key factors Bergrin could have presented to the jury to impeach credibility and impugn the integrity of material witnesses was violated due to the government's misconduct. See Conley v. United States, 415 F. 3d 183,191 (1st Cir. 2005), United States v. Giglio, 405 U.S. 105, 154-55 (1972). Bagley, 473 U.S. at 678 (1985).

The "law makes it easier for [habeas petitioners] to obtain a new trial where the government has deliberately engineered an unfair trial by withholding material exculpatory or impeachment evidence, "as they have clearly done, sub judice. United States v. Joslyn, 206 F. 3d 144, 153 (1st Cir. 2000). The totality and cumulative error and delineated Brady violations, mandates Bergrin's reversal. Any other decision by this most Honorable Court would create a travesty of justice, a grave miscarriage of justice and trample upon the United States Constitution's Due Process Clause.

X. BERGRIN WOULD HAVE BEEN VINDICATED IF HE HAD EFFECTIVE ASSISTANCE OF HIS INVESTIGATION.

Upon Bergrin's arrest on May 20, 2009, he was detained and has remained in continuous federal custody since then. Bergrin incorporates by reference every fact espoused in points one to ten as if inserted here in its entirety.

In or about 2012, and subsequent to Bergrin's first trial, which resulted in a "hung jury" (mistrial), Judge Dennis Cavanaugh made the decision to consolidate all counts in a single trial (23 counts) and reversed the rulings of the Honorable Judge William J. Martini; who had been recused by The Third Circuit Court of Appeals and upon government motion.

Bergrin qualified for funds pursuant to the Criminal Justice Act (CJA) and retained New Jersey Licensed Private Investigator, Louis Stevens. The problem presented to Bergrin was the fact that, although Steven's was supposed to be paid intermittently, his submitted bills remained unpaid for almost a year. Steven's could not afford to pay his bills, run his office and afford his expenses or even survive; thus he failed to perform his duties, responsibilities and obligations. He even went so far as to falsify to stand by counsel and Bergrin that seminal investigation requests by wrongfully verifying he had done it; when he never did. This ineffectiveness and