From: **Michael Capps** cappsm@me.com
Subject: Capps / Theory of Prosecutorial Misconduct
Date: May 31, 2023 at 7:32 PM
To: jacob_rasch-chabot@fd.org



Attached is the trial transcript containing my direct/cross testimony. The below theory was provided to Kurt previously - we didn't break it down entirely, but there was enough in Kurt's opinion on the surface, he included it in his draft Motion for Release as an allegation of misconduct.

> Begin forwarded message:
>
> **From:** Michael Capps <cappsm@gmail.com>
> **Subject:** **Theory of Prosecutorial Misconduct**
> **Date:** May 2, 2023 at 2:33:43 PM CDT
> **To:** Kurt Kerns <kurtpkerns@aol.com>
>
> Follow along with me if you will - attached is the full transcription of my testimony, as you provided earlier, I will reference page and line numbers:
>
> Background:
> Page 80-83
> Metzger presents me with a letter sent to you regarding discovery materials and things he claims we didn't submit
> I continuously assert no knowledge
>
> On Page 83, Line 6 - Judge admonishes Metzger regarding not asking me about a document I have no knowledge of - without foundation
>
> Issue:
> Page 97, Line 21 - Asked about a recalling a order in aid hearing in August 2020
> Line 25 - I do not recall
>
> Page 98, Line 9 - Directed to reference page 12 of a document Metzger handed me
> Line 10 - Mr. Metzger, I'ver never seen this document before
>
> Continues pushing in Line 11/12 - asks again to turn to page 12
>
> I respond again, I'm still telling you I've never seen this before
>
> You can continue to read this page yourself, no need for me to cut/paste
>
> I continue to assert no knowledge of the document 2 more times, then he instructs me to read from the document, out loud
>
> I assert never seeing the document a fourth time
>
> He then proceeds to ask me questions about dissolution of the companies based on the required reading from a document without foundation in evidence
>
> Now move on to Page 123, Lin 10 - jury questions "Why would you apply for a grant for a company you were closing."
>
> This is directly tied to the forced reading of a document not in evidence and shows a juror was impacted by Metzger's misconduct at some level
>
> Further - I was acquitted on all loan issues pertaining to Midwest Business Group - not Krivacy - which was specifically pushed by Metzger
>
> —
> Is this a reach - it seems this would rise to prosecutorial misconduct as I was essentially coerced into reading from a document I had repeatedly denied knowledge of, statements which were prejudicial and is demonstrated by a juror question to the same

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