Chris,

Hello! Hope you are doing ok. Jan is doing ok considering. I try to do things for her as often as I can. She is a very wonderfully smart lady and such a fighter. Without her so many people here would never have fought their cases. Hopefully soon I'll have alot of free time and can help her sometime even if it's just making her coffee.

I've been meaning to send this stuff I've just been busy. So hopefully you can get it on a website, then people can see the corruption at work. If there is anything you ever want or need me to do for you or Jan please don't hesitate to ask. I'm just a letter away. If you need me to do something from you to her sometime let me know and I'll do my best. When you have it online tell Jan which website so I can send friends + family there. Thank you for your support, I know it has to be hard on you, hang in there. We're going to win!

over →

My family's address is below
you may need it in the future.

Mom: Jewell Martin
71 Martin Drive
Corbin Ky 40701
(606) 528-2316
My brother Larry Martin
and my daughter Orenda Morris
can be reached here also.
Thank you again
Melinda
AKA Mindi

Chris,
This ex-trooper entered Seagoville Tx FCI on Mar 3 he is scheduled to be released Jan 1. Wish Bubba could see these clippin's. ^^

NEWS JOURNAL — AUGUST 22, 2007 — A5

WS

Corbin

NEWS IN BRIEF

Former KSP Detective pleads guilty to violating informant's civil rights

A former Kentucky State Police Detective admitted in a Friday he violated a confidential informants civil rights when he kissed her against her will, then later asked a witness to lie about the incident.

Jason O'Bannon, an 11-year veteran of KSP Post 13 in London, could face up to 10 years in prison following his plea in United State District Court in Lexington. He pleaded guilty to a federal information, ... a common practice in federal court whereby someone accused of a crime can plead guilty to a formal indictment.

Allegedly, the witness came to O'Bannon's Laurel County home in 2005 to discuss a case. He grabbed her and kissed her against her will, then later asked a witness to lie about the incident to a grand jury. The suggested penalty for the civil rights violations is 10 years. He could get an additional year in prison for witness tampering.

KSP investigators launch their own probe into the case, before turning it over to the FBI. O'Bannon resigned from his post on July 19. He is scheduled to be sentenced at 9:30 a.m. Nov. 16 in Lexington.

Corbin attorney David Hoskins is representing O'Bannon in the case.

COM — CITY | REGION

Ex-trooper pleads guilty to charges in kissing incident

By Beth Musgrave
...Former Kentucky State Police trooper pleaded guilty yesterday to ... to persuade someone to lie ... federal grand jury about his ... sexual contact with a confidential informant.
... Christopher O'Bannon ... U.S. District Judge Jen... Coffman that in July 2005 he ... forced a woman to kiss him and then tried to persuade a witness to lie to a June 2007 federal grand ... about the incident.
... kissed a cooperating witness that didn't want to be kissed and tried to persuade someone not to testify against me," O'Bannon told Coffman, Jr.
According to a press release, O'Bannon had an undercover informant make drug purchases and then asked the woman to come to his home so they could discuss her ... work. O'Bannon then grabbed her ... and kissed her against her will. ... O'Bannon then asked a fellow ... state trooper to lie to government ... investigators and provide a false ... for him, according to the re... case. O'Bannon pleaded guilty to a ... criminal information, meaning he ... was not charged by a grand jury ... but voluntarily came forward and ... pleaded guilty to tampering with a ... witness and deprivation of rights ... under the color of law, a Class ...
O'Bannon recently resigned as a police officer, said his lawyer ... Hoskins, his lawyer. He is very re... morseful about what she said," ... Hoskins said. Yesterday, after ... O'Bannon's hearing, Hoskins said his client had no criminal his... tory and it is unlikely that he will ... spent much of his career at the ... London state police post. O'Ban... was released on his own ... recognizance.

...ing from an investigation into ... corruption of several high-ranking ... Manchester, city officials. Former ... Manchester Mayor Dawn White ... who recently pleaded guilty to several charges relating to the paving of private driveways with city resources, was also accused of using a drug dealer to burn down a building that was was blocking the construction of a new city building in ... 1996.
... O'Bannon is scheduled to be ... sentenced Nov. 16. He could face a ... maximum of 11 years but Hoskins ... said his client had no criminal history and it is unlikely that he will ... receive the maximum sentence. ... O'Bannon was released on his own ... recognizance.

Monday, August 20, 2007 • London, Kentucky — ECHO

40007000288

Former detective admits to crime

O'Bannon pleads guilty to violating informant's civil rights

BY ALLISON ALTIZER JOHNSTON
NEWS EDITOR

Former Kentucky State Police detective told a federal ... he grabbed and ... amount of time in prison. ... sexual acts upon a confidential ... Courtney Norris, public affairs ... even though she didn't want to ... confidential informant ... and witness tam... Office with the U.S. Attorney ... be kissed. ... O'Bannon, admitted to ... he also admitted to asking a ... will, then, later, tried ... Fayette County, where he pleaded guilty ... ing the civil rights violation. Office ... said O'Bannon ... confidential informant came to ... witness to lie about the incident ... convince a colleague to lie ... ed guilty to a criminal informa... carries a suggested penalty of ... Laurel County home in June ... to a federal Grand Jury in June ... tion, or a formal charge brought ... by the U.S. attorney ... 2005 to discuss her work in ... 2007. ... O'Bannon, 33, of ... and witness tampering charge ... criminal case, O'Bannon told the ... he worked for the KSP for 11 ... He is accused of a civil rights ... court he kissed the informant ... he faces the same violation ... intentionally forcing ... ten

SEE DETECTIVE, PAGE 12

DETECTIVE

...He added that O'Bannon's scheduled ... to be formally sentenced ... Nov. 16 in ... being rep... by attorney ... David Hoskins ...

501 Capital Circle, NE
Tallahassee, FL 32301
June 18 ,2008

Chris Milson
15 Choctaw Trail
Elkland, MO 65644

Dear Chris,

Enclsed is my §2255. It is in regards to law enforcement misconduct by Jason O'Bannon, a police officer who was later convicted and sentenced for improper conduct with witnesses or witness tampering. It was suggested I put my brief online for public viewing purposes. Therefore, I give you full permission to publish the brief on the internet or to use in any manner in which you see fit.

Thank you for your help.

Sincerely,

Melinda Morris
#08760-032
FCI Tallahassee

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

MELINDA MORRIS,

Petitioner,

v.

Case No: 6:07-cv-280-KKC
Crim. No: 6:03-cr-00035-KKC

UNITED STATES OF AMERICA,

Respondent.

_____/

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY PURSUANT TO 28 U.S.C. §2255

COMES NOW THE PETITIONER, Melinda Morris, pro se, pursuant to 28 U.S.C. §2255, and files this Memorandum of Law in support of her Motion to Vacate and Set Aside her Sentence in Criminal Case No: 6:03-cr-00035-KKC.

As a matter of introduction, the Petitioner (hereinafter "Morris"), respectfully submits to the district court that the events which transpired in the instant case constitute a denial of her right to effective assistance of counsel as guaranteed by the Sixth Amendment to the U.S. Constitution. In addition, Morris's rights under the Fifth and Sixth Amendments guaranteed her the right to notice in an indictment and to be informed of the nature and cause of the accusation. Finally, Article III to the U.S. Constitution guarantees the presence of an impartial adjudicator. These errors were not merely procedural, instead they substantially infringed upon Morris's Constitutional right to due process of law. At a minimum, Morris requests a hearing to be held on these issues.

Per the Supreme Court in Haines v. Kerner, 404 U.S. 519, pro se pleadings are to be construed and held to a less stringent standard than formal pleadings drafted by lawyers; if the Court can reasonably read pleadings to state a valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusing legal theories, poor syntax, and sentence structure, or litigant's unfamiliarity with pleading requirements.

Morris respectfully urges this Honorable Court to grant all and the most liberal considerations with respect to her 28 U.S.C. §2255 Brief in Support of her Motion. Morris is not an attorney, and is proceeding pro se, to safeguard her Constitutional rights and in the best interests of justice.

For it is the Sixth Circuit which has ruled, "A central tenet of our republic--a characteristic that separates us from totalitarian regimes throughout the world--is that the government and private citizens resolve disputes on an equal playing field in the courts. When citizens face the government in the federal courts, the job of the judge is to apply the law, not to bolster the government's case." See Beaty v. United States, 937 F. 2d 288 (6th Cir., 1991).

STATEMENT OF JURISIDICTION

Federal law provides an avenue for those whose sentences have been lengthened unconstitutionally. Title 28 U.S.C. §2255 is a statute that provides a remedy for redress of federal constitutional violations in a federal court. "A prisoner in custody under sentence of a court established by an Act of

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

MELINDA MORRIS

Petitioner,

v.

Case No: 6:07-cv-280-KKC
Crim. No: 6:03-cr-00035-KKC

UNITED STATES OF AMERICA

Respondent.

_____/

MOTION FOR LEAVE TO FILE INSTANTER ENLARGED MEMORANDUM OF LAW IN SUPPORT OF 28 U.S.C. §2255

COMES NOW, the Petitioner, MELINDA MORRIS, Pro se, to hereby and respectfully request this Honorable Court to grant her Motion for Leave to File Instanter Enlarged Memorandum of Law in Support of 28 U.S.C. §2255.

Petitioner requests the Court to exercise leniency in the interpretation of the complex Constitutional and statutory issues presented herein. Petitioner brings her claims without the formal training of legal drafting as an attorney. Accordingly, she seeks for "liberal construction" of the pleading not to have the motion scrutinized for the technical excellence that practicing attorneys are held to. See Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594 (1972).

In support of her Motion, Petitioner avers: Petitioner enters this Court in good faith, with issues that are relevant to her case which exceed the court's page limitation imposed

by the court's local rules. Petitioner makes her claim that given the numerous and complex issues involved in her motion, it is impossible to stay within the limitations of the page limit rule.

To deny her right to be heard would deny Petitioner's right for redress of grievances, as guaranteed by the First Amendment Right included in the U.S. Constitution.

Therefore, the Petitioner respectfully urges this Honorable Court to grant her Motion for Leave to File Instanter Enlarged Memorandum of Law in Support of 28 U.S.C. §2255.

Respectfully Submitted,

Date: 30 Nov, 2007

Melinda Morris, Pro Se
#08760-032
Federal Correctional Institution
501 Capital Circle,NE
Tallahassee, Florida 32301

Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitutional or laws of the United States...may move the Court which imposed the sentence to vacate, set aside, or correct the sentence..." per 28 U.S.C. § 2255. Morris believes her best opportunity to obtain fair and substantial justice regarding her sentence is through this petition, as the Federal Courts have historically served as a safety net for those who have had their constitutional rights violated.

STATEMENT OF ISSUES

I. INEFFECTIVE ASSISTANCE OF COUNSEL.

II. PROSECUTORIAL MISCONDUCT.

III. ABUSE OF JURISDICTION & DOUBLE JEOPARDY.

IV. SENTENCE THAT WAS MISCALCULATED, UNREASONABLE, AND ILLEGAL.

STATEMENT OF FACTS

On May 21, 2001, Morris was arrested and charged with trafficking in a controlled substance, later specified as methamphetamine, by the Whitley County Circuit Court, State of Kentucky, in Docket NO. 6:02-CK-0081-02. By the time of sentencing in the case on December 8, 2003, Morris had served approximately 14 months of time on it. At the advice of counsel, she pled guilty in July, 2003, as Morris understood that she would receive a sentence of time served and probation. Instead at sentencing on December 8, 2003, she received a sentence of 5 years.

On May 22, 2003, the federal government entered the case, using the same conduct as the state case as the basis for their charges, by filing an indictment for Morris and two co-defendents

William Faulkner and Randy Fox, charging 13 counts under 21 U.S.C. § 846 for conspiracy to manufacture over 50 grams and to distribute over 500 grams of methamphetamine. One June 26, 2003, a superseding indictment was entered charging 15 counts and adding three defendants, Justin Lundy, Troy Ramsey and Brandy Lawson. Arraingnment was held on July 10, 2003, and attorney Hunter Payne was appointed as defense counsel to Morris. She pled not guilty. A Motion to Continue was filed on July 16, 2003, with counsel filing a Motion to Withdraw on July 22, 2003. The motion was granted on July 25, 2003, and attorney Samuel Castle was appointed as counsel. On July 30, 2003. Gordon is appointed August 18, 2003.

All of the defendents were residents of Kentucky. According to Kentucky State Police Uniform Offense Report records, "There is no physical evidence in this case" (See Exh. A). All alleged conduct was committed inside the state of Kentucky.

On December 15, 2003, Morris entered into a Plea Agreement for Counts 1 and 2, under 21 U.S.C. § 841(a)(1) and § 846. A Presentence Report (hereinafter "PSR") was prepared in which the base offense level was calculated to be 32, as further based on the estimated quantity of 75.81 grams of actual methamphetamine Kentucky State Police chemists theorized could be produced. Three levels were added, as included in the Plea Agreement, pursuant to U.S.S.G. § 2D1.1(b)(5)(B), as the offense "involved the manufacture of methamphetamine which created a substantial risk of harm to human life." Included in the PSR, but not included in the indictment or the Plea Agreement, were an additional two points because of the presence of a firearm, for an adjusted offense level of 37. Three points were subtracted for the acceptance of

responsibility for a total offense level of 34. The Criminal History Level was determined in the PSR to be a Category III based on a number of misdemeanors, mostly constituting traffic violations, totaling 6, which were reduced to 4 under §4A1.1(c), having no effect on the category. The sentencing range, therefore, on a level 34, Category III, was 188-235 months.

On April 29, 2004, at the sentencing hearing, the court noted that there was one objection filed with respect to the PSR. The objection, in part, concerned a gun enhancement over a gun which Morris was unaware was present, and as the result, denied to be part of "relevant conduct". Objections to the PSR were overruled, because AUSA Smith represented to the court that Morris had previously pled to the state offense which had alleged there was a gun present. No evidence to support this claim was presented by AUSA Smith. Morris did not plead guilty to a gun offense in the state charge. The court sentenced Morris based on sentencing guidelines to 188 months, but reduced the sentence to 185 months and twelve days, crediting her with the four months and 18 days she had already served on the state charge. She was also sentenced to five years of supervised probation. Morris had been serving her respective sentence since December 8, 2003.

On May 12, 2004, Morris, through counsel, filed a Notice to Appeal. Morris won the appeal, with her sentence ordered to be remanded for resentencing consistent with Booker.

On August 10, 2006, Morris was resentenced by the district court. At the resentencing hearing, objections were again made by counsel regarding the gun enhancement. Morris was resentenced

to 174 months under Booker to what appeared to be a reduction of 14 months, until it was later clarified by the court on the record to be calculated from the date she was originally sentenced, which was April 29, 2004, making it a reduction of only 11 months. The district court again refused to remove the gun enhancement.

The sentence is now being collaterally attacked pursuant to 28 U.S.C. §2255. The motion under §2255 was filed on a timely basis, within the 12 month period allowed from the date of the resentencing. This Memorandum of Law and Arguments are being filed within the 90 day extension permitted by the district court of November 30, 2007.

ARGUMENTS

In order to succeed in a §2255 Motion, the Petitioner must show that the adjudication of a claim in federal court resulted in a sentence that was imposed in violation of the Constitution of laws of the United States, or that the court was without jurisdiction to impose such a sentence. The Constitution, as the framework from which all Federal law springs, must not be violated as applied to Morris.

I. PETITIONER'S SIXTH AMENDMENT RIGHT TO EFFECTIVE COUNSEL WAS DENIED LEADING TO AN UNKNOWING PLEA AND UNLAWFUL SENTENCE

As an initial matter, Morris notes that she did not appeal this claim, because, generally, an appellate court does not consider ineffective assistance of counsel claims on direct appeal. Massaro v. United States, 538 U.S. 500, 504, 155 L Ed 2d 714, 123 S. Ct. 1690 (2003), has ruled that "[i]n light of the way our system has developed, in most cases a motion brought under

[28 U.S.C.] §2255 is preferable to direct appeal for deciding claims of ineffective counsel. Morris believes the only issue raised on her behalf upon appeal was in regards to Booker, as she was resentenced in consideration of Booker. She made repeated requests to counsel during the preparation of this §2255 for a copy of the Brief filed at the Sixth Circuit Court of Appeals and the resulting Opinion, but was ignored, never receiving a copy of either filing. Further, the case number from the appeal was never referenced on the district court docket as is done in other district courts throughout the United States.

The Sixth Amendment to the United States Constitution guarantees that criminal defendants are entitled to the assistance of counsel in presenting their defense. The Supreme Court has mandated, "The right to counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy, of our adversary process." See Kimmelman v. Morrison, 477 U.S. 365, 374 (1986); see also U.S. Const. Amend. VI. Furthermore, the Court has recognized that "the right to counsel is the right to effective assistance of counsel." See McMann v. Richardson, 397 U.S. 759, 771 (1970)(emphasis added).

To succeed on a claim of ineffective assistance of counsel, a defendant must show that his "counsel's conduct so undermined the proper function of the adversarial process that the trial cannot be relied on as having produced a just result." See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2055, 2063 (1984). The Strickland Court went on to hold that in order for a defendant to prevail on an ineffective assistance of counsel

claim, he must satisfy a two-prong test. Id. A defendant should demonstrate that the representation he received "fell below an objective standard of reasonableness" and "a reasonable probability that but for counsel's unprofessional errors, the results of the proceedings would have been different." Strickland, 466 U.S. at 688, 694.

A court reviewing a claim of ineffective assistance must determine whether a reasonable probability exists that, but for counsel's unprofessinal errors, the results of the proceedings would have been different or whether the result was fundamentally unfair or unreliable. Id. (citing Lockhart v. Fretwell, 113 S. Ct. 838 (1993)). Ultimately, the Strickland test requires courts to focus upon whether counsel's performance was sufficient to ensure the fundamental fairness of the proceeding. Id. However, the prejudice that must be shown need not be anything more than something as small as one additional day in jail. See Glover v. United States, 531 U.S. 198 (2001).

"It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interests." See Frazer v. United States, 18 F. 3d 778, 785 (9th Cir., 1994).

In the context of guilty pleas, the U.S. Supreme Court announced that counsel must give objectively reasonable advice before the presumption of effectiveness will be applied. See, Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985). Ineffective

assistance of counsel at the plea stage of a proceeding will render the plea involuntary, and hence invalid. Id. at 56. The Supreme Court has held that the prejudice prong in guilty plea cases focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. Id. at 59. In other words, in order to satisfy the "prejudice" requirement, the Petitioner must show that a reasonable probability exists, but that for counsel's errors, he would not have taken the course of action that was embarked upon. Id. Additionally, the ABA Standards Relating to the Administration of Criminal Justice provides that, "it is unprofessional conduct for the lawyer to understate or overstate the risks, hazards, or prospects of the case to exert undue influence on the accused's decision as to his or her plea." Standard 4-5.1(c)(1979). "Although Strickland dealt with a claim of ineffective assistance in a capital sentencing proceeding, the same two-part standard has been held to apply to ineffective assistance claims arising out of the plea process." See Tahamtani v. Lankford, 846 F. 2d 712, 714 (11th Cir., 1988)(citing Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985).

In the instant case, Morris suffered from "musical chairs" in regards to the assignment of defense counsel, with one defense counsel after another seeking to be terminated was replaced with yet another attorney. After Morris met with defense attorney Hunter Payne at his office and having begun the process of establishing an attorney/client relationship, she was approached by Mr. Payne and informed that he was withdrawing as counsel due to a "conflict of interest". When Morris asked if the "conflict"

was due to another co-defendant, she was told "no". Morris was going through a complicated pregnancy at an advanced age. Her pregnancy was causing an unavoidable roller coaster of emotions and instability. London, the town in which Morris was indicted, is a small town, where everyone knows each other. Morris's ex-husband is from London and has been employed by the National Guard full-time for almost 30 years. His brother was the chemist for the state police crime lab. When Morris was going through a custody battle with her ex-husband, the first judge, the Honorable Carnahan, withdrew from the case due to a "conflict of interest" because he had been the judge presiding on the divorce. Steve Cessna, the attorney that Morris had hired for the custody battle, had accepted a retainer from her,heard her side of the story, even appearing in the docket as counsel of record, until the day before the hearing when he withdrew. Cessna kept the retainer. The case was postponded, with Morris obtaining new counsel, Sam Begley. When the date for the reset hearing arrived, Morris appeared in court, at which time Steve Cessna was on the bench as the presiding judge. Cessna motioned for Morris to approach the bench at which time she was advised that she had already lost custody as the hearing had already been held and she missed the date. As the result, Morris has good reason to view any attorney with suspicion given the politics and social dynamics in the area.

In the instant case, the same as with the first defense counsel appointed, the second attorney appointed, Sam Castle,withdrew due to a "conflict of interest". This occurred during Morris's initial consultation with Castle. On August 18, 2003,

the court appointed the third defense counsel, Derek Gordon. This attorney remained with Morris through her appeal, however, the docket indicates that Gordon made no request for discovery, unlike the defense attorneys for all of her co-defendents. (Refer to discovery requests for: Lawson, R. 33, 34, 35; Lundy, R. 59, 60, 61; Faulkner, R. 67; Fox, R. 71, 73; Ramsey, R. 77). Most of the discovery process had been completed by the other attorneys prior to the time that Gordon was even appointed as Morris's counsel. Further, plea negotiations had already begun and deals were being made. Gordon merely placed a plea agreement in front of Morris and told her to sign it. Gordon conducted no investigation whatsoever prior to inducing Morris to sign the plea agreement.

In unique circumstatnces, where there is the actual breakdown of the adversarial process, a court may presume counsel's ineffectiveness without resorting to the two-prong test set forth in Strickland. In United States v. Cronic, 466 U.S. 648 (1984); Kimmelman v. Morrison, 477 U.S. 385, 106 S. Ct. 2574, the Supreme Court held that in addition to counsel's failure to conduct his own investigation, there was no effort made to investigate the government's case, and this falls below the minimum standard of competent representation. The Court noted that the adversarial testing process generally will not function unless the defense has done some investigation into the prosecution's case and into various defense strategies. Preparation consists of more than showing up and giving a good performance, if the truth-seeking process is to play some role in the criminal justice system. Defense attorneys must explore the truth, so that, if there is

exculpatory evidence in favor of their client, they can present it.

Failure to investigate the facts is unconscionable and falls below the level of performance required by the Sixth Amendment. See Evitts v. Lucey, 469 U.S. 387, 394,104 S. Ct. 830, 835; Phillips v. Mills, 1999 U.S. Lexis 20628 (6th Cir., 1999).

In the instant case, when Morris first met with Gordon, she was very apprehensive. She was expecting her child within the month, facing a federal felony charge, and did not even have a reliable lawyer three months after the indictment was entered. At her first meeting after his appointment on August 18, 2003, Gordon asked Morris if she could give the government information. If so, she would be entitled to a downward departure. Morris had gone through a drug rehabilitation program (refer to PSR) and had started her life over. Morris had not been around any criminal activity since leaving the Layne House (rehab) in August, 2002. As the result, Morris had no information to provide to Gordon. Gordon indicated that she was the first client he had ever had that had not received a downward departure. As Morris was the last one to obtain defense counsel, she could not have provided any "new" information to that of the other co-defendents before her. Morris was made to feel that if she couldn't provide information, she could expect no help from Gordon.

Counsel has "the overarching duty to advocate the defendant's cause...to consult with the defendent on important developments" and to "make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. 668, 104 S. Ct. 2052, 2064-74.

Whenever Morris would call Gordon, she would be told that he was out or in a meeting and that he would return her call, which he never did.

Morris was incarcerated on December 8, 2003, for her state conviction. Morris spent one night in the Whitley County Jail and was transferred to the Clay County Detention Center (CCDC) the next day. Gordon visited Morris at CCDC, bringing the Plea Agreement with him. Morris was expecting Gordon to go over the Plea Agreement with her, but he said he was in a hurry. Morris quickly read the agreement, but questioned Gordon as to the amount of time that would be imposed. Gordon specifically advised Morris that the agreement with the prosecutor was for 10 years, and that when the PSR was done, an additional 2 years would be added for her criminal history of misdemeanors for a total of 12 years. Based on this representation, Morris signed the Plea Agreement. Morris submits that she should have been entitled to believe defense counsel's representations made to induce her to sign the Plea Agreement.

"We believe that when an attorney makes a significant representation of fact to his client, such as of a promise by the Assistant United States Attorney and the terms of that promise, the client is entitled to believe him. If this assumption cannot be indulged, the negotiations sanctioned under Rule 11 will be seriously impeded. There is accordingly a duty on attorneys to make sure whenever participating in plea bargaining proceedings, which are under the close scrutiny of the court, that any information they convey to their client is accurate and complete

and that they understand what the applicable law and rules are. Failure to adhere to professional standards in this regard is no minor imperfection, and in our view constitutes grounds for questioning an attorney's continued fitness to represent clients in the federal courts." See McAleney v. United States, 539 F. 2d 282, 286-287 (2nd Cir., 1976).

Morris was suffering from post partum depression when she signed the Plea Agreement and had recently been removed from everything she held dear. She left an aging mother of 80 years old and a three-month old baby. When Morris asked Gordon as to why there was not a set number of years contained in the Plea Agreement, she was told the government never puts that in a plea agreement.

Plea agreements should be entered into voluntarily and intelligently in order to satisfy due process. A Plea Agreement should not be sustained if it rests on a guilty plea that is the result of coercion. When deception is used to make the situation appear hopeless, this can cause coercion. A lawyer should review all important provisions with his client before proceeding to an agreement. Jail records would verify that there was only approximately 15 minutes of visitation between Gordon and Morris. There is a duty on the attorney to make sure, whenever participating in a plea bargaining proceeding, that any information he conveys to the client is accurate and complete and that he/she understands what applicable law and rules are; and failure to adhere to professional standards in that regard constitutes grounds for questioning attorney's continued fitness to represent

clients in Federal Court (See Federal Rules of Criminal Procedure, Rule 11, 11(d), 18 U.S.C.A.).

"Defendant is entitled to counsel whose undivided loyalties lie with his client." See United States v. Ellison, 798 F. 2d 1102 (7th Cir., 1986).

Motions for continuance had been repeatedly requested by the various defense attorneys and granted by the court. The timing of the rearraignment, as driven by defense counsel, was suspect in that it immediately followed Morris's sentencing on state charges on December 8, 2003, which were based on the same conduct during the same timeframe.

In reference to the Plea Agreement, defense counsel was incompetent. There was no nexus to interstate commerce to support a federal criminal charge. Further, the charges, being duplicative of the state case, were clearly a violation of double jeopardy. Any functioning or competent defense counsel should have readily recognized these fatal defects to the federal government's case. Instead, Morris suffered from defense counsel that had to be contacted by the court when he failed to appear at the rearraignment on December 15, 2003 at 9:30 a.m. (TR 3, R. 188). The Clerk of Court advised that Gordon would be able to make it into court around 11:15 a.m. (TR 33, R. 188). Gordon blamed his non-appearance on some kind of "misunderstanding" when court was resumed at 11:30 a.m. (TR 34, R. 188).

The Sixth Circuit has held that the Double Jeopardy Clause protects against a second prosecution for the same offense after conviction or acquittal, and against multiple punishments for the