

Joseph Labriola, pro se
MCI Shirley
P.O. Box 1218
Shirley, MA
01464-1218

March 11, 2013

Walter F. Timilty
Clerk of the Court
Norfolk County
Criminal Division
650 High Street
Dedham, MA
02026-1855

LEGAL MAIL

Re: COMMONWEALTH Vs. JOSEPH LABRIOLA, No. #57811

Dear Clerk:


Enclosed please find for filing in your usual and timely manner the following;

- 1) Defendant's pro se motion for production of grand jury minutes,
- 2) Defendant's memorandum of law in support of his pro se motion for production of grand jury minutes,
- 3) Defendant's motion to mark-up his motion for production of grand jury minutes, and
- 4) Certificate of service for each motion (X2).

Can you please file these matters at your earliest possible convenience providing for me notice of docketing as well as an updated copy of the docket entry sheet(s) in this matter which reflect the addition of these most recent filings.

Thank you for your time and anticipated prompt attention to this serious matter. I will be anxiously awaiting notice of docketing.

Respectfully Submitted,


Joseph Labriola, pro se

cc: file
plaintiffs

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT
CRIMINAL DIVISION
No. 57811

COMMONWEALTH OF MASSACHUSETTS,
plaintiffs,

Vs.

JOSEPH LABRIOLA,
defendant,

MOTION FOR PRODUCTION OF
GRAND JURY MINUTES

NOW COMES THE DEFENDANT, Joseph Labriola, acting pro se, who does herein respectfully move that this Honorable Court ORDER the District Attorney for the County of Norfolk to provide the defendant with a true and accurate copy of the grand jury minutes from the above-captioned criminal matter.

As grounds for the instant motion, and without prejudicial specificity revealing legal strategy, the pro se defendant offers the following;

- 1) The defendant has never, during the forty (40) year ordeal of this wrongful conviction, been provided with or has seen the grand jury minutes in this case.
- 2) Neither the defendant's original trial attorney or appeals attorney ever provided the defendant with copies of the grand jury minutes. This ineffectiveness has never been raised before the bench.
- 3) The defendant has learned, through a source present at the grand jury, that the District Attorney introduced testimony, unsupported by any set of facts or evidence, that corrupted the process and has resulted in the securing of faulty indictments.

4) In order for the pro se defendant to perfect his planned Mass.R.Crim.P., Rule 30(a) "Motion for a New Trial" he requires the requested true and accurate copies of the grand jury minutes from this matter at Bar.

5) The defendant is serving a life sentence, without the possibility of parole, and has been incarcerated entering his fortieth (40th) year. The gravity of this matter cannot be gainsaid and it would certainly serve the interests of justice and fairness to ALLOW the instant motion. There would be no prejudice to the Commonwealth in the allowance of this pursuit of relief.

WHEREFORE, the pro se defendant prays that this Honorable Court ALLOW the instant motion in its entirety issuing an ORDER that the Norfolk County District Attorney immediately provide him with the requested true and accurate copies of the grand jury minutes in this matter.

Respectfully Submitted,

Dated: 3 / 11 / 13

x Joseph Labriola
Joseph Labriola, pro se
MCI Shirley
P.O. Box 1218
Shirley, MA
01464-1218

CERTIFICATE OF SERVICE

I, Joseph Labriola, do hereby swear and certify that I did cause to be served true and accurate copies of the instant motion, with its supportive memorandum of law, upon the office of the District Attorney for the County of Norfolk at his usual place of business via first class U.S. mail this 11 day of MARCH, in the year of our Lord 2013.

Signed under the pains and penalties of perjury.

Dated: 3 / 11 / 13

x Joseph Labriola
Joseph Labriola

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT
CRIMINAL DIVISION
No. 57811

COMMONWEALTH OF MASSACHUSETTS,
plaintiffs,

Vs.

JOSEPH LABRIOLA,
defendant,

MEMORANDUM OF LAW
IN SUPPORT OF
MOTION FOR PRODUCTION OF
GRAND JURY MINUTES

The defendant must be allowed to secure the requested grand jury minutes in order to protect his liberty interests under the United States Constitution, Article I, section 9, as well as under Amendments V, VI, and XIV, as well as under the protections afforded him through the Massachusetts Constitution and Declaration of Rights.

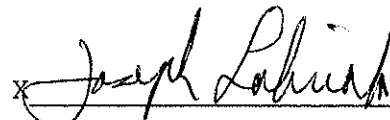
"An indictment... must describe the offense charged 'fully, plainly, substantially, and formally' with as much certainty (emphasis added) as the known circumstances of the case will permit." Com. v. Soule, 6 Mass.App. 973, 384 N.E. 2d 235 (1979). The introduction of unsupported and prejudicial false facts pollutes the process and invalidates that required "certainty" of the facts mandated to secure the indictment. The Fifth Amendment calls for an "unbiased jury" to return an indictment as detailed in, Costello v. U.S., 76 S.Ct. 406, 350 U.S. 359 (1956). The prosecution in this case introduced highly prejudicial and false information to the grand jury, information supported by no set of facts and this prejudicial information biased the grand jury and infected the process with unfairness.

The unlawful restraint of the defendant, in violation of his constitutionally protected rights (both state and federal) allows him to seek the redress of the Court as a matter of right. See Mass.R. Crim.P., Rule 30(a). The defendant seeks required discovery under Mass.R.Crim.P., Rule 30(c)(4), in light of the prima facie argument put forth in the motion this memorandum supports. The defendant must remain slightly vague about the specifics of the new facts as it would reveal legal strategy and diminish his efforts toward relief and the ultimate justice he seeks. "The judge has wide discretion to allow the appropriate form of discovery." See Com. v. Stewart, 383 Mass. 253, at 261 (1981). Such discovery may not be a matter of right, but once the defendant establishes his "prima facie" case for relief "discovery would be appropriate to to develop facts necessary to support the claim..." See Harris v. U.S., 394 U.S. 286, at 300 (1969), and Mass. Rules of Court, Criminal Procedure, pg. 192, annotating Mass.R.Crim.P., Rule 30(c)(4).

WHEREFORE, the defendant offers that due to the gravity of the potential injustice, coupled with the prima facie argument for relief, it is in the interests of justice for the Honorable Court to ALLOW the defendants motion this memorandum supports. Such allowance would not prejudice the Commonwealth in any manner. It would be impossible for the defendant to proceed in the perfection of his new trial argument without the requested true and accurate copies of the grand jury minutes in this matter at Bar.

Respectfully Submitted,

Dated: 3 / 11 / 13



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MCI Shirley
P.O. Box 1218
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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT
CRIMINAL DIVISION
No. 57811

COMMONWEALTH OF MASSACHUSETTS,
plaintiffs,

Vs.

JOSEPH LABRIOLA,
defendant,

**MOTION TO MARK-UP DEFENDANT'S
MOTION FOR PRODUCTION OF
GRAND JURY MINUTES**

NOW COMES THE DEFENDANT, Joseph Labriola, acting pro se, who does herein move that the Honorable Court "Mark-Up" his pro se Motion for Production of Grand Jury Minutes, with its supportive Memorandum of Law, to be heard at the earliest possible convenience of the Court.

As grounds for this motion the defendant offers the following;

- 1) The defendant plans to bring a new trial motion pursuant to Mass.R.Crim.P., Rule 30(a) seeking relief from unlawful restraint.
- 2) His Motion for Production of Grand Jury Minutes is a post-conviction discovery moving pursuant to Mass.R.Crim.P., Rule 30(c)(4).
- 3) The defendant attempted to secure the grand jury minutes in question through a non-judicial route, but the Norfolk District Attorney refused to produce them. (See Exhibit "A")
- 4) The defendant has been incarcerated for a few months short of forty (40) years and any further delay in this matter would prove prejudicial and defeat the pursuit of expedient justice.

5) The defendant suffers from chronic C.O.P.D. and further delay could result in the defendant becoming further incapacitated possibly unable to manage his legal affairs.

6) There would be no prejudice to the plaintiff's, after their proper opportunity to reply/respond to the defendant's motion, in the timely handling of this serious matter.

WHEREFORE, the pro se defendant prays that this Honorable Court ALLOW the instant motion in its entirety and schedule his pro se Motion for Production of Grand Jury Minutes to be heard at the earliest possible convenience of the Court's docket.

Respectfully Submitted,

Dated: 3 / 11 / 13

x Joseph Labriola
Joseph Labriola, pro se
MCI Shirley
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01464-1218

CERTIFICATE OF SERVICE

I, Joseph Labriola, do hereby swear and certify that I did cause to be served a true and accurate copy of the instant motion upon the office of the District Attorney for the County of Norfolk at his usual place of business via first class U.S. mail this 11 day of MARCH, in the year of our Lord 2013.

Signed under the pains and penalties of perjury.

x Joseph Labriola
Joseph Labriola



The Commonwealth of Massachusetts

OFFICE OF THE DISTRICT ATTORNEY
FOR THE NORFOLK DISTRICT

(EXHIBIT)
("A")

MICHAEL W. MORRISSEY
DISTRICT ATTORNEY

45 SHAWMUT ROAD
CANTON, MA 02021
(781) 830-4800
FAX (781) 830-4801

March 1, 2013

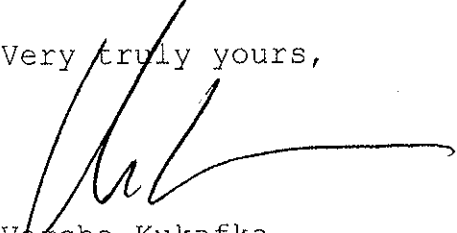
Joseph F. LaBriola
W34248
PO Box 1218
Shirley, MA 01464

Re: Public Records Request

Dear Mr. LaBriola:

We received your February 18, 2013 letter in which you request: "a copy of the transcript of the Grand Jury proceedings for an indictment found and returned against [you] in the Superior Court on June 4, 1973. The Docket Number for the case is: # 57811." Treating this as a public records request under G.L. c. 66, § 10, we advise you that grand jury minutes are not subject to disclosure.

Very truly yours,


Varsha Kukafka
Assistant District Attorney