**False Evidence Fraud on the Court**

Long ago, the Supreme Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." [Mooney v. Holohan, 294 U.S. 103](http://scholar.google.com/scholar_case?case=10553267621994442310&hl=en&as_sdt=2&as_vis=1&oi=scholarr), 112 (1935). In [Napue v. Illinois, 360 U.S. 264 (1959)](http://scholar.google.com/scholar_case?case=177919023861571522&hl=en&as_sdt=2&as_vis=1&oi=scholarr), the Supreme Court reiterated that a conviction obtained through use of false testimony, known to be such by representatives of the State, is a denial of due process. The Court further ruled that there is also a denial of due process when the State, though not soliciting false evidence, allows it to go uncorrected when it appears. In cases involving false or misleading testimony, a new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury . . . ." Napue, 360 U.S. at 271.

Prelude:

In the i2G case, there is overwhelming evidence of deliberate deception committed by the prosecution. The case relied on spreadsheet data that was “filtered” to exclude $32 million in exculpatory commission payments to i2G distributors, which inflated the loss figures. The prosecution's "knowledge" is proven by their agent testimony that the “non-filtered” data showed $40 million in commission payments, not the $8 million represented in profit loss spreadsheet 101i. The prosecution admitted to presenting "filtered" data but claims it does not prove they asked it be done.  All of its spreadsheets included two years of data from a separate company Xtg1, which operated **after i2G was closed.** Knowledge is proven through their own discovery, emails in their possession, and their own witness testimony.  There were direct lies to the court regarding Reynold’s statements which his post-trial affidavit contradicts,  false testimony by multiple witnesses about the data, manipulated commission data, and Brady violations.

**The Government conceded false evidence, which permeated the trial, invalidated testimony, and prevented a fair trial.**

The government did not deny the false data in 101i and others that Keep relied upon for his pyramid scheme analysis.  It admitted to "inconsistencies" but failed to acknowledge the significant impact this had on its claims. It did not address Xtg1 data, which extended two years beyond the indictment timeline when i2G was closed. This included over 4,000 data entries and over $4 million from an unrelated company called XTG1.

The government acknowledged that exculpatory commissions were filtered from 101i but failed to address its impact on inflating losses and underreporting of gains. It also was unable to disprove false statements made by Reynolds or Keep.

The government argued its witnesses did not offer “false testimony” because they presented them with “false evidence.” They admit to 101i inconsistencies but insist that they disclosed that **101i did not contain all the relevant I2G data,** **proving that Keep and Reynolds' statements were not false.** They acknowledge that commissions were withheld from 101i but claim it was discovered this too late.

Rather than disproving false evidence, the Government proved that 101i data was unreliable, and the Court’s denial to exclude 101i was an error.  R.681:#8311; R.498:#4164.   It argued that Keep's testimony was not false because he only analyzed the false data they gave him and **did not opine on the accuracy or completeness of the underlying data.**  This flawed logic fails to disprove his false statements, proves the unreliability of his testimony, and suggests prosecutorial misconduct.

 Dr. Keep emphasized the importance of accessing a company’s data and stressed that a pyramid scheme conclusion could not be made without it. (Doc 487 #3926)  He stated that he never had access to data like this before. (Doc 487 3808, 497#3995,96, 98)  Reliance on the "data" was referenced over 100 times. (Doc 487 3747, 52, 3805, 3826, 27, Doc 487 #3844, 45, 47, 70, 73, 84, 85, 3808, 3925, 26)   Since he was provided with unreliable data, Keep's pyramid scheme conclusions were invalid.

Keep validated his “false statements” by admitting his knowledge to “inconsistencies” in the data. He stated that certain i2G determinations would depend on **“which data”** you looked at. (Doc 487 #3956, #3958)  and that data in 109F was “wrong.”(Doc 487 #3956, #3958)  So he did “opine on the accuracy or completeness of the underlying data” (id).

The government failed to disprove Reynolds' false testimony that “all commission types” were included in 101i  by claiming that its deficiencies were disclosed.  This only proves the unreliability of 101i.  Nor does Reynolds' answer to an unrelated question disprove his false statement which he admits was false in his post-trial affidavit.

In his post-trial affidavit, Reynolds confirmed that two types of commissions were excluded from 101i.  1.) commissions used via "gift certificates" created to purchase products and 2) commission transfers to other distributors.

 The commission data exclusions were significant. For instance, a non-witness named Pepito was portrayed as a victim who lost over $100,000 (Document 718, #1). The Court referred to her as a "big deal" and "a poor lady who got suckered out of a lot of money" (Document 718, #2, p. 48). However, the "pre-filtered" commission data (example 7240) show that she received $90,000 (Document 718, #3) and other commissions.

The government withheld 32 million dollars in commissions paid to distributors to purchase their packages or transfer them to others, 80% more than what was represented. This deliberate "filtering" of exculpatory commission data constituted fraud upon the Court.

The government claimed that Reynold’s affidavit admitting that commission data was “filtered” does not prove they **asked him** to “filter” it.  However, Reynold testified that **he pulled data as requested “until the day you asked for it”** (Doc 497 #4062, Doc 497#4067).   Even the Court recognized the purpose of the replacement (101F) was because it was “much much more helpful to you because it showed what you wanted.”  (Doc 718 #11345)

The government lied to the court and defense by attributing false statements to Reynolds that exculpatory data “had problems”  and was not good. (doc 718 11354, 55)  Reynolds's affidavit affirms he never said that.

The government did not try to refute Reynolds' false testimony that a "gifted position" would result in a 0 in the "ValueAll Purchases" in 101i (Doc 497 #4062), contradicting his prior statement that his system **would** **not** track gifted positions (Doc 497 #4034). By his false statement, the government represented hundreds of "gifted emperor packages" as "paid," each accruing a loss of $5019.95. This would dramatically inflate losses, which they knew.

The government argues that Hosseinipour should have cross-examined Keep and Reynold and since 101i was available before the trial, no violation occurred. However, Hosseinipour had ineffective counsel who could not know what was sent to him or cross-examine what he did not know.

The Government 101i was produced as US-126786 on 6/28/22  days before trial with others, each with over twenty thousand entries, with “hidden dates” (Doc 498#4232,4116, 4226)  Maike objected that they had no time to verify for accuracy.  (doc 497 #4079)  Reynold also stated he did not have time to verify the exhibits for dates. (Doc 497#4079, 4082)

 Hosseinipour discovered the false data and alerted the court in her motion to stay pending appeal (doc 635). She asked the court to withhold its ruling until it could determine the extent of the false evidence through her restitution filings. Barnes alerted the court to data aberrations in his sentencing memorandum and restitution filing. The government should not be rewarded for its duplicity.

The Government itself claimed the spreadsheet data and code were so complicated that only “Jerry Reynolds” could interpret them properly, but laypersons like Barnes would not understand it (Doc 718 #11354 11343)

 During the restitution hearing, the government and the Court validated Reynold’s 7240 spreadsheets (Doc 718 11343,44). The Government had initially planned to introduce 7240 as an exhibit, so their change in referring to it as “uncorroborated credits” is self-serving and dishonest. The Court’s reference to “unsubstantiated” (Doc 718 #11354, 55) is contradicted by Reynolds's affidavit, which substantiates it.

 The court even recognized the government’s duplicity in replacing 7240 with a spreadsheet 101F which was  “much much more helpful to you because it showed what you wanted.”  (Doc 718 #11345)

MR. SEWELL: -- is that it's not that this data is incorrect. It is that Mr. Meyer's interpretation of the data is incorrect. If there's anything we learned from the trial is that Jerry Reynolds' spreadsheets are not for, you know, the layperson to come in and say, "Well, I think it means this." So this data can come from someone like Jerry Reynolds explaining what all these code numbers mean   (Doc 718 #11354)

THE COURT: Well, if this data has been aggregated in a form that is usable -- or understandable by me, I'll consider it, but so far I don't -- I haven't -- I understand the concept. (doc 718 11354, 55)

MR. SEWELL: He's not here, but, I mean, if we need to get an affidavit from him and get him through. But the important point is that that document was, at trial, turned into 101-F, because in the meetings with Jerry Reynolds -- we had meetings with Jerry Reynolds and were preparing for trial. That 7240 was going to be an exhibit, and Jerry Reynolds noted again and again that his staff had prepared the document without his involvement. That was an early subpoena that was issued. And he said, "This document needs to be corrected. This document has problems." And so we didn't get into all the details. He produced the corrected version that was much, much more helpful, and that was 101-F that was used at trial.

 So what --

THE COURT: It was much, much more helpful because it showed what you wanted. Listen, I'll consider what their arguments are from the document. If you can produce an affidavit from Mr. Reynolds that says this -- that 7240 is inaccurate and instead 101-F is more reliable or is accurate, then that's fine, but -- MR. SEWELL: And I think -- THE COURT: Look, I'm going to ask then, somebody for the defense, explain to me -- show me what 7240 is and explain what your argument is about what this document shows.  Doc 718 #11345)

    The government argues that it relied on other evidence of losses different from 101i. However, any difference invalidates the reliability of 101i. After five years of witness tampering and sending over 60 "Victim" Notifications to the distributor base before trial (Doc 701#10801, 53, 54, 56), only 1.5 million dollars in direct claims were received (doc 718 11341, 11306) This is a significant departure from the four million dollars in losses it claims are shown by 101i (Doc 718# 11306)  If the 97% loss rate claims were valid, they should have received $32,640,000 in victim claims, not 1.5 million. The false data representation’s impact cannot be underestimated.

A Napue false-testimony claim arises under the Brady disclosure doctrine. Brooks v. Tennessee, 626 F.3d 878, 894 (6th Cir. 2010).....“[R]eversal is warranted only when there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” Id. (quotations omitted).

    “Filtering” out exculpatory commissions is identical to withholding exculpatory evidence, so the concepts of Brady should apply.  The accurate and exculpatory commission data also qualified as Giglio, and the Government was required to turn over the favorable gain loss records, not manipulate data to inflate losses.  The government met with Reynolds three times before the trial;   They understood the commission data and what they were “filtering.”

**The Government Knew its Data Exceeded the Indictment Timeline**

The Government argues that Hosseinipour cannot prove that it knew the data was false. However, Agent Sauber acknowledged the “inconsistencies” in the record at Maike's sentencing hearing and in its brief. The Government knew this would compromise the reliability of the data. (Doc 663 6571-6593)

 During and after the trial, The Court asked about the relevance of data that breached the timeline. (doc 498 4097,98, Doc 663 6593) For example, An XTG1 entry from Sept 29th, 2015, was represented as an i2G member who received “favorable placement” despite being a “late-joiner.” (Doc 498 #4097,98)  The Court allowed the testimony despite the fact that I2G was already closed. Barnes objected to the speculation, relevance, and being outside of the timeline, but the Prosecution stated it was representative of how I2G operated. XTG1 entries, packages, and sales activity were represented as i2G at trial.

The government demonstrated a clear understanding of "gifted positions" (Doc 497#4034 Doc 663 6570-71), “gift certificate commissions,” and “fund transfer commissions.” (Doc 498 #4220, 21 4216 Doc 663 6572)  Reynolds described “gift certificates” as"commissions" that were "advantageous" and could be used to "pay for orders or use for other things" (Doc 498 #4216). The government knew excluding these commissions from 101i would inflate losses and hide gains.

The government’s knowing deception is proven through its own exhibits. Exhibit 229 shows that Syn had **275** **"gifted" packages,** which argues that Syn suffered no loss. However, in 101i, all 275 of Syn’s “gifted” packages were represented as individual losses of $5019.95.  The government can’t claim a lack of knowledge of the contradictions in its own evidence.

The Government understood the concepts that would significantly inflate losses and deflate gains in 101i, including excluding refunds (Doc 663 #6568, Doc 497 4061, 62), waiving auto-ships that appeared as paid (Doc663 #6573, 74, Doc 505#4550), customer positions, unpaid corporate positions (Doc 498 #4104), unreported customer frauds (Doc 663 #6577), and the XTG1 company launched in 2015 (Doc 663 6572). Each was affirmed by Sauber.

**The Government had knowledge about XTG1**

The government exhibits referred to XTG1. Additionally, it obtained XTG1 launch information from the Anzalone's computers. The September 2015 launch of XTG1 happened **after I2G closed.** Therefore, two years of data presented as I2G data were **unrelated to I2G.** Since Hosseinipour and Barnes were not part of XTG1 and the emails were never disclosed, this constituted a Brady violation. One such XTG1 launch email discovered by Hosseinipour was submitted with her restitution brief.
Compromised data from other spreadsheets 101d, 101b, 101f, and 101g  also significantly altered every i2g statistical representation made at the trial. The Xtg1 data invalidated the total unique distributor entries (Doc 487 # 3849, #4139), total sales (Doc 487 #4057), distributor levels (Doc 487 3848,#4138), and product packages (Doc 487 #4056 pg 47).

The trial was marred by the pervasive use of false data, which invalidated all of Keep's pyramid scheme analysis and government representations and tainted every witness' testimony.

Reversal is warranted under Napue. Had the Government presented accurate and exculpatory data, and not presented False testimony,  every claim it made would have been disproven and , the results of the proceeding would have been different.