

Commonwealth of Pennsylvania, :  
(Bureau of Consumer Protection) :

Plaintiff, :

v. :

Claudia A. Montelione, :  
Defendant, :

IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY

CRIMINAL ACTION - LAW

Docket. Nos. 2746 CR 2008; 4178 CR 2008;  
and 1422 CR 2009.

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DAUPHIN COUNTY  
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AND NOW THIS DATE

THE HONORABLE CHARLES C. BROWN, JR. S.J. :

28 AUG 2009

**APPLICATION FOR RECONSIDERATION:**  
**JUDGMENT NON OBSTANTE VEREDICTO**

SERVICE IS HEREBY ACCEPTED  
AND COPY RECEIVED  
*Edward M. Mancini, Jr.*  
DISTRICT ATTORNEY

AND COMES NOW Eugene A. Wrona, amicus curiae and assistance of counsel for Defendant, Claudia A. Montelione, to respectfully offer this court the opportunity to correct the determinations of the jury in the criminal matter as captioned above in accordance with the duty of the judge to support and defend the U.S. Constitution and the wealth and property rights of a defendant secured therein. Petitioner makes Application For Reconsideration of the Court's Order that formalizes determinations by the jury as made on Wednesday, July 29, 2009 in the court named above. Charles C. Brown, Jr., S.J., presiding.

**Jurisdiction**

This court has authority to entertain this Application pursuant to Pa.R.A.P. §1701(b)(3). Defendant does not waive her right to challenge the jurisdiction of this court for the matter as prosecuted in Dauphin County CCP on July 28 and 29, 2009 or any earlier proceedings.

A Notice of Appeal having been filed in this matter, this court must be afforded the opportunity to correct any errors which may influence the outcome. Issues to which judicial notice must be afforded are whether Defendant was deprived of rights and the full and fair opportunity to prepare a defense in conformance with the U.S. Constitution and the Constitution and laws of the Commonwealth of Pennsylvania. When a court deprives a defendant of due process, that court forfeits any jurisdiction that may have vested therein.

"To exceed jurisdictional limits of a courts power is to exercise authority illegitimately." Persinger v. Islamic Republic of Iran, 729 F.2d 835 (C.A.D.C. 1984).

Defendant challenges this court to defend its actions that DENIED Defendant of due process of law, equal protection of law et al and that assumes jurisdiction in Dauphin County to prosecute a defendant under criminal statutes where “no crime” was committed contrary to settled law. See Statement of Law, Definition, “Forum contractus”, infra.

## BACKGROUND

The Commonwealth of Pennsylvania prosecuted defendant by and through the District Attorney of Dauphin County for allegedly scheming and conspiring with others to retaliate against public officers or prosecutors; to wit, Pennsylvania’s Attorney General Thomas W. Corbett, Jr., Dauphin County CCP judge Lawrence F. Clark, Jr. and Dominic DeRosa, Warden, Dauphin County Prison.

The jury found defendant guilty of three counts of retaliation pursuant to 18 Pa.C.S. § 4953.1. Retaliation against prosecutor or judicial official. Defendant was also tried for three counts of criminal conspiracy under 18 Pa.C.S. 903. Defendant was convicted of all three counts.

Other criminal charges were brought under 18 Pa.C.S. § 4911 [Tampering with public records or information] and 18 Pa.C.S. § 4703 [Retaliation for Past Official Action]. The jury found Defendant “NOT GUILTY” of the Tampering charge.

Defendant contends that all six convictions must, as a matter of law, be overturned n.o.v. by this court for procedural and administrative errors by the prosecutor and the court.

Article VI of the U.S. Constitution (supremacy clause) incorporates all treaties entered into by the states prior to the enactment of the U.S. Constitution. The Sixth Amendment to that Constitution secures the right of any defendant in a criminal action the right to the ‘**assistance of counsel**’. This right is IN-VIOLATE as a pre-condition of due process of law.

Pennsylvania law confirms that right under a treaty signed by William Penn in 1682. See Statement of Law, infra.

## FACTS

At all times, the judicial actions of “Commonwealth of Pennsylvania v. Claudia A. Montelione” are subject to Article III of the United States Constitution. **Article III requires a trial by jury.**

Defendant was summoned to Dauphin County by Order of court for a hearing on March 4, 2008. Defendant was not informed of the charges against her, and plaintiff (“prosecutor”), Bureau of Consumer Protection, withheld from Defendant the nature and cause of the charges against her. The charges involved the unauthorized practice of law as admitted by the Bureau in a “Brief” to the appellate court.

Defendant was deprived of due process of law prior to March 4, 2008, which deprivation continued through that date and beyond. The court refused to inform Defendant of the nature and cause for the action under which she was compelled to appear in Dauphin County.

Defendant made a “special appearance” in Dauphin County Court of Common Pleas to challenge the jurisdiction of that court as well as challenging Venue. Notwithstanding plaintiff’s failure to inform Defendant of the nature and cause for the action against her, the “forum contractus” in the matter between plaintiff and Defendant is established in Lackawanna County. See Statement of Laws, *infra*.

Plaintiff has yet to establish jurisdiction in Dauphin County over Defendant or over the subject matter brought before the court. Defendant preserves her right to challenge Dauphin County CCP as failing to have jurisdiction over her person and/or the matter brought forward by plaintiff.

On March 4, 2008, Eugene A. Wrona appeared with Defendant as “assistance of counsel”. As its first order of business, the court, Lawrence F. Clark, Jr., Judge, ordered Mr. Wrona removed from the well, leaving Defendant alone in the well and without the assistance of counsel contrary to law and in violation of her constitutional rights under the Sixth Amendment et al and under Pennsylvania law.

Judge Clark proceeded to conduct an alleged hearing despite Defendant not being informed of the complaint and or the nature of charges against her, whether the action was civil or criminal, or whether the court was acting under pseudo-Admiralty jurisdiction. Plaintiff failed to file a “complaint” to initiate the action. See PaRCP 1007. The court failed to protect and secure due process of law for Defendant.

Clark forfeited any jurisdiction that may have vested in this court and proceeded to order Defendant to produce documents and materials as demanded by the Bureau of Consumer Protection, despite the Bureau’s failure to provide Defendant of the cause and nature of charges against her. The Bureau is unable to produce a complaint or a complainant [adverse party] against whom Defendant may prepare a defense. Clark’s order denied Defendant the right of Appeal. See Statement of Laws, *supra*.

The law holds that when a person is deprived of due process, the court forfeits any jurisdiction it may have enjoyed. When a court acts without jurisdiction, any and all orders entered thereafter are *void ab initio*, save an order to dismiss the matter for lack of jurisdiction.

Clark proceeded in the absence of jurisdiction. Every subsequent order entered by the court compelling Defendant to act is *void ab initio* for lack of jurisdiction.

Subsequent actions involved Defendant’s arrest for contempt of court and criminal charges as heard in this court on July 28 and 29, 2009. Every subsequent action was taken *under color of law*.

Defendant has been incarcerated unlawfully in Dauphin County prison for more than twelve (12) months since March of 2008.

On July 28, 2009, Eugene A. Wrona appeared and offered his services as “assistance of counsel” for Defendant. He was initially denied access to the courtroom. Shortly thereafter, an unidentified person, presumably a member of the court staff, invited Mr. Wrona to enter the courtroom, but not to enter the well or to speak with Defendant.

Judge Brown entered the courtroom and made some opening remarks. The jury had not yet been seated. Brown acknowledged that Defendant refused “representation” by a public defender, choosing to

appear as herself, an American citizen and natural person, without “representation”. Nevertheless, Brown directed the public defender to remain in the well with Defendant, contrary to her expressed wishes.

Brown then engaged Mr. Wrona in an exchange as to whether he should be permitted to serve Defendant as her “assistance of counsel”. An extensive discussion of the constitutional support and Pennsylvania law support for the “assistance of counsel” ensued.

As if it were orchestrated, First Assistant District Attorney Francis T. Chardo entered the courtroom with deputy sheriffs for the purpose of placing Mr. Wrona under arrest. It is not clear from whom Asst. DA Chardo acquired any authority whatsoever to violate the sanctuary of that forum and to interrupt the court proceedings. Judge Brown permitted Chardo’s egregious actions.

Even after the unlawful interruption of court proceedings, Brown granted permission for Mr. Wrona to present to the court argument for the “assistance of counsel” under the U.S. Constitution and Pennsylvania law. He granted permission for Mr. Wrona to serve Defendant, but from outside the well.

Finally, Brown sat back and permitted Asst. DA Chardo to arrest and kidnap Mr. Wrona from the sanctuary of the courtroom under “allegations” that he was engaged in the unauthorized practice of law. Defendant was **again DENIED** the assistance of counsel.

The arrest of Mr. Wrona appears to place Chardo in “contempt” of judge Brown’s express permission for Mr. Wrona to assist Defendant.

Chardo stated to the court that this was “a second offense”. Chardo and the court were and are aware that under Pennsylvania and U.S. law, the “presumption of innocence” remains sacred. Further, Chardo and the court know, or should know that the District Attorney failed to appear before District Court Magistrate Joseph S. Solomon on May 26, 2009, to prosecute the same criminal charge against Mr. Wrona. Ref. Magisterial Court Docket No. CR-0000182-09.

The charges were re-filed in violation of **Article I, Section 10** of the Constitution of Pennsylvania.

There is no “first offense” conviction. It follows, a priori, that there can be no “second offense”. **First Assistant District Attorney Francis T. Chardo LIED on the record to the court.** See Statement of Law, infra, 18 Pa.C.S. A. § 5301. Official Oppression.

Judge Brown repeated the error of law inflicted upon Defendant by judge Clark on March 4, 2008. He denied Defendant of the assistance of counsel, but he directed the public defender to remain in the well with Defendant, creating the illusion for the jury that she had the assistance of counsel.

Brown denied Defendant her rights under **Article I, Section 9** of the Constitution of Pennsylvania; *Rights of Accused in Criminal Prosecutions*. See also Statement of Law, infra, 18 Pa.C.S.A. § 903, Conspiracy; and 18 U.S.C., Section 241, Conspiracy Against Rights; and Definition, “color of law”.

The jury was subsequently brought into the courtroom where Brown informed them that it was unnecessary for them to witness the proceedings that resulted in the arrest and kidnapping of Mr. Wrona. The court presumes that Constitutional rights issues are irrelevant to a jury in a criminal trial.

Defendant was again compelled to proceed “without the assistance of counsel”, a repeat denial of her constitutional right to **due process under law** and forfeiture of jurisdiction.

As on March 4, 2008, when a court DENIES a litigant of their due process rights, the court forfeits jurisdiction and proceeds further under the personal and individual liability of the judge who no longer may proceed in any judicial capacity.

## **STATEMENT OF THE LAW**

**NO MAN IS ABOVE THE LAW.** Cites omitted.

**Thou shalt not bring false witness against another.** Mosaic Law and Ninth Commandment.

“Law and court procedures that are “fair on their faces” but administered “with an evil eye or a heavy hand” was discriminatory and violates the equal protection clause of the Fourteenth Amendment.” *Yick Wo v. Hopkins*, 118 US 356 (1886).

## **U.S. CONSTITUTION**

**U.S. Constitution, Article VI, clause 2.** [ Supremacy clause.]

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

### **1st AMENDMENT TO THE U.S. CONSTITUTION**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**U.S.C.A., Const. Amend. 1.**

### **5th AMENDMENT TO THE U.S. CONSTITUTION**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**U.S.C.A., Const. Amend. 5.**

### **6th AMENDMENT TO THE U.S. CONSTITUTION**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

**U.S.C.A., Const. Amend. 6.**

### **14th AMENDMENT TO THE U.S. CONSTITUTION**

Privileges and Immunities of Citizenship, Due Process and Equal Protection

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**U.S.C.A., Const. Amend. 14, §1.**

## CONSTITUTIONAL CASE LAW: Federal Due Process

"It is of course true that a law which impinges upon a fundamental right explicitly or implicitly secured by the Constitution is presumptively unconstitutional." Mobile v. Boldon, 446 US 55, 64 L Ed 2d 47, 100 S Ct 1490 (1979); see Shapiro v. Thompson, 394 US 618, 634, 638, 22 L Ed 2d 600, 89 S Ct 1322; et al.

"The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint." Washington v. Glucksburg, 521 US 702, 138 L Ed 2d 772, 117 S Ct 2258 (1997); citing Collins v. Harker Heights, 503 US 115, 117 L Ed 2d 261, 112 S Ct 1061 (1992). (Due Process Clause "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them'"") quoting Daniels v. Williams, 472 US 327, 331, 88 L Ed 2d 662, 106 S Ct 662 (1986). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. Reno v. Flores, 507 US 292, 301-302, 123 L Ed 2d 1, 113 S Ct 1439 (1993); et al.

"... Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," quoting Moore v. ? ? ?, 431 US, at 502, 52 L Ed 2d 531, 97 S Ct 1932 (plurality opinion).

The U.S. Supreme Court HELD in Peralta v. Heights Medical Center, Inc., 108 S.Ct. 896 (1988):

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652 94 L.Ed. 865 (1950); Failure to give notice violates "the most rudimentary demands of due process of law." Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965). See also World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291, 100 S.Ct. 559, 564, 62 L.Ed. 490 (1980); Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed. 18 (1976); Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110, 89 S.Ct. 1562, 1569, 23 L.Ed. 129 (1969); Pennoyer v. Neff, 95 U.S. (5 Otto) 714, 733, 24 L.Ed. 565 (1878).

And

Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, "it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." Coe v. Armour Fertilizer Works, 237 U.S. 413, 424, 35 S.Ct. 625, 629, 59 L.Ed. 1027 (1915).

"As we observed in Armstrong v. Manzo, 380 U.S. at 552, 85 S.Ct., at 1191, only "wiping the slate clean ... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place." Peralta v. Heights Medical Center, Inc., 108 S.Ct. 896 (1988).

The U.S. Supreme Court has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. U.S. v. Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821).

"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Armstrong, 358 US 1, 78 S.Ct. 1401, (1958)

## U.S. STATUTES

### **Title 18, U.S.C., Section 241 -- Conspiracy Against Rights**

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, (or because of his/her having exercised the same).

It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured.

Punishment varies ... [omitted]

### **Title 18, U.S.C., Section 242 -- Deprivation of Rights Under Color of Law**

This statute makes it a **crime** for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S. (*Emphasis added.*)

This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.

Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.

Punishment varies ... [omitted]

## **CONSTITUTION OF PENNSYLVANIA**

### **Article I. DECLARATION OF RIGHTS**

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE THAT -

#### **Inherent Rights of Mankind**

Section 1. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying **and defending life and liberty**, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

### **Article V. JUDICIARY**

#### **Section 9. Right of Appeal**

There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law.

### **Article VI. PUBLIC OFFICERS**

#### **Oath of Office**

**Section 3.** Senators, Representatives and **all judicial**, State and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation before a person authorized to administer oaths.

"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity."

The oath or affirmation shall be administered ... . Any person refusing to take the oath or affirmation shall forfeit his office.

## CODE OF JUDICIAL CONDUCT

### **Canon 1. Judges should uphold the integrity and independence of the judiciary.**

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

## **Pennsylvania Statutes**

### **Title 1 Pa.C.S. § 1503. Applicability of colonial law.**

- (a) English law.- The common law and such of the statutes of England as were in force in the Province of Pennsylvania on May 14, 1776 and which were properly adapted to the circumstances of the inhabitants of this Commonwealth shall be deemed to have been in force in this Commonwealth from and after February 10, 1777.
- (b) Provincial statutes.- The statutes enacted on or before May 14, 1776 under the authority of the late Proprietaries of the Province of Pennsylvania have the same validity and effect as statutes enacted under the authority of this Commonwealth.
- (c) Exceptions.- The rules specified in subsections (a) and (b) of this section shall not be applicable to any statute or law which:
  1. has been heretofore or is hereafter amended or repealed or which has expired by its own limitation;
  2. orders the taking or subscribing any oath, affirmation or declaration of allegiance or fidelity to the British crown;
  3. acknowledges any authority in the heirs or devisees of William Penn, Esq., deceased, the former Governor of the Province of Pennsylvania, or any other person whomsoever as Governor of the Province of Pennsylvania; or
  4. is repugnant to the Constitution of this Commonwealth or of the United States.

### **The [Pennsylvania] Frame of Government of 1682: Excerpt [Emphasis added.]**

VI. That, in all courts all persons of all persuasions may freely appear in their own way, and according to their own manners and there personally plead their own cause themselves; or, if unable, by their friends: and the first process shall be the exhibition of the complaint in court, fourteen days before the trial; and that the party, complained against, may be fitted for the same, he or she shall be summoned, no less than ten days before, and a copy of the complaint delivered him or her, at his or her dwelling house. But before the complaint of any person be received, he shall solemnly declare in court, that he believes, in his conscience, his cause is just.

### **18 Pa.C.S. A. § 4953.1. Retaliation against prosecutor or judicial official.**

(a) **Offense defined.**--A person commits an offense if he harms or attempts to harm another or the tangible property of another by an unlawful act in retaliation for anything lawfully done in the official capacity of a prosecutor or judicial official.

(b) **Grading.**--The offense is a felony of the second degree if:

1. The actor employs force, violence or deception, or attempts or threatens to employ force, violence or deception, upon the prosecutor or judicial official or, with the requisite intent or knowledge, upon any other person.



2. The actor's conduct is in furtherance of a conspiracy to retaliate against a prosecutor or judicial official.
3. The actor solicits another to or accepts or agrees to accept any pecuniary or other benefit to retaliate against a prosecutor or judicial official.
4. The actor has suffered any prior conviction for any violation of this title or any predecessor law hereto, or has been convicted, under any Federal statute or statute of any other state, of an act which would be a violation of this title if committed in this Commonwealth.
5. The actor causes property damage or loss in excess of \$1,000.

Otherwise the offense is a misdemeanor of the first degree.

**(c) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Judicial official." -- Any person who is a:

1. judge of the court of common pleas;
2. judge of the Commonwealth Court;
3. judge of the Superior Court;
4. judge of the Supreme Court;
5. district justice;
6. through 9. n/a [omitted]

"Prosecutor." -- Any person who is:

1. an Attorney General;
2. a deputy attorney general;
3. a district attorney; or
4. an assistant district attorney.

### **18 Pa.C.S. § 903. Criminal conspiracy.**

**(a) Definition of conspiracy.** -- A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

1. agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
2. agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

**(b) Scope of conspiratorial relationship.** -- If a person guilty of conspiracy, as defined by subsection (a) of this section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, to commit such crime whether or not he knows their identity.

#### **Pennsylvania Case Law; Conspiracy**

It is not necessary to find an express agreement in order to find a conspiracy.

"An unlawful conspiracy may be inferred when concert of action could not possibly be sheer coincidence."

*Ball v. Paramount Pictures*, 169 F2d 317, C.A. Pa. 1948.

### **18 Pa.C.S. A. § 4911. Tampering with public records or information.**

**(a) Offense defined.**--A person commits an offense if he:

1. knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;

2. makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1) of this subsection; or
3. intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(b) **Grading.**--An offense under this section is a misdemeanor of the second degree unless the intent of the actor is to defraud or injure anyone, in which case the offense is a felony of the third degree.

### 18 Pa.C.S. A. § 5301. Official oppression.

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor of the second degree if, knowing that his conduct is illegal, he:

1. subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or
2. denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

### 42 Pa.C.S.A. § 2522.

From *ODC v. Surrick*, 555 A.2d 883, 889 (Pa. 1989) from PAPADAKOS, Justice, dissenting.

“This requirement (oath of office) is embodied in our Bar Admission Rules, Pa.B.A.R. 231(a)(2), and mandated by statute, 42 Pa.C.S.A. § 2522, which reads:

Before entering upon the duties of his office, each attorney at law shall take and subscribe the following oath or affirmation before a person authorized to administer oaths:

*"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity, as well to the court as to the client, that I will use no falsehood, nor delay the cause of any person for lucre or malice."*

Any person refusing to take the oath or affirmation shall forfeit his office.

## DEFINITIONS

**Clean hands doctrine.** Under this doctrine, equity will not grant relief to a party who, as actor, seeks to set judicial machinery in motion and obtain some remedy, if such party in prior conduct has violated conscience or good faith or other equitable principle. *Franklin v. Franklin*, 365 Mo. 442, 283 S.W.2d 483, 486. One seeking equitable relief cannot take advantage of one's own wrong. *Fair Automotive Repair, Inc. v. Car-X Service Systems, Inc.*, 2 Dist., 128 Ill.App.3d 763, 84 Ill.ec. 25, 471 N.E.2d 554.

**Color of law.** The appearance or semblance, without the substance, of legal right. Misuse of power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under “color of state law”. *Atkins v. Lanning*, D.C.Okl., 415 F.Supp 186, 188.

When used in the context of federal civil rights statutes or criminal law, the term is synonymous with the concept of “state action” under the Fourteenth Amendment, *Timson v. Weiner*, D.C. Ohio, 395 F.Supp. 1344, 1347; and means pretense of law and includes actions of officers who undertake to perform their official duties, *Thompson v. Baker*, D.C. Ark. 133 F.Supp. 247; 42 U.S.C.A. § 1983.

Action taken by private individuals may be “under color of state law” for purposes of 42 U.S.C.A. § 1983 governing deprivation of civil rights when significant state involvement attaches to action. *Wagner v. Metropolitan Nashville Airport Authority*, C.A.Tenn., 772 F.2d 227, 229.

Acts “under color of any law” of a State include not only acts done by State officials within the bounds or limits of their lawful authority, provided that, in order for unlawful acts of an official to be done “under color of any law”, the unlawful acts must consist in an abuse or misuse of power which is possessed by the official only because he is an official; and the unlawful acts must be of such a nature or character, and be committed under such

circumstances, that they would not have occurred but for the fact that the person committing them was an official then and there exercising his official powers outside the bounds of lawful authority. 42 U.S.C.A. § 1983. **Black's Law Dictionary**, 6<sup>th</sup> Ed., pages 265-266.

**Forum contractus.** The forum of the contract; the court of the place where a contract is made; the place where a contract is made, considered as the place of jurisdiction. **Black's Law Dictionary**. 6<sup>th</sup> Edition, page 655.

## DISCUSSION

"The very purpose of a **Bill of Rights** was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, free press, freedom of worship & assembly, and other **fundamental rights may not be submitted to vote; they depend on the outcome of no elections.**" Jackson, J., *West Virginia State board of Education v Barnette* 319 US 624, 638 87 Led 1628, 1638, 63 SCt 1178, 147 ALR 674 (1943) (R.H Jackson, S.C. Justice)

"The Supreme Court has long emphasized "the special role played by the American prosecutor in the search for truth in criminal trials." *Strickler v. Greene*, 527 U.S. 263, 281 (1999). As we observed in *Commonwealth of The Northern Mariana Islands v. Mendiola*, 976 F.2d 475, 486 (9th Cir. 1992) (citations omitted), *overruled on other grounds by George v. Camacho*, 119 F.3d 1393 (9th Cir. 1997) (en banc): **The prosecuting attorney represents a sovereign whose obligation is to govern impartially and whose interest in a particular case is not necessarily to win, but to do justice. . . .** (emphasis added)

The Commonwealth failed to establish jurisdiction for Dauphin County against Defendant on either March 4, 2008, or for any other proceeding. All subsequent charges and orders issued thereafter are **void ab initio** in the absence of jurisdiction. Defendant presented an abundance of law which remains unanswered by the Attorney General and by the District Attorney of Dauphin County.

"Subject matter jurisdiction involves threshold determination as to whether the court is legally authorized to decide the question presented, and if it is not, consideration of cause is wholly and immediately foreclosed." *Gilbert v. Gladden*, 87 N.J. 293, 304, 354 A.2d 65 (1976).

"Jurisdiction over subject matter, representing power of a court to hear and determine cases of CLASS to which proceeding in question belongs, rests solely upon the courts having been granted such power by the constitution or by valid legislation, and can not be vested by agreement of the parties." *State v. Robinson*, 140 N.J. Super 456 (1976)

The U.S. Supreme Court has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. **U.S. v. Will**, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); **Cohens v. Virginia**, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821).

"No state legislator or executive or **judicial officer** can war against the Constitution without violating his undertaking to support it." **Cooper v. Armstrong**, 358 US 1, 78 S.Ct. 1401, (1958)

Until jurisdiction has been **established** by the plaintiff (prosecutor), a court is powerless to act in any judicial capacity. Accordingly, this court must, as a matter of law, declare that the proceedings in the matter of Commonwealth of Pennsylvania v. Claudia A. Montelione [as captioned above] are moot, and that the judgment of the jury is void for lack of jurisdiction in the court.

Further, the court knowingly and intentionally violated the due process rights of Defendant. Clark arbitrarily removed the “assistance of counsel” from the well, leaving Appellant, untrained in the law, to fend for herself. See Statement of Laws, due process, *supra*.

Judges Clark and Brown forfeited any jurisdiction that may have been vested in Dauphin County Court. The criminal trial of Defendant is void ab initio for lack of jurisdiction. Convictions on six criminal counts must be voided, and therefore overturned.

The Commonwealth knowingly and intentionally brought false criminal charges against Defendant. Two of the charges, 18 Pa.C.S. § 4911 and 18 Pa.C.S. § 4703 did not reach the jury or Defendant was acquitted therefrom. Three counts of 18 Pa.C.S. § 4953.1 – Retaliation Against Prosecutor or Judicial Official and three counts of Criminal Conspiracy, 18 Pa.C.S. § 903, were heard by the jury. All six of these charges must be dismissed under the “clean hands doctrine”. See Statement of Laws, *supra*.

The Commonwealth appears before the court with unclean hands beginning in October of 2007.

First, the Commonwealth names three “victims” of Defendant’s criminal conduct, Corbett, Jr., Clark, Jr., and DeRosa. Corbett and Clark have standing for protection under 18 Pa.C.S. § 4953.1(c). A prison warden is not defined as either a “prosecutor” or a “judicial official” in the statute.

The criminal charge of Retaliation against a warden is a false complaint and violates *inter alia*, 18 Pa.C.S.A. § 5301. Official Oppression.

Clearly, the Commonwealth brought these charges **under color of law** to oppress, harass and intimidate Defendant. The Attorney General and the District Attorney for Dauphin County must be held accountable for their egregious misrepresentation of law in bringing these charges against Defendant.

The charge of Retaliation against Dominic DeRosa is a “false accusation” and is the result of a criminal conspiracy, 18 Pa.C.S. § 903, involving two or more persons, including the Attorney General and the District Attorney of Dauphin County. See Statement of Laws, *supra*, Official Oppression.

The Commonwealth appears before a “court of law” with unclean hands. Since it cannot obtain a conviction on the [false] criminal charges of “Retaliation” and “Conspiracy” filed on behalf of DeRosa, the argument for “Conspiracy” against Corbett and Clark must also fail.

The charges of “Retaliation” AGAINST Corbett and Clark must also fail for the failure of the Commonwealth to meet its burden of proof.

In the administration of the case, the Commonwealth presented two witnesses to testify against Defendant, to wit, Pennsylvania State Trooper Dennis L. Grim of the Special Investigations Division that reports to the Attorney General and Michael Gerdes, a Deputy Attorney General for the Bureau of Consumer Protection, who **prosecuted** Defendant on March 4, 2008.

The Commonwealth failed to produce as witnesses the “complainants”, Attorney General Thomas W. Corbett, Jr., judge Lawrence F. Clark, Jr., and Warden Domenic DeRose.

The Sixth Amendment, *supra*, requires that a defendant must be afforded the opportunity to face her accusers. Defendant was DENIED due process of law and was not afforded the opportunity unable to test the credibility of her accusers. This court forfeits jurisdiction, *supra*.

The charges against Defendant were brought “**under color of law**”. See Statement of Laws, *supra*.

Gerdes testified extensively to the “presumed” fears of the accusers, and that they felt threatened.

Every court knows that an attorney is prohibited from testifying for the client. Such “testimony” is hearsay at best. The testimony of Gerdes must be stricken as hearsay and inadmissible as evidence.

The Commonwealth failed to meet its “burden of proof” to present witnesses against the Defendant for each of the criminal charges of Title 18 § 4953.1 Retaliation Against Prosecutor or Judicial Official.

Defendant must be awarded JUDGMENT NON OBSTANTE VEREDICTO for the egregious failure of the Commonwealth to meet its burden of proof and its conscious intent to deny due process of law to Defendant. The Commonwealth knowingly and intentionally deprived Defendant of her rights under the Sixth Amendment to confront her accusers and to test their credibility.

IF, as Gerdes states, that these public officers felt “threatened”, it must be asked “From what?”

Defendant must be afforded the opportunity to defend herself, and she is incapable of any other threat. Defendant was in prison, her alleged co-conspirators were not brought before the jury, and both are themselves “public officers” commissioned in their respective states as a Notary.

If the Prosecutor [Corbett] or Judicial Official [Clark] feels threatened, one may only surmise that the threat arises from a potential investigation into their actions which were taken “under color of law”, and that the “threat” may cause them to defend themselves lest they join former Luzerne County judges Ciavarello and Conahan as defrocked former judicial officials. Defendant poses no other threat against these two “public officials”. Their only fears arise from their exposure for misconduct.

Public awareness of possible criminal activity by a public official goes to the very core of matters of public concern. See, e. g., *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838-839 (1978). ... (“commentary on the fact that there is strong evidence implicating a government official in criminal activity goes to the very core of matters of public concern”), ... .

Further, Defendant was deprived of the opportunity to call witnesses in her favor.

The interest of justice and of judicial expedience as well as court cost controls requires that co-conspirators be tried together. The Commonwealth refuses to consolidate the “conspiracy” trials of the co-conspirators, apparently attempting to limit the admissibility of exonerating evidence.

## CONCLUSIONS

The judicial system, and in particular our criminal justice courts, play a vital part in a democratic state, and the public has a legitimate interest in their operations. See, e.g., *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838-839 (1978).

The court has a duty to require that plaintiff establish jurisdiction in that venue. The court failed to perform its duty regarding jurisdiction. Lawrence F. Clark, Jr., assumed jurisdiction where none had been established. Therefore, it follows, a priori, that any actions by Clark in a judicial capacity are **void ab initio** for lack of jurisdiction., See Statement of Laws.

The subsequent actions and proceedings are moot. See Statement of Laws in *Peralta v. Heights Medical Center, Inc.*, 108 S.Ct. 896 (1988), supra, also citing *Armstrong v. Manzo*. The Commonwealth confesses that it failed to serve Defendant with “notice”; per *Armstrong*. Defendant must be restored to the position she occupied prior to the Commonwealth depriving her of **due process of law** inter alia, “**wiping the slate clean**”.

The court has a duty protect the rights of a defendant to the assistance of counsel, to face his accuser(s), to test the credibility of those individuals.

The court failed to protect Defendant’s right to the assistance of counsel as promulgated in the U.S. Constitution, Sixth Amendment, and under Pennsylvania law incorporated via the Article I, section 9 of the Constitution; Title 1 Pa.S.C.A. § 1503; and the Frame of Government of 1682, which is also incorporated under the “supremacy clause”, Article VI of the U.S. Constitution.

The three criminal convictions under Title 18 § 4953.1 and the three criminal convictions under Title 18 § 903 must be overturned ***non obstante veredicto***.

In the language of “contract law”, when one party appears with “unclean hands” it shall not be granted a remedy. The Commonwealth and this court have a “contract” with the public that requires them both to perform their duties as fiduciaries of the law with the highest level of integrity. See Statement of the Law, Code of Judicial Conduct, supra.

The Commonwealth failed its contractual duty to with regard to its performance beginning with the Bureau of Consumer Protection, to wit: lack of notice; unlawful subpoena; improper Venue; assistance of counsel; threats, intimidation; unlawful search and seizure; deprivation of life and liberty; kidnapping; and a succession of other actions all taken “under color of law”.

The Commonwealth breached its contractual duty and appears with “unclean hands”.

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WHEREFORE, FOR THE FOREGOING REASONS, this court must as a matter of law exercise its duty under the oath of office and render Judgment N.O.V. in favor of Defendant, Claudia A. Montelione, acquitting her of all charges brought against her by the Attorney General of this Commonwealth and/or by the District Attorney of Dauphin County.

Respectfully submitted,

By Eugene A. Wrona

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