

IN RE: THE MATTER OF COMMONWEALTH OF PENNSYLVANIA v. Claudia A. Montelione IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania,	:	
Attorney General Thomas W.	:	No. <u>757 C.D. 2008</u>
Corbett, Jr.	:	
	:	
v.	:	
Claudia A. Montelione,	:	
Appellant	:	

**Notice to Attorney General of Pennsylvania of Challenge to Constitutionality
of Pennsylvania Statute 71 P.S. § 307-3(a) Pursuant to Pa.R.A.P. 521**

TO Thomas W. Corbett, Jr., ATTORNEY GENERAL OF PENNSYLVANIA:

Pursuant to Rule 521 of the Pennsylvania Rules of Appellate Procedure, notice is hereby given that a challenge to the constitutionality of 71 P.S. § 307-3(a), added by Act of December 17, 1968, P.L. 1221, which specifically provides in relevant part as follows:

(a) The Attorney General shall be authorized to require the attendance and testimony of witnesses and the production of any books, accounts, papers, records, documents, and files relating to any commercial and trade practices which the Bureau of Consumer Protection has authority to investigate ... and, for this purpose, the Attorney General or his representative may sign subpoenas, administer oaths or affirmations, examine witnesses and receive evidence during any such investigation....

The challenge to the constitutionality of this statute arises from an application of 71 P.S. § 307-3(a), in the matter as captioned above where the Bureau issued a subpoena alleging an investigation of business practices of Appellant without producing any documents or information of “probable cause” in support of an investigation despite demands for same by Appellant.

“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).

An interpretation of law by a judge in the “lowest court of record” in the Commonwealth created a new doctrine, to wit, the “sweeping powers doctrine” under which the judge, Lawrence F. Clark, Jr., Court of Common Pleas in Dauphin County, **determined** that the General Assembly [of this Commonwealth] granted “sweeping authority and power” to the Attorney General, thereby implying an

intentional grant by the legislature to the unfettered right of an Attorney General to override the constitutional protection afforded all citizens of the United States and residents of this Commonwealth to, inter alia:

- override ARTICLE VI, clause 2 of the Constitution of the U.S.;
- deprive persons of due process of law;
- deprive persons of notice [in the broadest terms] of an action against them;
- deprive persons of the right to face their accuser [complainant];
- deprive persons of the right to know the nature and cause of the action against them;
- deprive persons of information supporting evidence in support of “probable cause”;
- deny to all persons the protections of the Fourth, Fifth and Sixth Amendments of the Constitution of the U.S.;
- et al.

These issues are of immediate and appropriate public concern lest agents acting in the name of the Commonwealth of Pennsylvania trample on the rights of individuals and **trash** the Constitutions of this Nation and of this Commonwealth under color of law.

The moving party reminds the Attorney General that the occupant of THE OFFICE OF ATTORNEY GENERAL is required to have taken and subscribed an Oath of Office pursuant to ARTICLE VI, section 3 of the Constitution of Pennsylvania and 42 Pa.C.S. § 2522 under which he has a duty to “support, obey and defend the Constitution of the United States” and of this Commonwealth.

Under these terms and conditions and pursuant to Pa.R.A.P. 521, you are herewith commanded to answer this challenge to the interpretation of section 919 of The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, added by Act of December 17, 1968, P.L. 1221, **71 P.S. § 307-3(a)**, as to:

(1) whether or not the interpretation of law by Lawrence F. Clark, Jr. is completely accurate, even to whether or not the General Assembly intentionally granted “sweeping authority and power” to the Attorney General; and

(2) whether or not the General Assembly, as a state legislative body, has the **authority to grant** such “sweeping authority and power” to any agency of state government; or,

(3) **in the alternative**, to determine that the General Assembly intended no such “sweeping authority and power” be granted to any operatives of government, including the Attorney General or to any police officers or other agencies within this Commonwealth and therefore Lawrence F. Clark, Jr., incorrectly interpreted the authority of the Bureau when it issued a subpoena without meeting all the pre-requisites

for conducting an investigation, including but not limited to establishing the pre-requisite of "probable cause".


If the answer from the OFFICE OF ATTORNEY GENERAL is in the affirmative for questions (1) and (2), then the Attorney General is commanded to answer:

"Why 71 P.S. § 307-3(a) is not presumptively unconstitutional? See appended STATEMENT OF LAW, *Mobile v. Bolton*.

Appellant's challenge to the constitutionality of 71 P.S. § 307-3(a) incorporates the STATEMENT OF LAWS as appended hereto to be the criteria under which the interpretation of law by the Attorney General shall be rendered. The answer to this Constitutional Challenge shall be provided to the Court of Common Pleas of Dauphin County and to all other county courts of this Commonwealth. It shall also be distributed to the Commonwealth Court of Pennsylvania per docket number above and to all Superior Courts within this Commonwealth and published as the Commonwealth's interpretation of law.

WHEREFORE, because Claudia A. Montelione is currently incarcerated [in Dauphin County Prison] and is therefore unable to sign this instrument as a direct result and consequence of actions by the lower court and the Bureau based upon the application and interpretation of the above cited law in the lower court, an immediate response, within ten (10) days, is demanded to confirm the official and constitutional interpretation of 71 P.S. § 307-3(a).

Failure of THE OFFICE OF ATTORNEY GENERAL to answer within ten (10) days or to request within those ten (10) days an extension of time to answer will be presumed to be an acceptance by the OFFICE OF ATTORNEY GENERAL to the conclusion of law as stated in choice (3), wherein the General Assembly intended NO SUCH SWEEPING AUTHORITY AND POWER" to be granted under 71 P.S. § 307-3(a). See UCC 2-201.



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STATEMENT OF THE LAW

“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

1st AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

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.

4th AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

5th AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

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 CONSTITUTION OF THE UNITED STATES.

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 CONSTITUTION OF THE UNITED STATES.

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.

Title 42 Sec. 1981. Equal rights under the law

(a) Statement of equal rights.

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined.

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment.

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Sec. 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Section 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties.

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror.

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges.

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

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.

CONSTITUTIONAL CASE LAW: Federal

“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. Bolton*, 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.

“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)

“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).

Peralta v. Heights Medical Center, Inc., 108 S.Ct. 896 (1988) holds:

“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).

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).

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