

First Judicial District Division 2 CourtRoom 5-A Hall of Justice 100 Jefferson County Parkway Golden, Colorado 80401	▲ Court Use Only ▲
PEOPLE OF THE STATE OF COLORADO - Plaintiff v. STEVE D. GARTIN - Defendant	Case Number: 00CR3371 Division 2 - L.P.A.
Defendant Pro-Se: Steve D. Gartin c/o 200 Jefferson County Parkway Golden, Colorado [80401]	CourtRoom: 5A
MOTION TO DISMISS FOR VINDICTIVE PROSECUTION	

Steve D. Gartin, pro-se hereby moves the Honorable Court to Dismiss the above captioned matter for prosecutorial misconduct, to-wit, Vindictive prosecution and as grounds therefore states for the record:

Petitioner believes and therefore asserts that the above titled case has been brought before the Honorable Court by FRAUD in a mis-construction of statutes, by an unlawful seizure of foreign jurisdiction, by deprivations of constitutionally secured due process and by the commencement of a vindictive prosecution by a prosecutor unauthorized to prosecute this case without express written authorization from Governor Bill Owens.

Contained herein is only the facts and the case law surrounding vindictive prosecution.

Facts:

1. On September 19, 2000 Petitioner was traveling in a private conveyance, with two other innocent citizens, when the Lakewood S.W.A.T. Team deployed by Donald L. Estep & Gary Clyman conducted a “**Felony Traffic Stop**” without cause or warrants and removed all occupants at gun-point. All occupants were forced to lie face-down in the street with multiple high-tech, large caliber, automatic weapons aimed at critical (death-inducing) anatomical targets on their bodies. All three innocent citizens were then hand-cuffed behind the back and interrogated by COLORADO STATE ATTORNEY GENERAL'S OFFICE Investigator Gary Clyman. [See Exhibit #1 – Gartin Grand Jury Transcript: Page 11 & 12]
2. Gary Clyman testified to the Grand Jury that the “Felony Traffic Stop” was conducted with the intent and for the purpose of “getting him [*the Accused*] off the streets until we could get this case filed and get him on significant bond.” [See **Exhibit #1** - Gartin Grand Jury Transcript: Page 11].
3. On September 19, 2000 the only warrant in existence was an unsigned, and therefore invalid, warrant from case #97M811 which was filed by Donald L. Estep on, 2/27/97, after the Jefferson County Multi-Jurisdictional S.W.A.T. Team broke down Petitioner’s door, without probable cause or exigent circumstances, and unlawfully arrested and incarcerated him, on another unsigned, *and therefore invalid*, warrant on 26 February, 1997.

4. Both unsigned and invalid warrants were from **recused** Judge Charles T. Hoppin's¹ court. [See **Exhibit #2: UnSigned Warrants.**]
5. Donald L. Estep subsequently conspired with *then Lieutenant*, now Captain Terry Manwaring in order to construct a false and misleading document entitled AFFIDAVIT IN SUPPORT OF WARRANTLESS ARREST, which he subsequently filed with the Jefferson County Court along with two ostensible "summons" which served to commence two separate cases against the Petitioner for which he had to pay \$2000 bond each. [See **Exhibit #3 AFFIDAVIT IN SUPPORT OF WARRANTLESS ARREST**]
6. Donald L. Estep's purported summons failed to rise to minimal standards of professional performance and resulted in the dismissal of one case and provided error for appeal on the other. [See **Exhibit #4 – Insufficient charging documents**]
7. Donald L. Estep concurrently contacted Ted Mackelroy, an Arapahoe County District Attorney who lived on Lookout Mountain in Golden and Greenwood Village Police Agent Mark Stadterman who conspired to file bogus and frivolous charges in Littleton Court on 2/28/97 and conspired with Judge Ethan Feldman to set bond five times higher than the guidelines, to-wit: \$5000. That case, #97M472, was recently dismissed as groundless² on 10 December, 2001 by the Arapahoe County District Attorney.
8. On 7 April, 1997 Petitioner responded to an irregular court document from Jefferson County Magistrate Marilyn Leonard wherein the proper Christian Appellation appeared on the face of the court document.
9. On 7 April, 1997 Petitioner was accused of some undefined "contempt of court" and immediately arrested and sentenced to SIX MONTHS – NO GOOD TIME. No mittimus was provided, no charges were filed.
10. Within the first week in the Jefferson County Detention Facility Petitioner was assaulted by several inmates. Near the end of the first month Petitioner was moved to solitary confinement.
11. On 5 May, 1997 Petitioner was dragged in hand-cuffs, waist-bound and shackled before Judge Charles T. Hoppin for arraignment on the two cases filed by Donald L. Estep subsequent to the S.W.A.T. assault of 26 February, 1997. Judge Hoppin attempted to "go to trial" without providing discovery, charging instruments or due process. Judge Hoppin extorted a conditional "waiver" under duress, in exchange for a copy of the charging instruments and a promise of discovery.

¹ **W.D.Tenn. 1993.** To establish vindictive prosecution, defendant is not required to show that prosecution was actually vindictive, but, rather, realistic likelihood of vindictiveness.

Standard of realistic likelihood of vindictiveness with respect to claim of vindictive prosecution is objective standard. U.S. v. Adams, 832 F.Supp. 1138, affirmed 38 F.3d 1217.

² **D.D.C. 1990.** A bad faith prosecution is generally defined as having been brought without a reasonable expectation of obtaining a valid conviction; however, bad faith and harassing prosecutions also encompass those prosecutions that are intended to retaliate for or discourage the exercise of constitutional rights. PHE, Inc. v. U.S. Dept. of Justice, 743 F.Supp. 15.

12. Jefferson County Detention Facility Staff, *with callous and deliberate indifference to constitutional guarantees of due process of law*, denied Petitioner meaningful access to the law library from 7 April, 1997 to 24 September, 1997.
13. Petitioner was forced to conditionally “accept” a Public Defender in order to receive Discovery or access to the Court’s Record. Public Defender, Kathleen McGuire was a STATE employee.
14. Petitioner filed Federal Civil Rights³ Case #97-N-1501 naming Judge Charles T. Hoppin, Golden Police Department, Jefferson County Sheriff⁴ and others.
15. Judge Charles T. Hoppin recused himself. Cases 97M811 & 97M812 were transferred to Judge Tina Louise Olsen.
16. Petitioner filed Federal Civil Rights⁵ Case #97-D-1036 naming Donald L. Estep and the Jefferson County Sheriff’s Department Multi-Jurisdictional S.W.A.T. Team, Judge Roy Olson, Chief Judge Henry Nieto, Judge Charles T. Hoppin, Magistrate Marilyn Leonard, COLORADO STATE ATTORNEY GENERAL’S OFFICE⁶ and C.S.A.G. agent **Maurice Knaizer** among others.
17. Petitioner filed Federal Civil Rights⁷ Case #97-S-1523 naming the Jefferson County Detention Facility Staff, Sheriff Ronald Beckham, Donald L. Estep⁸, Terry Manwaring Judge William DuMoulin, Chief Judge Henry Nieto and others relating to deprivation of the right to access the courts, unlawful imprisonment and the constitutionally impermissible prison conditions.

³ **C.A.9 (Cal.) 1997.** “Vindictive prosecution” occurs when government penalizes a person merely because he has exercised a protected statutory or constitutional right. U.S. v. Pagnio, 114 F.3d 928, appeal after remand 168 F.3d 503.

⁴ **C.A.8 (Ark.) 1994.** Prosecutor’s discretion to charge is very broad but cannot be based upon vindictiveness or exercised in retaliation for defendant’s exercise of legal right.

Defendant may demonstrate “prosecutorial vindictiveness” by proving through objective evidence that prosecutor’s decision was intended to punish defendant for exercise of legal right. U.S. v. Rodgers, 18 F.3d 1425.

⁵ **N.E.III. 1995.** Prosecutor may not punish defendant for exercising statutory or constitutional right. U.S. v. Cunningham, 902 F.Supp. 166.

S.D.N.Y. 1996. Prosecution is vindictive if it is undertaken in retaliation for exercise of statutory or constitutional right. U.S. v. Aviv, 923 F.Supp. 35.

⁶ C.A.3 (N.J.) 1992. In determining whether an indictment posed a reasonable likelihood of vindictiveness, the question was whether the situation presented a reasonable likelihood of danger that the state might be retaliating against the accused for lawfully exercising a right, not whether there was a possibility that the defendant might be deterred from exercising a legal right. U.S. v. Esposito, 968 F.2d 300.

⁷ **C.A.6 (Ky.) 2000.** To establish vindictive prosecution, defendant must show that prosecutor has some persona “stake” in deterring defendant’s exercise of his constitutional rights, and that prosecutor’s conduct was unreasonable. U.S. v. Wells, 211 F.3d 988, 2000 Fed.App. 161P.

⁸ **C.A.11 (Ga.) 1985.** Prosecutor’s charging decision does not impose improper “penalty” on defendant unless it results from defendant’s exercise of protected legal right, as opposed to prosecutor’s normal assessment of social interests to be vindicated by prosecution. U.S. v. Taylor, 749 F.2d 1511.

18. COLORADO STATE ATTORNEY GENERAL'S OFFICE represents⁹ the STATE Defendants in the above Federal Civil Rights Actions.
19. Case #97M812 was dismissed for insufficient charging instrument by Judge Tina Olsen on 2 October, 1997 for insufficiency of charging instrument. [See **Exhibit #5**]
20. Case #97M811 went to jury trial although fatally flawed charging instrument was never corrected and speedy trial had expired.
21. Case #97M811 was void ab initio for failure of the charging instrument to invoke jurisdiction.
22. Despite fatal flaws, Petitioner was found “guilty” at a jury trial¹⁰ in which the jury was not allowed to hear any issue except whether there was a restraining order – not whether or not the order was valid and not whether the alleged actus reus constituted a statutory offense.
23. From January 1998 to December 2000 Petitioner researched and filed Rule 60b Motions that were ignored by Judge Lisle Thomas Woodford, and studied, learned, filed and implemented “Administrative Procedures” in order to correct¹¹ the unlawful judgment in the void ab initio case before being sentenced and serving an unlawful sentence in Jefferson County Detention Facility in overcrowded, draconian prison conditions for committing no crime.
24. In October 2000, Petitioner returned home to California in order to seek legal asylum and courts that were not completely controlled by the government agents named as Defendants in Federal Cases listed above, #14, 16 & 17. Petitioner continued to pursue administrative remedies with Judge Tina Olsen while in California. [See **Exhibit #6: Olsen Administrative Procedure**]
25. Donald L. Estep and Gary Clyman have misconstrued Petitioner’s **Administrative Process**,¹² intended to correct illegal sentences and judicial error, to be some sort of financial instrument scam to “write bad checks” and have enlisted the assistance of “stalking horse” Marleen M. Langfield, Esquire¹³ to commence a patently retaliatory prosecution based upon a tortured misapplication of statutes and the invidious discriminatory animus¹⁴ that the Petitioner is a “Patriot.”¹⁵

⁹ **C.A.6 (Ky.) 2000.** To establish vindictive prosecution, defendant must show that prosecutor has some personal “stake” in deterring defendant’s exercise of his constitutional rights, and that prosecutor’s conduct was unreasonable U.S. v. Wells, 211 F.3d 988, 2000 Fed.App. 161P.

¹⁰ **W.D.Tenn. 1993.** To establish vindictive prosecution, defendant is not required to show that prosecution was actually vindictive, but, rather, realistic likelihood of vindictiveness.

Standard of realistic likelihood of vindictiveness with respect to claim of vindictive prosecution is objective standard. U.S. v. Adams, 832 F.Supp. 1138, affirmed 38 F.3d 1217.

¹¹ **C.A.9 (Cal.) 1997.** “Vindictive prosecution” occurs when government penalizes a person merely because he has exercised a protected statutory or constitutional right. U.S. v. Pagueio, 114 F.3d 928, appeal after remand 168 F.3d 503.

¹² **C.A.7 (Ill.) 1991.** Fifth Amendment prohibits Government from prosecuting defendant because of some specific animus or ill will on prosecutor’s part or to punish defendant for exercising legally protected statutory or constitutional right. U.S.C.A. Const.Amend. 5. U.S. v. Benson, 941 F.2d 598, rehearing denied, mandate recalled and corrected 957 F.2d 301, appeal after remand 67 F.3d 641, opinion modified on denial of rehearing 74 F.3d. 152.

¹³ **D.Conn. 2000.** To establish actual vindictive motive to prosecute, defendant must show the (1) the prosecutor harbored genuine animus toward the defendant, or was prevailed upon to bring the charges by another with animus such that the

26. On March 13, 2001 heavily armed FEDERAL BUREAU OF INVESTIGATION S.W.A.T. Team deployed on Petitioner's **business location** in Fairfax, California during the AfterSchool Children's Program. F.B.I. Agents knew where Petitioner lived, knew the route he rode his bicycle to work each day and had ample opportunity to deploy upon the Petitioner without dozens of innocent women and children present. [See **Exhibit #7** – Newspaper clipping]
27. FEDERAL BUREAU OF INVESTIGATION Agents were deployed by Donald L. Estep who conspired with Federal Magistrate¹⁶ Patricia Coan to issue a warrant for Unlawful Flight to Avoid Prosecution based upon intentionally false and misleading information relating to purported "weapons violations" by Donald L. Estep and unsigned, *and therefore invalid*, warrants issued in case #00CR3371. [See **Exhibit #8** – UnSigned Warrants, Blank Indictment, Federal Warrant without Affidavit retrieved from Federal Court in Oakland, California]
28. On 20 March, 2000 the U.S. Attorney dismissed the unsupported, un-provable Federal Charges.
29. Petitioner continued to be held without charges in Santa Rita Prison in maximum security, 24 hour lock-down without access to telephone, pencil & paper or postage until 4 April, 2001.
30. Petitioner did **not** waive extradition.
31. Jefferson County Sheriff's Deputies Lonnie Lock and Pete Derrick **kidnapped** Petitioner and caused him, handcuffed and *against his will*, to travel in interstate commerce to the Jefferson County Detention Facility where he has been unlawfully incarcerated to present.
32. After Petitioner's first appearance before the Honorable Leland Paul Anderson, on April 12, 2001, a "message" was relayed to Petitioner to drop all the "law suits and accept a plea bargain" or 'they' would make it real hard.
33. After the second appearance before the Honorable Leland P. Anderson wherein Petitioner had established his Pro-Se Status, on, or about April 28, 2001 FEDERAL BUREAU OF INVESTIGATION Special Agent Mark Holstlaw of the Multi-Jurisdictional Domestic Terrorism Task Force arranged a "special visit" to relay a message¹⁷ that Petitioner should "drop the ProSe

prosecutor could be considered a stalking horse, and (2) defendant would not have been prosecuted but for the animus. U.S.C.A. Const.Amend. 14. U.S. v. Dean, 119 F.Supp.2d 81.

¹⁴ **C.A.7 (Ill.) 1991.** Fifth Amendment prohibits Government from prosecuting defendant because of some specific animus or ill will on prosecutor's part or to punish defendant for exercising legally protected statutory or constitutional right. U.S.C.A. Const.Amend. 5. U.S. v. Benson, 941 F.2d 598.

¹⁵ **C.A.7 (Wis.) 1996.** Claim of vindictive or selective prosecution requires showing that defendant (1) was singled out for prosecution while other violators similarly situated were not prosecuted; and (2) decision to prosecute was based on arbitrary classification such as race, religion, or exercise of protected rights. U.S. v. Monsoor, 77 F.3d 1031.

¹⁶ **E.D.N.Y. 1988.** Doctrine of prosecutorial vindictiveness does not apply to prosecutions brought by different sovereigns, absent showing that state prosecution was a **stalking horse** for a subsequent federal investigation. U.S. v. McGriff, 678 F.Supp 1010.

¹⁷ **N.D.N.Y. 1997.** In some circumstances, a presumption of unconstitutional prosecutorial vindictiveness arises when prosecutors employ practices that pose a realistic likelihood of vindictiveness. U.S. v. Cady, 955 F.Supp. 164.

status¹⁸, take Daniel Edwards, *Esquire* as attorney and accept a plea bargain. Three years probation was offered in lieu of six decades in prison. If Petitioner did not do as told, ‘they’ would ‘drop the hammer’ and file more charges every time Petitioner ‘filed¹⁹ a piece of paper.’ The unmistakable inference was conveyed that Petitioner would never get out of jail as long as he refused to drop the ProSe status and accept a Plea Bargain.

34. Petitioner has been unlawfully incarcerated for over Nine Months and has been Orally and Formally petitioning the Honorable Court for relief in the nature of the constitutionally secured right to speedy trial.

VINDICTIVE PROSECUTION

C.A.9 (Cal. 1995. To establish prima facie case of prosecutorial vindictiveness, defendant must show either direct evidence of actual vindictiveness or fact that warrant appearance of such.

Evidence indicating realistic or reasonable likelihood of vindictiveness may give rise to presumption of vindictiveness on government’s part.

For purposes of claim of prosecutorial vindictiveness, once presumption of vindictiveness has arisen, burden shifts to prosecution to show that independent reasons or intervening circumstances dispel appearance of vindictiveness and justify its decisions. *U.S. v. Montoya*, 45 F.3d 1286, certiorari denied 116 S.Ct. 67, 516 U.S. 814, 133 L.Ed.2d 29.

The standard of review in a vindictive prosecution case is unsettled in this circuit. *United States v. Kinsey*, 994 F.2d 699, 701, n.5 (9th Cir. 1993); *Guam v. Fergurgur*, 800 F.2d 1470, 1472 (9th Cir.), cert. denied, 480 U.S. 932 (1987). **The court has variously applied “abuse of discretion” and “clearly erroneous” standards.** See *United States v. Gann*, 732 F.2d 714, 724 (9th Cir.), cert. denied, 469 U.S. 1034 (1984).

A de novo standard was adopted in *United States v. Martinez*, 785 F.2d 663, 666 (9th Cir. 1988). Subsequent cases appear to have considered the evidence de novo without stating what standard was being used. See, e.g., *Kolek v. Engen*, 869 F.2d 1281, 1287-88 (9th Cir. 1989); *Adamson v. Ricketts*, 865 F.2d 1011, 1017-1020 (9th Cir. 1988), cert. denied, 497 U.S. 1031 (1990); *United States v. DeTar*, 832 F.2d 1110, 1112 (9th Cir. 1987).

The cases can be reconciled by reference to standards established by *United States v. McConney*, 728 F.2d 1195 (9th Cir.) (en banc), cert. denied, 469 U.S. 824 (1984): Findings of historical facts and the actual motive for prosecuting are reviewed under the clearly erroneous standard. Once the motive is ascertained, the determination of whether it constitutes a basis for vindictive prosecution is reviewed de novo.

[B] The Supreme Court has defined mixed questions as those in which “the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the [relevant] statutory [or constitutional] standard, or to put it another way, whether the rule of law is applied to the established facts is or is not violated. *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n. 19, 102 S.Ct. 1781, 1790 n. 19, 72 L.Ed.2d 66 (1982).

Thus, there are **three distinct steps** in deciding a mixed fact-law question.

¹⁸ **C.A.9 (Cal.) 1999.** “Vindictive prosecution” occurs when a prosecutor brings additional charges solely to punish the defendant for exercising a constitutional or statutory right, such as a defendant’s right to a jury trial. *U.S.C.A. Const.Amend. 6 U.S. v. VanDoren*, 182 F.3d 1077.

¹⁹ **C.A.7 (Ill.) 1994.** Prosecution is “vindictive” and violates due process if it is undertaken to punish defendant because he has done something the law plainly allows him to do; thus, showing of actual vindictiveness require objective evidence of some kind of genuine prosecutorial malice. *U.S.C.A. Const.Amend. 5. U.S. v. Porter*, 23 F.3d 1274.

The **first step** is the establishment of the “basic, primary, or historical facts: facts ‘in the sense of a recital of external events and the credibility of their narrators. . . .’” *Townsend v. Sain* 372 U.S. 293, 309 n. 6, 83 S.Ct.745, 755 n.6, 9 L.Ed.2d 770 (1963) (quoting *Brown v. Allen*, 344 U.S. 443, 506, 73 S.Ct. 397, 446, 97 L.Ed. 469 (1953) (opinion of Frankfurter, J.)).

The **second step** is the selection of the applicable rule of law.

The **third step** – and the most troublesome for standard of review purposes – is the application of the law to fact or, in other words, the determination “whether the rule of law as applied to the established facts is or is not violated.” *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n. 19, 102 S.Ct. 1781, 1790 n. 19, 72 L.Ed.2d 66 (1982).

[2] The district court’s resolution of each of these inquires is, of course, subject to appellate review. The appropriate standard of review for the first two of the district court’s determinations – its establishment of historical facts and its selection of the relevant legal principle – has long been settled. Questions of fact are reviewed under the deferential, clearly erroneous standard. See Fed.R.Civ.P. 52(a). Questions of law are reviewed under the non-deferential, de novo standard. See, e.g., *U.S. v. One Twin Engine Been Airplane*, 533 F.2d 1106, 1108 (9th Cir.1976); *Lundgren v. Freeman*, 307 F.2d 104, 115 (9th Cir.1962). These established rules reflect the policy concerns that properly underlie standard of review jurisprudence generally.

Thus, because the application of law to fact will generally require the consideration of legal principles, the concerns of judicial administration will usually favor the appellate court, and most mixed questions will be reviewed independently. This is particularly true when the mixed question involves constitutional rights.

Accordingly, I would be content to rest the debate that has for so long engaged this court upon a statement made by the Supreme Court, to which we look for leadership in such matters:

“While this Court does not sit as *nisi prius* to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the decision as to reasonableness the fundamental – i.e., constitutional – criteria established by this Court have been respected. . . .” *Ker v. California*, 374 U.S. at 34, 83 S.Ct. at 1630. [*United States v. McConney*, 728 F.2d. 1195 (9th Cir.) (en banc), cert. denied, 469 U.S. 824 (1984).]

A defendant alleging vindictive prosecution has the burden of showing an appearance of vindictiveness. The appearance²⁰ gives rise to a presumption of vindictiveness. Whether there is an appearance of vindictiveness is a question of fact reviewed for clear error. See *United States v. Clay*, 925 F.2d 299, 302 (9th Cir. 1991). Once that fact is established, whether the presumption arises is a question of law reviewed de novo.

COLORADO STATE ATTORNEY GENERAL'S OFFICE Investigator Gary Clyman is a member of the clandestine Multi-Jurisdictional Domestic Terrorism Task Force which appears to be primarily focused on the unlawful persecution of ostensible ‘patriots.’ Testimony before the Statewide Grand Jury by Mr. Gary Clyman indicates that the exercise of the constitutionally secured right to Petition the Government for Redress of Grievance is perceived by the Multi-Jurisdictional Domestic Terrorism Task Force to be a ‘crime’ worthy of prosecution. [See EndNote # ¹]

“Stalking Horse” Marleen M. Langfield, Esquire – Special Prosecutor for the COLORADO STATE ATTORNEY GENERAL'S OFFICE has been prevailed upon by Donald L. Estep and Gary Clyman of the Multi-Jurisdictional Domestic Terrorism Task Force to create²¹ a ‘crime’ from the whole-cloth, by

²⁰ **N.D. Ill. 1998.** In order to show vindictive prosecution, defendant must show that he was prosecuted to punish him for exercising legally protected statutory or constitutional right. *Gil v. U.S.*, 4 F.Supp.2d 760.

²¹ **C.A.7 (Ind.) 1998.** For a defendant to prove prosecutorial vindictiveness on the part of the government for its decision to seek an indictment, he must present objective evidence showing genuine prosecutorial vindictiveness.

Defendant asserting claim of prosecutorial vindictiveness based on government’s decision to seek indictment can show requisite genuine prosecutorial vindictiveness by showing that the decision to prosecute was not based on the usual determinative factors. *U.S. v. Spears*, 159 F.3d 1081.

converting the lawful statutory right to file Mechanic's Liens²² into a financial instrument crime for purposes of commencing and conducting an unlawful retaliatory prosecution known in legal fiction as COLORADO FIRST JUDICIAL DISTRICT Case #00CR3371.

“Stalking Horse” Dennis Hall, Esquire – Jefferson County Deputy District Attorney, has been prevailed upon by Donald L. Estep and Gary Clyman of the Multi-Jurisdictional Domestic Terrorism Task Force to create a ‘crime’ from the whole-cloth, by converting the lawful statutory right to file Mechanic's Liens²³ into a financial instrument crime for purposes of conducting an unlawful retaliatory prosecution known in legal fiction as COLORADO FIRST JUDICIAL DISTRICT Case #00CR2419–Dismissed 30 April, 2001.

1. Thousands of Mechanic's Liens are filed each year in Colorado.
2. Filing mechanic's liens is a statutory right.
3. Petitioner is the ONLY person ever prosecuted for having lawfully filed mechanic's liens.
4. COLORADO STATE ATTORNEY GENERAL'S OFFICE Investigator Gary Clyman testified to the Statewide Grand Jury that filing “fraudulent liens” is a “patriot tactic.”
5. Petitioner has been accused by Clyman & Estep of being a “patriot” and of being “heavily involved in the patriot movement.”
6. COLORADO STATE ATTORNEY GENERAL'S OFFICE serves as “Defense Attorney” for Jefferson County STATE Defendants in Federal Civil Rights Actions and has a vested interest in prosecuting the Plaintiff in those actions, in order to delay, deny, divert and obstruct justice.
7. Petitioning the Government for Redress of Grievance is a constitutionally protected First Amendment Right.
8. Exhausting all administrative remedies is required by the Federal Courts before proceeding to litigation for breach of contract of government actors violating their oath of office and causing damages and deprivations of constitutionally guaranteed rights.
9. The **Administrative Process**²⁴ constitutes an exhaustion of administrative remedies.
10. Only people arbitrarily classified as “patriots” are prosecuted for exercising their First Amendment right to petition the government for redress of grievance.
11. Grand Jury Indictment: Count # 16 Attempt to Influence a Public Servant presents as purported “evidence of the crime”²⁵ the **Petition for Redress of Grievance**²⁶ presented to Gary Clyman by Petitioner.

Grand Jury Transcript: December 15, 2000 Page 121:

Point 373: Q. Do you recall getting a document that was entitled, **Petition for Redress of Grievance**. . .?”

²² **Mechanic's lien is a statutory creature.** A mechanic's or miner's lien is the creature of the statute, and attaches only by virtue of work being done or materials furnished under a contract, express or implied, with the owner of the property upon which the lien is claimed. Davidson v. Jennings, 27 Colo.187, 60 P.354 (1900)

²³ **Direct lien statute expressly authorizes lien arising out of contract**, either express or implied. Home Pub. Market Co. v. Fallis, 72 Colo. 48, 209 P.641 (1922).

²⁴ **C.A.1 (R.I.) 1998.** Successful assertions of vindictive prosecution are most common where defendant advances some procedural or constitutional right and is then punished for doing so. U.S.C.A. Const.Amend. 5 U.S. v. Lanoue, 137 F3d 656.

²⁵ **C.A.7 (Ill.) 1994.** Prosecution is “vindictive” and violates due process if it is undertaken to punish defendant because he has done something the law plainly allows him to do; thus, showing of actual vindictiveness requires objective evidence of some kind of genuine prosecutorial malice. U.S.C.A. Const.Amend 5 U.S. v. Porter, 23 F.3d 1274.

²⁶ **C.A.7 (Wis.) 1993.** Prosecution is “vindictive” and violation of due process if undertaken to punish person because he has done what law plainly allows him to do; filing of indictment may in some instances be basis for such a claim. U.S.C.A. Const.Amend. 5. U.S. v. Polland, 994 F.2d 1262.

Point 374: A. “. . .and they had **patriot language** in them. . .”

Point 375: A. “. . .we had wronged him, civilly and/or criminally, by doing an illegal search and illegal arrest.”

Grand Jury Transcript: December 15, 2000 Page 122:

Point 376: Q. Now, did there come a time when Mr. Gartin hand-delivered a **Petition for Redress of Grievance**. . .?

A. “Yes, He hand-delivered that to me at the office, . . .”

Point 377: **GRAND JURY EXHIBIT NO. 6**

Q. And you had already received one of these in the mail; is that correct?

A. “Not this. This was a follow-up to either one or two previous documents. . .”

S.D.N.Y. 1996. Prosecution is vindictive if it is undertaken in retaliation for exercise of statutory or constitutional right.

Defendant claiming vindictive prosecution must show that (1) prosecutor harbored genuine animus²⁷ toward defendant, or was prevailed upon to bring charges by another with animus such that prosecutor could be considered a “stalking horse,” and (2) he would not have been prosecuted except for animus.

To obtain discovery or hearing on claim that prosecution is vindictive, defendant must offer some evidence supporting both elements of vindictiveness claim. U.S. v. Aviv, 923 F.Supp. 35.

C.A.6 (Mich.) 1999. To establish claim of vindictive prosecution, plaintiff must show: (1) exercise of a protected right; (2) prosecutor’s ‘stake’ in the exercise of that right; (3) unreasonableness of prosecutor’s conduct; and, presumably, (4) that prosecution was initiated with intent to punish plaintiff for exercise of the protected right.

Person claiming to be vindictively prosecuted must show that prosecutor had some “stake” in deterring petitioner’s exercise of his rights, and that prosecutor’s conduct was somehow unreasonable. National Engineering & Contracting Co. v. Herman, 181 F.3d 715, certiorari denied, 120 S.Ct. 578, 528 U.S. 1045, 145 L.Ed.2d 481.

PRIMA FACIE PROSECUTORIAL VINDICTIVENESS:

Grand Jury Exhibit #6: Petition for Redress of Grievance establishes Petitioner’s exercise of the First Article²⁸ in Amendment to the Declaration of Rights and charges stemming directly from exercising that constitutionally guaranteed Right.

MOTIVE

If Gary Clyman or the COLORADO STATE ATTORNEY GENERAL'S OFFICE was found by a court of competent jurisdiction to have violated the Fourth Article in Amendment by an unlawful search and seizure, they would be civilly liable²⁹ for \$50,000 per day for theft of Petitioner’s lawful private registered property as agreed to by Gary Clyman’s tacit procuration, *a standard administrative protocol commonly*

²⁷ Gary Clyman Grand Jury Transcript: *Point 401: “. . .I have dealt with identical situations. . . people that have these kinds of beliefs.”

²⁸ **N.D.Ala. 1995.** Although prosecutor’s discretion as to whom to charge is particularly ill-suited to judicial review, discretion is not unfettered and decision to prosecute may not be deliberately based upon unjustifiable standards such as race, religion, or other arbitrary classification, including the exercise of protected statutory and constitutional rights, and prosecutor may not select individual for prosecution solely because of exercise of rights under the First Amendment. U.S.C.A. Const.Amend. 1. Hunt v. Tucker, 875 F.Supp. 1487, affirmed 93 F.3d 735.

²⁹ **D.PuertoRico 1994.** “Vindictive prosecution” may be established by producing evidence of actual vindictiveness sufficient to establish due process violation or by alleging circumstances which establish sufficient likelihood of vindictiveness to warrant presumption that such desire swayed actions of prosecutor. U.S.C.A. Const.Amend. 5, 14. U.s. v. Lopez, 854, F.Supp.41, affirmed 71 F.3d 954.

used by modern quasi-judicial tribunals and administrative agencies of the government to establish facts prior to adjudication.

ACTUS REUS

Prosecutor's tortured application of the Statutes relating to financial instrument Fraud, to-wit: Section 18–Title 5 (C.R.S. §18-5-114) establishes prima facie “unreasonable³⁰ conduct” when viewed in the light that both **Dennis Hall**, Esquire and **Marleen M. Langfield**, Esquire have a full copy of the Colorado Revised Statutes in their office. **Title 38–Article 22 relates to liens.** Any first-year law student could look at the Colorado Revised Statutes and understand that a questionable lien³¹ is defined as a “*spurious document*” and **not** a “*fraudulent lien.*” The term: “Fraudulent Lien” cannot be found defined as a crime by common law, codes, ordinance or statute. Additionally, as Prosecutors, Hall and Langfield are bound to Ethical Rules prohibiting the institution of bogus, frivolous, vindictive and retaliatory prosecutions:

Rule 3.8. Special Responsibilities of a Prosecutor:

The prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause³²;

The Grand Jury Transcript of 15 October, 2000 –*Pages 11 & 12*- establishes the fact that COLORADO STATE ATTORNEY GENERAL'S OFFICE Investigator **Gary Clyman** and Multi-Jurisdictional Domestic Terrorism Task Force Agent **Donald L. Estep** prevailed upon both Jefferson County Deputy District Attorney **Dennis Hall**, *Esquire* and COLORADO STATE ATTORNEY GENERAL'S OFFICE Special Prosecutor **Marleen M. Langfield**, *Esquire* to file bogus, frivolous and vindictive charges, *based upon the WRONG STATUTES*,³³ in order to “get him³⁴ on significant bond” while Agents thoroughly prowled through Petitioner's business papers and computers, *for a year and four months*, searching for “evidence” of any other crime they could use to increase the jeopardy Petitioner faces.

³⁰ **C.A.2. (N.Y.) 1994.** Prosecutor abuses his charging discretion if his decision to charge springs solely from defendant's exercise of protected legal right, rather than from prosecutor's normal assessment of societal interest in prosecutions. U.S. v. LaPorta, 46 F.3d 152.

A claim of vindictive prosecution is not subject to interlocutory appeal because the defendant may raise the claim on appeal from a final judgment. United States v. Moreno-Green, 881 F.2d 680, 681 (9th Cir. 1989).

³¹ **C.A. 11 (Ga.) 1985.** Prosecutor's charging decision does not impose improper “penalty” on defendant unless it results from defendant's exercise of protected legal right, as opposed to prosecutor's normal assessment of social interests to be vindicated by prosecution. U.S. v. Taylor, 749 F.2d 1511.

³² **C.A.6 (Tenn.) 1989.** Prosecution which would not have been initiated but for governmental vindictiveness, based on actual retaliatory motivation, in constitutionally impermissible. U.S. v. Adams, 870 F.2d 1140.

³³ **C.A.10(N.M.) 1997.** While it is perfectly acceptable for prosecutor to penalize defendant for violating the law, prosecutor may not punish defendant for exercising protected statutory or constitutional right.

In analyzing claim of prosecutorial vindictiveness, court must focus on whether, as a practical matter, there is realistic or reasonable likelihood of prosecutorial conduct that would not have occurred but for hostility or punitive animus toward defendant because he exercised his specific legal right.

To establish claim of prosecutorial vindictiveness, defendant must prove either (1) actual vindictiveness, or (2) reasonable likelihood of vindictiveness which then raises presumption of vindictiveness; if defendant can meet this burden, prosecution must justify its decision with legitimate, articulable, objective reasons. U.S. v. Carter, 130 F.3d 1423

³⁴ C.A.8. (Mo.1993): Prosecutor may not make decision to prosecute based on race, religion, or other arbitrary and unjustifiable classifications, nor may prosecutor file charges out of vindictiveness or in retaliation for defendant's exercise of legal rights. U.S. v. Jacobs, 4 F.3d 603.

A prosecution based entirely upon³⁵ an intentional and deliberate mis-construction and erroneous application of the statutes³⁶ creating a legal impossibility and having no remote chance of prosecutorial success³⁷ before a jury is ipso facto “unreasonable³⁸” and constitutes a prima facie “vindictive prosecution.” Such a wild, erratic departure from acceptable prosecutorial practice cannot possibly be normal or usual business. The vast resources and finances expended in this vindictive prosecution must also raise “red flags” in the mind of any reasonable person. What would a Prosecutor hope to gain, what great social evil would he strive to prevent? The simple answer is that this is a retaliatory prosecution.

The undeniable fact that the COLORADO STATE ATTORNEY GENERAL'S OFFICE is prosecuting case #00CR3371 against³⁹ the Petitioner and defending⁴⁰ STATE actors in Federal Civil Rights Actions 97N1501, 97D1036, 97S1523, 01ES1145 and 95B1747 establishes a prima facie conflict of interest and a credible motive⁴¹ for a vindictive prosecution.

Petitioner exercised⁴² the constitutional right to sue⁴³ the government for deprivation of Plaintiff's constitutionally secured rights pursuant to 42 U.S.C. §§ 1986, 1985 & 1983 – known as the anti-Ku Klux Klan statutes – in above enumerated Federal Civil Rights Actions.

³⁵ **C.A.9 (Idaho) 1991.** Defendant alleging vindictive prosecution has initial burden of showing appearance of vindictiveness; there is appearance of vindictiveness when there is reasonable likelihood that prosecutor would not have filed charges but for hostility toward defendant because defendant exercised his or her legal rights. U.S. v. Clay, 925 F.2d 299.

³⁶ **N.D.N.Y. 1997.** In some circumstances, a presumption of unconstitutional prosecutorial vindictiveness arises when prosecutors employ practices that pose a realistic likelihood of vindictiveness. U.S. v. Cady, 955 F.Supp. 164.

³⁷ **D.D.C. 1990.** A bad faith prosecution is generally defined as having been brought without a reasonable expectation of obtaining a valid conviction; however, bad faith and harassing prosecutions also encompass those prosecutions that are intended to retaliate for or discourage the exercise of constitutional rights. PHE, Inc. v. U.S Dept. of Justice, 743 F.Supp 15.

³⁸ **D.N.J 1992.** Presumption of prosecutorial vindictiveness arises where totality of circumstance surrounding prosecutorial decision at issue suggests appearance of vindictiveness; once presumption is created, court must determine whether prosecutorial decision was justified by other independent reasons or intervening circumstances sufficient to dispel appearance of vindictiveness. U.S. v. Cannistraro, 800 F.Supp. 30.

³⁹ **C.A.6 (Ky.) 1996.** Prosecutor vindictively prosecutes when prosecutor acts to deter person prosecuted from exercising protected right; to prove vindictive prosecution, defendant must demonstrate that prosecutor has some “stake” in deterring defendant's exercise of constitutional rights, and that prosecutor's conduct was somehow unreasonable. U.S. v. Branham 97 F.3d 835, 1996 Fed.Ap. 324P.

⁴⁰ **C.A.3. (N.J.) 1992.** In determining whether an indictment posed a reasonable likelihood of vindictiveness, the question was whether the situation presented a reasonable likelihood of danger that the state might be retaliating against the accused for lawfully exercising a right, not whether there was a possibility that the defendant might be deterred from exercising a legal right. U.S. v. Esposito, 968 F.2d 300.

⁴¹ **C.A.2 (N.Y.) 1999.** Actual vindictiveness must play no part in a prosecutorial or sentencing decision and, since the fear of such vindictiveness may unconstitutionally deter a defendant's exercise of his right, the appearance of vindictiveness must also be avoided. U.S. v. Johnson, 171 F.3d 139.


⁴² **C.A.9 (Idaho) 1991.** Defendant alleging vindictive prosecution has initial burden of showing appearance of vindictiveness; there is appearance of vindictiveness when there is reasonable likelihood that prosecutor would not have filed charges but for hostility toward defendant because defendant exercised his or her legal rights. U.S. v. Clay, 925 F.2d 299.

⁴³ **C.A.8 (Ark.) 1994.** Prosecutor's discretion to charge is very broad but cannot be based upon vindictiveness or exercised in retaliation for defendant's exercise of legal right.

Defendant may demonstrate “prosecutorial vindictiveness” by proving through objective evidence that prosecutor's decision was intended to punish defendant for exercise of legal right. U.S. v. Rodgers, 18 F.3d 1425

C.A.7 (Ind.) 1996. To be successful on claim of prosecutorial vindictiveness, defendant must affirmatively show through objective evidence that prosecutorial conduct at issue was motivated by some form of prosecutorial animus, such as a personal stake in outcome of case or attempt to seek self-vindication. In certain, limited circumstances, defendant is entitled to presumption of prosecutorial vindictiveness.

Defendant claiming prosecutorial vindictiveness must come foreword with evidence of prosecutorial animus, not mild inconvenience. *U.S. v. Bullis*, 77 F.3d 1553.


 COLORADO STATE ATTORNEY GENERAL'S OFFICE Investigator **Gary Clyman** has testified to the Statewide Grand Jury that he had been “subject” to liens filed on his property. This statement alone is sufficient to establish the fact that Gary Clyman believes he has a personal stake⁴⁴ in the outcome of this prosecution. Gary Clyman, as an agent of the COLORADO STATE ATTORNEY GENERAL'S OFFICE has immediate access to Special Prosecutor **Marleen M. Langfield**, Esquire who is acting in the capacity of a “**stalking horse**” in this prosecution seeking to vindicate Gary Clyman for conducting a criminal investigation without express authorization from the Governor, for deploying the Lakewood S.W.A.T. Team to serve unsigned, invalid misdemeanor warrants and for involving Jefferson County Judge Jack Berryhill in a debacle to issue fraudulent search warrants in midnight haste in absence of due process of law, which may also constitute a Federal crime pursuant to 18 U.S.C.§241 & 242 and if convicted could result in significant incarceration in Federal Prison.

C.A.2 (N.Y.) 2000. A prosecution brought with vindictive motive, penalizing those who choose to exercise constitutional rights, would be patently unconstitutional.

An indictment will be dismissed if there is a finding of “actual” vindictiveness, or if there is a presumption of vindictiveness that has not be rebutted by objective evidence justifying the prosecutor’s action.

To establish a prosecution brought with vindictive motive, the defendant must prove objectively that the prosecutor’s charging decision was a direct and unjustifiable penalty that resulted solely from the defendant’s exercise of a protected legal right; put another way, the defendant must show that (1) the prosecutor harbored genuine animus toward the defendant, or was prevailed upon to bring the charges by another with animus such that the prosecutor could be considered a “stalking horse,” and (2) the defendant would not have been prosecuted except for the animus.

To establish a presumption of prosecutorial vindictiveness, the defendant must show that the circumstances of a case pose a “realistic likelihood” of such vindictiveness. *U.S. v. Sanders*, 211 F.3d 711.

 COLORADO STATE ATTORNEY GENERAL'S OFFICE Defense Attorney **Beverly Fulton**, Esquire in the Civil Litigation Section serves as Defense Attorney for numerous STATE Actors from Jefferson County Governmental Offices named as Defendants in Federal Civil Rights Actions wherein the Petitioner is Plaintiff. **Beverly Fulton, Esquire**, as an employee of the COLORADO STATE ATTORNEY GENERAL'S OFFICE has immediate access to Special Prosecutor **Marleen M. Langfield**, Esquire who is acting in the capacity of a “**stalking horse**”⁴⁵ in this prosecution seeking to vindicate Jefferson County STATE Defendants for conducting a criminal conspiracy to deprive Petitioner of constitutionally guaranteed rights pursuant to 18 U.S.C. §§ 241 & 242, and for deploying the Jefferson County Multi-Jurisdictional S.W.A.T. Team, and the Lakewood S.W.A.T. Team to serve unsigned, invalid misdemeanor warrants and for involving numerous Jefferson County Judges in a debacle to issue fraudulent warrants in absence of due process of law.

⁴⁴ **C.A.9 (Cal.) 1996.** To establish prima facie case of vindictive prosecution, defendant had to show either direct evidence of actual vindictiveness or facts that warranted appearance of such. *U.S. v. Edmonds*, 103 F.3d 822.

⁴⁵ **C.A.9 (Cal.) 1995.** To make claim of vindictive prosecution, there must be vindictiveness on part of those who made the charging decision. *U.S. v. Gomez-Lopez*, 62 F.3d 304.

C.A. 9 (Cal.) 1995. To establish prima facie case of prosecutorial vindictiveness, defendant must show either direct evidence of actual vindictiveness or facts that warrant appearance of such.

Evidence indicating realistic or reasonable likelihood of vindictiveness may give rise to presumption of vindictiveness on government's part.

For purposes of claim of prosecutorial vindictiveness, once presumption of vindictiveness has arisen, burden shifts to prosecution to show that independent reasons or intervening circumstances dispel appearance of vindictiveness and justify its decisions.

Mere filing of indictment can support charge of vindictive prosecution, although there must be proof of **improper prosecutorial motive** through objective evidence before presumption of vindictiveness attaches. U.S. v. Montoya, 45 F.3d 1286, certiorari denied 116 S.Ct. 67, 516 U.S. 814, 133 L.Ed.2d 29.

C.A.7 (Ind.) 1996. To be successful on claim of prosecutorial vindictiveness, defendant must affirmatively show through objective evidence that prosecutorial conduct at issue was motivated by some form of prosecutorial animus, such as a personal stake in outcome of case or attempt to seek self-vindication.

In certain, limited circumstances, defendant is entitled to presumption of prosecutorial vindictiveness.

Defendant claiming prosecutorial vindictiveness must come forward with evidence of prosecutorial animus, not mild inconvenience. U.S. v. Bullis, 77 F.3d 1553

C.A. 7 (Ind.) 1994 Prosecution is vindictive, in violation of Fifth Amendment due process clause, if it is undertaken in retaliation for exercise of legally protected statutory or constitutional right. U.S.C.A. Const.Amend. 5.

Evidentiary hearing is not required on claim of vindictive prosecution unless defendant establishes that: (1) prosecutor harbored genuine animus, and (2) absent such motive, defendant would not have been prosecuted; there must be sufficient evidence produced to raise reasonable doubt that government acted properly in seeking indictment. U.S.C.A. Const.Amend. 5 U.S. v. Cyprian, 23 F.3d 1189

C.A.10 (N.M.) 1997. In analyzing claim of prosecutorial vindictiveness, court must focus on whether, as a practical matter, there is realistic or reasonable likelihood of prosecutorial conduct that would not have occurred but for hostility or punitive animus toward defendant because he exercised his specific legal right.

To establish claim of prosecutorial vindictiveness, defendant must prove either (1) actual vindictiveness, or (2) reasonable likelihood of vindictiveness which then raises presumption of vindictiveness; if defendant can meet this burden, prosecution must justify its decision with legitimate, articulable, objective reasons. U.S. v. Carter, 130 F.3d 1432.

DISMISSAL

C.A. 2 (N.Y.) 2000. A prosecution brought with vindictive motive, penalizing those who choose to exercise constitutional rights, would be patently unconstitutional.

An indictment will be dismissed if there is a finding of "actual" vindictiveness, or if there is a presumption of vindictiveness that has not been rebutted by objective evidence justifying the prosecutor's action.

To establish a prosecution brought with vindictive motive, the defendant must prove objectively that the prosecutor's charging decision was a direct and unjustifiable penalty that resulted solely from the defendant's **exercise of a protected legal right**; put another way, the defendant must show that (1) the prosecutor harbored genuine animus toward the defendant, or was **prevailed upon to bring the charges by another with animus** such that the prosecutor could be considered a "*stalking horse*," and (2) the defendant would not have been prosecuted except for the animus. U.S. v. Sanders, 211 F.3d 711.

C.A.2 (N.Y.) 1999. Actual vindictiveness must play no part in a prosecutorial or sentencing decision and, since the fear of such vindictiveness may unconstitutionally deter a defendant's exercise of his rights, the appearance of vindictiveness must also be avoided.

An indictment will be dismissed if there is a finding of actual vindictiveness, or if there is a presumption of

vindictiveness that has not been rebutted by objective evidence justifying the prosecutor's action. U.S. v. Johnson, 171 F.3d 139.

S.D.N.Y. 1988. Where bringing of indictment is motivated solely by prosecutor's vindictiveness, it is subject to dismissal. U.S. v. Torres, 683 F.Supp. 56.

There is no shadow of doubt that numerous Jefferson County STATE Actors have a "vested interest in the outcome" of this case. There is no doubt that the COLORADO STATE ATTORNEY GENERAL'S OFFICE represents opposing interests in Federal Civil Rights cases and prosecutes case #00CR3371 without authorization from the Governor. The obvious conflict of interest cannot be ignored. The open and unconcealed pernicious and egregious prosecutorial vindictiveness in this instant matter justifies the severe sanction of dismissal with prejudice, *however*, the Defense does not want this case dismissed. The Defense believes that a trial by jury is necessary to fully exonerate the Accused and to set the record for further civil actions to recover damages to person, property, business and Family.

Therefore, the Defense petitions the Honorable Court to impose the immediate release of Accused on Personal Recognizance Bond as the appropriate sanction in this matter based upon the enclosed case law, standards of appellate procedure, facts presented, and in the interest of fundamental fairness and substantial justice.

Humbly submitted in good faith,

First Submission

Friday, December 28, 2001

Second Submission:

Friday, March 15, 2002

4-12-101. Form of oath.

Whenever any person is required to take an oath before he enters upon the discharge of any office, position, or business or on any other lawful occasion, it is lawful for any person employed to administer the oath to administer it in the following form: The person swearing, with his hand uplifted, shall swear "by the Everliving God".

Steve D. Gartin - Petitioner, Pro Se
P.O. Box 16700 7C-25-A
Golden, Colorado 80402

Attachments:

Exhibit #1: Gartin Grand Jury Transcript: Page 11

Exhibit #2: Un-Signed Warrants from #97M811

Exhibit #3: AFFIDAVIT IN SUPPORT OF WARRANTLESS ARREST

Exhibit #4: Insufficient charging documents

Exhibit #5: Dismissal for defective charging instrument

Exhibit #6: Olsen Administrative Procedure

Exhibit #7: Newspaper Clipping from California

Exhibit #8: California Federal Court Documents from Jefferson County, Colorado

CERTIFICATE OF SERVICE

This is a True Copy of **Petition for Personal Recognizance Bond as Sanction for Prosecutorial Vindictiveness to the 1st Judicial District for the STATE OF COLORADO Court VIA Jefferson County Jail Mail** addressed to:

The Honorable Leland Paul Anderson
STATE OF COLORADO—First Judicial District
Golden, Colorado 80401

Marleen M. Langfield, Esquire
Special Deputy COLORADO STATE ATTORNEY GENERAL
Special Deputy District Attorney
c/o David J. Thomas, Esquire
500 Jefferson County Parkway
Golden, Colorado 80401

END NOTES FROM GRAND JURY TRANSCRIPT

ⁱ Grand Jury Transcript: December 15, 2000 Page 121:

Point 372: Q. Now, Investigator, after his arrest did Steve Gartin send you any sorts of documents?

A. "Oh, yes."

Q. Many documents in the mail?

A. Many, and by fax and hand-delivery.

Point 373: Q. Do you recall getting a document that was entitled, **Petition for Redress of Grievance**. . .?"

Point 374: A. ". . .and they had **patriot language** in them. . ."

Point 375: A. ". . .we had wronged him, civilly and/or criminally, by doing an illegal search and illegal arrest."

Grand Jury Transcript: December 15, 2000 Page 122:

Point 376: Q. Now, did there come a time when Mr. Gartin hand-delivered a Petition for Redress of Grievance. . .?

A. "Yes, He hand-delivered that to me at the office, . . ."

Point 377: GRAND JURY EXHIBIT NO. 6

Q. And you had already received one of these in the mail; is that correct?

A. "Not this. This was a follow-up to either one or two previous documents. . ."

Grand Jury Transcript: December 15, 2000 Page 123:

Point 378: Q. Were you under any legal obligation to respond to his 100 questions?

"Not to a single one."

Point 379: Q. All right. And in what county is your office located, sir?

City and County of Denver, Colorado

Grand Jury Transcript: December 15, 2000 Page 124:

Point 380: Ms. Langfield: Okay. For the record, I have handed Grand Jurors copies to share so they can follow along of Exhibit 6, which is the **petition for redress of grievance**. . ."

Point 381: "Sure. Obviously, they were not in custody because they had shown up voluntarily at my office. . ."

Grand Jury Transcript: December 15, 2000 Page 125:

Point 382: ". . .the property he is referring to is the property that was seized pursuant to the search warrant on September 20."

Grand Jury Transcript: December 15, 2000 Page 126:

Point 383: A. "First I asked if he was going to be filing liens on myself or the other two alleged respondents, and he would not answer that. . ."

Point 384: ". . .if you do the right thing and return my property, no penalty clause will be invoked."

Grand Jury Transcript: December 15, 2000 Page 127:

Point 385: Q. And on what basis were you holding that property?

Point 386: Q. And in your position as a law enforcement agent, are you the one that makes a decision as to whether to hold property as evidence of contraband or return it to its owners?

Grand Jury Transcript: December 15, 2000 Page 128:

Point 387: Q. Are you still holding the property that Mr. Gartin was demand back?

Point 388: ". . .Agent Holstlaw, who has an ability to communicate on a different level with Mr. Gartin, was our go-between. . ."

Point 399: Q. All right. **So the property that you continue to hold is property that is either in your opinion evidence or contraband; is that correct?**

A. "Yes."

Grand Jury Transcript: December 15, 2000 Page 129:

*Point 400: ". . .he was basically attempting to influence my decision about what property to keep or to extort us through threat of economic harm. . ."

*Point 401: ". . .I have dealt with identical situations. . . people that have these kinds of beliefs."

Point 402: Q. Are you familiar with the criminal statute. . .?"

*Point 403: Q. Now, I believe you indicated that you had given Mr. Gartin a letter. . . that he should not be filing fraudulent or frivolous liens against you; is that correct, sir?"

Grand Jury Transcript: December 15, 2000 Page 130:

Point 404: ". . . It is a method that we have, through experience, decided to talk with people like this to give them every opportunity to warn them that what they are going to do, as far as maybe filing liens, is unlawful, even though we have no such obligation to do that."

Point 405: Q. No obligation to warn; is that correct?

Point 406: GRAND JURY EXHIBIT 7.

Point 407: Q. . . .has he continued to attempt to influence you to give back the property which you are holding legally, lawfully, and which you seized pursuant to the search warrant?

♣ A. Yes. . . . *indicated that we had defaulted on the petition and gave us an opportunity to cure. And then when we didn't respond to that, we got another one very recently indicating that we had in fact defaulted. And typically when they do these things, usually the next step, if they follow through with it, is to file liens. But I'm not aware that he's actually done that at this time.*

Grand Jury Transcript: December 15, 2000 Page 131:

Point 408: Q. But he would not be required to notify you if he had, would he? A. "No. I would have to determine that myself."

Point 409: Q. . . . question #47 says, "Do respondents admit they then proceeded to attempt to secure a warrant to search said private premises by applying to Jack Berryhill, Esquire, for a warrant WITHOUT an affidavit sworn before a judge or magistrate of competent jurisdiction?"

Point 410: A. ". . . if we fail to answer, the answer is however he wants it answered. . . we DID fail to obtain an affidavit when Judge Berryhill signed the warrants, which is not true.

Grand Jury Transcript: December 15, 2000 Page 132:

Point 411: Q. All of the answers on that purported document are just what he kind of hope, fantasized, and wished you would respond? A. "I believe so."

[The witness let the witness stand at 2:33PM]