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]

[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."

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.

In good faith,

Wednesday, November 23, 2005

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 70185
Albuquerque, NM 87197
720-404-1812

Certificate of Service

This is a True Copy of First Amendment Petition for Redress of Grievance *in the Nature of a Motion* to Dismiss for Vindictive Prosecution *mailed to the* 1st Judicial District for the STATE OF COLORADO Court *VIA* U.S. Mail addressed to:

Clerk of the Court
STATE OF COLORADO–First Judicial District
Division 8
Golden, Colorado 80401

Scott Storey, Esquire
500 Jefferson County Parkway
Golden, Colorado 80401

End Notes from Grand Jury Transcript

- 🕮 **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 #04CR2541 without authorization from the Governor, through a compliant District Attorney's Office.

- 🕮 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.

- 🕮 **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.

No one has ever before been charged with a felony for having an attorney file a Motion for Forgiveness and Petition to Seal. Gary Clyman was searching the files and certifying records four days before the 8 April, 2004 motions hearing. Gary Clyman, Donald Estep and Marleen M. Langfield, Esquire were working together in an attempt to violate my probation the very day it was legally served in full, after two prior failed attempts during the probationary period.

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[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.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 stake[44] 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.

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

[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.

success[37] before a jury is ipso facto "unreasonable[38]" 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 against[39] the Petitioner and defending[40] STATE actors in Federal Civil Rights Actions 97N1501, 97D1036, 97S1523, 01ES1145 and 95B1747 establishes a prima facie conflict of interest and a credible motive[41] for a vindictive prosecution.

Petitioner exercised[42] the constitutional right to sue[43] 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.

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[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.

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 cause[32];

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 him[34] 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.

A prosecution based entirely upon[35] an intentional and deliberate mis-construction and erroneous application of the statutes[36] creating a legal impossibility and having no remote chance of prosecutorial

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[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.

[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.

Connected Case 00CR3371 on same charge, same tortured application: Gary Clyman included this case in his affidavit ~ Prima Facie prosecutorial vindictiveness:

Grand Jury Exhibit #6: **Petition for Redress of Grievance** establishes Petitioner's exercise of the First Article[28] 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 liable[29] 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 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 "unreasonable[30] 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 lien[31] is defined as a "*spurious document*"

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[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.

[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.

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.

Investigator Gary Clyman testifies that he "arrested" an 80 year old innocent bystander, "at gun point" and his testimony further states that he interrogated that octogenarian, and obtained a mid-night rubber-stamp search warrant based upon that interrogation at gun-point.

Gary Clyman's animus is well documented in his testimony before the Grand Jury and included within this matter by reference as 00CR3371.

The record in this case documents two other malicious prosecutions which were dismissed, wherein the Colorado State Attorney General's Office was threatening Defense Witnesses with prosecution and making good on their threats. Both the threats and the actions are a matter of record within the Court Files of the cases included within the **Notice of Connected Cases**.

The obvious benefit to the Colorado State Attorney General's Office, the FIRST JUDICIAL DISTRICT, JEFFERSON COUNTY, ARAPAHOE COUNTY, DOUGLAS COUNTY, the FIRST JUDICIAL DISTRICT ATTORNEY'S OFFICE, JEFFERSON COUNTY SHERIFF'S OFFICE and other tortfeasors directly connected with the CourtHouse Enterprise, *Colorado Organized Crime Control Act, Colo. Rev. Stat. § 18-17-101 et seq.* of the STATE OF COLORADO. All of the Esquires who ply the legal profession are of an elite class, exceptionally well-paid for minimal effort. The entire Class is suspect of having a "stake" in any controversy between the exaulted class of Esquire and the poor commoner who stands up as pro-se. The courts' record in the many connected cases document the contempt with which the privileged class of Esquire holds the pro-se defendant or litigant. The Colorado State Attorney General's Office had the added incentive of being commissioned to defend the many government actors accused of criminal acts and abuse of public office. The conflict is obvious.

- 🕮 **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.

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.
The **Administrative Process**[24] constitutes an exhaustion of administrative remedies.
Only people arbitrarily classified as "patriots" are prosecuted for exercising their First Amendment right to petition the government for redress of grievance.
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**. . .?"
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. . ."

Gary Clyman testifies under oath that his receipt of a First Amendment Petition for Redress of Grievance preceded his investigation and prosecution. He has never received authorization from the Governor to prosecute as is required by law.

- 🕮 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 animus[27] toward defendant, or was prevailed upon to bring charges by another

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[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.

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

the Multi-Jurisdictional Domestic Terrorism Task Force to create[21] a 'crime' from the whole-cloth, by converting the lawful statutory right to file Mechanic's Liens[22] 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 Motions[23] into a financial instrument crime for purposes of conducting an unlawful retaliatory prosecution known first in legal fiction as COLORADO FIRST JUDICIAL DISTRICT Case #00CR2419–*Dismissed 30 April, 2001*. Then again as 00CR3371, 00CR3372 & 00CR3373. and now as #04CR2541.

Thousands of Motions are filed each year in Colorado.
Filing motions is a statutory right.
Defendant is the ONLY "person" ever prosecuted for having lawfully filed a Motion for Forgiveness.
Petitioner has been accused by Clyman & Estep of being a "patriot" and of being "heavily involved in the patriot movement."
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.
Petitioning the Government for Redress of Grievance is a constitutionally protected First Amendment Right.
Colorado State Attorney General instigated police action 8 days after First Secured Party registered the ALL CAPITAL LETTER version of his Christian Appellation. Persecution escalated after registering a First Amendment Petition for Redress of Grievance with Investigator Gary Clyman and has continued, unabated and unmitigated to this present matter.

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[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.

[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).

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 F2d 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 in 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 appearance[20] 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 # [i]]

"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

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[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.

This case provided the assured appearance by First Secured Party that would enable Estep/Clyman/Langfield/Miller/Massaro/Thomas/Hall & Holstlaw to consummate their evil intent to unlawfully incarcerate and prosecute First Secured Party for execising a constitutional right.

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.

- 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

6. On or about September 2002, Defendant Miller and Plaintiff entered into a verbal contract between the parties, the essence of which is that Plaintiff would provide computer services, computer education, database management, document management, legal research, office management, website development and legal support services to Defendant in return for 10% of the gross income of the legal practice known as Thomas C. "Doc" Miller, esquire d.b.a. Doc's Law.

7. Defendant Miller committed to codifying this contract in writing.

8. Defendant Miller failed, neglected or refused to commit this verbal contract to writing.

9. Plaintiff substantially performed on the conditions of the contract from September 2002 until March of 2004.

10. Defendant Miller grossed over $100,000 during this period.

11. Defendant Miller remunerated Plaintiff $2295.00 during this period.

12. Defendant Miller has failed, neglected or refused to pay Plaintiff approximately $7705.00.

13. Plaintiff hereby demands payment of $7705.00 forthwith, or in the alternative demands a trial by jury in order to subpoena Federal and State tax records and to issue interrogatives to determine the facts relating to the exact amount in which Defendant is in default and to establish the elements of willful and wanton, deliberate and fraudulent conduct of the Defendant.

14. Damages sought include:
    1. Direct Damages
    2. Compensatory damages according to proof;
    3. Punitive damages;
    4. Exemplary damages;
    5. Interest as allowed by law;
    6. Costs of suit; and
    7. Such other and further relief as this court may deem just and proper.

Wherefore, the Plaintiff, prays for judgment against the Defendant as shall be awarded by a jury for the Breach of Contract by the Defendant, and a sum certain judgment of $7800 should the Defendant default.

Respectfully submitted in good faith, **Friday, May 14, 2004**

_____

Steve Douglas Gartin – Pro-Se
720-404-1812

X: 7 June 2005

Boulder County Court Boulder County Justice Center P.O. Box 4249 1777 Sixth Street Boulder, Colorado 80306-4249	▲Court Use Only▲
Steve Douglas Gartin - Plaintiff v. Thomas C. Miller - Defendant	Case Number: _____ Division _____
Plaintiff, Pro se: Steve Douglas Gartin 2363 ½ South Decatur Street Denver, Colorado 80219	CourtRoom: _____

Amended Complaint for Breach of Contract

Comes now, Steve Gartin, the Plaintiff, pro se, and complains against the Defendant, Thomas Miller as follows:

1. Steve Douglas Gartin is a natural person and at all times pertinent herein is a resident of the State of Colorado and of Denver County.

2. Thomas Charles Miller is a natural person and at all times pertinent herein is a resident of the State of Colorado and Boulder County.

3. The amount in controversy is under $15,000 and the Defendant resides in Boulder County, therefore venue is proper in Boulder County Court.

4. Defendant is an attorney B.A.R. registration # 22652. Social Security number 522-74-3951
Aliases: Thomas C. Phillips, Doc Miller, Thomas Doc Miller, Tom Miller, Tom Doc Miller, Doc Phillips, Thomas C. Miller.

5. Plaintiff brings this complaint pursuant to the civil tort for Breach of Contract.

Brian Shaha, and whether or not Mr. Shaha had knowledge of the conclusion of this investigation, and of my involvement prior to the appointment of Walter Barrett.

The following statements made by Attorney, Thomas C. "DOC" Miller are false and misleading:

a. Mr. Miller had full knowledge of his client's whereabouts at all times up and until April 2, 2004. It was not several weeks, and even with this in mind, Mr. Gartin never did accept this investigator's offer to be relocated; he remained at his place of residence, but refused to answer his phone. Please refer to this investigator's report to suggest that Mr. Gartin relocate, not that he did.

b. Mr. Miller stated case numbers in this motion, 02CR3711, that were blatantly a false statement, he was never involved in these cases. This case was mentioned not once but 7 times through the course of Mr. Miller's Motion.

c. Mr. Miller has slandered myself, my company, and my ability to earn an income due to his flamboyant allegations without any documented proof to substantiate his allegations.

d. Mr. Miller stated that he had put in hundreds of hours and invoiced the ADC for a case that was already investigated and concluded 3 weeks after knowledge of possible charges. This investigator was retained through exchange of services with the defendant and myself, with full knowledge of Mr. Miller, even as far as Mr. Miller introducing myself as the investigator to the Lakewood Police Department as well as Joe Gilmore, yet the ADC was invoice for investigative services of Mr. Walter "Wally" Barrett for a substantial amount of money.

e. The case pertaining to the sealing of Mr. Gartin's document were denied due to Mr. Miller's inaccuracies in the proper statues in this matter. Mr. Miller's statutes pertained to the sealing of Investigator Gary Clyman's records, which was in fact denied since Mr. Clyman was not motioning this Honorable Court to seal his records.

Additionally, several of Mr. Miller's clients will confirm the fact that Mr. Gartin was working on their cases and that Mr. Miller charged them extra for his services, although he did not pay Mr. Gartin except for minimal computer consulting.

Wherefore, the Investigator, Frank A. Pugliese, submits his INVESTIGATOR'S RESPONSE TO MOTION TO WITHDRAW, to this Honorable Court for review and to contain in this case as evidence.

Respectfully submitted, **Friday, April 23, 2004**

_____

Frank A. Pugliese
P.O. Box 4772276
Aurora, Colorado 80047
303-306-1043

in the State of Arizona, and falsely state that I had traded this vehicle, just before Mr. Gartin's, travel. I refused and stated that I would not falsify document's for anyone. Attorney Miller was angry with me and hung up.

19. Mr. Gartin has had no convictions during his probation period. He has reported every police contact he has had. He completed his anger management and urine analysis. He did not file any law suits and he worked enough hours for Mr. Miller to pay his "restitution." This investigator would suggest that Mr. Miller be responsible for the restitution payment.

But, again, Mr. Miller refers to the wrong case. Mr. Miller throughout the probationary period has had Mr. Gartin perform Para-legal tasks, research, building a data base and to appear at every court case, client transportation to courts and babysitting Attorney Millers Clients. Attorney Miller use for his personal gain one and one half years of Mr. Gartin's time, which was spent working on other cases of often with unsolicited onlookers. Mr. Gartin was involved with virtually every case Attorney Miller was contracted for, all at Mr. Gartin's expense for travel and expenses as a professional paralegal and research assistant, all for no income by Mr. Miller and without employment of Mr. Gartin in Mr. Miller's cases, a violation of Colorado Labor Laws. Attorney Miller stated that the probationary $4000.00 was strictly a suggestion and did not have to be paid, therefore, Mr. Gartin was unable to secure gainful employment due to his employment from Attorney Miller in which to pay his restitution. This in itself should bring a question to the court as to the continual violations Mr. Miller has made pertaining to attorney/client privilege in all of his cases. Mr. Gartin has explained what he expected of Attorney Miller and Attorney Miller has stated in a written response that he was unable to assist Mr. Gartin's case in an expert manner, due to his slight diligence in reading case files, lack of knowledge of the pertinent laws, and to advance as Mr. Gartin had requested him to do.

20. Mr. Gartin was arrested at the Broomfield Jail after visiting one of your clients, Mr. Kevin Brown, on November 23, 2002. Mr. Brown has filed a grievance against Mr. Miller, alleging many of the same crimes, misdemeanors and breaches of professional conduct that I have observed in this case and others.

Mr. Miller told me that he would also get me appointed as Private Investigator on that case and requested that
I submit an invoice for the investigation I had performed.

This investigator appreciates Mr. Miller's kind words about my investigative skill, but 02CR3011 was not dismissed until 12 January, 2004. I was the investigator on this case, my investigation was completely concluded within three weeks. This investigator was introduced to the Lakewood Police Department by Mr. Miller as the investigator on the case. This investigator was also introduced by Mr. Miller to Joe Gilmore as the investigator. Mr. Miller in paragraph 10 of this motion calls me a "quasi-investigator," then complements me in paragraph 22. My investigation was through the retainment of Mr. Gartin, and recognized by Mr. Miller. If Mr. Miller did in fact have Mr. Barrett appointed on this case as well as Case number 00CR3371, after all investigations were completed, I believe his motives should be questioned as to the validity of Mr. Barrett's appointment and the possible unwitting involvement of Mr.

Mr. Miller has continually acted contrary to his client's strong demands and instructions not to employ Mr. Barrett, which is another failure of attorney/client obligation caution on the client's behalf and professional responsibility. It is to be strongly questioned as to Attorney Miller's refusal to advance his client's interests and failure to take the instruction of his clients demands. Mr. Miller has demonstrated that he believed that Mr. Gartin should work for him without pay, as he has demonstrated by Mr. Gartin's thousands of hours assisting Mr. Miller without compensation to offset his representation, as he has done to other client's, unknown to this Honorable Court and to the Alternative Defense Council.

14. It is my understanding that Mr. Miller has demanded that Mr. Gartin only contact him by phone or U.S. Postal service. Mr. Miller could not possibly respond to Mr. Gartin's time-sensitive issues. Mr. Miller has continually gone against his client's demands by employing Mr. Barrett, which is a violation of attorney client privilege. Mr. Miller's refusal to cooperate with his clients and his client's requests is questionable. Mr. Miller has demonstrated that he believed that Mr. Gartin should work for him without pay, as Mr. Gartin has spent thousands of hours assisting Mr. Miller without compensation.

15. Mr. Miller, throughout Mr. Gartin's probationary period, has had Mr. Gartin perform Para-legal tasks, research, the building of a data base and assistance at court cases other than his own. Ostensibly these services were performed for Mr. Miller in order to pay Mr. Miller for legal services that were already being paid through ADC. 1.5 years of Mr. Gartin's time were spent working on other cases of other individuals as a professional paralegal and research assistant, all for no compensation. This in itself should bring a question to the court as to the continual violations Mr. Miller has made pertaining to attorney client privilege in other cases. Mr. Gartin has explained what he expected of Mr. Miller, and Mr. Miller has stated in a written response that he was unable to assist Mr. Gartin's case in an expert manner due to his lack of knowledge of the specifics of Mr. Gartin's case, although Mr. Gartin had repeatedly asked Mr. Miller to read the necessary documents pertaining to his case.

16. I was present on April 8th when Mr. Miller suggested to Mr. Gartin that they begin preparing a 35c motion in order to address the constitutional violations Mr. Gartin has suffered and to bring it under the "ineffective assistance of counsel" due to the fact that Mr. Miller had recycled Mr. Gartin's case file rather than reading it.

17. In this Investigator's opinion, Mr. Gartin has fully completed his probation under the most dire circumstances and should have been released from probation, withdrawn his guilty plea and this matter should have been over as scheduled.

18. In reference to the traffic stop and charges against Mr. Gartin in the State of Arizona, he was in fact stopped and issued a summons, un announced to me, until Attorney Miller contacted this investigator to enquire as to the date I traded this automobile that Mr. Gartin was driving. I stated then as I am now, the trade was made on October 9, 2003. This vehicle was stored in a private storage area, taken in as forfeited collateral, untouched until Mr. Gartin retrieved it on or about November 10, 2003. Attorney Miller, Mr. Gartin's Counsel as was confessed to me, told this investigator he was going to defend Mr. Gartin's case pro-bono, as he had told others, and would I send a modified letter to the Court

this case. I had no written order by this court, or knowledge that a removal of my services was in fact ordered.

I have researched the case files pertaining to case number 00CR3711 and I found two cases, one in Denver District Court, pertaining to Aaron Brown, whose attorney was Seufert T. Marshal. This was a drug case that I admit to never working on, nor did Mr. Miller's name appear on any documents in this case. The next case was pertaining to another Drug case out of El Paso District Court concerning defendant Andrea Dawn Wood, whose attorney was the Public Defenders office; and in this case also I agree that I had no knowledge of it, nor did I see Mr. Miller's name on any documents.

11. My responsibilities were to my client and this Honorable Court. Prior to submitting my final report, Mr. Miller had no objection, nor did he inform me of any change in investigator status, he only requested a copy for his records. As evidence may not be accepted without prior knowledge of the opposing counsel, I simply sent a copy of my report in a timely fashion, for the protection of my client and his assurance of evidence in this matter. It was not until Mr. Miller examined my report, in which some of his actions, those of his confidant Wally Barrett and the State Attorney General's Officer were called into question, that he objected to my status as investigator and retaliated with slanderous remarks as to my investigative ability.

12. Mr. Miller is acting on impulse for the concerns I made in my report, just prior to the April 8, 2004, hearing. Mr. Miller contacted me to inform this investigator that what I wrote suggests a violation of attorney client privilege and that he would retaliate in any manner possible to see that charges were made against me for my statements and actions.

13. Mr. Gartin has refused to involve Mr. Barrett in his case, first, due to the fact that I am his investigator of choice. Mr. Miller has violated attorney client privilege in another case matter with his investigator Mr. Walter Barrett, where Mr. Miller introduced Mr. Barrett and myself as the investigators on this particular case. I enquired of my clients as to the retainment of Mr. Barrett, and they stated that they never heard of him nor had any knowledge of his involvement in their cases. My client's were concerned that their case could be in jeopardy due to the very poor physical and metal state displayed by Investigator Barrett. Mr. Barrett was unable to respond to the judge's simplest questions in a coherent and cogent manner, nor was he able to substantiate or document his involvement in this particular case. Mr. Barrett appeared with bloodshot eyes, dilated pupils and fully flushed red, which my clients as well as Mr. Miller's clients, were concerned about the conduct of their case, due to Mr. Miller's gross violation of attorney/client privilege to an investigator unknown to them, or hired by them and presenting in such a tatty condition.

Mr. Gartin had made numerous objections to the involvement of Walter "Wally" Barrett, yet Counsel, against the wishes of his client, allegedly appointed Mr. Barrett to a related case that endangered Mr. Gartin's probation agreement, to-wit: 02CR3011. Mr. Miller continued to work with this investigator until his involvement as Alternative Defense Counsel, at which time Mr. Miller introduced Mr. Barrett, too, after which Mr. Barrett was financially compensated by the Alternative Defense Counsel even after I had submitted an invoice for my services and it had been denied.

investigation I was going to conduct in the matter. This Investigator explained to Mr. Miller, that unless there was verbal, or physical contact between the two parties, there were no violations to investigate. Mr. Miller stated that for several weeks he had no knowledge of Mr. Gartin's whereabouts, nor a way to contact him, yet on April 1, 2004, Mr. Gartin contacted Mr. Miller by phone, and from his home, to notify him as to the appearance of Mr. Bonilla. I, the investigator, suggested to Mr. Gartin that he be placed in a safe house pending his hearing dated April 8, 2004, in an attempt not to violate his probation should Mr. Bonilla return. Due to this evidence, I have found Mr. Miller's representation of Mr. Gartin's case to be questionable.

8. To my knowledge, Mr. Miller's refusal to use email is a very recent development. Mr. Gartin procured a free email account for Mr. Miller, docslaw@justice.com shortly after release from jail. A short time later, Mr. Gartin purchased Mr. Miller's domain name, www.docslaw.com and set up an email, doc@docslaw.com for Mr. Miller and set up his phone lines and computer in order to facilitate electronic communications. Mr. Gartin did indeed copy in several people on his communications with Mr. Miller during the month of March 2004, his concern, from the contents of Mr. Gartin's e-mails, was that Mr. Miller refused to provide the Motion for Forgiveness and Petition to Seal and the opposing motions. The e-mails were entitled "Doc's Anger Management Issues" and did not reveal any sensitive material related to Mr. Gartin's case, or that in any way "undermines attorney/client" privilege per se. The fact that Mr. Miller refused to provide the information Mr. Gartin was requesting could be construed to be a breach of that relationship.

9. It has been this investigator's experience with Mr. Miller that his willingness to discuss client matters with outside interests proves a much greater threat to "security of information" than any risk that a hacker would breach the security of a server AND have an agenda that would compromise any attorney/client confidentiality. Particularly in Mr. Gartin's case, where Mr. Gartin, himself, is completely unconcerned with concealing any information and quite regularly posts legal filings and information to his personal website, www.stevegartin.com/endgame.htm and is quite open about all of his legal issues. Mr. Miller's argument does not explain why he refused to provide Mr. Gartin with the information he requested.

During the course of my investigation, I have spoke with five different individuals to whom Attorney Miller has disclosed confidential and privileged information as regards this instant case matter. For the protection of these individuals from Mr. Millers uncontrollable anger and impulse for retribution, I shall hold them in confidence for their well-founded fear of retaliation by Mr. Miller and his confidant Walter Barrett. I am prepared to provide evidence should the court order the submission of their names, I would further request that Mr. Miller and Mr. Barrett or any of their agents, not contact these individuals, due to the fact that they are in dire fear of retaliation by these two parties. Attorney Miller's fits of rage and anger towards his clients have yielded numerous threats to "throw them in jail" if they didn't pay him more money, as well as the demeaning profanity and personal slurs used during his relationship with these clients and their spouses.

10. This Honorable Court in itself appointed this investigator, not ADC, nor Mr. Miller. My responsibility was to my client, Mr. Gartin, and Mr. Miller ceased any assistance or contact with me in

2. This investigator recalls that event as stated.

3. This investigator agreed to remain on this case and "on-call" during the pendency of Mr. Gartin's probation, due to the unusual circumstances of his probation agreement concerning defendants in a related case being named as his probation officer and to whom his urine analysis and anger management reports were to be forwarded. The possible conflict of interest caused this investigator some concern from the beginning.

4. This investigator has researched the public record and has identified many cases that were dismissed against Mr. Gartin and would properly be sealed or expunged, this case 00CR3711 was not among them.

I have been a criminal investigator since 1982, and have continued to practice my profession until the present time. I have assisted numerous federal and local law enforcement agencies in the bringing to justice of criminal cases pertaining to extortion, homicide, and real-estate fraud over my 22 years of service. I have been a Professional Bail agent for 13 years, during which I had a 5 year break to continue my investigative services. I attended and was Certified as a Criminal Profiler by the Community College of Aurora, an accredited College. Mr. Miller has knowledge of this since he borrowed my investigative book on this subject and has refused to return it as requested.

5. This investigator noted the change of judges for this hearing as unusual. The fact that two defendants in many of Mr. Gartin's legal actions, Gary Clyman and Donald L. Estep, also appeared was noteworthy. The fact that the two defendants were obviously acquainted with Wally Barrett on a first name basis caused this investigator some concern.

Pertaining to Mr. Gartin's Motion For Forgiveness and to seal/expunge the records that I attended, was a pointless dramatic monologue by Mr. Miller which was both irrelevant and he had cited the wrong statutes. None of the cites had any pertinence to Mr. Gartin's sealing of records, he failed to support any authority to do so, when questioned by the Honorable Judge Munsinger.

6. The facts are as stated. Mr. Gartin retained me, through exchanging of services, in June of 2003, to investigate the possibility of Mr. Miller's, and Mr. Barrett's potential violation as to attorney client/privilege, and the possible involvement with the prosecution. Attorney Miller and Investigator Walter "Wally" Barrett were not privy to my investigation until my Final Report was filed to the Honorable Court; and the continuing association with the State Attorney Generals office as to cooperating in 'controlling his client,' that is to say Mr. Gartin, was revealed. My concerns are that while visiting Attorney Miller at his home in Boulder Colorado, he had stated he was attempting to gain employment with the State Attorney Generals office. This suggests a motive for his cooperation with the Attorney Generals Office.

7. Attorney Miller is mis-stating the facts. Mr. Gartin spoke with Attorney Miller about his case on or about April 1, 2004, pertaining to the surprise appearance of Mr. Carlos Bonilla in front of Mr. Gartin's home, at which time Mr. Miller contacted myself, THE INVESTIGATOR, to determine what

as unconscionable in my opinion.

Thank you for allowing me to assist in this investigation. Please rest assured that should my services be needed further, I shall honorably offer my services.

END OF REPORT
Frank A Pugliese, Chief Investigator and appointed investigator of this case.

VI: 23 November 2002

Arrest at Broomfield jail.

VII: 17 November, 2003

Arrest in Flagstaff, Arizona

VIII:4 March, 2004

Thomas Cecil "Doc" Miller, esquire informs me that he is "welshing" on our legal agreement.

IX: 8 April, 2004

The Debacle: Best explained by a filing from Private Investigator, Frank Pugliese:

First Judicial District Division 2 CourtRoom 5-A 100 Jefferson County Parkway Golden, Colorado 80401	▲Court Use Only▲
PEOPLE OF THE STATE OF COLORADO - Plaintiff v. STEVE DOUGLAS GARTIN - Defendant	Case Number: **00CR3371** Division 2 LPA
Friday, April 23, 2004	CourtRoom: 5A

Investigator's Response to Attorney's Motion to Withdraw

Comes now, the court appointed investigator, Frank Pugliese, (hereinafter known as "the Investigator") in response to A.D.C. counsel, Thomas C. Miller's allegations in his Motion to Withdraw in the above case. This response follows original numbered paragraphs as follows:

1. The investigator, Frank A. Pugliese, was appointed in this case matter by the Honorable Leland Anderson in January of 2000. The investigator continued to monitor the case at Bar during the Defendant's probationary period, as had Attorney Miller.

since I too am a martial artist. There has never been acorrelation between martial arts and violence, other than what we see on the television and in movies. Any martial artist is trained to conduct his self on a passive level and to never use what they have taken years to perfect, unless owing to the potential of loss of life or property, whichis sanctioned by the Statues of Colorado, and is, in fact, expectable.

Mr. Gartin has expressed his regret for ever swearing that he committed any wrong doing against the victims of this case, but did so to put to rest his incarceration that would have surely surpassed any sentence that this court would have imposed if he was in fact found guilty in a court of law. As this investigator did then and still contends, that Mr. Gartin was simply exercising his civil right to petition for redress of greivance, as any citizen has, if he felt wronged and the decision would have been left up to the civil court to decide not a criminal court.

Mr. Gartin has been accused of participation in militia groups against the United States, but yet there is no proof of such association. Mr. Gartin has been accused as being a violent man, and a enemy against any and all law enforcement, simply because he has a masters in martial arts, and he files civil suits against the judicial system he feels has wronged him. Mr. Gartin has had to avoid driving his automobile in fear of being stopped and having numerous police swarm on him as they would a person who commits homicide, simply because others believe he could be violent or possibly there is another motive to justify these actions, without any form of documentation to substantiate their accusations or the "jacket" he carries in police databases.

Mr. Gartin has in fact completed his anger management course, for what reason that was requiredI am not sure. He is, in my opinion, a non-violent man. He also successfully completeddrug and alcohol evaluations, although has never been charged with, or proven to be either of the two, nor has it ever appeared to me that such a problem exists. Why his attorney stipulated that Mr. Gartinbe constrained from filing legal actions against government servants who may have violated his rights is beyond the understanding of this investigator and was not a part of his probation agreement, but it was included in Mr. Barrett's report of his interview with State Attorney General Investigator Gary Clyman. Any payment of fines required of Mr. Gartin is beyond his ability and has been directly effected by his unfounded prosecution by Jefferson County District Attorneys Office and his unpaid professional service to his attorney and the high cost of traveling to Boulder and maintaining a vehicle to provide that service.

CLOSING

In twenty one years as an investigator in this great State, for prosecution and defense alike, I have yet to see such treatment of any individual. Mr. Gartin has more than lived up to his probationary obligations as prescribed by this Honorable Court and adminstrated by the very Defendants in his Federal Civil Rights action. It is in my opinion, that this once proud man has been perhaps, placed lower than any man I have met, all in the presumption of justice. Any sentence given to an individual is for the purpose of rehabilitation of crimes. Mr. Gartin's probation was to be unsupervised yet, anytime he may be stopped the agency was to notify Investigator Clyman. I have personally witnessed action by other agencies that, in my opinion, are simply in the form of harassment. Watched like prey, with the hunter just waiting for a moment to pounce on him. The charges in this case are now, and have always been, in question by this investigator. I do in fact believe that Mr. Steve Gartin has completed his probation if not more. It is the belief of this investigator, that Mr. Gartin should now be allowed to enter society and live a normal life as others with much more severe charges have been allowed too. I do respect our judicial system, and believe it is a just one, so long as it is used to help others and according to the laws of this state, no one is above the law. I do apologize for some of my statements in this report, but they are none-the-less my assessment of the facts that I see, as a professional criminal investigator. To continue such actions against this party could only be construed

prevented his ability to work and participate in a normal work environment, as others can, due to the negative comments on his police record and contact information. Mr. Gartin is a meticulous man, who by all standards would be an asset to any company. His first employment with the Naked Edge Cutlery chain as General Manager was cut short by what can only be considered a conspiracy of criminal agents within the company with law enforcement officials to maliciously charge Mr. Gartin with unfounded and patently false charges, which were dismissed due to my immediate investigation of the allegations charged against him. Regardless of the facts I immediately made available to the charging officer, Monique Gilstrap of the Lakewood Police Department, the prosecution of Mr. Gartin continued over a year and cost Mr. Gartin, not only the cost of bond, but also a lucritive position and ultimately the ability to work at all.

Mr. Gartin has devoted his time in the helping of others. I have seen on many occasions that this subject could have handled situations in a completely different manner, as others would, but chose to explain his beliefs in YahSheuah, which is his basic religious belief. Mr. Gartin is a passive man, and as far as I am able to assess, does not have a violent nature in the slightest. Rather just the opposite, he is almost passive to a fault, which seems to provide others with the opportunity to take advantage of his kind nature and willingness to work first and to be paid later.

Mr. Gartin has given attention to the producing and promoting of his Martial Arts Videos and DVDs. He has distributed just enough of his work to keep financially poor at best, but has never complained about his lack of funds, nor has he ever asked for assistance from acquaintances or government agencies as many in his situation would do to possibly live a better life.

I have conducted an extensive background on Mr. Gartin to possibly identify anycharacteristics that Mr. Gartin may have that could be construed as a violent man, yet I have found no such evidence to support any type of behavior. Mr. Gartin’s past reflects charges such as fear of faxing, for reportingchild abuse by Tamara Gartin's live-in boyfriend, Marcus Bernard Merrit, and a SWAT deployment stemming from a call to his children just to say hello, this in its self is a frivolous charge. Mr. Gartin has lost the ability to see his children due to such flamboyant and unfounded charges. Yet he shows only hurt for the parties that have made such claims, not retaliation. I have personally witnessed law enforcement waiting outside his home as a harassment to him to the point of being so bold as to say hello to him by name. His internet connection, has a continuous dialing on his server, every 30 minutes. Yet the number is undetectable and appears regardless of what computer or server he uses. His computers were under the control of your Investigator Gary Clyman and Donald L. Estep for a year and a half, one can only imagine what could have been programmed into them. Yet he holds his ground without retaliation.

Mr. Gartin spent approximately 1.5 years working with his counsel, Appointed Attorney, Thomas C. "Doc" Miller, to assist in paralegal assignments, research as well as setting up a data base, accounting programs, and internet communication and a website, so counsel's office and cases could run more efficient, all for little or no financial compensation and without complaint. Mr. Gartin had been unable to be gainfully employed during this time. Mr. Gartin has had to endure frivolous charges filed against him to attempt to violate the probation this court has ordered, without avail. This man has had to endure more than any other person, (outside of a sexual predator), while on his probation, that I have seen in my 21 years as a criminal investigator.

Mr. Gartin follows the code given by all Martial Artists, to harm none, unless he is in imminent danger of harm. Mr. Gartin has attended sparing matches sanctioned by the martial arts competitive society, and although the exhibition never transpired, it was none the less exciting to see the other diverse types of arts at this competition, Mr. Gartin was honored by the commission for his accomplishment and his contributing to this ancient art, I felt honored myself to have been invited,

Clyman, and Investigator Donald Estep, and has never had proof of the validity of such accusations in any other situations. What's more disturbing is the Deputy State Attorney, Marlene Langfield's willingness to allow such conduct by parties under her control.

On March 31, 2004 on or about the hour of, 06:30 p.m., Carlos Bonilla was looking around the Gartin neighborhood, walking around, talking on his cell phone, his car, a silver metallic Chrysler sedan, was parked outside the Gartin residence. Mr. Gartin did not approach, nor did he acknowledge his presence. This concerns me. I am concerned for Mr. Gartin's health and well being.It appears that the closer this case comes to a conclusion, the more events begin to arise that would surely violate Mr. Gartin's probation if he responded to them. I have suggested that Mr. Gartin be placed in a safe house of my choice, without knowledge to anyone except myself and Mr. Gartin. He will be in court to appear on April 8, 2004, for his hearing should he chose to except this offer.

FINAL REPORT

I have had the pleasure in being the appointed investigator of this particular case. It is, in fact, one that I shall remember.

The Defendant, **Steve D. Gartin,** a 55 year old male Caucasian, soft speaking and in good health, is the subject matter of this report.

Mr. Gartin, was placed on probation for a period of 2 years, in which time, I have had the honor to get to know this subject very well. Mr. Gartin is an honorable man, he cares for others as well as other's feelings and all nature in itself and all their needs. During the period of his probation Mr. Gartin has had to endure many obstacles that unfortunately were not of his doing. Mr. Gartin has continually attempted to gain employment but to no avail, his criminal record, as well as the captions have

Steve Gartin

Original Message From: Frank
To: steve@qartin.net
Cc: chasclements@comcast.net
Sent: Friday, April 02, 2004 12:57 AM Subject: Gartin Final Report.doc Final draft

A.F. Pugliese Investigations
P.O. Box 472276
Aurora, Colorado 80047-2276
303-306-1043 Fax 303-750-6304
www.afptrax.com

Date: Apri12, 2004
To: Jefferson County District Court - The Honorable Leland Anderson
From: Appointed Investigator, Frank Pugliese
REPORT
Subject: Steve Douglas Gartin
A.K.A.STEVE DOUGLAS GARTIN Case number: OOCR3371
APPOINTMENT

The Investigator, Frank A. Pugliese, a 21 year professional criminal investigator, was appointed to the Steve Gartin Case in January of 2001. Appointment was made until the completion of the above mentioned case. This is the final Investigation Report pertaining to said case as Mr. Gartiri s two year probation period concludes on 8 Apri12004.

INVESTIGATOR CONCERNS

During this investigation and during Mr. Gartin's probation, I have seen a man who, in my

opinion, has been harassed by law enforcement agencies for allegations that were unfounded, but none-the-less he was arrested and incarcerated for such offences only to find that all charges were dismissed and that all accusations were, in fact, false, frivolous and vexatious in nature.

An investigator, by the name of Walter (Wally) Barret was assigned to further investigate Mr. Gartin s case without authorization by this court and against Mr. Gartin's wishes. This type of behavior concerns me and in my opinion, is at the least questionable. In the report that was forwarded to me were appalling statements made by State Investigator Gary Clyman, in reference to Mr. Gartin’s appointed Counsel, Thomas C. "Doc" Miller's abilities to contain his client over the past 22 months of probation. A question arises in my mind as to the purpose of Mr. Clyman's statements, why such a statement was included in the report and the willingness of counsel and his privately chosen investigator to cooperate with the prosecution's investigator to keep Mr. Miller's client contained, over his probation, knowing that Mr. Gartin, is in fear of his safety from this very person and others associated with him.. Additionally, Mr. Clyman and Ms. Langfield are named as Defendants in Mr. Gartin's Federal case # 01-ES-1145. They both could be construed to be interested parties and hostile to Mr. Gartin and would have obvious iinterest in preventing Mr. Gartin from timely litigation against them and his successful completion of his two year probation, which co-incidentally also defines the statute of limitation in some legal actions.

Having a caption such as Mr. Gartin's on the NCIC/CBI record of an individual carries much the same effect as that of a sexual predator. Informing all law enforcement to be cautious of Mr. Gartin only opens him up to further harassment and unnecessary use of deadly force in the treatment of Mr. Gartin by law enforcement agencies. Such allegations have never been confirmed nor have they ever been demonstrated by the numerous times Mr. Gartin has been arrested at the request of Investigator Gary

18-8-306 Attempt to influence a public servant.
"Any **person** who " attempts to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or the agency or body of which he is a member, commits a class 4felony.

When Clyman returns my property, it will provide prima facie malice. There was nothing in those computers in the first place.

I realize that Marleen wants to re-define the statutes to fit the actus rea and she gets a little cranky when I nit-pick the verbage, but isn't that what "criminal justice" is all about? I need help arguing the unconstitutionality of the statutes. I'm getting the case law on as many cases as I can, but I still need some adult supervision when it comes to presentation. This case should be dismissed based upon the mis-application of the statutes. So... I would like to argue all that before the "plea" discussion.

Thanks again for all your fine, professional assistance and your personal attention and involvement. I do truly appreciate that fact that you are on my side. I understand the danger involved in continuing to trial in Jefferson County, but I also see so many errors in the institution and prosecution of this matter that it SHOULD be dismissed out of hand. I want to exhaust dismissal options before "pleading" guilty to a crime that I did not commit. Please help me to accomplish that goal.

Sincerely yours,

Monday, March 25, 2002

Steve Gartin
cc: Frank Pugliese

V: The Probation

construed together to give full effect to the legislative purpose of each statute. Subsequent Injury Fund v. Trevethan, 809 P.2d 1098 (Colo. App. 1991).

Another fundamental rule of construction is to give effect to every word on an enactment if possible. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

A well-established rule of statutory construction is that the entire statute is intended to be effective. People v. Phillips, 652 P.2d 575 (Colo. 1982); In re Estate of Hill, 713 P.2d 928 (Colo.App. 1985)

It is presumed that the general assembly has knowledge of the legal import of the words it uses and that it intends each part of the statute to be given effect. Longbottom v. State Bd. of Com. Colleges, 872 P.2d 1253 (Colo.App. 1993).

F~i-EFREBEt'm=HOH OF F[ERSOoHs; A fiction of the law, the effect of which is to put the representative in the place, degree, or right of the person represented.
El 2. The heir represents his ancestor. Bac. Abr. Heir and Ancestor, A. The devisee, his testator; the executor, his testator; the administrator, his intestate; the successor in corporations, his predecessor. And generally speaking they are entitled to the rights of the persons whom they represent, and bound to fulfill the duties and obligations, which were binding upon themin those characters.
Rl 3. Representation was unknown to the Romans, and was invented by the commentators and doctors of the civil law. Toull. Dr. Civ. Fr. liv. 3, t. 1, c. 3, n. 180. Vide Ayl. Pand. 397, Dall. Diet. mot Succession, art. 4, Sec. 2.

[Websters Collegiate 10th Edition] **Nom de guerre;** literally, **war name:** pseudonym. **Pseudonym:** bearing a false name. A fictitious name.

Name: A word or phrase that constitutes the distinctive designation of a person or thing.
Person: persona, actor's mask, *character in a play,* person, probably from Etruscan phersu mask, from Greek prosopa, plural of prosopon: face, mask.

Appellation: an identifying name or title

Indorsement: The act of a payee, drawee, accommodation indorser, or holder of a bill, note, check, or other negotiable instrument, in writing his name upon the back of the same, with or without further or qualifying words, whereby the property in the same is assigned and transferred to another. U.C.C. § 3-202 et seq.

Assign: To transfer, make over, or set over to another. To appoint, allot, select, or designate for a particular purpose, or duty. To point at, or point out, to set forth, or specify; to mark out or designate; to particularize, as to assign errors on a writ of error; to assign breaches of a covenant.

Assignment. The act of transferring to another all or part of one's property, interest, or rights. A transfer or making over to another of the whole of any any property, real or personal, in possession or in action, or of any estate or fight therein. It includes transfers of all kinds of property. (Higgins v. Monckton, 28 Cal.App.2d 723, 83 P.2d 516, 519), including negotiable instruments.

False and fraudulent: To amount to actionable "false and fraudulent representations", they must have been as to existing fact or known by one making them, from his superior knowledge, to have been untrue when made. Burlison v. Weis, Mo.App., 152 SM.2d 201,203.

C.R.S. § 2-4-101 - Common and technical usage. Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

C.P,S. § **2-4-201.** Intentions in the enactment of statutes. (1) In enacting a statute, it is presumed that:
(a) Compliance with the constitutions of the state of Colorado and the United
States is intended-,
(b) The entire statute is intended to be effective;
(c) A just and reasonable result is intended;
(d) A result feasible of execution is intended-,

Wilson v. Omaha Indian Tribe, 442 U.S. 653,667 (1979) (quoting United States v. Cooper Corp., 312 U.S. 600, 604 (1941)). See also United States v. Mine Workers, 330 U.S. 258, 275 (1947)

3 **Instrument:** A formal or legal document in writing, such as a contract, deed, will, bond, or lease. A writing that satisfies the requisites of negotiability prescribed by U.C.C. Article 3. A negotiable instrument (defined in U.C.C. §3-104), or a security (defined in U.C.C. §8-102) or any other writing which evidences a right to payment of money and not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorscment or assignment. U. C. C. § 9-105 M.

4 **Affecting:** evoking a strong emotional response
Affect: to produce an effect upon: as a: to produce a material influence upon or alteration in. 5 **Directly:** immediately after: AS SOON AS Directly *adverb* la: in a direct manner
2a: without delay: IMNMDIATELY

6 Offering: An issue of securities offered for sale to the public or private group. Securities offerings are generally of two types: primary (proceeds going to the company for some lawful purpose) and secondary (where the funds go to a person other than the company; i.e. selling stockholders).

False Instrument: A counterfeit; one made in the similitude of a genuine instrument and purporting on its face to be such.

(e) Public interest is favored over any private interest

General assembly did not intend statutory construction violative of due process.
The general assembly did not intend that the long-arm statute be construed to permit jurisdiction to be asserted where to do so would violate dur process of law. Le Manufacturer Francaise Des Pneurnatiques Michelin v. District Court, 620 P.2d 1040 (Colo. 1980).

Strained or forced constructions of statutes are disfavored. Martin v. Montezuma-Cortez School Dist. RE-1, 841 P.2d 237 (Colo. 1992)

If the language of a statute is plain, its meaning clear, and no absurdity results, courts may not adopt a strained interpretation. People v. Nara, 964 P.2d 578 (Colo.App. 1998).

Two statutes concerning same subject matter should be read together. People in Interest of M.K.A., 182 Colo. 172, 511 P.2d 477 (1973). Statutes addressing the same subject matter must, if possible, be

If Ms. Langfield is trying to dissuade me from continuing my attempts for redress of grievance and remedy for wrongs committed by her and her clients, we can accomplish that purpose by contractual agreement. I will agree to discontinue suit against herself and her clients in exchange for her discontinuing her criminal prosecution against me.

I do indeed have an open mind and I am willing to work out an agreement that will make Ms. Langfield comfortable that the controversy has come to an end, as long as that agreement makes me as comfortable that Donald L. Estep and Gary Clyman will cease their on-going persecution against me. And I use "persecution" intentionally in this regard!

Secondarily, I have indeed submitted the motion for Continuance, BUT, if we cannot reach an agreement, I would like to withdraw it. I am getting very weary of the battle and I think that two more months of gathering evidence will enable us to develop a defense that will be sufficient to sway at least ONE juror into a non-guilty plea. I believe that is possible. Between the overcrowding, 19 hour a day lock-down, lack of exercise, substandard food, poisoned water and air and psy0ps my mental condition is deteriorating; another six months and I would be unable to put up a fight.

I am concerned about the motions. The Court of Appeals number is 02CA0236. The issue is interlocutory appeal of pre-arraignment motions.

This prosecution is all wrong. Everything about it is wrong. I cannot conceive, in my wildest imagination this case standing on appeal. It might, simply because of the corruption of the system locally, but further up the chain, this case will ultimately win.

Please look at the definitions of the statutes involved.

D E F I N I T 10 N S

(1) A person [2] Commits offering a false instrument~ for recording in the first degree if, [4]
knowing that a written instrument relating to or affecting real or personal property or

[2] C.R.S. § 2-4-401: Definitions: (8) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.
At the very least, reading the statute in this way is not so clearly indicated that it provides reason to depart from the often-expressed understanding that "in common usage, the **term "person" does not include the sovereign, [and] statutes employing the [word] are ordinarily construed to exclude** it."

directly affecting contractual relationships contains a material false statement or material false information, and with intent to defraud, he presents or offers it to a public office or a public employee, with the knowledge or belief &t it will be registered, filed, or recorded or become a part of the records of that public office or public employee.
(2) Offering a false instrument for recording in the first degree is a class 5 felony.
(3) A person commits offering a false instrument for recording in the second degree if, knowing that a written instrument relating to or affecting real or personal property or directly affecting contractual relationships contains a material false statement or material false information, he presents or offers it to a public office or a public employee, with the knowledge or belief that it will be registered, filed, or recorded or become a part of the records of that public office or public employee.
(4) Offering a false instrument for recording in the second degree is a class 1 misdemeanor.

38. The Grand Jury was not provided instructions on all the charges.

39. The COLORADO STATE ATTORNEY GENERAL'S OFFICE did not have authorization to impanel the Grand Jury.

40. The COLORADO STATE ATTORNEY GENERALS OFFICE did not have authorization to investigate this matter.

41. The FEDERAL BUREAU OF INVESTIGATION declined to prosecute this matter based on the fact that there were not criminal charges that could be filed.

42. The Jefferson County Board of County Commissioners did not authorize the appointment of Marleen Langfield as "special prosecutor."

43. The case should be dismissed on Due Process violations alone.

So, in light of all the facts tending to mitigate the alleged offense, and the preponderance of evidence that we will be able to present to the jury, I think that we have a very good chance of winning an acquittal. If I understand correctly, it only takes ONE of the People of the Jury to kill a conviction. Doesn't a conviction have to be unanimous?

I understand that the chances of winning at motions hearing are remote. The judge seems to have no reservation about supporting the prosecution's position from the bench and aiding and abetting in any way he possibly can. I'm a bit surprised at that, but I understand the fact that they are all working together. I now have a case number at the Appeals Court for the interlocutory issues, how would it be best to proceed in that regard.

During the motions hearing on I April I would like to address all the motions to dismiss. On the hearing on the 5 th I would like to cover the subpoenas, limine, res gestae and other trial issues. At the end of all those issues, I would like to consider the plea agreement. That way, the issues for appeal would be set, just in case the plea agreement breaks down.

You will receive a copy of my letter to Ms. Langfield. I have defined my reservations and the reasons therefore. I have supplied both you and her with a counter-offer designed to allay my suspicions of Donald L. Estep and Gary Clyman. I do not believe that my fears are unfounded. I'm not sure that I can find it in my heart to agree with any disposition that does not fulfill that critical element.

In paragraph two of your letter you mention the rhetoric in my prior pleadings indicating cc a great deal of pent up anger." I'm sure you have read the Grand Jury Transcript of the Testimony of Gary Clyman. No doubt you have heard of the old adage, "What is good for the goose is good for the gander." This situation would seem an appropriate application.

You also mention that she is NOT requesting psychological evaluation. Judge Anderson already did! The professional prognosis of Ph.D Henry Tobey is a matter of record. If he had thought that I had "pent up anger," he would have included that in his official report. Gary Clyman and Ms. Langfield's opinions in that regard are not "professional" and are in fact jaded by the fact that they have been the subject of some very direct criminal and ethical accusations that they have no excuse or mitigation for. I do not agree with their non-professional "opinion" nor will I agree to such classes. The anger I have exhibited in my filings has always been preparatory to civil suit, you know that - she should.

26. In some of their interviews they admit that they studied with me, in others they deny that fact. In some testimony they deny that there was a contract to convert the slum at 38th into a Kendaggan, in others they admit that they submitted the proposal to their attorney. They have across the board denied that I did any work, actual manual labor, for them, but there are other witnesses that will testify to the contrary. 1 As Frank will discover, several contractors performed work for Carlos based upon my good word - and Carlos failed to pay them.

27. Willem de Thouars has reported to the F.B.I. that Carlos has come to his house; he will also testify to the business arrangements made and agreed upon wherein Willem would move his personal classes to 38th street.

28. When Frank interviews Paul Sukert {305 Sheridan) he will be more informed of the depths of the deceit that the Bonillas used to deal with virtually everyone in their sphere of influence. Paul was Carlos' right-hand-man, enforcer, confidant and best friend. Paul was one of the people who helped Carlos move into 1613 S. Quitman while I was living up on the Mining Claims.

29. Paul also came with Carlos to enlist my assistance in stopping his father-in-law, of whom he was terrified, from conducting drug deals in Paul's home during December 1999. Paul characterized them as "armed and dangerous," and he and Carlos were both afraid to confront him. Carlos agreed to pay me $10,000 for each and every time that coming to his rescue in such circumstances placed my life in danger. Chas and Paul will both confirm that agreement.

30. Criminal extortion is going nowhere. Hector is a liar and two witnesses besides myself were there and will testify that there was never any mention of a specific amount owed or any offer of settlement made. Once the FACT that they owed me money was established, the entire discussion revolved around passing the baton from Carlos to Hector and continuing with the business agreements made with the full knowledge of the entire Bonilla Family.

31. Criminal extortion has been declared unconstitutional by the Colorado State Supreme Court.

32. Computer crime statutes will have to be tortured to extremes in order to find even minimal application in this matter. Downloading the legislative intent behind the statute should be sufficient to quash that charge on motions hearing.

33. The concealed weapons statute has a built in exception that describes the statutory exception found in the police report of the "FELONY TRAFFIC STOP." Enough said.

34. Attempting to influence a public servant will be proven irrelevant when my computer equipment is returned to Frank. There is nothing incriminating in there, never has been; and they have held that equipment for a year and a half just to keep me out of business.

35. Four motions are pending relative to unconstitutional statutes. I just got Marleen's rebuttal of those, but Leland will have to help her out in order to win -I'm sure he will.

36. The Constitutional Right to a Speedy trial has been violated. The statutory right to speedy trial has been violated. 22 May invoked that statutory right.

37. The Grand Jury was inappropriately tainted with inflammatory rhetoric, conclusory allegations, unsupported strawman theories, vague accusations and undue prosecutorial manipulation. When they talk about my inflammatory rhetoric, they should be required to explain their own.

16. Frank could interview the "lady at the hair salon" on 41" and Federal and get the low-down on Carlos' drug-deal repo business that also went sour.

17. Carlos asked me, during our meeting after his arrest, if I would look into filing liens to protect his property from seizure by the government. I did not decide to proceed until Hector refused to return the keys I loaned him so that he could sterilize Carlos' apartment. He ducked and dodged and refused to meet with me for over five months before I gave notice that I would file liens if he did not respond. Hector, nor Carlos ever finished the work on Quitman or on 3e and neither place was in livable condition. I had paid rent for three years in advance in high-class proprietary collector knives and I had performed substantial professional services in behalf of the Bonilla Family that Hector made no effort to either acknowledge or pay for.

18. Several witnesses are privy to this entire chain of events.

19. There is then, no "motive" for the filing of "fraudulent liens." The "intent to defraud" element of the offense is overcome by the vast amount of work performed for Carlos in his capacity as 'Property Manager," and as performance on the contracts made to develop the businesses involving "Bonilla Services, Inc." which we now know is a fraud. His promise to pay me for services performed will be established by many witnesses, and I don't think he will even deny those facts under oath.

20. There is no way possible to "defraud a person" by using a mechanic's lien that expires 30 days after filing. It is not "negotiable" until it is perfected by the foreclosure process and then only by a very involved process. It does NOT DIRECTLY- affect anything, since a lien has to be perfected by judicial process before it is even enforceable, let alone negotiable.

21. A mechanic's lien could conceivably be used for a "harassment tactic," to encumber property for thirty days, if *there were any advantage to that,* but not as a method to defraud or to gain some valuable consideration - that is a legal impossibility.

22. Once the "intent" element is removed, 18-5-114 becomes a misdemeanor. Of course that is also scary, since such a conviction would mean "county time," and most people prefer prison to Jeffco jail. I still think that it is not impossible to prove that the LEGISLATIVE INTENT of that statute relates to "financial instruments" and not to liens. Why else, pray tell, would an entire chapter be written on Liens, *Chapter 38,* which is at the other end of the books from Financial Instruments, *Chapter 4,* or Fraud, *Chapter 18 section 5?* Would you please track down the legislative intent just to humor me? It is not available in the prison law library.

23. Even if the constitutional challenge fails and the jury returns a verdict of guilty, there is too much mitigating evidence to convict with the intent element. Even if the Prosecution convinces the jury that the disparate amounts on the liens evinces some sort of deception, it will be obvious that a great deal of performance on the contract defeats an element of intent to defraud. I See the footnotes)

24. Arabella's rental records will reflect the undeniable fact that most of her "renters7' were not paying rent "on the books." Even just her tax records would be very revealing. Carlos was NOT being paid by Bonilla Services, Inc.. From whence came his income?

25. In studying the police reports of interviews of the Bonillas, it is clearly obvious that it took them quite a while to arrive at the "story" their attorney prepared them for. I think that a jury would be at a loss to decide upon which lie they should believe. The Bonillas consistently contradicted themselves and each other from one report to the other.

7. Frank has a list of at least a half dozen other contractors who did work on the Bonilla properties as part of the master plan to upgrade all the properties.

8. 1 will also provide information concerning the Land Trust Program in which all the properties were intended to be placed. At least that was part of the agreement with Carlos and Hector. All the Bonillas admit that he was acting as "property manager" during the period of my relationship with them.

9. The police reports that I gave Frank on 3-20-2002 identify who the alleged "grow equipment" belongs to. I'm certain that investigation of those people will lead right back to Carlos.

10. Carlos was the only one living at 1613 S. Quitman during the period from March to October in 1999. Neighbors and the witness in #1 above as well as many others will testify to that fact.

11. 1 lived and worked on the Mining Claims from April through September of 1999. My motorcycle was stolen by some of Carlo's associates so that I could not leave the mountains. I also had responsibility for the wolf-dog of Carlos' and could not leave her tied up and could not leave her alone even if I could find transportation. I have numerous witnesses to those facts. I lived in my motorhome the whole summer that year and never saw the Quitman property from March until October.

12. Whether or not the prosecution wins its Res Gestae motion, it will be impossible for them to connect me to any "grow operation." I simply was not involved. I was living alone in the mountains without transportation and have neighbors to establish that fact, as well as Hector Bonilla, Carlos Bonilla, Paul Sukert and Lee Leweke who brought me supplies from time to time.

13. Neighbors will establish the fact that Carlos was the only person living at Quitman that summer and he had access to the entire house. If anything was happening in the basement there, Carlos had his hand in it. Frank will be able to establish that fact without problem. The other people involved seem implicated by the police reports I gave Frank on Wednesday.

14. When the truth comes out, it will be quite evident that my "falling out" with Carlos was as the result of his breech of the primary underlying agreement between he and I that he would NEVER bring any drugs into the house where I was living; to-wit: 38th Street. Even though I had a separate apartment with its own lock, my apartment was trashed and searched and if I would have been there at the time, my life would have been in danger. That was the extent of my failing out with Carlos.

15. If we cared to, we could expose who the grow equipment belongs to. Frank could uncover the information as part of his investigation without me saying a word. As always, the threads lead back to Carlos.

IV: The "Deal"

To Attorney Miller, from Jefferson County Jail
Thomas C. Miller, *Esquire*
Counselor at Law
1850 Lincoln Place
Boulder, Colorado 80033

Dear Mr. Miller,

Thank you for your very informative letter dated March 18, 2002.1 very much appreciate your fine services in my behalf and the extra effort you have extended under the duress of time constraints. I suspect that few attorneys would have put forth so much effort without first receiving a retainer. I am also aware that you have accepted remuneration at a rate far below what you are accustomed to. Your service to date has been exemplary, thank you.

Let's take a moment to discuss your visit with Marleen M. Langfield, the prosecutor in the matter at issue. I understand the "split plea' that you outlined was her suggestion and I hope that she is indeed "open for suggestion" because that offer is not quite acceptable. A misdemeanor "guilty plea" is not out of reason, but the felony is for several reasons. Please allow me to enumerate some of them.

I . As Frank has probably told you, more defense witnesses have come forward that establish the fact that Arabella was knowingly and actively complicit in every aspect of the contracts and plans that I have enumerated. More witnesses will be forthcoming.

2, Witnesses will also establish the fact that Arabella has severe mental disabilities that adversely effect everyone around her. As you know, she lied to the Grand Jury. She will undoubtedly break under cross-examination.

3. Carlos has been convicted of felony perjury. He will undoubtedly lie again.

4. Chas and Eric have had their "criminal extortion" cases dismissed. Cynthia Sheehan and Wil Smith will surely tell you why and how. There will be some valuable information to be gleaned from those two attorneys.

5. 1 will introduce Frank Pugliese to the man who paid Carlos $10,000 cash for the rental of the basement on Quitman. I am relatively certain he will testify. I don't believe the work to make the basement livable was ever completed. It was certainly not completed in October, when I arrived back from the mountains. I never heard what happened to that end of the contract, but I can provide Frank with the contacts necessary to track down the facts.

6. Arabella stated to police investigators that I only lived at S. Quitman from November 1999 to January 2000. No "grow operation" was in the basement during that period.

Following a difficult criminal justice experience, all charges in 02 CR 3011 were dismissed by this Honorable Court on January 12, 2004, upon motion of the District Attorney's Office of Jefferson County.

On November 16, 2003, Mr. Gartin and two of his martial arts students were returning from a martial arts training seminar in Los Angeles, California.

Mr. Gartin's vehicle was stopped, ostensibly for a cracked windshield, near Flagstaff, Arizona by police officials.

After presenting his driver's license, Mr. Gartin's automobile was surrounded and all three occupants were confronted by police officers with drawn guns.

All three occupants of Mr. Gartin' automobile were then handcuffed, intimidated, and physically punished and threatened.

Further, these police officers insulted Mr. Gartin and his traveling companions with such derogatory statements as, "only a fool brings a knife to a gun fight."

FORGIVNESS

On March 22, 2003, Mr. Gartin mailed a letter of apology to Colorado Attorney General Office's Special Prosecutor, Marlene Langfieled for any inflammatory rhetoric of his in pleadings related to 00 CR 3371.
In that same letter, Mr. Gartin advised of his ongoing trepidation related to the investigation of AG Investigator Clyman and others. (The letter of March 22, 2003 is attached hereto and incorporated herein as Exhibit C).
Mr. Gartin and AG Investigator Clyman have a long and well-documented history resulting from the investigation and prosecution of Mr. Gartin in 00 CR 3371.
This history includes S.W.A.T. team arrests of Mr. Gartin in residential neighborhoods, at martial arts schools with children present, and on the national interstate highway system.
Mr. Gartin's life, and the lives of numerous innocent persons, has been put at risk as they were thrown to the ground, handcuffed, and had numerous firearms, including automatic weapons, pointed to their heads.
Mr. Gartin has also named AG Investigator Clyman, and Special Prosecutor of the Colorado Attorney General Office's Marlene Langfield in numerous legal filings contesting their conduct as unconstitutional and illegal in 00CR2419 and 00 CR 3371.
Mr. Gartin has named AG Investigator Clyman in a notice of intent to sue for his involvement in the S.W.A.T. team arrest identified in Mr. Clyman's Grand Jury Testimony.
Mr. Gartin has been menaced and threatened at every police encounter once he identifies himself and police officials search NCIC or CCIC data bases.
Mr. Gartin has been charged with serious crimes, based upon evidence found insufficient by the Jefferson County District Attorney's Office following a Lakewood Police Detective's (Monique Gilstrap) conversation with AG Investigator Clyman.

End 7 March, 2004 version of Motion for Forgiveness and Petition to Seal

Several of Attorney Miller's statements were not completely accurate, but he broke off internet contact at that time and no further refinements, nor the final file version were provided. Attorney Miller set the entire voluminous case file out on the curb for recycling mere days after the 8 April, 2002 hearing on the Fraudulent Plea Agreement. All pertinent records would have been immediately available to Attorney Miller if he had operated his legal business in accord with the professional rules.

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.

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.

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 message[17] that Petitioner should "drop the ProSe status[18], 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 'filed[19] 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.

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.

On November 23, 2002, Mr. Gartin was arrested, handcuffed, and jailed related to 02 CR 3011on charges of Theft on Count I, First Degree Aggravated Motor Vehicle Theft on Count II, and Theft of Trade Secrets on Count III.

Investigating Officer Monique Gilstrap in 02 CR 3011 issued the Affidavit for Warrantless Arrest on November 11, 2002, after researching the National Crime Information Computer (NCIC) and the Colorado Crime Information Computer (CCIC).

The information provided in the NCIC and CCIC data bases states, "Approach with caution. Subject is a martial arts expert and is known to carry multiple knives concealed on his person. If contacted notify the Colorado Attorney General's Office Special Prosecutions Unit at 303.866.5622 or Inv. Clyman at 303.806.7479" (the Jacket).

Based upon the information in those data bases, Officer Gilstrap contacted investigator, AG Investigator Clyman in regard to 02 CR 3011.

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[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.

[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.

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, Esquire[13] to commence a patently retaliatory prosecution based upon a tortured mis-application of statutes and the invidious discriminatory animus[14] that the Petitioner is a "Patriot."[15]

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]

FEDERAL BUREAU OF INVESTIGATION Agents were deployed by Donald L. Estep who conspired with Federal Magistrate[16] 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]

On 20 March, 2000 the U.S. Attorney dismissed the unsupported, un-provable Federal Charges.

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.

Petitioner did **not** waive extradition.

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[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 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.

Nieto and others relating to deprivation of the right to access the courts, unlawful imprisonment and the constitutionally impermissible prison conditions.
COLORADO STATE ATTORNEY GENERAL'S OFFICE represents[9] the STATE Defendants in the above Federal Civil Rights Actions.

Case #97M812 was dismissed for insufficient charging instrument by Judge Tina Olsen on 2 October, 1997 for insufficiency of charging instrument. [See **Exhibit #5**]

Case #97M811 went to jury trial although fatally flawed charging instrument was never corrected and speedy trial had expired.

Case #97M811 was void ab initio for failure of the charging instrument to invoke jurisdiction.

Despite fatal flaws, Petitioner was found "guilty" at a jury trial[10] 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.

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 correct[11] 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.

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]

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[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.

[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. Paguio, 114 F.3d 928, appeal after remand 168 F.3d 503.

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.

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.

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.

Petitioner filed Federal Civil Rights[3] Case #97-N-1501 naming Judge Charles T. Hoppin, Golden Police Department, Jefferson County Sheriff[4] and others.

Judge Charles T. Hoppin recused himself. Cases 97M811 & 97M812 were transferred to Judge Tina Louise Olsen.

Petitioner filed Federal Civil Rights[5] 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 OFFICE[6] and C.S.A.G. agent **Maurice Knaizer** among others.

Petitioner filed Federal Civil Rights[7] Case #97-S-1523 naming the Jefferson County Detention Facility Staff, Sheriff Ronald Beckham, Donald L. Estep[8], Terry Manwaring Judge William DuMoulin, Chief Judge Henry

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[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. Paguio, 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.Ill. 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" exercise of his constitutional rights, and that prosecutor's conduct was unreasonable. U.S. v. Wells, 211 F.3d 988, 2000 Fed.App. 161P.

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].

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.

Both unsigned and invalid warrants were from **recused** Judge Charles T. Hoppin's[1] court. [See **Exhibit #2**: UnSigned Warrants.]

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]

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]

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 groundless[2] on 10 December, 2001 by the Arapahoe County District Attorney.

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.

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.

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.

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[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.

[C.R.S. 24-12-101. 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".]

First Secured Party has denied and squarely Challenged Jurisdiction at each and every Special Appearance under threat, duress and coercion and continues to protest the court's unjustified seizure of jurisdiction sans appellate record and without due process of law or adherence to constitutional or statutory mandates.

> Where jurisdiction is denied and squarely challenged, jurisdiction cannot be assumed to exist "sub silentio" but must be proven. Hagans v. Laving, 415 U.S. 528, 533, n. 5; Monell v. N.Y., 436 U.S. 633. Mere "good faith" assertions of power and authority (jurisdiction) have been abolished. Owen v. Indiana, 445 U.S. 622; Butz v. Economou, 438 U.S. 478; Bivens v. 6 unknown agents, 403 U.S. 388.

Special Appearance

First Secured Party has never knowingly, deliberately nor intentionally joindered with this Court of Un-Disclosed Jurisdiction. Any and all interaction with the First Colorado STATE Judicial District, Inc. has been under threat, duress and coercion. At no time has either the "Defendant" nor its First Secured Party volunteered into or in any manner contracted with the First Judical District, Inc. to adjudicate any aspect of the matter known in un-disclosed legal fiction as 04CR2541.

First Secured Party hereby in the interests of justice and full disclosure 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:

First Secured Party 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.

> C.R.S. §20-1-102 Note 8. Attorney general
>
> Absent command from governor or general assembly, Attorney General was not authorized to prosecute criminal actions. People ex rel. Tooley v. District Court In and For Second Judicial District, 1976, 549 P.2d 774, 190 Colo. 486.

Contained herein is the latest version of the Motion for Forgiveness and Petition to Seal that First Secured Party received from Thomas Cecil "Doc" Miller, Esquire on 7 March, 2004.

Facts as presented by Thomas Cecil "Doc" Miller, Esquire in a March 7 version of MOFPS:

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]

First Judicial District Division 8 CourtRoom 520 Hall of Justice 100 Jefferson County Parkway Golden, Colorado 80401	▲Court Use Only▲
PEOPLE OF THE STATE OF COLORADO - Plaintiff v. STEVE DOUGLAS GARTIN - Defendant	Case Number: **04CR2541** Division 8
First Secured Party for the "Defendant" in Propria Persona: Steve Douglas Gartin P.O. Box 70185 Albuquerque, NM 87197 email: sheriffsteve@justice.com	CourtRoom: 520

First Amendment Petition for Redress of Grievance *in the Nature of a Motion* to Dismiss for Vindictive Prosecution

Standing:

Steve Douglas Gartin, is *First Secured Party for the above captioned* "Defendant" deliberately and consistently spelled in all capital letters presumably to denote a Transmitting Utility pursuant to U.C.C. Security Agreement #SDG0911200-SA or a strawman "corporate person," in Admiralty/Maritime Prize and Booty courts and is *designated in this secret and undisclosed lawform as* STEVEN DOUGLAS GARTIN.

Secured Party's priority interest is legally established as first-in-line and first-in-time and remains unrefuted by official record: U.C.C. # SDG9112000-SA on file with the Colorado Secretary of STATE.

First Secured Party appears, Non-voluntarily, by Special Visit in propria persona by the Doctrine of Necessity; under credible threat of assault and incarceration by heavily armed Police, under duress induced by numerous forcible imprisonments based upon an unbroken chain of groundless and frivolous charges, *including this instant matter*, and coercion compelled by threat of economic damages and forcible imprisonment or death by Police due to the slanderous entry in the NCIC/CCIC database recorded by the Colorado State Attorney General's Office Investigator Gary Clyman.

Jurisdiction:

First Secured Party is C*hild of* י ה ו ה (YHVH-the EverLiving God), a sovereign Inhabitant of the California Republic, currently sojourning in New Mexico and claims all Rights secured by the 1849 California Constitution, the New Mexico Constitution, the Treaty of Hildago, the Colorado Constitution, as well as the Original Jurisdiction Constitution for the united States of America, the Supreme Law of the Hebrew People, the Torah of י ה ו ה ,and the Common Law and hereby provides Notice of Foreign Law in good faith accordance with your colorable codes.