

**IN THE HINGHAM (SECOND) DISTRICT COURT OF THE COUNTY OF
PLYMOUTH IN THE COMMONWEALTH OF MASSACHUSETTS**

Commonwealth of Massachusetts,)	No. 0558CR000954
Plaintiff,)	
)	
v.)	MOTION FOR MISTRIAL
)	AND IMMEDIATE RELEASE
Jeffrey L. Clemens,)	re Jury Trial on September 18, 2008
Defendant.)	(for Disorderly Conduct)
)	
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The Defendant hereby motions the court to declare the September 18, 2008 jury trial a mistrial, on the following grounds:

- 1) Denied right to defense counsel
- 2) Judicial prejudicing of the jury
- 3) Cumulative errors amounting to manifest injustice (extreme prejudice)
- 4) Insufficient Probable Cause for the charge of Disorderly Conduct

1) Denied right to defense counsel

Upon the second dismissal of court-assigned defense counsel, Mr. Greenspan, on September 18, due to counsel’s refusal to prepare for trial – including the refusal to subpoena material witnesses (including the originating 911 caller), the failure to transcribe relevant 911 tapes, and failure to challenge the probable cause of the charge (similar rationale for the withdrawal of the previous counsel, Ms. McDonnough) – the Defendant requested assignment of new counsel. The trial judge merely ordered the

recently withdrawn counsel as “stand-by” counsel and proceeded to hold a trial. The trial proceeded WITHOUT a signed Waiver of Counsel on the part of the Defendant.

It is ludicrous to have a stand-by counsel be the same counsel that was dismissed as having been inadequate for the Defendant already. As well, the record clearly shows that the Defendant asked for new counsel. At one point before the start of trial (and after the not-as-yet-dismissed defense counsel had said to the trial judge that they were “ready”), the Defendant had requested, at the microphone, permission to speak, but was ignored, while the jury was subsequently brought in for the start of the trial.

2) Judicial prejudicing of the jury

The Defendant found the behavior of the trial judge to be unusual, as the judge repeatedly scolded the Defendant in front of the jury without cause, reason, or prompting – highly prejudicial on the face, considering that the Defendant is charged with Disorderly Conduct to a police officer.

During the less than ½ hour jury selection, the trial judge implored the Defendant to **“Don’t look at the jury that way”**, then ordering the Defendant to look at him. It was the Bailiff, as stated by the Defendant at the time, who had asked him to look at the jury.

Just before the start of the trial, when the Defendant’s brother was politely asked to not have his coffee in the courtroom (of which he then promptly took outside), the Defendant noticed the judge sneer at the jury and said to the trial judge, “He’s my brother”. At that point, the trial judge expressed disgust and scolded the Defendant, then asked the Bailiff to remove the jury. Later, upon the Defendant’s brother returning from taking the coffee outside the courtroom, the trial judge made a statement to the Defendant in front of the just returned jury, **“You pointed your finger at me, twice.” “I’m giving you final warning, that if there is one more outburst, I will find you in contempt of court.”** The trial judge then ordered the Defendant’s brother out of the courtroom for writing notes on a notepad. There was a subsequent discussion among Attorney Greenspan,

Judge Moynahan, DA Linehan, and Defendant Clemens, where note taking was ordered not to be allowed.

The Trial Judge's actions against the Defendant implied a combative, disruptive, and disorderly person, which is prejudicial against the Defendant, especially one who is accused, charged, and on trial – with a presumption of innocence – for Disorderly Conduct.

3) Cumulative errors amounting to manifest injustice (extreme prejudice)

During testimony and cross-examination, an inordinate amount of questions required of the Defendant to answer, despite objections from his stand-by counsel, involved irrelevant civil litigation (years in the making and complex). The Defendant was forced to go into detail about unrelated (to the Disorderly Conduct charge) civil litigation matters, even forced to disclose the name of Anthony Pellicano, who was recently convicted of wiretapping, including for clients who were civil defendants (in California) of Mr. Clemens herein.

As well, relevant questions by the Defendant of the reporting officer were restricted, particularly when the Defendant was asking about the actual arrest and booking, particularly since the officer's testimony conflicted with the subsequent testimony of the Defendant, as the timing of events surrounding the Disorderly Conduct charge was in serious question.

The irrelevant inclusions and relevant exclusions, introduced despite objections, are both very prejudicial against the Defendant. The Defendant speculates whether or not there was a concerted effort to prejudice the jury, as **the irrelevant information introduced at trial leaves a lot for speculation about the Defendant**. Is he litigious? Troubled? Is he out just for the money [a theory actually introduced by the DA in the trial]? Mostly, the civil litigation related to a previous false "citizen" arrest for trespassing, of which the

Defendant was literally exonerated, with a trial being called off “in furtherance of justice”, in Beverly Hills (or “Hollywood”) in 1997.

The Defendant saw the Assistant DA (acting as prosecutor) with a copy of his arrest (criminal) history during the trial. On that history is an arrest and charge for Trespassing in 1997. The DA continued to hound the Defendant herein with questions about “why” he was sitting at a driveway near the 911 caller’s residence, despite objections, as if he were surveillancing the residence – there were facts to suggest otherwise, but the judge allowed REPEATED “why” questions about sitting in a driveway not in view of the residence. The allowed repeated questioning is prejudicial, as the questioning implied a deeper sinister reason for an otherwise lawful and respectful use of his US Constitutional right to exist.

4) Insufficient Probable Cause for the charge of Disorderly Conduct

Despite repeated urgings to his defense counsel, the probable cause of the Disorderly Conduct charge was not challenged, such as by a motion. But, counsel had motioned for dismissal of a related charge – Unlicensed Private Investigator – but the motion was still open at the start of the trial. The “PI” probable cause is tied directly to the probable cause in the Disorderly Conduct charge, as the Arrest Report (which formed the basis for the Disorderly Conduct charge) contained information related to a potential Unlicensed Private Investigator charge. This Defendant had an understanding that the open matter was to be addressed BEFORE start of the trial, as September 18 was merely the scheduled trial date, but with open legal questions previously continued.

Another charge – Criminal Harassment (again originating from the same incident as the Disorderly Conduct charge) – remained open and untracked. The legality of all three charges were not addressed prior to the start of the September 18 trial, solely due to the omissions and/or failings of the Defendant’s dismissed two successive court-appointed defense attorneys. Thus, the conduct of the trial was prejudiced by that lack of legality for the charge.

Summary

If a trial like the one held on September 18, 2008 were to be acknowledged as a valid trial, then a prejudice-free trial would not even be a recognizable concept anymore, the goal of which would be the stuff of myth and legend. Due process, effective defense counsel, and protection against those bearing false witness are just many of the rights protected by the US Constitution. Are these rights protected in this District Court?

A review of this District Court's Mission Statement is in order:

*“As the gateway to justice in the Commonwealth of Massachusetts, the District Court is dedicated to the administration of justice in a fair, impartial and timely manner in accordance with the rule of law. In fulfilling this role, **the District Court shall provide the communities it serves with an environment that is safe, accessible and respectful to all** [emphasis added]. The District Court shall conduct its business with integrity, competence and a commitment to excellence in order to promote public trust and confidence in the judicial system.”*

Relief Sought

The Defendant kindly asks the court to recognize that the trial proceeded, with the Defendant *Pro Se*, without a signed Waiver of Counsel by the Defendant. In addition, the Defendant kindly asks the court to recognize the extreme prejudice exhibited in the September 18, 2008 trial, and forthwith declare it a mistrial. A mistrial will not prejudice the Commonwealth's case against the Defendant.

DATED this _____ day of September, 2008

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Certificate of Service

I declare, under the penalty of perjury under the laws of the State of Ohio and the Commonwealth of Massachusetts, that I served a copy of this Motion for Mistrial upon:

Assistant District Attorney Linehan
District Attorney Office
Hingham District Court
28 George Washington Blvd
Hingham, MA 02043

via Overnight Express (US Postal Service) and by FAX to (781) 749-9601, on September 24, 2008.

Jonathan A. Clemens
(in Huron, OH)