AFFIDAVIT in Support of
PETITION for the Immediate Release from Pre-Trial Detention

Of Jeffrey L. Clemens in US v. Clemens
(USDC #1:2010-mj-01016 and #1:2010-cr-10124)

TO: Magistrate Judge Judith G. Dein
US District Court - Boston
Via Clerk Thomas Quinn
February 6, 2011

The current pre-trial detention of Jeffrey L. Clemens in the reference case is inappropriate, on numerous grounds, as outlined in the PETITION dated February 5, 2011.

This AFFIDAVIT in Support of the PETITION will illustrate the prejudice built up and used against Jeffrey L. Clemens, particularly highlighting the past 5 plus years of intertwined federal and state charges and prosecutions. We will find that the latest state charges, which were brought from the Town of Scituate, Massachusetts in 2005, originated from a shameful abuse and misinterpretation of the official criminal history of Jeffrey L. Clemens, as evidenced in Radio Logs. The Town's handoff to the federal authorities came in the form of multiple transmissions of the related unopposed, prejudicing police report to federal agents BEFORE Jeffrey ever encountered federal detention. The so-called O'Hara Report was to circulate and come up at federal detention hearings for years afterward, all before Mr. Clemens could oppose it in a state trial on September 18, 2008.

The key to prejudice is never allowing the police and prosecutor charges to be challenged in open court during fair trials.

The use of lengthy pre-trial detention and essentially compelled plea bargains do a lot to keep trials from happening. If the prosecution cannot keep a fair trial from happening, they make sure that an unfair one occurs, as AUSA David Tobin's former associates did at the Plymouth County DA office in August and September 2008. Those associates knew that the cumulative lies and deceit imbedded in the criminal history of Jeffrey L. Clemens were to come to bear in the state proceedings, so they separated the three charges stemming from the same incident (assuring that collaborative witnesses NOT be present) and made sure that attorney Stephen C. Pfaff (Tobin's classmate at Suffolk Law) kept the defendant Clemens away from the witnesses during pre-criminal-trial discovery in a related civil suit for over a year BEFORE the related criminal trial. Voila! A conviction of an innocent man at the most rights-violating trial the undersigned has ever seen or known! A Motion for Mistrial and Motion for Injunctive Relief – both on the Hingham docket – show how rights were violated and discrepant facts were concealed. The rule book was thrown out on September 18, 2008, a date coincident with Jeffrey's first ever criminal trial. The eventual July 8, 2010 reversal of the conviction is tempered by the white-washed opinion that came from the Massachusetts Court of Appeals, which did well in burying the

prosecutorial misconduct and rights violations by ignoring the issues of prejudice raised by the court-appointed lawyer handling the appeal.

We already see the white-washing path cleared in the First Circuit by US District Court Judge William G. Young when he threw out a civil case related to the Scituate matter, not based on the merits (admittedly), but by his own discretion and his knowledge of the prosecution currently being carried out by the victim Pfaff's law school classmate Tobin against Clemens for an alleged threat. The First Circuit said that Young's discretion was OK (despite the improper means used to introduce a so-called threat to the judge, which would normally preclude discretion from even applying to the situation) and that the Pfaff Ex Parte communication with the District Court was OK, too. Never mind the year of collaboration between Pfaff and the FBI – attempting to get a threat charge against Mr. Clemens by forwarding just about every document or letter Jeffrey wrote, during litigation, to the FBI for "review" - prior to arresting Jeffrey Clemens in the current case.

If this all seems convoluted, conjectured, speculated, assumed, or confusing, then read the introduction again and finish the review contained herein. The statements made to this point are supported by the public record in several different courts. The undersigned does not apologize for the complexity of the matters at hand, because it was not the doing of the undersigned nor of the defendant herein, but of those wishing to conceal official abuses and misconduct. So, why do we have a judicial system? Let us hope it is for justice and for the service of the public, as the public is barred under the laws of this country from bringing criminal charges against anyone else. Is it Pfaff's FBI? Tobin's FBI? Gavin Debecker's FBI? Scituate's FBI? It is certainly not Jeffrey's FBI, though it should be.

Let us begin.

The cumulative prejudice against Jeffrey L. Clemens is best understood by analyzing the federal Pre-Trial Services Reports accumulating since the first federal detention of Mr. Clemens in May of 2005, as they contain his general background and supposed (and paraphrased) criminal history. Up until the Hingham District Court trial of September 18, 2008 – for a charge of disorderly conduct against the 46-year-old Mr. Clemens by a police officer – Jeffrey had never plead guilty to a crime nor had he ever been on trial for a crime.

On the face of the criminal history, then, one can know that the alleged facts used in criminal arrests and charges against Jeffrey have never faced the scrutiny of an opposition or cross-examination, except on September 18, 2008, but only then by carving off two related charges which never went to trial, and by denying any ability for Clemens to prepare. Plenty of shame there, but, this is not about shame. This is about facts and the omission of facts.

The undersigned has in his possession the March 22, 2010 dated PRETRIAL SERVICES REPORT by Mark P. Miller in Toledo, Ohio. Certainly, judges presiding over the detention of Mr. Clemens have seen it. On Page 4 is the criminal record data for Mr. Clemens, replicated herein:

Date/Place Charge Disposition

08/21/95 Bellevue, WA **Harassment** No charges filed

09/23/97 Beverly Hills, CA **Trespass**: Occupy Property Without Consent 7BH02158 12/4/1997: Dismissed.

02/19/98 Barnstable**,** MA **Larceny of Motor Vehicle** 9825CR0680A 04/22/98: 12 months probation.

11/13/99 Douglas Co., NV 1) **Eluding/Fail to Stop on Signal of Police** 2) **Resisting Arrest** 99-1120 12/08/99 1) 20 days jail. 2) Dismissed.

01/03/02 Northampton, MA 1) **Operating Under the Influence of Liquor** 2) **Resisting Arrest** 3) **Disorderly Conduct** 4) **Assault with Danger Weapon**. 1 & 2) 08/27/02 – Diversion. 08/29/03: Dismissed. 3 & 4) Dismissed.

05/12/05 Hingham, MA 1) **Disorderly Conduct** 0558CR0954A 09/18/08: 6 months jail.

05/12/05 Hingham, MA 1) **Unlicensed Private Detective** 0558CR1192A 2) **Criminal Harassment** 0558CR1191 1) Active warrant. 2) Dismissed.

05/26/05 U.S. District Court Los Angeles, CA **Mailing Threatening Communications** CR05-00548SJO 02/07/06: 8 months BOP and three years supervised release. 04/07/06: Jurisdiction transferred to Northern District of Ohio. 08/22/06: Violation hearing resulting from allegation of threatening letter sent to FBI agent. Supervision continued with home confinement extended 6 months. 09/05/06: Violation hearing relative to defendant's removal of electronic monitoring transmitter. Supervised release revoked and defendant sent to BOP FMC for evaluation. 02/09/07: Supervised release reinstituted. 10/02/07: Violation hearing relative to defendant's failure to complete his mental health treatment and theft of agency property. Supervised release revoked and defendant sentenced to 60 days imprisonment.

ANALYSIS of PRETRIAL SERVICES REPORT (Criminal History)

The first level of analysis should be an accounting of what is <u>not included</u> in this paraphrased report:

The first charge of **Harassment** was reported to the FBI as an arrest on September 8, 1995.

[The alleged victim was the Bellevue Police Department, not a private person. The accuser was a police officer. The accused defendant Clemens was a complainant of police misconduct, first reported on October 25, 1994 and again on June 5, 1995.]

The second charge of **Trespass** originated with a citizen arrest by an employee of Gavin Debecker & Associates, a company with a recognized professional association with the FBI (and the US Secret Service, US Marshal Service, et al.), and was handed off to the Beverly Hills Police Department. The charge was filed several weeks AFTER the incident date.

[The arrest by William Michaelis of Gavin Debecker & Associates came in the form of a grab and throw down to the floor, the assault of which was recorded by a lobby camera, the recording of which was withheld from the defendant during the subsequent criminal proceedings. It was during the proceedings that the Beverly Hills prosecutor showed Jeffrey his FBI Crime Report showing a lone arrest on September 8, 1995…how would Jeffrey know about that, as he was not informed he was under arrest – by Bellevue Police Department Detective Robert K. Thompson – nor was he told of his rights.]

Oddly, a July 2005 federal detention hearing in Los Angeles gave status of the **Trespass** matter as "Status Unavailable"…Miller said it was dismissed, so indeed the status is available. In fact, the matter went to trial and the judge ordered the case dismissed on the day of the scheduled trial without testimony and without a verdict. SO, when did the authorities finally update the status at the FBI? What does the FBI Crime Report say? Or had the Pre-Trial Services people failed to report status properly in 2005?

The third charge of **Larceny of Motor Vehicle** is an unusual charge, as the noted motor vehicle was the defendant's own vehicle, an Isuzu Trooper.

[Jeffrey was actually the victim of malicious marketing by an auto dealership, who vigorously pursued the sale of an overpriced Pontiac Fiero to Mr. Clemens, even going to the extent of filing fraudulent documents to get a loan for Mr. Clemens from Rockland Trust. The dealership had actually delivered the vehicle to Mr. Clemens at night. The next day, Jeffrey returned the Fiero and took back his Trooper, whose title had not been transferred yet. With full knowledge that Jeffrey was returning the car, the dealership rushed a title transfer at the DMV AFTER knowing the Jeffrey was not accepting the car. The car had been a hard sell upon Jeffrey, who had originally just gone to the dealership for an oil change on his Trooper. Upon investigation, Jeffrey found that the Fiero had been in a previous accident and had been repaired. The dealership had misled Jeffrey. The dealership used the police as a means to extort the completion of a fraudulent sale. The matter at worst was only a civil matter, a question of ownership and money, not the criminality of Mr. Clemens.]

The fourth and fifth charges **– Eluding/Fail to Stop on Signal of Police** and **Resisting Arrest** – came as a surprise to Jeffrey, because if anyone should or would have charged Jeffrey that day in 1999 it was the California Highway Patrol, who followed Jeffrey into Nevada from California and who had begun the "chase". Police (either the CHP or Mono County Deputies) had stopped Jeffrey for the third time passing through a small remote town on his way back to school after tending to civil case matters in Clemens v. Gavin Debecker. When Jeffrey saw no independent witnesses in the area, he left and proceeded to find a suitable spot to pull over. The drive took him into Nevada, where Jeffrey thought he was safe from the CHP and Mono County Deputies, who had malice on their minds. Their reports, long since forgotten, as they never charged Jeffrey, stated that Jeffrey had crossed the center line over 30 times…implying that

he was drunk. Aghh! We have the reason for the stop – suspicion of drunk driving! So, where is the DUI charge from the Nevada folks? Jeffrey sincerely believed he was being harassed by the police, who had recently made a false speeding charge against Jeffrey in the same area. All that does not matter, as the CHP or Mono County never charged Jeffrey with anything that day, but for some reason, a Douglas County deputy had found his own reason for stopping the defendant with guns ablazing. How does an unarmed person **resist arrest** with several police officers pointing guns at him? The implied answer is probably why the charge was dismissed. BUT, what about the **Eluding/Fail to Stop on Signal from Police** charge? Aside from the charge being presented to a defendant Clemens as a traffic citation by the Deputy County Prosecutor (a Ms. Brown), the prosecutor proposed plea offer was given to an uncounseled defendant, misled at that. Upon accepting the offer FROM the prosecutor, Jeffrey was immediately hauled off to jail for a sentence that was never part of the plea deal. Deception works! A civil suit brought Pro Se by Mr. Clemens resulted in a $5,000 settlement. Maybe, someone should have erased the charge from the records, as we are to learn later the record would give unscrupulous police officers an idea to charge Clemens again with a similar charge…. But, Miller's report does NOT show another charge. Why not?

We are now to the sixth through ninth charges against Mr. Clemens – **Operating Under the Influence of Liquor**, 2) **Resisting Arrest**, 3) **Disorderly Conduct**, and 4) **Assault with Danger Weapon**.

How did a night end up with so many charges? Jeffrey was pulled over by a Massachusetts State Police (MSP) officer in western Massachusetts on his way back to school and was issued a citation for an inoperative headlamp. True enough, the headlamp was intermittently inoperative, as it was a wiring/corrosion matter and not a broken lamp.

But, the officer somehow found it appropriate to issue a **Failure to Yield** citation to Jeffrey along with the Inoperative Headlamp citation. Hmm, had the officer received word of the Douglas County matter? Remember the Eluding/Fail to Stop on Signal from Police charge, the one that cost the Nevada county $5,000 in a subsequent law suit? WHO SAYS PRO SE LITIGANTS CAN NOT FIND REDRESS IN THE COURTS? This was Jeffrey's second round of litigation and second settlement. Frivolous? Vexatious? Delusional? Not hardly.

Jeffrey was allowed to leave (on that night in January 2002) but followed the officer back to the Huntington Barracks and asked him if that was where his boss could be found? With a yes answer, Jeffrey told the officer that he would be back the next day to talk with the officer's boss. Another officer walked up and slammed his hands on Jeffrey's hood and the rest was history…the subsequent pull-over, window smashing, driver being dragged through the window, bludgeoning, medical treatment, the full meal deal. The **OUI** charge resulted from an officer asking Jeffrey if he would submit to a blood test – while the medic was treating his wounds, which would require stitches – when Jeffrey obviously said no, with cause. The **Resisting Arrest** and **Disorderly Conduct** charges were baseless, and a means for cover-up…inspired by the previous similar allegations against Jeffrey. What an awful situation. No wonder the Northampton Court records were erroneous, and required clarification in the July 28, 2005 federal detention hearing. (But, why the Status Unavailable on the Beverly Hills matter? Hmm, again.)

The assault upon Jeffrey by the Massachusetts State Police on January 3, 2002 was not the first assault by police upon Jeffrey. An assault – ripped shirt and bruised arm while sitting in his car (and a false speeding ticket and a verbal threat of "I'll be seeing you around" to Jeffrey.) by a Bellevue Police officer in 1994 was the basis for a complaint to the city…leading to Jeffrey's FIRST arrest on September 8, 1995, when the city faced a civil lawsuit. More on that litigation later. In a way, the 2002 MSP assault on Jeffrey would lead to yet another arrest, by the Scituate Police Department on May 12, 2005. More on that later, too.

Jeffrey's second assault by "police" was the throw down in 1997, an incident (of Trespass) left without status in the FBI database for years. Is it still that way? The MSP assault was indeed reported to the police – Jeffrey reported the matter to Mike Tobin at the MSP, presumably at its headquarters. The criminality of the MSP officers and the potential liability of the state for their misconduct is probably why all charges were dismissed. But, why do the federal authorities feel now that Jeffrey should be detained? Answer: it has nothing to do with threatening anybody. If anything, the police and security people have physically harmed Jeffrey (not the other way around), while lawyers and judges have used the threat of incarceration as a means to shut the real victim (Jeffrey) up.

As of May 12, 2005, Jeffrey was no stranger to civil litigation. In December 2002, Jeffrey settled with parties associated with the Beverly Hills Matter (Gavin Debecker, MGM, et al) for over $20,000. On May 14, 2005 he sent a memo to parties in Los Angeles, informing them of a pending suit relating to a fraud upon the court during previous civil litigation. That fraud upon the court had been discussed already with US Attorneys (Saunders et al), the FBI (Ken Kaiser et al), the US Senate (DeWine et al) and the US House (Sensenbrenner et al). That fraud upon the court had already been introduced to Judge Snyder in October 2003 by motion, which was never filed and sent back to Jeffrey. Only, the court kept copies and tried to use Jeffrey's writing against Jeffrey in pursuing a threat to murder Judge Snyder indictment in June 2005! Wow! We owe that laughable indictment to AUSA Steven D. Clymer – a Cornell law professor and Assistant US Attorney from Syracuse, NY on loan to Los Angeles – who convinced a grand jury that an absolute non-threat was a threat to murder the judge, in a motion asking the District Court to investigate Judge Snyder's conduct.

USDC Judge Snyder previously worked as an attorney for one of Jeffrey's civil defendants (MGM), so with her having dismissed (in 2001) such a civil case against her former client, it is only normal to inquire as to why a filed civil case would jump from the properly assigned judge from a related civil case judge King, to a civil defendant stock holder judge Tevrizian, to a former civil defendant attorney judge Snyder? Not to mention the involvement of chief judge Marshall in the original dismissal of the civil case number two (CAA, MGM, et al in 2000 vs. number one with only Gavin Debecker in 1998) over a technical pretext later found to be false and inappropriate…it was the subsequent refiling that we saw the case bounce until it landed with the "right" judge Snyder.

All that Jeffrey ever wanted was for an authority to review the judge assignment scheme in his civil litigation in Los Angeles, but what he got was a far cry, as seen below. Judge Snyder ignored it. The FBI

ignored it. The US Attorneys ignored it. The US House ignored it. But, of all people, Scituate Police Sergeant Michael O'Hara did not ignore it, because he and his boss Lt. John Rooney indeed helped the FBI address it – by helping the FBI arrest Jeffrey on May 25, 2005.

The tenth charge of **Disorderly Conduct** was instigated by Scituate Police on May 12, 2005. As to which officer actually decided to arrest Jeffrey first is in question, as it was Officer Timothy Goyette who lunged at Jeffrey first, while Officer Michael O'Hara merely joined in on the grab and cuff. The police found themselves without a charge but a man in handcuffs. They were to sort out the charge to go forward with at the station minutes later. One thing for certain, before the arrest, both officers had talked with the 911 caller, a Shelly Laveroni, later to become a client of attorney Pfaff mentioned to this court already. We have gotten ahead of the events on that fateful day in May, but we should mention a key factor in what happened – the fact that the police dispatcher read over the radio Jeffrey's entire arrest history to officer O'Hara just minutes before arresting Mr. Clemens.

Actually, we have a dilemma, as Jeffrey faces a rescheduling of the Disorderly Conduct charge originating on May 12, 2005, by action of somebody unknown who on October 26, 2010 reset the case for trial in Hingham District Court, as if there were no ethical problems with going ahead with another trial, say, the fact that the prosecution witness and his civil attorney Pfaff had been reported on October 7, 2010 to the Massachusetts Attorney General, who was asked to help investigate criminal conduct on the part of these individuals?

The real dilemma is do we call a spade a spade and call these proceedings a sham, or do we allow the system to insist on its autonomy and knowingly proceed with a malicious prosecution? It is not really a dilemma, as the right thing to do always includes telling the truth and faithfully following the law. So, with that said, we will proceed to report on and analyze the proceedings associated with the tenth, eleventh, twelfth, and thirteenth charges, as the true misconduct and true culprits will be found.

We introduce **Exhibit A**, an 8-page document electronically stored as a pdf file, dated 1/28/11 and titled "JLC Summary re MAGO MSP", already submitted to the Massachusetts Attorney General Office (on January 31, 2011) in support of the undersigned request for help in investigating a police matter in Plymouth County via a letter dated October 7, 2010 and received (confirmed) on October 9, 2010 by the office. To date, the Massachusetts Attorney General Office has not identified who will be investigating the alleged criminal behavior of Officers O'Hara and Rooney and attorney Pfaff. Exhibit A is outlined:

- Background
- Introduction
- Parties
- Evidence Relied Upon (all Documents in the public record)
- Additional Evidence To Be Considered
- Findings (derived from inspections of Documents in the public record)
- Further Observations
- Profiles of Involved Parties
- Conclusions

The tenth charge of **Disorderly Conduct** was instigated after the reporting officer heard such past allegations against Jeffrey L. Clemens as Disorderly Conduct [Northampton, MA 2002], two allegations of Resisting Arrest [Douglas County 1999 and Northampton, MA 2002], and a Trespass charge [Beverly Hills, CA]. The woman dispatcher reading the history over the radio to Officer O'Hara called the defendant Jeffrey a "kook". The jury on September 18, 2008 never got to hear these facts, as the transcripts of the Radio Logs and 911 Call had not even been presented to the defendant Clemens before the trial. When Officer Rooney filed the two additional (eleventh and twelfth) charges later – **Unlicensed Private Detective** and **Criminal Harassment** – he was contemplating the originating-police-retaliating Harassment charge [Bellevue, WA 1995] and contemplating a way to show how a pulled over driver told he was free to go would get enraged and lunge at a police officer, a circumstance reported by Officer O'Hara that is ridiculous on the face. By the way, the City of Bellevue was sued within the three year statute of limitations in Washington State, but the case was undermined by the very attorney hired to carry out the lawsuit. When Courts accuse Jeffrey Clemens of being a questionable Pro Se litigant, the undersigned must ask – has attorneys and public defenders really done better or really looked out for the interest of Mr. Clemens? The answer is an overwhelming no, and is now found to be due to the lack of oversight of attorney, police, and judicial conduct, which rewards prejudicing behavior and criminalizes those seeking redress.

The thirteenth charge of **Mailing Threatening Communications** is an unlucky circumstance…not so much for Mr. Clemens, but for the federal justice system, as that matter is leading us here, to realizing that the federal system has some deep thinking to do about its role in society. The undersigned will have more on this "LA Matter" later, perhaps when the District Court in Los Angeles finally allows the release of Grand Jury Transcripts to the defendant herein. Jeffrey observed misconduct with Tobin last year in this matter, and the undersigned found the scandalous "Document 52" discrepancy and the awful "False Mandate" of FBI Agent Ingerd Sotelo in bringing the charge forward via an arrest fueled by the O'Hara Report tied with this case.

Exhibit A will be provided to this Court under a separate submission. Upon inspection of such document, and a simple review of the criminal history herein, the undersigned believes that a basis exists for a court-initiated investigation into the alleged misconduct, as the undersigned holds the Courts most responsible for the years-long prejudicing of Jeffrey L. Clemens. And the Court is absolutely responsible for the current detention of Mr. Clemens and must be responsible for his immediate release. The previously provided PETITION has already called for the immediate release of Jeffrey L. Clemens from Pre-Trial Detention. This AFFIDAVIT is provided in support and asks for nothing more than the Court to take notice of the relevance of the criminal history and analysis thereof and recognize the significant level of prejudicing that has occurred against the defendant and weigh that awful reality against the Court's current rationale for detention.

Sincerely, as I affirm that the foregoing is true and correct, under penalty of perjury under US laws.

Jonathan A. Clemens

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