Attempted Murder and Cover Up by Corrupt Cattaraugus County Public Employees

On February 27th, 2016 when a local rights advocate traveled to Buffalo NY to **meet up with a victim of the corrupt elements of Cattaraugus County.** They discussed and went over evidence of how the county buys off law firms to throw cases that attempt to hold county officials accountable for their crimes that would reduce the liability of we the taxpayers and protect our rights. **He almost did not make it home alive...**

The Activist was handed documents that proved beyond any reasonable doubt what was occurring in the county and placed them in his car. On his way home once he entered the county and close to home he started to be followed by the corrupt elements. On the last leg home he passed one of their

vehicles that was pulled off the roadway on his right. This vehicle then attempted a u-turn, in doing so it cut off the other vehicle. They almost collided. The next thing you know one of these vehicles is right behind him and they turn on their spotlight and blind the victim though the rear view mirror. Worried he was about to be taken out by the “back country injustice squad” he decided to go straight to a safe, lit location that had 360 degree video surveillance. But that was not to be. He maintained his lane a proper speed. He was then stopped of his forward motion by being blocked in by two “law enforcement” vehicles…

Within two seconds of him stopping he had guns pointed at him. He raised his hands in fear of being shot dead (in this country you can get shot for raises you hands now). His stereo was on so he could not hear what anyone was saying and did not have the time to turn it off. The video proves it. The corrupt elements of the local cabal ran to his driver’s side window with guns still pointing at him. They were yelling something so he looked over at his stereo to determine if it was safe to turn it off so he could hear what they were shouting. **That was a mistake, as he looked back towards his driver’s side window he heard a loud bang. Gun shot? The next thing you know glass is flying everywhere. He is then pulled from the car and violently thrown to the ground and knocked out.** Then they start stomping on him. He awakes with either a knee or jack boot pressing down on his upper right back. He then remembers his hands behind his back and lifted to his feet by his wrists. The pain was excruciating. Luckily there were other motorist’s in the area at the time.

He was then taken to the Hospital from the injuries he sustained then arraigned on three accusatory instruments in the form of simplified information (SI's) charges [People v. Tyler 1 N.Y.3d 493 *"defendant was 'charged' when he was ticketed"*] WST25CXCWC, WST25CXDQG and WST25CXDSW. This all occurred on February 27th, 2016.

Three supporting depositions were gratuitously filed [People v. Key 45 N.Y. 2d 111, 116, 408 N.Y.S. 2d 16, 19 (1978)] along with the original SI's. They did not meet facial sufficiency [People v. Smith 163 Misc.2d 353 621 N.Y.S.2d 449 *"information was insufficient... and hence without any facts providing reasonable cause, it is unacceptable that absence of a factual allegation in the deposition is nonwaivable."*].

Memo

To: Town Court Clerk Denise Richards
From: Ofc. Cori Kowalski
Date: February 28, 2016
RE: UTT Error
CC:

Dear Denise,

After reviewing my paperwork in regards to the unified traffic tickets issued to a [redacted] on 02/27/2016, I identified that I mistakenly misspelled his last name. Could you please void UTTs – WST28C8CWC for VTL 1192-3, WST28CRDKD for VTL 375-241 and WST28CRDMW for VTL 1180C and have Judge [redacted] serve upon [redacted] the following UTTs – WST25D3M3, for VTL 1192-3, WST25D3QB7 for VTL 1180C and WST25D3QCB for VTL 375-241 [redacted] is to appear before Judge [redacted] on 03/10/2016.

Thanks,

Cori M. Kowalski

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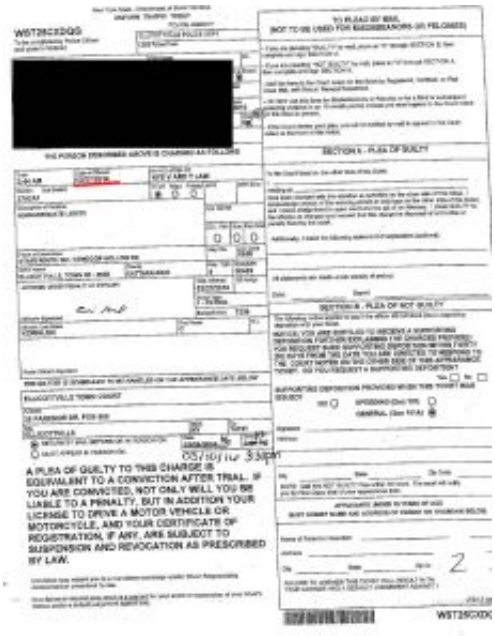
On February 28th, 2016, "Police Officer" Cori Kowalski, one of the stompers superseded the original simplified traffic informations with new ones; WST25D3Q97, WST25D3QCB, WST25D3N3L. Simplified informations are not allowed to be superseded pursuant to CPL § 100.50, therefore the superseding accusatory instruments were also null and void [People v. Greco, 12 Misc.3d 83 (2006), 819 N.Y.S.2d 630 "*The Criminal Procedure Law does not provide for the filing of a superseding simplified traffic information.*" ***"The next day, the complaining officer executed an accusatory instrument denominated a "SUPERSEDING SIMPLIFIED TRAFFIC INFORMATION" and "SUPPORTING DEPOSITION TO SIMPLIFIED TRAFFIC INFORMATION(S). Judgment of conviction reversed on the law and accusatory instrument dismissed.",*** see also *People v Finch, 19 Misc 3d 840*]. Kowalski would also write a letter to the court stating as such. If they would have obeyed the law, *i.e. followed due process,* which never occurs in Cattaraugus County they could have moved forward [People v Flood 25 Misc.3d 843, 844]. Criminals to the last....



WST28C8DQG

[redacted]

THE POLICE DEPARTMENT ABOVE IS CHARGING AS FOLLOWS

SECTION A - PLEA OF GUILTY

05/10/16 3:30pm

A PLEA OF GUILTY TO THIS CHARGE IS EQUIVALENT TO A CONVICTION AFTER TRIAL. IF YOU ARE CONVICTED, NOT ONLY WILL YOU BE LIABLE TO A PENALTY, BUT IN ADDITION YOUR LICENSE TO DRIVE A MOTOR VEHICLE OR MOTORCYCLE, AND YOUR CERTIFICATE OF REGISTRATION, IF ANY, ARE SUBJECT TO SUSPENSION AND REVOCATION AS PRESCRIBED BY LAW.

SECTION B - PLEA OF NOT GUILTY

2

WST25CXDK

"[a] valid and sufficient accusatory instrument is a nonwaivable jurisdictional prerequisite to a criminal prosecution" [People v. Williams 32 Misc.3d 135(A) 936 N.Y.S.2d 61]. [People v. Green 192 Misc.2d 296 745 N.Y.S.2d 656, see also People v. Cullen 99 Misc.2d 646 (1979) *"People cannot use the device of supersedure to continue a prosecution"*]. Further the supporting depositions were blank again.


SUPPORTING DEPOSITION / CPL 710.30 NOTICE TO SUPPORT SIMPLIFIED TRAFFIC INFORMATION

LOCAL CRIMINAL COURT
STATE OF NEW YORK
THE PEOPLE OF THE STATE OF NEW YORK
[redacted]

TO THE ABOVE NAMED DEFENDANT:

2

It appears the reason Kowalski illegally replaced them was because he misspelled the victims last name. When it comes to this type of mistake SI's are required to be amended. [People v. Kurtz 175 Misc.2d 980, 670 N.Y.S.2d 1008 "Correct errors to time, place and names of persons", People v. Johnson, 104 N.Y. 213, 10 N.E. 690 [1887] "Amendment of names is permitted to situations where a name is misspelled"], which requires the court to approve it before they do it. **The District Attorney's office would attempt to claim that because a "supporting deposition" was filed the proper conversion was made. Sorry, but that does not hold water either.**


[redacted]

The document is actually a Bill of Particulars and does not support anything. It contains no facts as related to what was observed when it came to the two violations. Further it also was created on, or after the 28th of February, 2016 and not served until March 10th, 2016, over the objections of the victim we might add. **But the best part is it lists the superseding simplified information numbers WST25D3Q97, WST25D3QCB, WST25D3N3L appear on the Bill of Particulars, not the original superseded simplified information numbers.** WORTHLESS - **Let's see if this is "overlooked" by the court and that they will attempt to claim it was from the originals, or will other** fraudulent documents **just appear out of nowhere** like they have done in the past **in an attempt to cover up their criminal conduct?** The a copy of the original BOP is here and this is considered a public record, the 50-H hearing saw to that. Thank You.

Defendant, however, does not explain how the docketing is "illegal" and could be part of a conspiracy – or how handwriting samples are relevant.

The court closely looked at the files to try and better understand his claim. File number 19741 contains the divestiture from the local court (with reference made to the three traffic tickets). File 19728 contains the indictment, the superceded traffic tickets, motions, grand jury minutes (sealed), notices, clerk notes, correspondence, and other miscellaneous documents. The files/dockets contain different materials and are not "parallel criminal matter[s]" (AC).

[redacted]

aware that first, traffic tickets were issued and filed in a local court, the matter was then indicted, and finally, the tickets were divested from local court.

Finally, there should be no question that court clerks are responsible for creating files and assigning docket numbers. Defendant, therefore, does not need the clerks's handwriting samples to prove a court clerk assigned the docket number and created the files. Defendant has not adequately explained – and the court cannot imagine any reason – why the handwriting samples are relevant to Defendant's case.

Defendant's motion for handwriting samples is DENIED.

At this point by law it's over. But this is Cattaraugus County, New York…

What is even more amazing is the fact that THE COUNTY COURT EVEN ADMITTED THAT THE ORIGINAL SIMPLIFIED TRAFFIC INFORMATION'S WERE SUPERSEDED. On page six of the court order and decision it is a clear as day. **They can't back out now** unless fraudulent 'documents' just appear out of nowhere **like they have in the past in other cases in violation of both state and federal law.** So the court also claimed the traffic tickets were superseded. That's it, at least in a real court of law. But this is Cattaraugus County after all. You would think the criminal elements within Cattaraugus County would call it after all the injury they caused and the fact they have no authority to move forward to prosecute. **The order also states it was moved by divestiture to the county court.**

Not having any authority to prosecute the matter the District Attorney's Office still proceeded in violation of the law and perjury to oath of office and fraudulently used CPL 170.20 (2) to move it to the county court. The law is very clear, People v. Correa 70 A.D.3d 532, 897 N.Y.S.2d 14 spells it out; *"while CPL 10.30 (1) (b) states that the Criminal Court's trial jurisdiction over misdemeanors is "subject to divestiture"… by a [superior] Court, CPL 170.20 and 170.25 are necessary to implement that divestiture"* . If the court had dismissed (acting sua sponte), or the people moved for dismissal in the lower Ellicottville Court, the illegal superseded informations, the District Attorney's office the could have refilled new ones if they had done so within the CPL 30.30 time limits, making everything legal. However this is Cattaraugus County, New York where the rule of law is on permanent vacation and justice goes to die.

In other words there has to be a misdemeanor charge present and in order to be charged you have to be ticketed. The only misdemeanor charge in this matter was superseded one day later as stated above rendering it null and void. Therefore the DA Office was without authority to present to the Grand Jury. It lacked jurisdiction.

Further, depending on who wishes to move it determines how it can be moved. A superior court can move it on their own authority if they follow a specific procedure and completely bypass a grand Jury process, however if the District Attorney's office wishes to it has to follow another procedure, that being CPL 170.20 (2), which requires it to be placed in front of the Grand Jury to move it which they could not do because they did not have a misdemeanor charge. So on April 18th, 2016, they served the victims Attorney with an alleged CPL §190.50 Notice of Presentment claiming the victim had been "charged" with seven accusatory instruments while he is in county court for another hearing .

However the Notice of Presentment was also fatality flawed. Of the seven alleged 'charges', the victim was only charged with possibly only one of them listed on the Notice… **We say "possibly" because in the usual fashion for the victim the District Attorney violated standard practice and procedure by not citing the law that the victim was allegedly charged with. In all other presentations they cite the actual laws violated, but not for the victim. Proof of a personal vendetta against the victim.**

Of the seven alleged charges, six were traffic violations and one was a misdemeanor. The misdemeanor was a "Obstruction of Government Administration" which he was never was charged with. [People v. Tyler 1 N.Y.3d 493 *"defendant was 'charged' when he was ticketed"*]. This would have made it impossible for the victim to determine exactly what he was charged with so if he decided to go before the Grand Jury he would not know how to properly defend himself. For example "Obstruction of Government Administration" can be one of three charges. Each with its own parameters of conduct that need to occur in order to be held liable for it;

1. Obstructing governmental administration (in the first degree. E Felony)
2. Obstructing governmental administration (in the second degree. A misdemeanor)
3. Obstructing governmental administration (by means of a self-defense spray device. D Felony)

See how the District Attorney's Office purposely confused the victim if he wished to appear before a Grand Jury? The other issue is the modern Grand Jury is nothing but a rubber stamp for the District Attorney's Office. Members are not properly informed on what their actual powers are. They are constantly being fed you have to do what you are told or "follow the law".

The grand Jury came back with ten count, nine were traffic violations and one was an A misdemeanor "Obstructing governmental administration in the second degree." This appears to be another historical first in Cattaraugus County. However even if the original charges were valid and they were properly taken to the county court the video clearly shows that the victim was not under arrest until he stopped when the guns were drawn on him. by law you cannot be charged with Obstruction in the second until you have been arrested and in this matter the 'police' who stopped the victim did not give him the time to react to what was occurring. The video clearly shows that.

Quoting People v Offen 96 Misc.2d 147 (1978) ***"The defendant has not been charged with a crime,***

since this court recognizes as a matter of law that "fleeing" from an officer prior to arrest is not a crime." Consequently, the motion to dismiss the charge of obstructing governmental administration (Penal Law, § 195.05), upon which the court reserved decision, is now granted and the charge is dismissed.

Quoting People v. Iannone 45 NY 2d 589 (1978), ***"A word of caution is in order. It is beyond cavil that a defendant has a basic and fundamental right to be informed of the charges against him so that he will be able to prepare a defense. Hence the courts must exercise careful surveillance to ensure that a defendant is not deprived of this right by an overzealous prosecutor attempting to protect his[her] case or his[her] witnesses,"*** see also People v. Fitzgerald , 45 NY2d 574 (1978).

Here is the issue with that in New York; the Grand Jurors can tell the DA to pound salt, take over the proceedings and investigate anyone and anyway they see fit when it comes to dealing with corruption. Fraud upon the Court is very clear in this matter.

New York State Constitution, Article I, Section 6, Paragraph 2; **The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments or to direct the filing of informations in connection with such inquiries, shall never be suspended or impaired by law.** No person shall be deprived of life, liberty or property without due process of law. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 8, 1949; November 3, 1959; November 6, 1973; November 6, 2001.)

In other words if the DA or ADA starts spouting “well you can’t do that because of CPL blah, blah , blah, they can ignore it, ***i.e. “shall never be suspended or impaired by law.”***
Further the Notice of Presentation was not filed by the District Attorney. Now why would they do that?

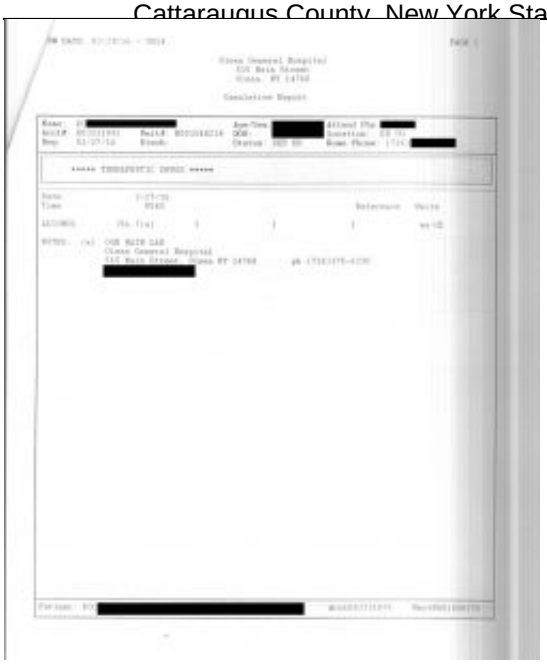
Also, when an indictment is handed down a divestiture of jurisdiction form has to be created and sent along with the original charges to the superior court. The divestiture also lists the charges and a host of other information. That was also not filed by the District Attorney’s Office. Why?

CPL 170.20 (2) At any time before entry of a plea of guilty to or commencement of a trial of an accusatory instrument specified in subdivision one, the ***district attorney may apply for an adjournment of the proceedings in the local criminal court upon the ground that he intends to present the misdemeanor charge in question*** *to a grand jury with a view to prosecuting it by indictment in a superior court.*

The key here is *“misdemeanor charge in question”…*

There was no *“misdemeanor charge in question”*, the victim was never charged because of the superseded informations and the he was never charged/ticketed with an “Obstruction of Government Administration” [People v. Tyler 1 N.Y.3d 493 ***“defendant was ‘charged’ when he was ticketed”*****].** Even the county court personal were asking where the misdemeanor charge was on May 25th, 2016 and the DA’s office claimed that they did not need one, that the misdemeanor charge.

In other words there has to be a misdemeanor charge present and in order to be charged you have to be ticketed. The only misdemeanor charge in this matter was superseded one day later as stated above rendering it null and void. Therefore the DA Office was without authority to present to the Grand Jury. It lacked jurisdiction.



In all cases the blood has to be analyzed by the State Police crime lab in Albany New York which takes about three months to get the results. But they rushed this job. All the blood samples were taken at the same time and they sent it to the Erie County Medical lab for forensic testing by hand delivery on Monday, the first business day after the attack. They wanted the test results back quick. Why? Simple they had a vendetta against the victim. The results from the lab were different from the hospital. Further the test kit was handed over to the cop with no seal placed over the vials. Further the box itself was not sealed. The test results from Erie county came back even lower at 0.04%, proving tampering possibly occurred. However, the hospital blood tests that produced the higher results use the Enzymatic Immunoassay method that combines all alcohols in the blood and other substances can also be included. Some of the other alcohols are methanol, acetone and isopropyl. Further, injury, specifically head and soft tissue injury can also produce higher results. Even with these possibly tampered with results they are by law is prima facie evidence that a driver is not intoxicated pursuant to VTL 1195 (2) (a). They even attempted to tamper with the results during the blood draw itself, they applied copious amounts of rubbing alcohol in violation of NYCRR: 10 CRR-NY 59.2 (d) to the blood draw area and destroyed the videos of it happening, about two hours worth. Who knows what they did to the vials afterwards. How convenient. It is a standard policy and practice in this county to destroy and/or edited videos which of course is completely illegal.

The Enzymatic method does not factor out and measure specifically ethyl alcohol, the alcohol that is considered the intoxicant that a person is held liable for and this test method confirmed by the hospital and thoroughly documented. It is also very easy to tamper with blood samples. Further proof of why they wanted a blood sample and not a Breathalyzer sample. Some of the tampering methods are using another persons blood or injecting ethyl alcohol using a syringe into the sample. As a side note breathalyzer's measures only ethyl alcohol however there is serious issues with the calculation mathematics of Breathalyzers. To this day ALL Breathalyzer manufactures have refused to release their source code in order to study it to prove the mathematics that determine the BAC is reliable. When this occurs the corrupt elements may attempt to use use the junk science approach of retrograde extrapolation to claim that the BAC was higher.

Not only did they not have the authority to present the matter to the Grand Jury because they had superseded the original simplified traffic informations, the only misdemeanor charge they listed

the victim was never charged with originally. Further no plea offer was made before the presentment unlike other Defendants [People v. Adams, 20 N.Y.3d 608, 964 N.Y.S.2d 495, 987 N.E.2d 272 (2013)].


Verna Dry

From: Jillian Koch
Sent: Wednesday, May 25, 2016 7:57 PM
To: Jane M. St.John; Verna Dry
Subject: Fw: People vs [redacted]

From: EMCmail@cattco.org <EMCmail@cattco.org>
Sent: Wednesday, May 25, 2016 2:12 PM
To: Jillian Koch
Subject: Re: People vs [redacted]

There won't be...the original charges were based on simplified traffic informations. We decided to present the OGA and not the DWI though the DWI served the basis of the initial jurisdiction.

----Jillian Koch <jkoch@mycourts.gov> wrote: ----

To: "EMCmail@cattco.org" <EMCmail@cattco.org>, "ALKerling@cattco.org" <ALKerling@cattco.org>
From: Jillian Koch <jkoch@mycourts.gov>
Date: 05/25/2016 10:56AM
Subject: People vs [redacted]

The Court has received a Directive in reference to the DWI charges in Ellicottville for [redacted] however there is no Misdemeanor complaint, please advise if one is forthcoming.

Jillian S. Koch
Sr. Court Office Assistant
Cattaraugus County, Supreme, Surrogate's and Jury office
303 Court Street
Little Valley, NY 14755
716-938-2383

Even one of the county court clerk assistants was asking the same question by the e-mail correspondence. Sr. Court Office Assistant Jillian Koch asked why there was no "Misdemeanor complaint" and where it was. There were no pending charges whatsoever in the lower court that would have allowed the people to move the matter pursuant to CPL § 170.20 to a superior court and the matter could not be prosecuted, therefore the District Attorney's Office had no authority to take tot he grand Jury and indictment itself is null and void ***"[a] valid and sufficient accusatory instrument is a nonwaivable jurisdictional prerequisite to a criminal prosecution"*** [People v. Williams 32 Misc.3d 135(A) 936 N.Y.S.2d 61], the e-mail from court personal and District Attorney's Office proves that also.

Also, when you are injured by a "police officer" the court has a duty to call the People to account for the injuries. This would include being handcuffed to a metal chair and being assaulted by a sheriff's deputy and knocked out, and said deputy has a history of such actions and has been sued in federal court for such conduct. It would also include when your window is shot or smashed out and are violently pulled from your car, thrown to the ground, knocked out and stomped upon and blood starts flowing from your ear drum indicating a possible concussion or skull fracture, all for a

minor traffic violation. But this is Cattaraugus County New York where the courts will ignore their duties and in doing so cover up the injuries brought about by the criminal conduct of public employees. People v Valletutti 297 NY 226, No effort was made by the prosecution to show (aside from the denials by the policeman of any violence) how or where these injuries were in fact inflicted, nor did the prosecution call as a witness the physician who made the entry in the jail records. This court said in People v. Barbato, 254 N.Y. 170, 176, 172 N.E. 458, 460: 'The district attorney on this evidence was called on to account for the defendant's condition.' A similar duty was on the People in this case, and no sufficient accounting is in the present record at page 461: '...on the weight of evidence the physical facts corroborate defendant's statement that injuries were inflicted by the police officers to procure a confession.'

Since the District Attorney, *i.e. the People,* did not have jurisdiction the court has to review the issue. There is no room for 'discretion", the most popular word in a judges dictionary. Judges use it all of the time to deny rights.

"There is no discretion to ignore lack of jurisdiction." Joyce v. U.S. 474 2D 215.
"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." [Main v. Thiboutot , 100 S. Ct. 2502 (1980)] ***"The burden shifts to the court to prove jurisdiction."*** [Rosemond v. Lambert, 469 F2d 416.]

In law, sua sponte (Latin: "of his, her, its or their own accord") or suo motu "on its own motion"[1] describes an act of authority taken without formal prompting from another party. The term is usually applied to actions by a judge taken without a prior motion or request from the parties [U.S. v. White, 139 F.3d 998 cert den 119 S.Ct 343, 525 U.S. 393, 142 L.Ed.2d 283 (1998)]

"Accordingly, the Court has an independent obligation to review for facial sufficiency as a means of assuring that it retains subject matter jurisdiction… Having undertaken a sua sponte review of the Information, the Court readily concludes that it is facially insufficient as to Counts One and Three, as well." [People v Barber, 42 Misc. 3d 1225(A) 992 N.Y.S.2d 159; 2014 N.Y. Misc. LEXIS 638; 2014 NY Slip Op 50193(U)].

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated **"Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. In other words when the judge becomes aware of "fraudulent documents, false statements or perjury" the judge or another officer of the court has a duty to take action on these issues and hold the perpetrator(s) accountable. It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted." "Fraud upon the court" makes void the orders and judgments of that court.** A judge is not the court. People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

All this information is in the hands of the court. Will it proceed unlawfully thereby creating another mess for the state to clean up? Will it be lowered to a level B misdemeanor so the victim loses his right to a trial by jury? Will the court claim the the original simplified informations were dismissed when the prima facie evidence clearly shows otherwise? Or will the court abide by the law?