UNITED STATES OF AMERICA:
THE STATE OF NEW YORK:
COUNTY OF CATTARAUGUS:
CATTARAUGUS COUNTY COURT:

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

CHRISTOPHER J KOCHAN, pro se

NOTICE OF MOTION
Indictment 16-116

PLEASE TAKE NOTICE that based upon the annexed pleading for renewed motion for special prosecutor with exhibits and prior proceedings Christopher J Kochan will move this Cattaraugus County Court, Little Valley, New York at the proper time for an order granting of relief. Summary relief is requested because prosecution failed and/or refused to submit timely answering papers that controvert the factual allegations. People v Gruden 42 N.Y.2d 214 (1977)

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FILED
2017 AUG 18 P 3:40
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THE STATE OF NEW YORK:
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MOTION TO RENEW FOR SPECIAL PROSECUTOR
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MOTION TO RENEW FOR SPECIAL PROSECUTOR

I - Motion to Renew Pursuant to CPL §710.40(4)

1. The Original Motion for Special Prosecutor field and served on, or about August 8, 2016 is incorporated herein by reference as if set forth in full at length .
2. CPL §710.40(4) provides that: *"[i]f after a pre-trial determination and denial of the motion the court is satisfied, upon a showing by the defendant, that additional pertinent facts have been discovered by the defendant which he could not have discovered with reasonable diligence before the determination of the motion, it may permit him to renew the motion before trial or, if such was not possible owing to the time of the discovery of the alleged new facts, during trial."*
3. *"Judges will not shut their minds to truths that all persons can understand"* [D.C.Pa. 1949 Porter v. Sunshine Packing Corp of Pa., 81 F. Supp 566, 24 Pa D 2d-383].
4. The facts presented below provide clear and convincing prima facie evidence of a conflict of interests and un-favorable biased by individuals so indentified herein of a their pattern and

practice of a biased, vindictive and retaliatory nature against Defendant that has existed over a number of years and provides more proof of the pattern and practice of denying defendant's rights by the employees, agents and/or servants of the Cattaraugus County District Attorney's Office.

"District Attorney" Lori Rieman

5. On April 28, 2016 Lori Rieman, acting as the District Attorney of the County of Cattaraugus would execute a falsified instrument known as a Notice of Presentation to present the matter that ultimately went to trial. The Presentation did not contain any charges. It only contained the vague wording found in numerous statutes, possibly twenty-two on all found in the Criminal Procedure Law and Penal Law. As such Lori Rieman was in violation of CPL §170.20 and the due process rights of Defendant. However the wording was separated by commas an indication that Defendant had been accused of seven charges, only one of which was an alleged misdemeanor for *"Obstruction of Governmental Administration"* , which that special wording is contained in three penal laws only. The remainder of the 'charges' were six traffic infractions. Of the these seven 'charges' Defendant was never charged with any form of *"Obstruction of Governmental Administration"* whatsoever and of the six remaining traffic infractions Defendant was only charged with one, maybe two of them (Exhibit (Ex.) 00001). Pursuant to CPL 170.20 a district attorney only has the authority to take a matter to a grand jury pursuit to 170.20 (2), unless there was a felony charge through a *"misdemeanor charge in question". In this matter the misdemeanor charge District Attorney Lori Rieman took to the Grnad Jury* which did not exist. Therefore there was no provision in law that would allow District Attorney Lori Rieman to present to the Grand Jury. This was intentional, willful and

wanton misconduct on the part of the District Attorney Rieman. Further the Notice of Presentation was served upon Defendant's Attorney was never filed in any court providing evidence that District Attorney was well aware it was fraudulent.

6. During the trial on Wednesday May 31, 2017, District Attorney Lori Rieman in a display of anger and rage would accuse Defendant of having multiple lawsuits proceeding against Cattaraugus County (Ex. 00002) which was a false statement by her at a tribunal in when she stated;

> *"And I also don't think that that makes* ***the defendant suing the county on multiple cases****, if they're attacking our bias -- I'm in here because this is her first trial in County Court, but yes,* ***the defendant has filed numerous lawsuits that certainly had nothing to do with him being charged*** *but have a lot to do with us paying attention to what's going on in the courtroom* ***because it's an issue of county liability,*** *"*

7. Defendant has only one federal lawsuit which was preceded by a Notice of Claim. This was another false statement before a tribunal by District Attorney Lori Rieman in violation of her code of conduct 3.3 (a) 1 and therefore JL § 487. *"A lawyer shall not knowingly: make a false statement of fact or law to a tribunal..."* . A trial by jury is a tribunal [People v. Adames 83 N.Y.2d 89 (1993), 629 N.E.2d 391, 607 N.Y.S.2d 919; People v. Catten 69 N.Y.2d 547,553 (N.Y. 1987)].

8. District Attorney Lori Rieman by her statement "*...it's an issue of county liability*" admitted she acted outside the scope of her duties to bring the matter to trial in an attempt to teach Defendant a lesson that he is not allowed to exercise his rights, which includes but is not limited to the freedom of speech first amendment rights. Prosecution by a disinterested prosecutor is a fundamental aspect of due process [People v. Benoit, 152 Misc. 2d 115]. This also provides the evidence of her motive to fraudulently present the matter to the grand jury. The notice of presentment as well as the alleged indictment, which included multiplicitous, or

duplicitous charges clearly and convincingly prove it (Ex. 00003,04,05). The incendent lasted maybe all of a continuous five minutes 1.7 miles stretch of road.

9. District Attorney Lori Rieman knew, or should have known if Defendant was found guilty his chances of seeking redress if he so wished for the wrongs brought upon him could be eliminated and/or greatly reduced which this aver is reinforce supra.

10. District Attorney Lori Rieman along with Court Secretary Jillian Koch and the Personal secretary to Ronald Ploetz, one Mary Reynolds, would file fraudulent complaints while in their official capacity against Defendant's website CatCountyCorruption.com, which has and still is exposing their and their agents, employees and/or servants corrupt, illegal , unconstitutional, unethical and immoral practices. These individuals so named herein would falsely claim that the website was publishing their personal information (Ex. 00006). To verify their complaints with the hosting service they were required to provide a copy of their drivers' license to verify their identity with the hosting service. CatCountyCorruption.com has never published personal information on Lori Rieman, Koch or Reynolds.

11. District Attorney Lori Rieman, Koch and Reynolds timed their complaints to shut down the website right before Defendant's alleged arraignment on the alleged indictment that was to occurred the following Monday June 13, 2016. The websites was shutdown the Thursday before. This caused CatCountyCorruption.com to be taken offline by the hosting service and required Defendant to take time away from preparing for the alleged arraignment to bring CatCountyCorruption.com back online. This was a unlawful and illegal concerted effort by those so herein named to hider and/or impede Defendant's ability to exercise his first amendment rights and properly prepare for the alleged arraignment on the alleged indictment. First Amendment protections extend to *" 'every sort of publication which affords a vehicle of*

information and opinion.'" The removal of CatCountyCorruption.com from the web by the fraudulent complaints directly benefited Lori Rieman as well as the employees, agents and/or servants of the County of Cattaaraugus in violation of the Defendant's constitutional and civil rights. Furthermore this seriously chilled the first amendment rights of not only Defendant, but all US Citizens, which includes, but not limited to New York Citizens. This is the very definition of official misconduct in violation of PL § 195.00, which *"encompass flagrant and intentional abuse of authority by those empowered to enforce the law."* People v. Feerick, 93 A.D. 2d 433, 445 (1999). Further no order from the superior court was ever granted and/or filed pursuant to CPL § 190.55 (b) that required the matter to indicted.

12. The name of public employees is not private information, it is public, so much so in New York you can actually find their names on websites "SeeThroughNewYork.net", dedicated to the position public employees' hold and the public employee job function they hold.
13. CatCountyCorruption.com and its owner, the Defendant, are clearly protected under the U.S. Const., Amend. 1 as well as Article 1 § 8 of the New York State Constitution due in part that it is reporting corruption of public employees, the very purpose of the law 1st Amendment and is even further protected by the New York State Constitution in Article 1 § 8; *"and the jury shall have the right to determine the law and the fact."* Not only does the jury get to try a case on the facts but the jury can nullify the law and declare a Defendant innocent even though a Defendant may have violated it.
14. In one former matter concerning Defendant, Lori Rieman would illegally move a matter from one venue to another outside the time allowed by law concerning the recusal in the matter of the Ellicottville Village judge on, or about August 28, 2014. Lori Rieman did not file the motion to change of venue until October 30, 2014 acting under the color of authority filed and

move the County Court based on CPL §170.15(3). The time limits of CPL §170.15(3) are contained in CPL §255.20, which mandates that such motions fall within the 45 day time limit [People v. Greenberg 89 N.Y.2d 553 (1997); 678 N.E.2d 878; 656 N.Y.S.2d 192.]. This matter is identified at County Court as LC-18994.

"Assistant District Attorney" Elizabeth Ensell

15. 'Assistant District Attorney' Elizabeth Ensell has on numerous occasions made false statements to a tribunal, and conducted herself in a manner unbecoming of an officer of the court, each incident is described below.
16. On, or about July 26, 2014 Elizabeth Ensell would execute an answer to Defendant's Omnibus motion in another matter which was dismissed claiming that Defendant was no longer allowed to file anymore motions because it would be in *"violation of Article 55 of the Criminal Procedure Law"*. Said law does not exist (Ex. 00007)
17. On April 6, 2016, Elizabeth Ensell would assist ADA William Preston Marshall at a CPL § 730 examination hearing concerning Defendant, which Defendant was allegedly found that he *"lacks capacity to understand the proceedings against him or to assist in his own defense."* Defendant was then illegally sent to the Cattaraugus County Jail for six day then to Elmira psychiatric center where he was immediately released after examination because the staff could not find any issues Defendant was sent there for as previously stated.
18. Elizabeth Ensell would claim at the hearing that because defendant used the words he did not *"understand"* back in 2014, at the original arraignment, that was the foundation for the CPL § 730 (Ex. 00008). The 2014 record clearly and convincingly shows that at no time did Elizabeth Ensell even raise the CPL § 730 issue in 2014. However in December of 2014

Assistant District Attorney Kelly Balcom (mistakenly identified as Ms. Falkin) did motion for a CPL 730 against defendant and the judge presiding over that matter completely ignored her (Ex. 00009,010). Further after the 2014 matter was dismissed because of the bogus CPL 730 motion by William Preston Marshall, Defendant would go on and win a NYDMV appeal of a refusal hearing and the corresponding hearing de-novo pro-se, proving he was more than capable of understanding the proceedings against him and able to assist in his own defense.

19. Elizabeth Ensell would make another false statement during jury deliberations when she stopped the review of videos before the final location of the publish point, which she stopped right before the violent attack by law enforcement that landed Defendant in the hospital (see Ex. 00011) in violation of her code of conduct 3.3 (a) 1 and therefore JL § 487. *"A lawyer shall not knowingly: make a false statement of fact or law to a tribunal..."*

20. DA Elizabeth Ensell made another false statement to the court when she claimed that *"Defendant consented to the blood draw and it was not taken at the direction of the police"*. (Exhibit 00012 Peoples answering affidavit, dated August 15, 2016, paragraph 27) Exhibit 00013, provided by the People to the Defendant clearly shows that is not the case and hospital personal were acting and agents and/or servants of the County of Cattaraugus at the time. The only blood draw from Defendant occurred at 5:30 AM and at not other time. This Exhibit also showed the refusal warnings were read to Defendant, see code of conduct, JL , *supra.*

21. On Thursday June 8, 2016, Assistant District Attorney Elizabeth Ensell would lie to the court, jury and defense again when she stopped the showing of videos requested by the jury one file before the dangerous outburst of violent behavior of the law Enforcement involved at the scene on the incident on February 27, 2016, which caused Defendant to be hospitalized. It was

only after persistent objections by Defendant to his Attorney that Elizabeth Ensell recanted and allowed the violent scene to be played.

22. On May 20,2017, Elizabeth Ensell in her Sandoval/Ventimiglia/Molneux application would make another false statement when she claimed "Defendant was convicted by a plea of guilty to Driving While Ability Impaired by Alcohol on April 2, 1998 in the town of Ellery. Defendant was not convicted and Defendant had action terminated in his favor and sealed via CPL 160.50 which is a complete seal so even if Defendant was convicted by law it was to be completely sealed. Defendant hereby demands an offer of proof on which his genuine bona fide signature appears on the document proclaiming Defendant plead to such charge, and any other charges that the People so claim exist see Court CPL § 160.50 sealing order attached (Ex. 00014).

23. On May 20,2017 Elizabeth Ensell would make another false statement when she claimed in her Sandoval/Ventimiglia/Molneux application that Defendant when she claimed *"Defendant's driving privileges were suspended by notice on July 29,1998 in the state of Pennsylvania.... ....March 31, 1999, he was convicted of failing to surrender his license".* Defendant was never convicted in the Commonwealth of Pennsylvania for Driving While Intoxicated, or Ability Impaired, or any intoxicant whatsoever and in fact the suspension was due to a reciprocity compact agreement between the state of New York and the Commonwealth (Ex. 00015, 016). Defendant did in fact surrender his license and did not drive for close to seven years do to the physical and mental torture he had endured at the hands of Chautauqua County Jail employees and only acquired a new license do to job requirements in the State of New York on the mid to late 2000's. Further, even if Defendant had plead guilty of DWAI in the State of New York in 1999, at the time the Commonwealth

of Pennsylvania did not have a law for "Driving While Ability Impaired" and motorist were not held liable for such out of state convictions, including, but not limited to New York [Petrovick v. COM., DEPT OF TRANSP., 741 A.2d 1264 (Pa. 1999)], see Ex. 00017.

24. Elizabeth Ensell in her Sandoval/Ventimiglia/Molneux application would also claim that Defendant was arrested on May 21, 2014 in the Village of Ellicottville. His is another false statement. Defendant was what Ensell claims 'arrested' in the town of Ellicottville and that "Arrest" is now a federal lawsuit against the individuals involved. Further the fraudulent statement Elizabeth Ensell claims Defendant made mysteriously appeared in the court file well after the allowable time and never served upon Defendant. The author of the alleged statements was Ellicottville Police Officer Matthew Albanese who is now named in the federal lawsuit 1:17-cv00452 in the Western US District County of New York based on the fact that the four alleged charges, three of which were never signed/verified and one for remaining silent, which lead to Defendant being assaulted by Cattaraugus County Sheriff's Deputy Bryan S Schwabenbauer and knocked out. It must also be noted that the Defendant's Article 78 clearly and convincingly provided evidence that the accusatory instruments where jurisdictionally defective and the Article 78 court in excess of its jurisdiction refused to even take it under consideration in violation of prevailing law [U.S. v. White, 139 F.3d 998 cert den 119 S.Ct 343, 525 U.S. 393, 142 L.Ed.2d 283 (1998), People v Barber, 42 Misc. 3d 1225(A) 992 N.Y.S.2d 159, Lewis v Simmons, 114 A.D.3d 203; 978 N.Y.S.2d 527, People v Victor J.,187 Misc. 2d 749; 720 N.Y.S.2d 304, Joyce v. U.S. 474 2D 215, Main v. Thiboutot , 100 S. Ct. 2502 (1980), Rosemond v. Lambert, 469 F2d 416]. If the courts had obeyed the law and not used judicial immunity as a weapon to violate the law there would have been no lawsuit. Further Defendant would go on and win an Appeal of the alleged refusal in which it was

found by the Judge that the testimony of Albanese *"contained various inconsistencies"* and could not provide his location upon direct examination thereby affirming Defendants claim that Albanese made the whole thing up (EXHIBIT 00018,019). Further of the two Notice of Claims filed, the County and all parties named therein failed and/or refused to respond in any manner to the first one.

25. Elizabeth Ensell would also state to the jury on June 7, 2017 when she failed in her attempt to prove that Defendant made inconsistent statements, she would ask for a sidebar and make the statement in full hearing range of the jury *"...Judge, I think I want to ask if we can approach real quick just* ***because of the way inconsistent statements work.*** *"* (Ex. 00020) Here Ensell implied that what she was about to provide to the Jury was an example using the Defendant's testimony and article to show them a perfect example of what inconsistent statements are, however Ensell failed in the attempt and refused to enter the article into evidence. Said proof is located on line 33 of Ex. 00021.

26. Elizabeth Ensell in her closing argument/summation created a power-point visual presentation that was displayed on the large screen TV for the jury to view. The presentation also included the charges written out, alleged conduct and words spoken by Defendant;

    a. The presentation for the Obstruction of Government administration (OGA) charge she failed and/or refused to cite the complete charge leading any reasonable person to believe that a individual is guilty of OGA "by means of interference only", however as the case cited clearly states the statue clearly reads "by physical force and interference" (EXHIBIT 00022);

> *"If it be "interference", then it must be physical interference, as "physical" modifies "interference" in the statute. The word "interference" is not cast in isolation, it is part of the phrase "physical force or interference", a phrase separated from the rest of the sentence by comma punctuation. The disjunctive "or" in said phrase joins "force" and "interference" and is distinct from the "or" following the word "interference", which latter*

disjunctive is placed before the last in the series of the obstructive means. It simply makes no sense to read "interference" in solitary, apart from its modifier "physical", for by so doing the reader must of necessity disregard the punctuated structure of the statute. People v. Case 42 N.Y.2d 98 (1977)"

However it must be noted for the record that this slide more closely mimicked the instructions read to the jury.

b. Elizabeth Ensell would falsely claim that evasive answers to questions can be inferred as the intent to obstruct government administration, however as the record shows, the alleged *"evasive answers"* only occurred after the alleged obstruction conduct occurred and there is no provision in law for a Ensell to make that claim , further *"It is well established that a person has no obligation to cooperate with police efforts to investigate suspected criminal activity"* [People v Brown 46 Misc 3d 1212(A)] (Ex. 00023), and;

c. Elizabeth Ensell would falsely claim that Defendant had *"four (4) devices capable of recording in his vehicle."* Defendant had only three devices and one of them, his phone, was turned off and one other device was inoperative (See parg. 26b Ex.00023).

d. Ensell would also in another slide that Defendant made the false statement *"I've been through this before"* during his testimony, which does not appear anywhere on the transcripts (See parg. 26b Ex. 00023) and does appear to relate back to the 2014 false statements by Albanese.

e. During cross examination Elizabeth Ensell would misstate the question of Officer Graham when she asked defendant *"And do you recall a person in the video in which an officer asked how you were feeling and you gave a particular number answer? Do you recall that?"* when in fact Officer Graham asked *"how does your head feel on a scale of one to ten"* (see video 20160227024735_10100515_100_PICT0019 @ 2:54:38 part of the peoples exhibits entered at trial) which clearly indicates Graham was asking about his head pain and not any other part of his body and defendant completely forgot about it do to the head injury he had sustained at the hands of Kowalski and Hunt until the next day when he discovered a line of dry blood coming from his inner left ear which was further substantiated by Police cam video 20160227071426_10100515_100_PICT0034 @ 7:15:18, part of the peoples

exhibits entered at trial. This led the jury to believe Defendant was over exaggerating his injuries.

This is intentional deception of the jury on the part of the People, by and through Assistant District Attorney Elizabeth Ensell by her false statements that violated Defendants due process rights [People v Williams 29 NY3d 84, 2017 NY Slip Op 02588, People v Anderson 29 NY3d 69, 2017 NY Slip Op 02589]. "[p]rosecutors play a distinctive role in the search for truth in criminal cases. As public officers they are charged not simply with seeking convictions but also with ensuring that justice is done. This role gives rise to special responsibilities—constitutional, statutory, ethical, personal—to safeguard the integrity of criminal proceedings and fairness in the criminal process" [People v Santorelli, 95 NY2d 412, 420-421].

27. On November 14, 2016, Elizabeth Ensell would strike a pedestrian in the city of Olean New York. The pedestrian was handicapped and was walking in a clearly marked crosswalk. The pedestrian was about one-third into the motor-vehicle traffic lane when she was struck, which caused the pedestrian to be hospitalized (exhibit 00024). The Olean Police Department would cover up the vehicular assault and the Olean Times Herald would make it appear as if the victim was to blame for the incident. An article was published on, or around April 2017, concerning the incident on CatCountyCorruption.com (exhibit 00025 through 00035). The article was picked up on the Olean Area Traffic and Community Safety Alliance in early April 2017 (exhibit 00036 through 00040). Elizabeth Ensell is the ADA for Olean City Court and her family has deep roots in the Olean and Portville, New York Area and is a perfect example of the nepotism that permeates the County of Cattaraugus and Local Governments. Her father

John Ensell also use to work for the Cattaraugus County District Attorney's Office. Elizabeth Ensell in the first panel of jurors would craftily draw out the name CatCountyCorruption.com website to taint the jury pool by one potential female juror who was a public employee that works for the Village of Little Valley as their clerk/treasurer. The potential juror's husband is a sergeant detective at Cattaraugus County Sheriff Office. Further she admitted she knew a potential witness for the People, a Deputy Sheriff as well as District Attorney Lori Rieman (31MAY17 Transcript Pg 30 Ex. 00041 through 00046).

Village size is usually a one square mile area that exists within the Town of the same name. The functions and responsibilities of public employees of both jurisdictions overlap and in many cases personal from both jurisdictions work in the same building or are well known to each other. Jillian and Susan Koch work for the Town of Little Valley and both individuals have committed acts of destroying and/or altering the public records in a case concerning the defendant. Further the County Court Clerk and commissioner of Jurors Verna Dry's relative is the former Little Valley Judge Joseph Dry who was exposed for corruption on the Website CatCountyCorruption.com (Exhibit Ex. 00047 through 00062).

All public employees so herein mentioned being employed at said locations for many years and the likelihood of them discussing Defendant's website that is, and was exposing the corruption is not remote.

The potential juror stated that CatCountyCorruption.com slandered to the whole jury pool that her husband was slandered by the website, which it did not. Defendant did not know of her husband at all up until the time of the jury selection nor her. While this potential juror was removed for cause, the wonton and intentional prejudicial damage she, as well as the People,

by and through 'ADA' Elizabeth Ensell, caused to defendant by spreading vicious lies about his website during the juror selection process in front of the jury pool cannot be overlooked.

28. 'ADA' Elizabeth Ensell's father, one John Ensell was employed at one time as an investigator for District Attorney Lori Rieman Office and has been called up for covering up what appears to be a cover up of a murder that occurred in Cattaraugus County. Elizabeth's sister, one Catherine Ensell has been in trouble with the law numerous times, which included drug sales and violent felony's and she would always receive light sentences unlike others who were charged with the same crimes and did not have a criminal record. An article was published in late April 2017, on CatCountyCorruption.com about the over the top and questionable favorable treatment Catherine Ensell has received over the years by Lori Rieman and judge Ronald Ploetz (see Exhibit 00063 through 00073).

"Assistant District Attorney" William Preston Marshall

29. In the Defendant's 2014 matter, who final court location was the Town Court of Little Valley, on June 18th, 2015, at a hearing "Assistant District Attorney" William Preston Marshall would then continue the anti-Defendant official custom, practice and/or policy and move for a CPL § 730.30 evaluation against Defendant. Defendant was never properly served with the CPL § 730.30 and only acquired a copy of it later while reviewing the court file on the matter. On February 2nd, 2016, Defendant, along with his Attorney appeared for what they thought was a competency hearing concerning the CPL 730.30 matter. When the judge wished to abide by the CPL § 730 procedure and wished to issue a final order of observation Marshall ordered and/or intimidated the Justice into not issuing the final order of observation and dismissing the

charges by stating *"nothing's getting dismissed, Judge"*. Defendant was sent to ECMC CPEP center and released 16 hours later and the doctor of record admonished the judge for sending Defendant there. Based on the original CPL 730 motion which should have been rendered void after the February 2nd, 2016, event Marshall moved forward and commenced illegal competency hearing on the same original CPL § 730.30 which caused Defendant to be placed illegally into the County jail for six days then illegally transported to Elmira Psychiatric Center where he was released 24 hours later, this location also finding no committing issue with Defendant.

30. In late February of 2016, 'ADA' William Preston Marshall would scheduled another competency hearing on March 2, 2016 and neither he nor the court would inform Defendant or his Attorney about it. Fortunately one of the Doctors who were to appear for the People could not make the hearing and it appears that Jillian Koch inveterately (based on her conduct in this matter) sent an e-mail to Defendant's Attorney informing him of the change in schedule (Exhibit 00074, 075, 076, 077).

"Assistant District Attorney" Kelly Balcom

31. On December 3, 2014, Assistant District Attorney Kelly Balcom, falsely names as a "Ms. Falkin" in the transcript would also make false claims when she stated at a tribunal in the Town of Machias Court concerning the Defendant in another matter would falsely claim in that matter (transcript 03DEC14, page 10, Ex. 0078, 079, 80);

    a. That the motions of Defendant had already been decided upon by the previous court (transcript 03DEC14, page 7) when in fact they had not (transcript 26AUG14). One of the Motions the Defendant had filed was his Omnibus Motion

that the previous Ellicottville Court did not rule on because it had recused itself from the matter on, or about August 28, 2014 before ruling. Kelly Balcom was one of the "Assistant District Attorney's' for Cattaraugus County at the 26AUG14 matter, also;

b. Kelly Balcom would go on and admit she made the false claim described in part a by stating *"If Your Honor would like a chance to review motions and rule on them."* (transcript 03DEC14, page 10, Ex. 00078. 079).

c. Kelly Balcom would go on a make another false statement at the 03DEC14 action;

> *"We weren't there for the majority of this, Your Honor. We came in at the end. So, I couldn't speak to everything that the other court has done. That is not one of the court's that we generally cover."* (transcript 03DEC14, page 13).

The matter before the Machias Town Court originated in the Ellicottville Village Court on May 21, 2014, both are within Cattaraugus County and 'ADA' Kelly Balcom represented the People at the action in the Ellicottville Village Court on 26AUG14 and that court so thereafter recused itself. The Machias court, like the Ellicottville court would soon voluntary recuse itself after Defendants first appearance.

"Assistant District Attorney" Amber Kerling

32. "Assistant District Attorney" Amber Kerling would play an instrumental role in the illegal change of venue for the 2014 Ellicottville Village Court Matter to the Town of Machais. She would represent the people in the change of venue hearing before the County Court, judge Ronald Ploetz presiding and when Defendant would challenge jurisdiction to do so, Kerling as well as the court would ignore the challenge. In 2017 Kerling was charged with prosecutorial misconduct in another case by the 4th Department for the Appellant Division (Ex. 0000,80, 081, 082,083). Further the article published on the case that caused Kerling to be found guilty

of prosecutorial misconduct quoted District Attorney Lori Rieman directly as it was her fault for the prosecutorial misconduct *"Anytime she [Kerling] is concerned about ethics she comes to me"* . This is futher proof that the problem of prosecutorial misconduct emanates from the top of the District Attorney's Office and is systematic(Ex. 00084).

33. Defendant request's the court pursuant to County Law 70 to appoint a special prosecutor in the above captioned matter from outside the counties of Cattaraugus and Chautauqua that has no economic or social interests and alike in said counties of western New York to ensure properly advocacy is employed.

34. The facts presented provide clear and convincing prima facie evidence of a clear pattern and practice a of the Cattaraugus County District Attorney's Office of a biased, vindictive and retaliatory nature against Defendant that has existed since 2014 because defendant was exercising his US Const. Unalienable rights, specifically his Amend. 1 and a well as his Article 1 § 8 of the New York State Constitution Unalienable Rights.

35. It is very apparent that the District Attorney Lori Rieman and here employees are well aware of prosecutorial immunity and weald it as a unlawful, illegal, immoral and unethical weapon to carry out their vindictive and retaliatory nature of herself, her employees and/or her servants and/or agents against Defendant's n violation of their oaths of office and Defendant's constitutional and civil rights. This understanding of their immunity in law can easily be seen in Pinaud v. County of Suffolk, 52 F.3d 1139, 1148 (2d Cir. 1995), the Second Circuit granted absolute immunity to prosecutors who allegedly violated the plaintiff's rights under the Fourth, Fifth, Sixth and Eighth Amendments by: seeking improperly to increase the plaintiff's bail; making false representations to prompt a plea agreement, which is what Lori Rieman did on July 27, 2016 by her statement found on page 2, line 22 of the 27JULY16 transcript in this

matter. They can then breach that agreement; manufacturing a bail jumping charge; making misrepresentations to the Bureau of Prisons; and unnecessarily transferring the plaintiff from county to state jail. These alleged acts, while "*unethical, deviant, and violative of the plaintiffs' constitutional rights, were 'components of the initiation and presentation of a prosecution, and therefore . . . protected by absolute immunity.'*" Phillips, 81 F.3d at 1213 (citing Pinaud). "*In short, absolute immunity insulates prosecutorial misconduct — however outrageous — so long as the misconduct is prosecutorial.*" [Phillips, 81 F.3d at 1213]. Thus, Quinlan's ex parte conversation with the State Court judge is protected by absolute immunity. Therefore the abuse as so described herein by the People, by and through the District Attorney's Office based on the understanding of the law is therefore invalid because they are abusing the very individuals who allowed the immunity privilege to exist in the first place, which is representative in the Defendant.

36. Further, conflict of interests by the Cattaraugus County District Attorney's Office is apparent in this matter based on the fact so provided as well as the appearance of impropriety. Taking parking ticket level violations and a misdemeanor charge that was not charged and was fraud upon the court to the grand jury demonstrate this type of practice by citing prior cases [People v Adams, 20 N.Y.3d 608] in which she has done so and the movant must establish actual prejudice, or a substantial risk thereof [Schumer, 60 NY2d at 55 [1983]]. Both are required however when circumstances dictate the appearance of impropriety alone can disqualify District Attorney; People v Zimmer, 51 NY2d 390, 396 [1980]; In a case of that nature, *"[d]efendant[s], and indeed the public at large, are entitled to protection against the appearance of impropriety"* [Shinkle, 51 NY2d at 421]. *"Central to the issue so sharply drawn is the pivotal point at which a public prosecutor stands in the criminal justice system.*

Unlike other participants in the traditional common-law adversarial process, whose more singular function is to protect and advance the rights of one side, a ***District Attorney carries an additional and more sensitive burden. It is not enough for him to be intent on the prosecution of his case. Granted that his paramount obligation is to the public, he must never lose sight of the fact that a defendant, as an integral member of the body politic, is entitled to a full measure of fairness. Put another way, his mission is not so much to convict as it is to achieve a just result"*** [Berger v United States, 295 U.S. 78, 88; People v Petrucelli, 44 AD2d 58, 59; Code of Professional Responsibility, EC 7-15].

37. The conduct of the employees of the Cattaraugus County District Attorney's Office mirror the accusations of Hogan Willig, a top tier law firm in Buffalo, New York See Ex 00085). who claimed that employees of the District attorney's Office do not have the temperament and psychological makeup to properly carry out their duties as responsible government officials in a four million dollar lawsuit by another victim of county corruption(See Ex. 00086).

II – RENEWAL AND FUTURE MOTIONS

38. Defense request that the Court grant Defendant leave to submit later motions or renew previous motions should facts be discovered through this motion or hearings related to this motion, which indicate additional relief maybe warranted.

III – ORDER AND FURTHER RELIEF

39. Wherefore Defendant request that this Court grant the relief sought in the Notice of Motion and Exhibits appoint a special prosecutor from outside the southern tier counties as this court deems just and proper.

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NANETTE M. PAINTER
Notary Public - State of New York
Registration #01PA6034885
Qualified in Cattaraugus County
My Commission Expires Oct. 24, 2018

STATE OF NEW YORK, COUNTY OF CATTARAUGUS SS.
I, Alan Bernstein, Clerk of the County of Cattaraugus of the County Court of said County and of the Supreme Court, both being Courts of Record having a common seal.
DO HEREBY CERTIFY that I have compared this copy with the original filed, recorded, filed and recorded, filed and entered, or entered in the office and that the same is a correct transcript thereof and of the whole of said original.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said County and Courts on
Date 8/18/17
Clerk, Deputy