No. 21-435

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

KEVIN D. LOGGINS SR.,-PETITIONER

VS.

REBECCA L. PILSHAW, et. al.;-RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

KEVIN D. LOGGINS SR. #63088

HCF PO BOX 1568

HUTCHINSON, KANSAS 67504

QUESTIONS PRESENTED

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to proceeding in the court whose judgment is subject of this petition is as follows:

REBECCA L. PILSHAW, District Court Judge, Sedgwick County District Court, **DIANA NICHOLS**, Court Reporter, Sedgwick County District Court; **DAVID KAUFMAN**, Assistant District Attorney, Sedgwick County District Attorney Office; **LOU ANN HALE**, Court Reporter, Sedgwick County District Court; **ERIC R. YOST**, District Court Judge, Sedgwick County District Court; **J. PATRICK WALTER**, District Court Judge, Sedgwick County District Court; **ANTHONY J. POWELL, JR.**, District Court Judge, Sedgwick County District Court; **PAUL W. CLARK**, District Court Judge, Sedgwick County District Court; **JAMES R. FLEETWOOD,** Chief Judge, Sedgwick County District Court; **HENRY W. GREEN**, Judge, Kansas Court of Appeals; **(FNU) LEWIS**, Judge, Kansas Court of Appeals; **JOHN J. BUKATY**, District Court Judge; **MELISSA T. STRANDRIDGE**, Judge, Kansas Court of Appeals; **STEPHEN D. HILL**, Judge, Kansas Court of Appeals; **PATRICK D. MCANANY**, Judge, Kansas Court of Appeals; **(FNU) BRAZIL**, Retired Judge, Kansas Court of Appeals; **G. GORDON ATCHESON**, Judge, Kansas Court of Appeals; **THOMAS MALONE**, Judge, Kansas Court of Appeals; **(FNU) ELLIOTT**, Judge, Kansas Court of Appeals; **(FNU) WAHL**, Judge, Kansas Court of Appeals; **(FNU) GREENE**, Judge, Kansas Court of Appeals; **MICHAEL B. BUSER**, Judge, Kansas Court of Appeals; **STEVEN A. LEBEN**, Judge, Kansas Court of Appeals; **KATHRYN A. GARDNER**, Judge, Kansas Court of Appeals; **BERNADINE LAMBRERAS,** Clerk of the Court, Sedgwick County District Court; **LAURA KELLY**, Governor, State of Kansas; **DAVID M. UNRUH**, Sedgwick County Commissioner; **TIM R. NORTON,** Sedgwick County Commissioner; **KARL PETERJOHN**, Sedgwick County Commissioner; **RICHARD RANZAU**, Sedgwick County Commissioner; **RICHARD A. EUSON**, Sedgwick County Counselor; **JEFF EASTER**, Sedgwick County Sheriff; **ROGER WERHOLTZ**, Interim Secretary of Corrections, Kansas Department of Corrections; **DOUGLAS SHIMA**, Clerk of the Court, Kansas Court of Appeals; **WARREN WILBERT**, District Court Judge, Sedgwick County District Court; **SAM CROW**, U.S. District Court Judge, State of Kansas; **DALE SAFFELS**, former U.S. District Court Judge, State of Kansas; **RICHARD D. ROGERS**, U.S. District Court Judge, State of Kansas,-**RESPONDENT(S).**

RELATED CASES

1.) In re Petition for Habeas Corpus, Kevin D. Loggins Sr., (Filed same date) Case No._____(To be supplied by the Court).

2.) Loggins v. State of Kansas, Appeal No. 119,888-A/119,889-A, (Writ of Cert., U.S. SUPREME COURT, Case No._____).

3.) Loggins v. State of Kansas, Appeal No._____, (Petition for Review, Kansas Supreme Court)

4.) Loggins v. Norwood, Appeal No. 20-3009, (Writ of Cert., U.S.S SUPREME COURT, Case No._____).

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____, or;
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was Dec., 1, 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May, 14th, 2021, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL & STATUTORY PROVISIONS

STATEMENT OF THE CASE

Petitioner filed a 42 U.S.C. § 1983 Civil Rights Complaint in the U.S. Dist., Ct., naming 38 State Officials as defendants for depriving my person of my liberty in violation of the Federal Constitution. Petitioner sued the some defendants for monetary damages in their individual capacity, and all defendants in their official capacity for equitable, injunctive or declaratory relief. None of the defendants responded. Petitioner sought summary judgment no defendant responded, so petitioner sought default against the defendants. The Dist., Ct., argued a Immunity & Heck Bar defense on behalf of all defendants and dismissed the complaint with prejudice.

Petitioner timely appealed, and none of the defendants responded. The COA upheld the Dist., Ct., finding, and ignored that the case was void from its inception and that all defendants are trespassers of the law. Petitioner now seeks this Superior Courts intervention to vindicate petitioner federally protected constitutional rights pursuant to Writ of Cert., and a clarification of Heck v. Humphery vs. Elliott v. Peirsol. The Ends of Justice and upholding Federal mandates demands said intervention.

I. WHETHER THE U.S. DISTRICT COURT AND THE U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT RULED IN CONTRADICTION TO LONG STANDING SUPREME COURT PRECEDENT, THAT A LEGAL NULLITY/VOID JUDGMENT OR ORDER REQUIRES INVALIDATION BEFORE RECOVERY IS SOUGHT?

Standard of review: "A void judgment is a legal nullity. See **Black's Law Dictionary** 1822 (3d ed. 1993); see also id., at 1709 (9th ed. 2009). Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, it suffices to say that a void judgment is one affected by a fundamental infirmity, that the infirmity may be raised even after the judgment becomes final." See **Restatement (Second) of Judgments** 22 (1980).

"This applies only in rare instances where a judgment is premised either on a certain type of **jurisdictional error or on violation of due process that deprives a party of notice** or opportunity to be heard." See **United States v. Boch Oldsmobile, Inc.**, 909 F.2d 657, 661 (CA1 1990); **Moore's** § 60.44[1][a]; **11 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedures** § 2861, p. 331 (2d ed. 1995 and supp. 2009); cf. **Chicot County Drainage Dist. v. Baxter State Bank**, 308 U.S. 731, 376, 60 S.Ct. 317, 84 L.Ed. 329 (1940); **Stoll v. Gottlieb**, 305 U.S. 165, 171-172, 59 S.Ct. 134; 83 L.Ed. 104 (1938). (Emphasis added).

"If the magistrate/judge has no jurisdiction, then he and those who advise and act with him, or execute his process, are **trespassers**." **Von Kettler et. al. v. Johnson**, 57 Ill. 109 (1807). This Superior Court held in **Dynes v. Hoover**, 61 U.S. 65, 15 L.Ed. 838 (1857):

"And this upon the principle, that where a court had no jurisdiction over the subject-matter, it tries and assumes it; or where an inferior court has jurisdiction over the subject-matter, but is bound to adopt certain rules its proceedings, from which it deviates, whereby the proceedings are rendered coram non judice, that trespass for false imprisonment is the proper remedy, where the liberty of the citizen has been restrained by process of the court, or by the execution of its judgment. Such is the law in either case, in respect to the court, which acts without having jurisdiction over the subject-matter; or which, having jurisdiction, disregards the rules of proceeding enjoined by the law for its exercise, so as to render the case coram non judice. (**Cole's** case, John. W., 171; **Dawson v. Gill**, 1 East., 64; **Smith v. Beucher**, Hardin, 71; **Martin v. Marshall**, Hob., 68; **Weaver v. Clifford**, 2 Bul., 64; 2 Wils., 385.) In both cases, the law is, that an officer executing the process of a court which has acted without jurisdiction over the subject-matter becomes a **trespasser**, it being better for the peace of society, and its interests of every kind, that the responsibility of determining whether the court has or has not jurisdiction should be upon the officer, than that a void writ should be executed. This court, so far back as the year 1806, said, in the case of **Wise and Withers**, 3 Cr., 331, p. 337 of that case, "It follows, from this opinion, that a court martial has no jurisdiction over a justice of the peace as a militiaman; he could never be legally enrolled; and it is a principle, that a decision of such a tribunal, in a case clearly without its jurisdiction, cannot protect the officer who executes it. The court and the officer are all **trespassers**." (2 Brown, 124; 10 Cr., 69; Mark's Rep., 118; 8 Term R., 424; 4 Mass. R., 234.)

In **Elliott v. Peirsol**, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828), this Superior Court mandated:

("Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; **and form no bar to a recovery sought, even prior to a reversal, in opposition to them). They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers."**) (Emphasis added). The Court also held:

"This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any Court exercising authority over a subject, may be inquired into in every Court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings." Id. at 340-41.

In **In re Tip-PA-Hans Enterprises, Inc.**, 27 B.R. 780, 783 (1983) it was held: (a judge "lacks jurisdiction in a particular case until it has been demostrated that jurisdiction over the subject matter exists".) (**When a judge acts "outside the limits of his jurisdiction, he becomes a trespasser** ...".) (Emphasis added).

Trespasser: is defined in Black's Law Dictionary (6th ed.) as one who has committed unlawful interference with one's person, property, or rights." If a judge acts without authority subject-matter jurisdiction, the judge is acting unlawfully, he/she has committed an unlawful interference with one's person, property, or rights.

It has been held that a state judge acting in his capacity as such, may be charged criminally for violating the provisions of federal statute where such judge discriminated against blacks in selection of jurors for the court in which he presided in Pittsylvania County, Virginia." **Ex Parte Virginia** (1880) 100 U.S. 339, 25 L.Ed. 676.

Even if a court (judge) has or appears to have subject-matter jurisdiction, subject-matter jurisdiction can be lost. Major reason why subject-matter jurisdiction is lost:

1.) **FRAUD UPON THE COURT**: Browning, 826 F.2d at 345. "The cited passage is consistent with this court's view, originally expressed outside the bankruptcy context, that "fraud in the procurement of a judgment" sufficient to warrant the relief thereform is properly identified with "fraud on the court, " i.e.,

"fraud which is directed to the judicial machinary itself and is not fraud between the parties .... It is thus fraud 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**."

"The majority points out that when a court is defrauded, the judgment never becomes final. See Maj. op. at 16 (stating that courts have historically enjoyed the power to invoke fraud on the court because judgments procured through fraud have never become final); see also **Kenner v. Comm'r**, 387 F.2d 689, 691 (7th Cir. 1968) ("We think ... that it can be reasoned that a decision produced by fraud on the court is not in essences a decision at all, and never becomes final.") Because the judgment never became final, the court can act through its jurisdiction over the original proceedings. Otherwise, the case would continue in perpetuity. (quoting **United States v. Williams**, 790 F.3d 1059 (10th Cir. 2015).

In Stoesel v. American Home, 326 Sel. 350, and 199 N.E. 798 (1935), the court ruled and determined that, "Under federal law, when any officer of the court has committed "fraud on the court", the order and judgment of that court are void and of no legal force and effect.". I Spark v. Duval County Ranch, 604 F.2d 976 (1979), the court ruled and determined that, "No immunity exists for co-conspirators of fraud. There is no derivative immunity for extra-judicial actions of fraud, deceit and collusion".

In the case at bar as admitted in the history of the case by the Court of Appeals, petitioner resented facts that the defendant Judge Clark Owens II., Court Appointed counselor David Zacharias and ADA David Kaufman, colluded to procure the jurisdiction to proceed to arraignment by fraudlently alleging that the defendant was before the court and that a amended complaint had been filed with the court adding additional charges. The record relects that the jurisdictional instrument (Complaint/Information was not filed until 12-days after the alleged sham hearing.

2.) **UNLAWFUL ACTIVITY OF A JUDGE OR DISCLOSED CONFLICT OF INTEREST. Code of Judicial Conduct: (Canon 3C):**

"(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably by questioned,"

"**Section 455** provides in part: (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

"The goal of section **455(a)** is to avoid even the appearance of partiality. The test in this circuit is 'whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality." (quoting **United State v. Burger**, 964 F.2d 1065, 1070 (10th Cir. 1992)). "The standard is purely objective. The inquiry is limited to outward manifestations and reasonable inferencedrawn therefrom. In applying the test, the initial inquiry is whether a reasonable factual basis exists for calling the judge's impartiality into question." Id. (citation omitted).

In **Beall v. Riedy**, 457 P.2d 376, the court ruled and determined, "Except by consent of all parties a judge is disqualified to sit in trial of a case if he comes within any of the grounds of disqualification named in the Constitution. **28 U.S.C. § 445(a)**, and **U.S.C.A. Amend. 14th** (Due **Process Clause [Impartial Tribunal]**). In **Taylor v. O'Grady**, 88 F.2d 1189 (7th Cir. 1989), the circuit ruled, "further, the judge has a legal duty to disqualify, even if there is no motion asking for disqualification." (**Will**, 449 U.S. at 213)("§ **455(b)(5)(i)** imposes an absolute rule requiring recusal unless "the case cannot be heard otherwise.")

"Whether jurisdiction exists is a question of law subject to unlimited review." **State v. Berreth**, 294 Kan. 98, 109, 273 P.3d 752 (2012). If the district court lacks jurisdiction to enter an order, an appellate court does not acquire jurisdiction over the subject matter on appeal." **State v. McCoin**, 278 Kan. 465, 468, 101 P.3d 1204 (2004).

"The right to a tribunal free of bias or prejudice is based, not on section **§ 144**, but on the Due Process Clause. While a probation revocation proceeding need not include the full panoply of rights that attend a criminal prosecution, see **United States v. Francischine**, 512 F.2d 827, 829 (5th Cir. 1975); **United States v. Farmer**, 512 F.2d 160, 162 (6th Cir. 1975), due process of course requires a fair hearing, **United States v. Foster**, 500 F.2d 1241, 1244 (9th Cir. 1974)."

"It has long been recognized that freedom of the tribunal from bias or prejudice is an essential of due process. E.g., **In re Murchison**, 349 U.S. 133, 136-137, 99 L.Ed. 942, 75 S.Ct. 623 (1955); **Whitaker v. McLean**, 73 App. D.C. 259, 118 F.2d 596 (1941); cf. **Morrisey v. Brewer**, 408 U.S. at 489." "The significance of section § 144 is that it bars any inquiry into the facts beyond the face of the affidavit. **Berger v. United States**, 255 U.S. at 32-33."

In the present case, however, that bar is unimportant because further inquiry confirms the existence of the alleged prejudice, if the Court accept, as we must, what the judge said about being personally "Interested in seeking to add charges on the defemdant", then adding said charges despite the Assistant District Attorney not endorsing the charge. See Doc.-(3), Appendix-(D), pg.-(11). Where a judge has had an earlier significant, personal involvement as a prosecutor in a critical decision in the defendant's case, the risk of actual bias in the judicial proceeding rises to an unconstitutional level. Due Process entitles a party to "a proceeding in which he may present his case with assurance" that no member or the court is "predisposed to find against him." **Marshall v. Jerrico, Inc.** 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed. 2d 182 (1980).

Due process guarantees "an absence of actual bias" on the part of a judge. **In re Murchison**, 349 U. S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955). Bias is easy to attribute to others and difficult to discern in oneself. "To establish an enforceable and workable framework, the Court's precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present. The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, "the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" **Caperton**, 556 U. S., at 881, 129 S. Ct. 2252, 173 L. Ed. 2d 1208. "Of particular relevance to the instant case, the Court has determined that an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case. See **Murchison**, 349 U. S., at 136-137, 75 S. Ct. 623, 99 L. Ed. 942. This objective risk of bias is reflected in the due process maxim that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." Id., at 136, 75 S. Ct. 623, 99 L. Ed. 942. (quoting, **Williams v. Pennsylvania**, 136 S.Ct. 1899, 195 L.Ed. 2d 132 (2016).

Its evident that former Judge Pilshaw was not neutral or impartial in these proceedings, its well documented from preliminary exam., throughout the trial and at sentencing, as well as during direct appeal and federal collateral proceedings. When a judge abandon her/his role as impartial/neutral tribunal (judge) to become a advocate for the prosecutions case **§ 455(a)** bars them from setting in judgment of the case.

"When a judge lose its color of neutrality and tends to accentuate and emphasize the prosecution's case, he or she failed to play the role of Art. III judicial officer." **U.S. v. Leuth**, 807 F.2d 719, 727 (8th Cir. 1986). "Once a trial judge steps outside the role of detachment, he or she assumes the role of partisan or advocate. At that point the judge is no longer, nor even appears to be neutral and impartial." **Limitations of Judicial Activism in Criminal Trials**, 33 Conn. L. rev. 243, 273-74 (2000). (Emphasis added).

Kansas Judicial Canon-2, Rule 2.2 provides: "A judge shall uphold and apply the law, and shall perform all duties of judicial officer fairly and impartially." See also, **Resolution of The Judicial Conference**, Oct. 1971, and **Canon 3D Code of Judicial Conduct**. This Superior Court in **Neder v. United States**, 527 U.S. 1 (1999), reiterated this courts mandates hoding:

We have recognized that " most constitutional errors can be harmless."**Fulminante**, supra, at 306. "[I]f the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other [constitutional] errors that may have occurred are subject to harmless-error analysis." **Rose v. Clark**, 478 U.S. 570, 579, 92 L. Ed. 2d 460, 106 S. Ct. 3101 (1986). Indeed, we have found an error to be "structural," and thus subject to automatic reversal, only in a "very limited class of cases." One of which errors is **Tumey v. Ohio**, 273 U.S. 510, 71 L. Ed. 749, 47 S. Ct. 437 (1927) **(biased trial judge)**".

"This claim contain a "defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." **Fulminante**, supra, at 310. Such errors "infect the entire trial process," **Brecht v. Abrahamson**, 507 U.S. 619, 630, 123 L. Ed. 2d 353, 113 S. Ct. 1710 (1993), and "necessarily render a trial fundamentally unfair," **Rose**, 478 U.S. at 577. "**Put another way, these errors deprive defendants of "basic protections" without which "a criminal trial cannot reliably serve its function as a vehicle for determination of**

guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair." Id. at 577-578.

The acts of taking on the role of a prosecuting attorney is not a judicial act, nor a part of judicial officers function. Prosecution is of the Executive Branch, and is the sole decider of whom to charge and what to charge them with. **SEPERATION OF POWERS DOCTRINE.** Likewise, concealment of documents (Obstruction of Justice) was not a judicial act. See **18 U.S.C. § 1512(c)(1)**. Both acts are outside her judicial capacity, and must be deemed personal acts.

As demanded in the Judicial Canon for Kansas and Federal Rules an impartial tribunal is a essential element of a criminal trial and when the right is not complied with Due Process of Law Clause **[U.S.C.A. 14th Amend.]**, stands as a jurisdictional bar. In a similar case this Superior Court held:

Since the **Sixth Amendment constitutionally** entitles one charged with crime to the assistance of counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty. "When this right is properly waived, the assistance of counsel is no longer a necessary element of the court's jurisdiction to proceed to conviction and sentence. If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, **the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty. " A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court** -- as the **Sixth Amendment** requires -- by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. " **If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. "The judgment of conviction pronounced by a court without jurisdiction is void**, and one imprisoned thereunder may obtain release by habeas corpus. " A judge of the United States -- to whom a petition for habeas corpus is addressed -- should be alert to examine "the facts for himself when if true as alleged they make the trial absolutely void." (quoting **Johnson v. Zerbst,** 304 U.. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). (Emphasis added).

The fact that plaintiff/petitioner was deprived of liberty in violation of the fundamental basic due process right to an impartial tribunal, the Fourteenth Amendment stands as a jurisdictional bar to a judgment of conviction entered by a judicial actor, setting in judgment on her own case, as it was her interest to file the aggravated sexual battery charge and not the prosecution. This Superior Court has long held and settled: "should a judge act in any case in which he does not have subject-matter jurisdiction, he/she is acting unlawfully, **U.S. v. Will**, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed. 2d 392, 406 (1980); **Cohens v. Virginia**, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed. 257 (1821), and without any judicial authority.

In the case at bar, **28 U.S.C. § 455(a)** disqualified Judge Pilshaw from setting in judgment on the case, thus, it was incumbent upon her to recuse herself on her on volition. Judge Pilshaw was aware of the disqualifying factors, and committed a criminal act by spolitating the record to conceal the structual/jurisdictional defect in violation of **18 U.S.C. § 1512(c)(1)** ([**Obstruction of Justice**]).

In **46 Am. Jur.2d Judges § 97** it is stated: "Thus, it would appear to be a rule of policy, that if there is any doubt or question of the judge being '**interested**' in the case, the doubt or question should be resolved in favor of disqualification, rather than qualification of the judge and where a judge has an interest in the result of litigation, **it has been held he is disqualified to act even if he acts in good faith without knowledge of the disqualification circumstances** . . . ." Quoting **In re Tip-Pa-Hans Enterprises, Inc.**, 27 B.R. 780 (1983).

The judge in this case was fully aware that her conduct disqualified her from setting in judgment on the case, and she remained on the case to insure that the charge she was interested in charging petitioner/plaintiff with would be presented in a way that the prosecution was not required to prove any of the elements of the charge, by telling the jury it was reasonable forseeable to petitioner/plaintiff that a aggravated sexual battery would occur since they often times occur at night.

When veiwing the facts in this case, the defendant Former Judge Rebecca L. Pilshaw's own statement on the record, her own words suffice to prove a interest, as she stated on the record, that "**i'm interested in adding a aggravated sexual battery charge**". Appx-(D), pg.-(11). There is no question that this judge was not disinterest in the case or neutral for that matter. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. **Yazoo, etc. R. Co. v. Kirk**, 102 Miss. 41, 58 So. 710. This principle applies even to the state in criminal cases. **State v. Brown,** 8 Okla. Crim. 40, 126 Pac. 245. The purpose of the rules is to guarantee that no judge shall preside in a case in which he is not wholly free, **disinterested**, and independent. **Tumey v. Ohio**, 273 U.S. 510, 71 L. Ed. 749, 47 S. Ct. 437.

The oath of office, too, imposed by the Legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich: and that I will faithfully and **impartially** discharge all the duties incumbent on me . . . ." See Marshall, Chief Justice, **Marbury v. Madison** (1803) 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60. When as here, the tribunal (judge) abandons said oath, she abandons her position as a Judicial officer, thus relinquish subject-matter jurisdiction and acts in a personal capacity and not in the judge's judicial capacity, rendering her a trespasser of the law, and barred from setting in judgment on the case, pursuant to **28 U.S.C. § 455(a).**

2.) **VIOLATION OF DUE PROCESS OF LAW:** "A judgment may be void for purposes of Rule 60(b)(4) **if entered in a manner inconsistent with due process**. See, e.g., **V.T.A., Inc.,** 597 F.2d at 224-25; **[Arthur Andersen & Co. v. Ohio (In re Four Seasons Sec. Laws Litig.),** 502 F.2d 834, 842 (10th Cir.), cert. denied, 419 U.S. 1034, 42 L. Ed. 2d 309, 95 S. Ct. 516 (1974).

This Superior Court held in **Griffin v. Griffin**, 327 U.S. 220, 66 S.Ct. 556, 90 L.Ed. 635 (1946):

"**A failure to observe constitutional requirements deprives a court of jurisdiction and any judgment rendered by such court is void** and may always be questioned collaterally. Due Process forbids any exercise of judicial power which, but for constitutional infirmity, would substantially affect a defendant's rights." (Emphasis added).

DUE PROCESS RIGHT TO IMPARTIAL TRIBUNAL: "**A fair trial in a fair tribunal is a basic requirement**." **In re Murchison**, 349 U.S. 133, 136 (1955). The due process right to a competent and impartial tribunal is quite seperate from the right to any particular form of proceeding. Due process requires a competent and impartial tribunal in administrative hearing, **Goldberg v. Kelly**, 397 U.S. 254, 271 (1970), and in trials to a judge, **Tumey v. Ohio**, 273 U.S. 510 (1927). (Emphasis added).

Due Process Clause of the Fifth Amendment guarantees a hearing concerning the deprivation of life or a recognized property or liberty interest before a fair and impartial tribunal. See **U.S. Const., amend. V**; **Withrow v. Larkin**, 421 U.S. 35, 46, 43 L.Ed. 2d 712, 95 S.Ct. 1456 (1975). "This guarantee applies to administrative adjudications well as those in the courts. See **Withrow**, 421 U.S. at 46-47. Not only is an actually biased decisionmaker a due process violation, but "'our system of law has always endeavored to prevent even the probability of unfairness.'" Id. at 47 (Quoting **In re Murchison,** 349 U.S. 133, 136, 99 L.Ed. 942, 75 S.Ct. 623 (1955).

To state a due process claim for such probable unfairness, a plaintiff must sufficiently allege facts supporting a conclusion that the "risk of unfairness is intolerably high" under the circumstances of the particular case. Id. 421 U.S. at 58.

In the case at bar, the defendant former Judge Rebecca L. Pilshaw was fully aware that her conduct/actions was constitutionally intolerable, for she went to great lengths to hide the record evidence that barred her from setting in judgment on the case. Thus commiting a criminal act "Obstruction of Justice", violation of **18 U.S.C. § 1512(c)(1).** Appx-(D) and (E). When a judicial officer abandons her role as judge to act in the capacity of a prosecuting attorney. Then orders the evidence of said action concealed from both state and federal court proceedings on review, there can be no doubt that defendant/Former Judge Rebecca L. Pilshaw was aware that she was barred from setting in judgment on the case. See **28 U.S.C. § 455(a)** and **Judicial Canon-3D, Kansas Judicial Canon-2, rule 2.2**.

Moreover, " even if there is no showing of actual bias in the tribunal, this Court has held that due process is denied by circumstances that create the likelihood or the appearance of bias. This rule, too, was well established long before the right to jury trial was made applicable in state trials, and does not depend on it. Thus it has been invoked in trials to a judge, e. g., **Tumey v. Ohio**, 273 U.S. 510 (1927);**In re Murchison**, 349 U.S. 133 (1955);**Mayberry v. Pennsylvania,** 400 U.S. 455 (1971); and in pre-Duncan state jury trials, e. g., **Turner v. Louisiana**, 379 U.S. 466 (1965);**Estes v. Texas**, 381 U.S. 532, 550 (1965).

DUE PROCESS RIGHT TO FAIR NOTICE [6TH AND 14TH AMENDMENT]:

Likewise, "Because these rights are basic to our adversary system of criminal justice, they are part of the 'due process of law' that is guaranteed by the **FOURTEENTH AMENDMENT** to defendants in criminal courts of the States. "The right to notice, The **Sixth Amendment** does not provided merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be "informed of the nature and cause of the accusation," See **Faretta v. Cal.,** 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 562 (1975).

The fact that plaintiff/petitioner was not present during the critical stage of arraignment, due process was not complied with, pursuant to Kansas Statute law and Constitutional law. "Whatever may be the function and importance of arraignment in other jurisdictions, "We have said enough to show that in Alabama it is a critical stage in a criminal proceeding. What happens there may affect the whole trial." **Hamilton v. Alabama,** 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed. 2d 114, (1961). Arraignment in the State of Kansas is deemed a critical stage as well see **K.S.A. § 22-3205(a)**. "In **State v. Bristor,** 236 Kan. 313, 317, 691 P.2d 1 (1984), the court noted that the critical stage analysis has extended the applicability of the Sixth Amendment right to counsel beyond the confines of the trial itself to various pretrial confrontations. For example, a pretrial lineup, a preliminary hearing, **arraignment**, and sentencing are all critical stages. 236 Kan. at 317-18. "The right of a criminal defendant to be present at all critical stages of his trial is a fundamental constitutional right." **Proffitt v. Wainwright**, 685 F.2d 1227 (11th Cir. 1982).

Even more crucial to the courts jurisdiction/lost thereof, is the fact the jurisdictional instrument upon which the defendant sought to act was not filed with the court until 12-days after the alleged arraignment in absentia. In the State of Kansas filing of the complaint/information prior to arraignment is a prerequisite to the courts jurisdiction to act. See Appx-(F).

K.S.A. 1992 Supp. 21-4624(1) states that: "notice **shall be filed with the court** and served on the defendant or the defendant's attorney at the time of arraignment." This would seem to indicate that the order is not particularly important as long as the service takes place at the time of arraignment. While we did note in Peckham that "**the filing of the service with the court is a prerequisite to serving the defendant**," **this statement was made as part of our conclusion that notice to the court could not be filed after arraignment**. See 255 Kan. at 316. This does not mean, and the statute does not indicate, that service and filing must be accomplished in a lockstep order so long as **both service and filing are accomplished at the time of the arraignment**. Quoting **State v. Harris**, 259 Kan. 689 (1996)(Kansas Supreme Court).

In another Kansas Supreme Court holding the Court held:

In **K.S.A. 22-2202(2)** arraignment is defined as follows:

"(2) 'Arraignment' means the formal act of calling the defendant before a court having jurisdiction to impose sentence for the offense charged, informing said defendant of the offense with which said defendant is charged, and asking said defendant whether he or she is guilty or not guilty."

K.S.A. 22-3205 outlines the procedure for arraignment as follows:

"Arraignment shall be conducted in open court and shall consist of reading the complaint, information or indictment to the defendant or stating to him the substance of the charge and calling upon him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead. If the crime charged is a felony, the defendant must be personally present for arraignment; if a misdemeanor, he may with the approval of the court, appear by counsel. The court may direct any officer who has custody of the defendant to bring him before the court to be arraigned."

It is clear that Scott's and Rosine's court appearances on November 25, 1981, and November 5, 1981, respectively, wholly lacked the essential elements of an arraignment. No complaint was read to either defendant as no complaint existed. For like reason, no copy of the complaint could have been handed to either defendant. Further, there was no complaint on which to base a plea. " **The existence of a complaint, information or indictment filed against a defendant is a**

fundamental prerequisite to an arraignment. "In **State v. Taylor**, 3 Kan. App. 2d 316, the Court of Appeals stated:

"The arraignment in a criminal proceeding is the formal act of calling the defendant before a court having jurisdiction to impose sentence for the offense charged, informing the defendant of the offense charged by reading the complaint, information or indictment or stating to him the substance of the charge, and asking defendant whether he is guilty or not guilty or to otherwise plead as permissible by law." Syl. para. 1. Quoting **State v. Rosine**, 233 Kan. 663 (1983)(Kansas Supreme Court).

As stated at **22 C.J.S., Criminal Law § 157**, p. 188: "Whether or not a court has jurisdiction of the offense in a particular case is determined from the allegations in the accusation. **An information is the only vehicle by which a court obtains its jurisdiction, and is limited upon that jurisdiction**". "The information/complaint is the jurisdictional instrument upon which a defendant stands trial." **State v. Bishop**, 240 Kan. 647, 652, 732 P.2d 765 (1987).

The U.S. Court of Appeals for the Tenth Circuit in its accessment of the case put forth an argument in passing that no defendants argued, by hinting the complaint information was already filed, and that the State prosecution could amend the complaint anytime before the verdict. See App.-(A), Thus, although the prosecution is at liberty to amend the complaint, in this case the Court, Prosecution and Court Appointed Counsel held a "alleged arraignment hearing" wherein the defendant Judge Clark Owens II., falsely alleged on the record that the "amended complaint had been filed previously to the hearing", Appx.-(G), pg-(2). Therein it was falsely/fradulently alleged that counsel and plaintiff had read said complaint/information and waived Plaintiffs sole fundamental constitutional right to fair notice. .-(G), pg-(2).

Reiterating this Superior Courts holding in Faretta v. California, supra, the Kansas Supreme Court in **State v. Carter**, 270 Kan. 426 (2000) reaffirmed the fundamental constitutional right to fair notice: "The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. **It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation**,'" Id. at 439.

As noted by this Superior Court in **Garland v. Washington**, 232 U.S. 642, 34 S. Ct. 456, 58 L. Ed. 772 (1914):

"**The object of arraignment being to inform the accused of the charge**," and further held "Due process of law, this court has held, does not require the State to adopt any particular form of procedure, **so long as it appears that the accused has had sufficient notice of the accusation and an adequate opportunity to defend himself in the prosecution**". **Rogers v. Peck**, 199 U.S. 425, 435, and previous cases in this court there cited. id at 644-645.

In the case at bar and the assessment of the lower federal courts facts of the history of the case it cannot be held that Plaintiff/defendant was ever apprised of the nature nor the substances of the charges. The record of the alleged arraignment in absentia, the record reflects no mention of any charges nor their nature or substances. Appx .-(G). Likewise, the actual record expose that the "complaint/information" plaintiff/defendant was subjected to was not filed until 12-days after the "alleged arraignment". Appx -(F).

"**Rule 10 of the Federal Rules of Criminal Procedure, 18 U.S.C.A.**, which provides that an 'arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. See Also, **K.S.A. § 22-3205(a).** Obviously, arraignment in accordance with **Rule 10** is intended to be a safeguard for due process- a pattern for a fair hearing. "**It is only when failure to observe this safeguard amounts to denial of due process, that the court is deprived of jurisdiction**". See **Merritt v. Hunter**, 170 F.2d 739 (10th Cir. 1948).

It is long settled law in this Country that "a judgment may not be rendered in violation of constitutional protections. **The validity of a judgment may be affected by failure to give the constitutionally required due process notice** and an opportunity to be heard." **Earle v. McVeigh**, 91 U.S. 503, 23 L.Ed. 398 (1875). Notice to the defendant, actual or constructive, **is an essential prerequisite of jurisdiction**. Due process with personal service, as a general rule, is sufficient in all cases. No man shall be condemned in his person or property without notice, and an opportunity to be heard in his defence, is a maxim of universal application. Id. at 509.

VALID JUDGMENT VS. VOID JUDGMENT

In 7 **Moore's Federal Practice § 60.25**[2], pp. 300-301 (2d ed. 1982), the following discussion is found:

"**A void judgment is something very different than a valid judgment. The void judgment creates no binding obligation upon the parties, or their privies; it is legally ineffective**. And while, if it is a judgment rendered by a federal district court, the court which rendered it may set it aside under Rule 59, within the short time period therein provided, or the judgment may be reversed or set aside upon an appeal taken within due time where the record is adequate to show voidness, the judgment may also be set aside under **60(b)(4) within a 'reasonable time', which, as here applied, means generally no time limit, the enforcement of the judgment may be enjoined; or the judgment may be collaterally attacked at any time in any proceeding, state or federal**, in which the effect of the judgment comes in issue, which means that if the judgment is void it should be treated as legally ineffective in the subsequent proceeding. Even the party which obtained the void judgment may collaterally attack it. And the substance of these principles are equally applicable to a void state judgment." (Emphasis added).

"A party attacking a judgment as void need show no meritorious claim or defense or other equities on his behalf; **he is entitled to have the judgment treated for what it is, a legal nullity, if he establishes that the judgment is void**." **Barkley v. Toland**, 7 Kan. App. 2d 625, 646 P.2d 1124 (1982). (Emphasis added).

In Black's Law Dictionary (9th ed.) vaild and void is defined as such:

Valid: 1. Legally sufficient; binding <a valid contract>. 2. Meritorious <that is a valid conclusion based on the facts presented in this case>. -**validate**, **validation**, **validity**.

Void: 1. Of no legal effect; null.

"A judgment may therefore be attacked in a collateral proceeding in another jurisdiction on the basis that it was rendered without jurisdiction. " **Durfee v. Duke**, 375 U.S. 106, 110, 11 L. Ed. 2d 186, 84 S. Ct. 242 (1963); **Pennoyer v. Neff**, 95 U.S. 714, 730-33, 24 L. Ed. 565 (1877), overruled on other grounds by **Shaffer v. Heitner**, 433 U.S. 186, 53 L. Ed. 2d 683, 97 S. Ct. 2569 (1977); **Thompson v. Whitman**, 85 U.S. 457, 469, 21 L. Ed. 897 (1873); see also **Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee**, 456 U.S. 694, 706, 72 L. Ed. 2d 492, 102 S. Ct. 2099 (1982) ("A defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding."); **United States v. Thompson**, 941 F.2d 1074, 1080 (10th Cir. 1991) ("Only void judgments are subject to collateral attack."); **First Nat'l Bank & Trust Co. of Wyo. v. Lawing**, 731 F.2d 680, 684 (10th Cir. 1984) (quoting **Ins. Corp. of Ireland**, 456 U.S. at 706); **V.T.A., Inc. v. Airco, Inc.**, 597 F.2d 220, 224 n.9 (10th Cir. 1979) ("If a judgment is void, it is a nullity from the outset."); **United States v. Indoor Cultivation Equip. From High Tech Indoor Garden Supply**, 55 F.3d 1311, 1317 (7th Cir. 1995) **("Void judgments are legal nul**lities[.]"); **Rodd v. Region Constr. Co.**, 783 F.2d 89, 91 (7th Cir. 1986) ("[A] void judgment is no judgment at all."); **Jones v. Giles**, 741 F.2d 245, 248 (9th Cir. 1984) ("A void judgment, as opposed to an erroneous one, is legally ineffective from inception."); **Jordon v. Gilligan**, 500 F.2d 701, 704 (6th Cir. 1974) ("A void judgment is a legal nullity[.]"). (quoting **United States v. Bigford**, 365 F.3d at 865).

The lower federal courts both district and U.S. Court of Appeals for the Tenth Circuit finding that plaintiff must show proof that the void judgment was reversed argument ignores the fact that " a judgment rendered without jurisdiction is void. **State v. Chatmon**, 234 Kan. 197, 205, 671 P.2d 531 (1983) And, significantly, a judgment "void for want of jurisdiction may be attacked at any time and may be vacated because it is a nullity." **State v. Minor**, 197 Kan. 296, 300, 416 P.2d 724 (1966). The law regarding this principle is well established and coded in the American Jurisprudence, and in the State of Kansas.

> "A void judgment is not entitled to the respect accorded to, and is attended by none of the consequences of, **a valid adjudication**. Indeed, a void judgment need not be recognized by anyone, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights, nor can any rights be based on it.
>
> "Although it is not necessary to take any steps to have a void judgment reversed or vacated, it is open to attack or impeachment in any proceeding, direct or collateral, and at any time or place, at least where the invalidity appears upon the face of the record. "All

proceedings founded on the void judgment are themselves regarded as invalid and ineffective for any purpose." (Emphasis added.) **46 Am. Jur. 2d, Judgments** § 31, p. 393-94. See **Chambers v. Bridge Manufactory**, 16 Kan. 270 (1876); 7 **Moore's Federal Practice § 60.25[2]**, pp. 223-25 (2d ed. 1995).

Both case cited by the district and court of appeals, Heck v. Humphrey, 512 U.S. 477 (1994) and Preiser v. Rodriguez, 411 U.S. 475, 36 L. Ed. 2d 439, 93 S. Ct. 1827 (1973), neither entertained the requirement of having a void judgment reversed. To invalidate a judgment requires that a valid judgment is standing. "A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include, **Kalb v. Feuerstein**, 308 U.S. 433, 60 S.Ct. 343, 84 L.Ed. 370 (1940)."

If the "record" reveals what pretends to be a judgment is void, there is nothing to be invalidated for it creates no binding right and is not deemed a final judgment, for the law provides that a void judgment is void even after what is preceived as a final judgment, if the issuing court lacked subject-matter, personal jurisdiction, or which was rendered in contradiction to Due Process of Law. "[T]he principle of finality," however, "rests on the premise that the proceeding had the sanction of law, expressed in the rules of subject matter jurisdiction". **Restatement (Second) of Judgments § 12 cmt. a.**

The proposition that the judgment of a court lacking jurisdiction is void trace back to the English Year book, See **Bowser v. Collins**, Y.B. Mich. 22 Edw. IV., f. 30, Pl. 11, 145 Eng. Rep. 97 (Ex ch. 1482) and made settled law by Lord Coke in **Case of Marshalsea**, 10 Coke Rep. 686, 77a, 77 Eng. Rep. 1027, 1041 (K.B. 1612). This Superior Court has held: "If the first judgment is a nullity, nothing which occurs afterwards will give it vitality. 'The validity of every judgment depends upon the jurisdiction of the court before it is rendered, not upon what may occur subsequently." **Pennoyer v. Neff**, 95 U.S. 714 (1877). (quoting **Renaud v. Abbott**, 116 U.S. 277).

"If, in a proper case the plaintiff holding a valid state judgment can be enjoined by the United States Courts from its inequitable use, -- by so much more can the federal courts enjoin him from using that which proports to be a judgment but is, in fact an **absolute nullity**." **Marshall v. Holmes**, 141 U.S. 597; **Gaines v. Fuentes**, 92 U.S. 10,; **Barrow v. Hunton**, 99 U.S. 85.

Thus, the district court and Court of Appeals for the 10th Cir., holding that plaintiff/petitioners case is barred by the Heck Bar runs afoul to this Superior Courts long settled and standing precedent that:"The law is well settled that a void order or judgment is void even before reversal. **Vallely v. Northern Fire & Marine Ins.** Co., 254 U.S. 348, 41 S.Ct. 116 (1920) ("Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. The are not voidable but simply VOID AND THIS EVEN PRIOR TO REVERSAL." [Empasis added]); **Old Wayne Mut. I. Assoc. v. McDonough**, 204 U.S. 8, 27 S.ct. 236 (1907); **Williamson v. Berry**, 8 How. 495, 540, 12 L.Ed. 1170, 1189 (1850); **Rose v. Himely**, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808). (Elliott v. Peirsol, supra)(Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; **and form no bar to a recovery sought, even prior to a reversal, in opposition to them**.)

The fact that the judgment is a legal nullity was not refuted by any of the defendants in neither the district court or in the Court of Appeals for the 10th Cir., and neither court answered the question it must be presumed that jurisdiction was lacking.

"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." **Main v. Thiboutot**, 100 S.Ct. 2502 (1980). Jurisdiction can be challenged at anytime," and Jurisdiction, once challenged, cannot be assumed and must be decided." **Basso v. Utah Power & Light Co.**, 495 F.2d 906, 910.

If facts alleging jurisdiction are challanged, the burden rest upon the party claiming jurisdiction to demostrate that jurisdiction of the subject matter existed." **McNutt v. G.M.A.C.**, 298 U.S. 178, 56 S.Ct. 780, 80 L.Ed 1135 (1935). The law provides that the jurisdiction of the court must be established through the record. "It is a long-settled principle that "standing cannot be" inferred argumentively from averments in the pleadings," **Grace v. American Central Ins. Co.**, 109 U.S. 278, 284 (1883), but rather "must affirmatively appear in the record." **Mansfield C. & L.M.R. Co. v. Swan,** 11 U.S. 379, 382 (1884)" See **King Bridge Co. v. Otoe County**, 120 U.S. 225, 226 (1887)(facts supporting Article III jurisdiction must "appear affirmatively from the record").

"There is no discretion to ignore that lack of jurisdiction." **Joyce v. U.S.**, 474 F.2d 215. Since the record reflects that said judgments is legal nullities, theres no requirement to have said invalid judgments, invalidated. Likewise, since none of the defendants sought to rebut the fact that the original court proceeded without jurisdiction in neither the district or court of appeals the law provides the court must presumed none existed, and that said judgment is a legal nullity. Thus, the lower courts holding is not with standing, and the Heck Bar is incapable of barring recovery sought. And plaintiff/Appellants detention is afoul to the **U.S.C.A Const. XIII (Prohibition of slavery).**

We presume that courts lack jurisdiction **"unless 'the contrary appears affirmatively from the record'"** **Bender v. Williamsport, Area School Dist.,** 475 U.S. 534, 546, 89 L.Ed. 2d 501, 106 S.Ct. 1326 (1986). (Emphasis added). Since the record presents indefeasible evidence that jurisdiction was procured falsely, and lost for failure to complete the court by providing an impartial tribunal (Judge), (Due Process Safeguard requirement), theres no discretion in the matter.

"When rules providing for relief from a void judgments is applicable, relief is not discretionary matter, **but mandatory**." **Orner v. Shalala,** 30 F.3d 1307 (10th Cir. 1994). (Emphasis added). Judgments entered where courts lacked jurisdiction of subject-matter, personal or which was procured by fraud, must be set aside. **Jaffe and Asher v. Van Brunt,** S.D.N.Y. 1994, 158 F.R.D. 278. "**A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid**. It is clear and well established law that a void order can be challenged in any Court." **Old Wayne Mut. L. Assoc. v. McDonough**, 204 U.S. 8, 27 S.Ct. 236 (1907).

Wherefore, this court should find since the original proported judgment of conviction in Case No. 95 Cr 1859/1616 are legal nullities from their inception, the U.S. district court and Court of Appeals for the 10th Circuit is not at liberty to ignore the lack of jurisdiction/voidness. Thus, since the defendants are trespassers of the law the Heck Bar or any other bar is not applicable under these circumstances, and that plaintiff/petitioners § 1983 civil claims are ripe for trial. Reverse and remand back to the district court for jurytrial.

II. WHETHER THE LOWER FEDERAL COURTS RULED IN CONTRADICTION TO THE LONG STANDING AND SETTLED PRECEDENT OF THIS SUPERIOR COURT REGARDING 11TH AMENDMENT IMMUNITY DEFENSE IN § 1983 SUITS AGAINST STATE OFFICIAL ACTING OUTSIDE THEIR JURISDICTION?

Standard of review: Ex parte Young teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. **The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States**." Id., at 159-160. (Emphasis supplied.) (quoting **Scheuer v. Rhodes**, 416 U.S. at 238).

"Officers sued in their personal capacity come to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term "person." Cf. id., at 71, n. 10 " ("[A] state official in his or her official capacity, when sued for injunctive relief, would be a person under **§ 1983** because 'official-capacity actions for prospective relief are not treated as actions against the State'")" (quoting **Graham**, 473 U.S. at 167, n. 14). "Through **§ 1983**, Congress sought "to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." **Monroe v. Pape**, 365 U.S. 167, 172, 5 L. Ed. 2d 492, 81 S. Ct. 473 (1961).Accordingly, it authorized suits to redress deprivations of civil rights by persons acting "under color of any [state] statute, ordinance, regulation, custom, or usage." **42 U. S. C. § 1983**.

"A suit which only seeks to prevent or restrain **a trespass** upon property or person by one who happens to be a state officer, but is proceeding in violation of the Constitution of the United States, is not a suit against a state within the meaning of the **ELEVENTH AMENDMENT**, but a suit against the **trespasser or wrongdoer**." **Ex Parte Royall**, 117 U.S. 241.

"It is the principle lying at the foundation of all well ordered jurisprudence that every judge, whether of a higher or lower court, exercising the jurisdiction vested in him by law, and deciding on the rights of others, should act on his own free, unbiased convictions, uninfluenced by any apprehension of consequence. "**Pratt v. Gardner**, 2 Cush. (Mass.) 63. To be free from liability the act must have been done by the judge in his judicial capacity in a matter within his jurisdiction. "**Lange v. Benedict**, 73 N.Y. 12. Where the court has no jurisdiction of the subject matter, its proceedings are void and the judge can derive no protection from them. **Broom v. Douglass**, 175 Ala. 268, 57 So. 860; **Savacool v. Boughton**, 5 Wend. 170; **Bigelow v. Stearns**, 19 Johns. 39. "In **46 Am. Jur.2d** § 75 P. 145 it is stated: ". . . . **all judges, whether of superior or inferior jurisdiction, are liable for their acts if they act entirely without jurisdiction**",

citing in footnote numerous cases including **Yaselli v. Goff** (Ca. 2) 12 F.2d 396, Aff'd, 275 U.S. 503, 72 L. Ed. 395, 48 S. Ct. 155, and **Rammage v. Kendall**, 168 Ky. 26, 181 S.W. 631, stating: "**Where the judge acts illegally, outside the limits of his jurisdiction, he becomes a trespasser, and is liable in damages as such**." Some courts have held that where courts of special or limited jurisdiction exceed their rightful powers, the whole proceeding is coram non judice, and the judge is liable to an action by the party injured. **46 Am. Jur.2d Judged** § 77". (quoting **In re Tip-Pa-Hans Enterprises, Inc.**, 27 B.R. 780(1983)) (Emphasis added).

"In an action against a judge of any court, whether of record or otherwise, for any act done by him or by his command, the question in every case to be determined is, was the act done a judicial act, done within his jurisdiction? **If it was not, he can claim no immunity or exemption by virtue of his office from liability as a trespasser; 'for if he has acted without jurisdiction, he has ceased to be a judge'**." **Randall v. Brigham**, 74 U.S. 523 (1869). (Emphasis added).

Also see, 2 **Institutes**, 427; **The Marshalsea Case**, 10 Reports, 76 A., **Floyd v. Barker**, 12 Id. 23; **Hoskins v. Matthews**, 1 Levinz, 292; **Martin v. Marshall**, Hobart, 63; **Bushell's Case**, 1 Modern, 119; **Hamond v. Howell**, 2 Id. 219; **Smith v. Bouchier**, 2 Strange, 993; **Groenvelt v. Burwell**, 1 Ld. Raymond, 454; **Miller v. Seare**, 2 W. Blackstone, 1141; **Perkin v. Proctor**, 2 Wilson, 386; **Mostyn v. Fabrigas**, 1 Cowper, 161; **Sutton v. Johnstone**, 1 Term, 493; **Welch v. Nash,** 8 East, 402; **Burdett v. Abbott**, 14 Id. 1; **Ackerley v. Parkinson**, 3 Maule & Selwyn, 411; **Mitchell v. Foster**, 4 Perry & Davison, 153; S.C., 12 Adolphus & Ellis, 472; **Garnett v. Ferrand**, 9 Dowling & Ryland, 670; **Van Sandau v. Turner**, 6 Q.B. 773; **Gossett v. Howard**, 10 Id. 411; **Houlden v. Smith**, 14 Id. 841; **Kinning v. Buchanan**, 8 C.B. 271; **Watson v. Bodell**, 14 Meeson & Welsby, 70; **Fergurson v. Kinnoull**, 9 Clark & Finelly, 296; **Miller v. Hope**, 2 Shaw's Appeal Cases, H.L. 125; **Calder v. Halket**, 3 Moore's Privy Council, 28; **Taaffe v. Downes,** Id. 36; **Gahan v. Lafitte**, Id. 382; **Hill v. Bigge**, Id. 465; **Wise v. Withers**, 3 Cranch, 331; **Anderson v. Dunn**, 6 Wheaton, 204; **Kendall v. Stokes**, 3 Howard, 89; **Mitchell v. Harmony**, 13 Id. 144; **Dynes v. Hoover**, 20 Id. 65; **Yates v. Lansing**, 5 Johnson, 282; **Bigelow v. Stearns**, 19 Id. 39; **Cunningham v. Bucklin**, 8 Cowen, 178; **Horton v. Auchmoody**, 7 Wendell, 200; **Bevard v. Hoffman**, 18 Maryland, 479; **Lining v. Bentham**, 2 Bay, 1; **Miller v. Grice**, 2 Richardson, 27; **Greene v. Mumford**, 5 Rhode Island, 472; **Scovil v. Geddings**, 7 Ohio, 566; **Piper v. Pearson**, 2 Gray, 120; **Clarke v. May**, Id. 410; **Kelly v. Bemis**, 4 Id. 83; **Noxon v. Hill**, 2 Allen, 215; **Revill v. Pettit**, 3 Metealf, Kentucky, 314.

A. Defendants: Former Judge Rebecca L Pilshaw and Judge Clark Owens II (Sued in their Official and Personal capacity).

Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. **Mitchell v. Forsyth**, 472 U.S. 511, 526, 86 L. Ed. 2d 411, 105 S. Ct. 2806 (1985). Accordingly, judicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial. "**Pierson v. Ray**, 386 U.S. at 554 ("Immunity applies even when the judge is accused of acting maliciously and corruptly"). See also **Harlow v. Fitzgerald**, 457 U.S. 800, 815-819, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982) (allegations of malice are insufficient to overcome qualified immunity).

"Rather, our cases make clear that " the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, i. e., actions not taken in the judge's judicial capacity. **Forrester v. White**, 484 U.S. at 227-229; **Stump v. Sparkman**, 435 U.S. at 360. "Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Id., at 356-357; **Bradley v. Fisher**, 13 Wall. at 351.

Former Judge Rebecca L. Pilshaw: Lost jurisdiction due to her personal interest in the case which disqualified her from setting in judgment in the case. When a judge gives up their impartiality and neutrality to become a partisan or advocate for the states case or one party over the other, **28 U.S.C. § 455(a)** disqualify said judge from setting in judgment on the case, thus depriving said judge of the authority (Jurisdiction) to act. The **Due Process Clause of the United States Constitution** guarantee one to a trial of a fair and impartial tribunal.

"**The lack of statutory authority to make particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack**." 46 Am. Jur. 2d, Judgments § 25, pp. 388-89. (Emphasis added). The right to a tribunal free from bias and prejudice is bases on the Due Process Clause. Should a judge issue any order after he has been disqualified by law, and if the party has been deprived of any constitutionally protected freedom, the judge has acted in his/her personal capacity and not in the judge's judicial capacity.

Whether an act by a judge is a "judicial" one relates to the nature of the act itself, that is, whether it is a function normally performed by a judge, and to the expectations of the parties, that is, whether they dealt with the judge in his judicial capacity. See **Mireles v. Waco**, 502 U.S. 9, 11, 112 S.Ct. 286, 116 L.Ed. 2d 9 (1991). Judges are of the Judicial branch, whereas prosecution is of the Executive branch. The prosecution is the sole decider of whom to charge and what charges is to be brought. The United States Constitution Due Process Clause guarantee's one subjected to a criminal trial to a impartial and neutral tribunal. **In re Murchison,** supra.

Furthermore, this defendant was aware that her conduct was in violation of the Supreme Authority of the United States(the Constitution). The defendant conspired to commit an overt criminal act of 'obstruction of justice' by way of spolitation of the record. See **18 U.S.C. § 1512(c)(1).** Appx .-(D) and (E). Thus rendering this defendant without any immunity and deemed a trespasser of the law. **Scheuer v. Rhodes**, supra; and **Randall v. Brigham**, supra.

Judge Clark Owens II.: Procured Jurisdiction by fraud on the Court. Under Federal Law, when any officer of the Court has committed "fraud on the Court", the order and judgment of that court are void and of no legal force and effect. In **Sparks v. Duval County Ranch**, 609 F.2d 976 (1979), the court ruled and determined that, "No immunity exists for co-conspirators of fraud."

In the case at bar, a "sham hearing" was held wherein the Court, Prosecution and Court Appointed attorney alleged that a amended complaint had been filed in the case, that petitioner was present and had been notified of the charges lodged therein. However review of the record and facts in the case, the Complaint/Information in question was not filed until 12-days after the alleged arraignment hearing, Appx -(F), and the lower courts history of the facts, Appx-(A). Likewise, the record reveals that petitioner was not present at said critical stage. Appx .-(G).

Fair notice is a Sixth Amendment Fundamental right, which invokes the Fourteenth Amendment right to Due Process of Law. Said right is a prerequisite to the courts jurisdiction, and when as here, the court goes about procuring its authority (jurisdiction) to act through fraud, no jurisdiction exist and said defendant can not claim any immunity, for he is a trespasser of the law, and has acted in his personal capacity.

B. **STATE COURT JUDGE DEFENDANTS SUED IN THEIR OFFICIAL CAPACITY FOR EQUITABLE, INJUNCTIVE OR DECLARATORY RELIEF:** J. Eric R. Yost; J. Patrick Walter; J. Anthony J. Powell Jr.; J. Paul Clark; Henry W. Green, P.J.; John J. Bukaty; Honorable Lewis, P.J.; Melissa T. Strandridge, C.J.; Stepen D. Hill, P.J.; Patrick D. McAnany, J.; Honorable Brazil S.J.; Gordon Atcheson, P.J.; Thomas Malone; Honorable Elloit, J.; Honorable Wahl, S.J.; Honorable Greene, C.J.; Michael Buser, J.J.; Steven A. Leben, P.J.; Kathryn A Gardner, P.J.; and J. Warren Wilbert.

These defendants are being sued in their official capacity for equitable, injunctive or declaratory relief. The United States District Court and the Court of Appeals for the Tenth Circuit dismissed plaintiffs complaint and affirmed the apeal by asserting a immunity defense and Heck bar on behalf of all the defendants. Neither defendant responded in the district court or the court of appeals. As stated herein all the named State Court Judges in the complaint acted without subject-matter jurisdiction.

Under the **Federal Courts Improvement Act of 1996**, judicial officers are only immune from injunctive relief if declaratory relief is unavailable when sued in their official capacities. See **42 U.S.C. 1983; Pullman v. Allen**, 466 U.S. 522, 541-42, 80 L.Ed. 2d 565, 104 S.Ct. 1970 (1984)(absolute immunity does not bar equitable relief against state court judges). Furthermore the law provides: "If the district/trial court lacks jurisdiction, to enter a order appellate courts/(postconviction courts) does not aquire jurisdiction over the subject-matter on appeal. **State v. McCoin**, 278 Kan. 465, 468 (2004).

Every appellate court has a special obligation to "satisfy itself not only of its jurisdiction but also that of the lower courts in a cause under review," even though the parties are prepared to concede it. **Mitchell v. Maurer**, 293 U.S. 237, 244 (1934), And if the record reveals the lower court was without jurisdiction rather lacking or lost thereof, the appellate court has jurisdiction not on the merits, but merely for the purpose to correct the lower court for entertaining the case. **United States v. Corrick**, 298 U.S. 435, 440 (1936).

Since the record reveals the trial courts orders/judgments is legal nullities/void for want of jurisdiction, and all these defendants entered orders/judgments based on the merits and in abused of discretion (error of fact and law) are themselve invalid as well. See **46 Am. Jur. 2d, Judgments** § 31, p. 393-94; and **7 Moore's Federal Practice § 60.25[2]**, pp. 223-25 (2d ed. 1995). If the first judgment is a nullity, nothing which occurs afterwords will give it vitality. (**Pennoyer v. Neff**, supra), ("The validity of every judgment depends upon the Jurisdiction of the court before it is rendered, not upon what may occur subsequently.") No judge has lawful authority to make a void order valid. **Bates v. Board of Educ., Allendale Comm., Consolidated Sch. Dist. No.** 17, 136 Ill.2d 260, 267 (1990).

C. **Federal Court Judge Defendants**: Judge Sam Crow; Judge Dale Saffels and Judge Richard D. Rogers. These defendants are being sued in their official capacity for equitable relief, injunctive or declaratory relief.

"An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review." **Mansfield, C. & L. M. Ry. Co. v. Swan**, 111 U.S. 379, 382. "The appellants did not raise the question of jurisdiction at the hearing below. But " the lack of jurisdiction of a federal court touching the subject matter of the litigation cannot be waived by the parties, and the district court should, therefore, have declined sua sponte, to proceed in the cause. " And if the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it." While the District Court lacked jurisdiction, we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit". **United States v. Corrick**, 298 U.S. 435, 56 S. Ct. 829 , 80 L. Ed. 1263, (1936). "The Court whether trial or appellate, is obliged to notice want of jurisdiction on its own motion. **Mansfield, etc. v. Swan,** (supra); **Cameron v. Hodges** (1888) 8 S. Ct. 1154, 127 U.S. 322, 32 L. Ed. 132; **L & N RR Co. v. Mottley** (1908) 29 S. Ct. 42, 211 U.S. 149, 53 L. Ed. 126; [**7] **City of Kenosha v. Bruno** (1973) 93 S. Ct. 2222, 412 U.S. 507, 37 L. Ed. 2d 109. "A party who has invoked the jurisdiction of the federal court and is unhappy with its decision may indeed challenge its jurisdiction even after verdict. **American Fire & Cas. Co. v. Finn** (1951) 71 S. Ct. 534, 341 U.S. 6, 95 L. Ed. 702, 19 A.L.R.2d 738".

Since the record reflects that the state court (trial and appellate court) acted without jurisdiction, these defendants orders/judgments are also legal nullities and was imposed without jurisdiction. Thus, these defendants being sued in their official capacity for equitable, injunctive or declaratory relief, show up to court as person's pursuant to **§ 1983**, and there lies no immunity bar to the relief sought. See **Federal Courts Improvement Act of 1996**.

State Court Judge James Fleetwood:

This defendant is being sued in his personal capacity for monetary damages/punitive damages. This defendant after being named in the forgoing law suit, appointed himself to a Habeas proceeding related to this case. Plaintiff moved to have the defendant removed stating the interest the defendant has in the suit. Defendant Judge James Fleetwood refused to recuse himself, and entered a order in the case, irregardless of him being disqualified from setting in judgment on the case pursuant to **28 U.S.C. § 455(a)**.

When as here the defendant ignores his constitutional duty to recuse himself to protect his interest in the suit, despite his lack of jurisdiction to do so, his actions must be deemed reachable through punitive damages. "The willful doing of an act with knowledge it is liable to injure another and regardless of the consequences." "An injury that is intentional, wrongful and without just cause or excuse." **Panchula v. Kaya,** 59 Ohio.App. 556, 18 N.E. 2d 1003,1005. Punitive damages may be rewarded to the plaintiff for such injury. See definition of **malicious injury**. **[Black's Law Dictionary (6th ed).]**.

"Punitive damages are available in a 'proper' **§ 1983** action . . . ." **Carlson v. Green**, 446 U.S. 14, 22 (1980). Although there was debate about the theoretical correctness of the punitive damages doctrine in the latter part of the last century, the doctrine was accepted as settled law by nearly all state and federal courts, including this Court. "**It was likewise generally established that individual public officers were liable for punitive damages for their misconduct on the same basis as other individual defendants**. " See also **Scott v. Donald**, 165 U.S. 58, 77-89 (1897) (punitive damages for constitutional tort). Further, although the precise issue of the availability of punitive damages under **§ 1983** has never come squarely before us, we have had occasion more than once to make clear our view that they are available; indeed, we have rested decisions on related questions on the premise of such availability." (quoting **Smith v. Wade,** 461 U.S. 30 (1983).(Emphasis added).

Since the defendants acted without subject-matter jurisdiction in the original judgment, neither the appellate court or postconviction court aquired jurisdiction, and since **28 U.S.C. § 455(a)** disqualified this defendant from setting in judgment on the case, he can claim no defense of immunity and is liable for the injury caused as well as punitive damages for his malicious intent.

D. **State Prosecution ADA David Kaufman**:

This defendant is being sued in his individual capacity for monetary damages. The defendant conspired with defendants Judge Clark Owens II., and plaintiffs court appointed attorney to fraudelantly procure jurisdiction to proceed in the case. On the 15th day of Nov., 1995 a sham/mock hearing of arraignment was held in plaintiffs absence. Appx -(G). At said hearing it was alleged that plaintiff was present and that a amended complaint adding additional charges added by defendant Judge Rebecca L. Pilshaw had been filed prior to the Nov., 15th , 1995 date. That plaintiff had read the complaint and waived his fundamental constitutional right to fair notice. Appx-(G).

The record reveals that plaintiff was not present, and that said amended complaint was not filed until the 27th day of Nov., 1995, twelve days after the sham/mocked hearing, and that plaintiff had not read the imaginary amended complaint and that counsel was allowed to waive the sole fundamental right of the defendant. In **Sparks v. Duval County Ranch**, 604 F.2d 976(5th Cir. 1979), the court determined that, "No immunity exists for co-conspirators of fraud."

"State government officials performing discretionary functions enjoy qualified immunity from liability under **42 U.S.C. § 1983**. **Harlow v. Fitzgerald,** 457 U.S. 800, 818, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982). Such immunity is "qualified" in that it does not obtain when otherwise immune officials violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Id.; Gehl Group v. Koby, 63 F.3d 1528, 1533 (10th Cir. 1995); **Hilliard v. City and County of Denver**, 930 F.2d 1516, 1518 (10th Cir. 1991). The Tenth Circuit has set forth the following framework for analyzing the application of the qualified immunity defense to claims brought pursuant to **42 U.S.C. § 1983**:

" In analyzing qualified immunity claims, we first ask if a plaintiff has asserted the violation of a constitutional right at all, and then assess whether that right was clearly established at the time of a defendant's actions. **Siegert v. Gilley**, 500 U.S. 226, 232, 111 S. Ct. 1789, 1793, 114 L. Ed. 2d 277 (1991). Once a public official raises a qualified immunity defense, the plaintiff bears the burden of (1) coming forward with sufficient facts to show that the defendant's conduct violated the law; and (2) demonstrating that the relevant law was clearly established when the alleged violation occurred. "**Pueblo Neighborhood Health Ctrs., Inc. v. Losavio**, 847 F.2d 642, 646 (10th Cir. 1988)." (quoting **Clanton v. Cooper,** 129 F.3d 1147 (10 Cir. 1997).)

In the case at bar plaintiff established that pursuant to Constitutional law **6th Amendment** (Fair Notice), this Superior Courts Precedent **Faretta v. California**, supra; Kansas Statute law **K.S.A. 22-3205** and **22-2202**, and Kansas caselaw, **State v. Rosine**, supra that the right is well established statutory and constitutional law, thus no immunity exist for this defendant and he shows up to court as a person pursuant to **§ 1983**.

E. **County Commisioners**: David M. Unruh, Tim R. Norton, Karl Peterjohn, Richard Ranzau, Richard A. Euson; **Court Reporters**: Diana Nichols, Lou Ann Hale; **Clerk**: Bernadine Lambreras. These defendants are being sued in their individual capacity for Monetary Damages. All these defendants personally participated in spoliation of exculpatory record evidence, therefore in violation of law, **18 U.S.C. § 1512(c)(1)[obstruction of justice]**. In **United States v. Okatan**, 536 F. App'x 18, 20 (2d Cir. 2013) it was noted that right to due process is violated by failure to preserve evidence only if evidence's exculpatory value was apparent before it was destroyed.

"The right the official is alleged to have violated must have been "clearly established" in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. "This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, see **Mitchell**, supra, at 535, n. 12; but it is to say that in the light of pre-existing law the unlawfulness must be apparent. See, e. g., **Malley**, supra, at 344-345; **Mitchell**, supra, at 528; **Davis**, supra, at 191, 195." (Quoting, **Anderson v. Creighton**, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987) .

The county commissioner defendants authorized and sanctioned the destruction of record evidence [transport dockets and inmate movement cards], evidence which could prove or disapprove false allegations that plaintiff was present at the critical stage of arraignment. Said evidence was essential to Plaintiffs argument verses the States, fraudalent claim that plaintiff was present at the sham/mocked hearing.

Court reporter defendants: Lou Ann Hale, withheld the transcript of the Mock/sham hearing of arraignment in both district court cases 95 CR 1616 and 95 CR 1859 from appellate counsel, the appellate court and federal habeas court. This defendant under oath swore that all record evidence in her custody was transcribed and turned over. Appx -(E) (Case Law History).,(Appx-(A)).

Likewise Diana Nichols conspired with defendant Rebecca L. Pilshaw to alter and conceal exculpatory evidence of the Rebecca L. Pilshaw bias/prejudice and lack of impartiality. Diana Nichols, intentional removed the first 9-pages and last 4-pages of preliminary examination transcript and withheld them from Plaintiff, plaintiff counsel and Appellate State Court and Federal court review until 2-days after federal habeas relief was denied. See Appx -(D) and (E). This defendants actions was calculated, deliberate, intentional and malicious, as well as in violation of law. **18 U.S.C. § 1512(c)(1).**

Clerk of the Court defendant: Bernadine Lambreras on two occasions withheld the transcript of the mock/sham hearing of arraignment in Case No. 95 Cr 1859 from the Kansas appellate courts review, (Appeal No. 07-94,723-A and Appeal No. 08-101,435-A). The withholding of the documents was to prevent the court of appeals from reviewing the actual record in controversy. This act was carried out to obstruct justice for it is the law in Kansas, if the record is not before the court on appeal, its a argument in passing and will not be considered by the court. See Kan. Sup. Ct. R 6.02. This defendant prevented the vindication of plaintiff federal protected constitutional right, thus, added and assisted in the trespasser (Rebecca L. Pilshaw) deprivation of plaintiffs liberty unlawful restraint/false imprisonment, and therefore is a trespasser herself.

"An official or municipality acts with deliberate indifference if its conduct or adopted policy disregards a known risk that is very likely to result in the violation of a persons constitutional rights. **Havater v. Robinson**, 1 F.3d 1063 (10th Cir. 1993), **Farmer v. Brennan,** 511 U.S. 825, 841(1994)(Citing **Canton v. Harris**, 489 U.S. 378, 390, 103 L.Ed. 2d 412, 109 S.Ct. 1197(1989), held "municipalities can be held liable for failure to train, policy makers of the city, it can reasonably be deliberate indifferent.." See id. at 390 n.7.

Both State and Federal courts have defined spoliation of the record as: "The destruction of evidence. It constitutes an obstruction of justice. The destruction of significant and meaningful alteration of a document or istrument." See **Application of Boykins v. D.C.N.Y.**, 165 F. Supp. 25,30(1958); Also "To hide or withdraw from observation, cover or keep from sight, or prevent discovery of." **People v. Eddington**, 201 Cal. App. 2d 574, 20 Cal. Rptr. 122, 124(1962).

Court reporters are required by state to "record verbatim" court proceedings in their entirity. **28 U.S.C. § 753(b)**. The are afforded no discretion in carrying out this duty; they are to record, as accurately as possible, what transpires in court. See **McLallen v. Henderson,** 492 F.2d 1298, 1299(8th Cir. 1974). Like in the case at bar the transcript of preliminary examination and arraignment hearing in both cases was essential to plaintiff/appellants appeals. **Antoine v. Byers & Anderson**, 950 F.2d at 1476 (9th Cir. 1991)("Furthermore, the accuracy of the court reporters transcribing is "indispensable to appellate process.")

The acts of producing documents pursuant to **K.S.A. 22-2302(2)** to defendant's at their request once they are filed like the clerks is all but an administrative act. If the officials removed the documents from the record in violation of **Kansas Supreme Court Rule 108(2)(B)(i); (G)(1)(b)**, those actions were outside the scope of the advocator duties and clearly ministerial and unlawful. Those act would be known to be unlawful, and thus no qualified immunity exist. See **Kelina v. Fletcher**, 522 U.S. 118, 123, 131 (1997).

Both Court reporters and the Clerk all committed unlawful acts that resulted in denial of plaintiff/appellants right to due process of law and has been effective in aiding the trespassers in this case of depriving plaintiff/appellant of the right to liberty for 25 plus years. The defendants committed fraud under oath and intentionally altered and concealed this evidence, thus knowingly and wilfully acting in contravention to their duties. They are without any immunity.

F. Defendants: Governor Laura Kelly, Secretary of Corrections Roger Werholtz, Sheriff Jeff Easter.

These defendants are being sued in their official capacity for equitable relief, injunctive or declaratory relief. All these defendants have executed, and aided in the void judgment of trespassers of law, [Rebecca L. Pilshaw and Clark Owens II.], thus themselves deemed trespassers of the law. "Should the judge not have subject-matter jurisdiction, then the law states that the judge has not only violated the law, but is also a trespasser of the law". **Von Kettler et. al. v. Johnson**, 57 Ill. 109 (1870)("if the magistrate (district court judge) has not such jurisdiction, then he and those who advise and act with him, or execute his process, are trespassers.

"The following well-settled principles of law cannot be controverted: "That when a court has jurisdiction, it has a right to decide every question before it; and if its decision is merely erroneous, and not irregular and void, it is binding on every other court until reversed. But if the subject-matter is not within its jurisdiction, or where it appears, from the conviction itself, that they have been guilty of an excess, or have decided on matters beyond and not within their jurisdiction, all is void, and their judgments, or sentences, are regarded in law as nullities. They constitute no justification; and all persons concerned in executing such judgments, or sentences, are trespassers, and liable to an action thereon." (**1 Peters, 340; 2 Peters, 169; Griffith v. Frazier, 8 Cranch, 9; 14 How., 144; Wicks v. Caulk, 5 Harris and Johns., 42; Bigelow v. Stearns, 19 Johns., 39; Case of the Marshalsea, 10 Co. R., 76; Terry v. Huntington, Hardres R., 480; Shergold v. Hollway, 2 Strange, 1002; Hill v. Bateman, 1 Strange, 710; Perkin v. Proctor, 2 Wilson, 382; Dr. Bouchier's Case, cited, 2 Wilson, 386; Martin v. Marshall and Key, cited, 2 Wilson, 386; Parsons v. Lloyd, 3 Wnson, 341; Miller v. Seare, 2 Wm. Black. R., 1145; Crepps v. Durden, Cowp., 640; Groome v. Forrester, 5 M. and S., 314; Warne v. Varley, 6 Term, 443; Brown v. Compton, 8 Term, 424; Moravia v. Sloper, Willes R., 30; Peacock v. Bell, 1 Saunders, 74; 8 Term, 178; 2 Wm. Black., 1035; The King v. Dugger, 1 Dowl. Ry., 460; 3 Campbell's R., 388; Doswell v. Impy, 1 Barn. and Cress., 169; 13 Johns., 444**.) (quoting **Dynes v. Hoover**, 61 U.S. 65 (1858)).

Defendant Laura Kelly as the head of state for the State of Kansas is executing the process of holding plaintiff/appellant illegally in a state institution upon a void judgment.

Defendant Secretary of Corrections is housing plaintiff/appellant in a state institution under his authority unlawfully and upon a legal nullity, and defendant Sheriff Jeff Easter executed the process of the trespassser by transporting plaintiff/appellant to the Kansas Department of Corrections.

"Such is the law in either case, in respect to the court, which acts without having jurisdiction over the subject-matter; or which, having jurisdiction, disregards the rules of proceeding enjoined by the law for its exercise, so as to render the case coram non judice. **(Cole's case, John. W., 171; Dawson v. Gill, 1 East., 64; Smith v. Beucher, Hardin, 71; Martin v. Marshall, Hob., 68; Weaver v. Clifford, 2 Bul., 64; 2 Wils., 385.) In both cases, the law is, that an officer executing the process of a court which has acted without jurisdiction over the subject-matter becomes a trespasser**, it being better for the peace of society, and its interests of every kind, that the responsibility of determining whether the court has or has not jurisdiction should be upon the officer, than that a void writ should be executed. This court, so far back as the year 1806, said, in the case of **Wise and Withers, 3 Cr., 331, p. 337** of that case, "It follows, from this opinion, that a court martial has no jurisdiction over a justice of the peace as a militiaman; he could never be legally enrolled; **and it is a principle, that a decision of such a tribunal, in a case clearly without its jurisdiction, cannot protect the officer who executes it. The court and the officer are all trespassers**." (**2 Brown, 124; 10 Cr., 69; Mark's Rep., 118; 8 Term R., 424; 4 Mass. R., 234**.)(quoting **Dynes v. Hoover**, 61 U.S. 65 (1858)). (Emphasis added).

"A suit which only seeks to prevent or restrain a trespass upon property or person by one who happens to be a state officer, but is proceeding in violation of the Constitution of the United States, is not a suit against a state witthin the meaning of the **ELEVENTH AMENDMENT**, but a suit against the trespasser or wrongdoer." **Ex Parte Royall**, 117 U.S. 241.

Wherefore, these defendants sued in their official capacity ONLY for equitable, injunctive or declaratory relief, raises no issue of immunity and is ripe for trial. The Court must reverse and remand with orders to have the jurytrial.

"Officers sued in their personal capacity comes to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term "person" Cf. id., at 71, n. 10" ("[A] state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State'") (Quoting **Graham**, 473 U.S. at 167 n. 14)".

CONCLUSION

"Analyzing the complaints in light of these precedents, we see that petitioners allege facts that demonstrate they are seeking to impose individual and personal liability on the named defendants for what they claim -- but have not yet established by proof -- was a deprivation of federal rights by these defendants under color of state law. **Whatever the plaintiffs may or may not be able to establish as to the merits of their allegations, their claims, as stated in the complaints, given the favorable reading required by the Federal Rules of Civil Procedure, are not barred by the Eleventh Amendment. Consequently, the District Court erred in dismissing the complaints for lack of jurisdiction.**" (Quoting **Scheuer v. Rhodes**, 416 U.S. id. at 238). (Emphasis added).

The record reflects that the defendants [Rebecca L. Pilshaw, Clark Owens II and David Kaufman] acted without jurisdiction due to [Fraud] and [Lack of Impartiality] to deprive plaintiff/appellant of the fundamental right to liberty under the color of state law, renders the judgment of Case No. 95 CR 1859 a legal nullity from its inception. Thus void and never valid or final. **Elliott v. Peirsol**, supra, id. at 340 and **Kenner v. Comm'r**, supra, 387 F.2d at 690, also see **Campos v. City of Merced**, 709 F.Supp. 2d 944, 961 (E.D. Cal. 2010) and **Manuel v. City of Joliet**, 137 S.Ct. 911 (2021). Both the district court and court of appeals, (**not the defendants**) sought to incert the Heck Bar/Eleventh Amendment defense on behalf of all the defendants, brings the benefits of the Void Judgment (Case No. 95 CR 1859), into question which plaintiff/appellant challenges as a legal nullity incapable of invoking the Heck Bar, since the judgment was ***never valid or final***. Likewise, since the defendants are trespassers of the law, renders them incapable of invoking the Eleventh Amendment bar. Judges are required to obey the law. See **O'Shea v. Littleton**, 414 U.S. 503 (1974), ("we have never held that the duties of judicial officers requires or contemplates the immunization of otherwise criminal deprivation of constitutional rights.")

Wherefore, this Superior Court in applying the Fundamental Laws of this land should find that the Petitioner has argued grounds to invoke this Superiors Courts Jurisdiction by raising the important question **Heck Bar** principle vs. **Void judgment/legal nullity** principle, and grant the writ.

Kevin D. Loggins Sr.

Kevin D. Loggins Sr.