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**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>MICHAEL J. KRASKA,</b>		: <b>Civil Action No.:</b>
	<b>Plaintiff,</b>	: <b>District Judge:</b>
		:
<b>v.</b>		: <b>CIVIL ACTION – LAW</b>
		: <b>JURY TRIAL DEMANDED</b>
<b>LAWRENCE F. CLARK, JR.;</b>		:
<b>JOHN/JANE DOE 1-10;</b>		:
<b>ADMINISTRATIVE OFFICE OF</b>		:
<b>PENNSYLVANIA COURTS; and</b>		:
<b>DAUPHIN COUNTY, PENNSYLVANIA;</b>		:
<b>Defendant.</b>		:

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**COMPLAINT**

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**AND NOW** comes the Plaintiff, Michael J. Kraska, by and through his undersigned counsel, Devon M. Jacob, Esquire, of the law firm of Jacob Litigation, and avers as follows:

**Jurisdiction and Venue**

1. This action is brought pursuant to 42 U.S.C. § 1983.
2. Jurisdiction is founded upon 28 U.S.C. §§ 1331, 1343 & 1367.
3. Venue is proper in this Court, as all Defendants are located within the Middle District of Pennsylvania, and the cause of action arose in the Middle District of Pennsylvania.

**Parties**

4. Plaintiff, Michael J. Kraska, is an adult individual, who, currently resides in Harrisburg, Dauphin County, Pennsylvania.

5. Defendant, Lawrence F. Clark, Jr., is an adult individual, who, during all relevant times, was employed as an elected judge in the Court of Common Pleas of Dauphin County, Pennsylvania.

6. Defendants, Jane/John Doe 1-10, are adult individuals, who, during all relevant times, were employed by Dauphin County, Pennsylvania, in the Sheriff's Office, in the capacity as law enforcement personnel. All of Jane/John Doe 1-10's actions or inactions were taken under color of state law. Jane/John Doe 1-10 are sued in their individual capacity.

7. Defendant, Administrative Office of Pennsylvania Courts ("AOPC"), is responsible for the prompt and proper disposition of the business of all Commonwealth courts. The AOPC assists in setting court policy, provides legal advice to the courts, and is responsible for providing continuing legal education to Commonwealth judges. The AOPC's address is the Pennsylvania Judicial Center, 601 Commonwealth Avenue, P.O. Box 61260, Suite 1500, Harrisburg, PA 17106.

8. Defendant, Dauphin County, Pennsylvania, is one of 67 counties located in the Commonwealth of Pennsylvania. Dauphin County is a Third Class

County, organized under The County Code, Act of Aug. 9, 1955, P.L. 323, as amended, with a population of approximately 275,000 people. Dauphin County's principal place of business is Dauphin County Administration Building, 2 South Second Street, 4<sup>th</sup> Floor, Harrisburg, PA 17108.

**Factual Background**

9. On January 29, 2013, Plaintiff, Michael J. Kraska, appeared in Courtroom No. 6, Dauphin County Courthouse, 101 Market Street, Harrisburg, Dauphin County, Pennsylvania 17101, as a witness, in a non-jury civil trial.

10. Defendant Lawrence F. Clark, Jr., presided over the trial.

11. During the course of Kraska being questioned by the Plaintiff's lawyer, there was an awkward pause in the questioning.

12. Not understanding the reason for the pause in the questioning, Kraska looked at Defendant Clark for guidance and direction.

13. When Kraska did so, he did not say anything to Defendant Clark.

14. Inexplicably, Defendant Clark flew into a furious rage.

15. The certified transcript of testimony from the non-jury civil trial reveals that the following occurred:

Q You believe--you also believed that Mrs. Keiter had the right, did you not, if the personnel committee voted against her, to appeal that decision to the board?

A No.

Q Oh, you didn't.

**(Pause.)**

**COURT:** Can I help you? Don't you dare sit there and stare at me.

MR. THOMAS: Can we take a break, Your Honor?

**THE COURT:** Pardon me?

MR. THOMAS: Can we take a break?

**THE COURT:** No. We got the sheriff coming in about 30 seconds.

MR. STROKOFF: I'm sorry Your Honor--

**THE COURT:** No. Don't—don't go any further.

BY MR. STROKOFF:

Q Sir, do you remember--

**THE COURT:** Mr. Strokoff--

MR. STROKOFF: I'm sorry.

**THE COURT:**--do not go any further

**(Pause.)**

**(The Judge left the bench.)**

**(Pause.)**

**(A deputy sheriff entered the courtroom.)**

**THE COURT:** Do you have some help?

A DEPUTY SHERIFF: How many do I need?

**(More deputy sheriffs entered the courtroom.)**

**THE COURT:** Escort this gentleman off the witness stand.

A DEPUTY SHERIFF: All right. Come on, sir.

16. Three deputy sheriffs, Defendants Jane/John Doe, who were employed by the Sheriff's Office of Dauphin County, Pennsylvania, escorted Kraska from the witness stand, and positioned him before Defendant Clark.

17. The certified transcript of testimony from the non-jury trial reveals that

the following occurred:

**THE COURT:** Now -- right here. Let me just tell you, fella, you do not sit in the witness chair in my courtroom and glare at me with the contempt that you had in your face towards this Court. That just does not happen. Now, deputies, I want you to take him for a little walk. Show him the basement cells, so he'll understand where he'll be if he engages in this kind of disrespect in this courtroom again. We're gonna go to lunch now. Do you understand me, Mr. Kraska?

THE WITNESS: Yes, sir.

**THE COURT:** Good. Deputies, take him for a walk.

A DEPUTY SHERIFF: Follow me.

**(Mr. Kraska was escorted from the courtroom.)**

**THE COURT:** Joe, that alarm did not work. Get it fixed immediately.

A SECURITY OFFICER: All right, sir.

**THE COURT:** Thank you. We will be in recess until after lunch. I'll see counsels in my chamber at about quarter after one. Thank you.

MR. THOMAS: Thank you, Your Honor.

**(The Court took a recess.)**

18. Defendants Jane/John Doe escorted Kraska to the basement of the courthouse where the prisoner holding cells are located.

19. Defendants Jane/John Doe searched Kraska's person, took his personal belongings from him, placed him in one of the prisoner holding cells, locked the cell door, and walked away.

20. While in the holding cell, other prisoners who were detained in other cells in close proximity to him, taunted him.

21. After the recess in the non-jury trial, Kraska was released from the holding cell.

22. The certified transcript of testimony from the non-jury trial reveals that after the recess, Defendant Clark stated the following:

**THE COURT:** Well, as we expressed to counsels, it is -- it was unfortunate that we had that circumstance arise. Possibly, Mr. Kraska was just having an aberrant moment or something of that nature. We didn't think it arose to the level of holding him in criminal contempt, but we did think that it was of a significant enough circumstance that we ought to have the benefit of having a discussion with law enforcement and maybe a tour of the courthouse facilities, so that he didn't get himself in any deeper situation. We harbor no ill will against Mr. Kraska. The facts of this case are going to be the facts of the case, and that's how the matter will come out. Under the circumstances, this Court has no doubt that we can separate the wheat from the chaff, so to speak, and make a decision in this case based on the facts and the evidence and any reasonable inferences drawn from the evidence. We would not be persuaded in any respect with regards to Mr. Kraska's unfortunate demeanor. We have every reason to believe that he will conduct himself appropriately going forward. And so, therefore, under that circumstance, we think that the matter can proceed. Your objection is noted, Mr. Thomas, for the record, but the Court is constrained to deny it.

23. Significantly, Defendant Clark admitted that Kraska's alleged conduct did not rise to the level of contempt, and that he did not hold Kraska in contempt.

24. However, Defendant Clark admitted that he had Kraska taken into custody for the purpose of being provided with a forced "tour" of the holding cells.

25. Defendants Jane/John Doe knew that when they took Kraska into custody for the purpose of providing Kraska with a forced “tour” of the holding cells, they were not acting pursuant to a lawful order.

26. Moreover, Defendants Jane/John Doe knew that Defendant Clark never provided them with a lawful order to search Kraska’s person, seize his personal belongings, or lock Kraska in a holding cell for any period of time.

27. Significantly, Defendants Jane/John Doe were never provided with a detainer or similar type verbal or written order directing them to take Kraska into custody or to detain him in a holding cell.

28. Rather, Defendants Jane/John Doe knew that they were acting pursuant to an unlawful agreement with Defendant Clark that they were to carry out his directed harassment of citizens who appear in his courtroom.

29. As a result of the Defendants’ conduct, Kraska sat locked in a holding cell in the basement of the courthouse, being terrorized by other inmates, not knowing why he was locked in the holding cell, or when he would be released.

30. Kraska suffered and continues to suffer from embarrassment, emotional injury, harm to his personal and professional reputation, and public ridicule.

**Judicial Immunity Does Not Immunize  
Actions Taken in a Personal as Opposed to a Judicial Capacity**

31. “As early as 1872, the [Supreme] Court recognized that it was ‘a

general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehensions of personal consequences to himself.” Stump v. Sparkman, 435 U.S. 349, 355 (1978) (quoting Bradley v. Fisher, 80 U.S. 335, 347 (1871)).

32. Rooted in English common law, the doctrine of judicial immunity is aimed primarily at preserving judicial independence. See Forrester v. White, 484 U.S. 219, 225 (1988) (citing Bradley, 80 U.S. at 348) (noting that judicial immunity historically was also a device for discouraging collateral attacks and protecting the finality of judgments); Pierson v. Ray, 386 U.S. 547, 554 (1967) (“This immunity . . . ‘is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that judges should be at liberty to exercise their functions with independence and without fear of consequences.’”) (quoting Scott v. Stansfield, L.R. 3, Ex. 220, 223 (1868), quoted in Bradley, 80 U.S. at 349); United States v. Chaplin, 54 F.Supp. 926, 933 (S.D.Cal.1944) (“The immunity which has clothed judges for a century and a half in our country found its genesis in the English common law simultaneously with the independence of the judiciary.”).

33. In the civil context, “[a] long line of th[e] Court’s precedents

acknowledge that, generally, a judge is immune from a suit for money damages.” Mireles v. Waco, 502 U.S. 9, 9 (1991).

34. There are only two circumstances in which the doctrine of judicial immunity does not apply to civil suits for money damages: (1) “a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge’s judicial capacity” and (2) “a judge is not immune for action, though judicial in nature, taken in the complete absence of all jurisdiction.” Id. at 11.

35. Punishing the citizenry for contempt of Court is a function of the judiciary and within the scope of the authority vested in Defendant Clark.

36. Having citizens locked in jail cells without due process for committing contempt of ego, however, is neither a function of the judiciary nor within the scope of authority vested in Defendant Clark.

37. Likewise, criminalizing protected speech, and having citizens locked in jail cells without due process for engaging in protected speech, is neither a function of the judiciary nor within the scope of authority vested in Defendant Clark.

38. Therefore, Defendant Clark is not immune from suit for his conduct stated herein.

**COUNT I**

**Plaintiff v. Individual Defendants  
First Amendment  
Pursuant to 42 U.S.C. § 1983**

39. Paragraphs 1-38 are stated herein by reference.

40. Judge Clark caused Kraska to be incarcerated because he allegedly stared at him (“**COURT:** Can I help you? Don’t you dare sit there and stare at me.”)

41. Political speech “occupies the core of the protection afforded by the First Amendment.” McIntyre v. Ohio Elections Com’n, 514 U.S. 334, 346 (1995).

42. The Supreme Court has held that “[t]he First Amendment affords the broadest protection to such political expression in order to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” Id.

43. According to Defendant Clark, Kraska engaged in protected speech (a critical look) for which Defendant Clark caused him to be incarcerated without due process.

44. Defendant Clark explained his retaliatory purpose in front of the other Individual Defendants before the other Individual Defendants acted at his direction.

45. As a result of the Defendants’ conduct, Kraska sat locked in a holding cell in the basement of the courthouse, being terrorized by other inmates, not

knowing why he was locked in the holding cell, or when he would be released.

46. Kraska suffered and continues to suffer from embarrassment, emotional injury, harm to his personal and professional reputation, and public ridicule.

## **COUNT II**

### **Plaintiff v. Individual Defendants Fourteenth Amendment – Procedural Due Process Pursuant to 42 U.S.C. § 1983**

47. Paragraphs 1-46 are stated herein by reference.

48. The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that a state shall not “deprive any person of life, liberty, or property, without due process of law; . . .” U.S. Const. amend. XIV, § 1.

49. To establish a procedural due process claim under § 1983, a Plaintiff must prove (1) a deprivation of an individual interest encompassed by the Fourteenth Amendment’s protection of life, liberty, or property, and (2) that the procedures available did not provide due process of law. See Hill v. Borough of Kutztown, 455 F.3d 225, 233-34 (3d Cir. 2006).

50. The Defendants caused Kraska to be incarcerated without notice of the charges and an opportunity to be heard on the charges.

51. In the alternative, the Defendants had an opportunity to intervene to prevent their Co-defendants from incarcerating Kraska without notice of the charges

and an opportunity to be heard, understood that that was what was occurring, but failed to intervene.

52. As a result of the Defendants' conduct, Kraska sat locked in a holding cell in the basement of the courthouse, being terrorized by other inmates, not knowing why he was locked in the holding cell, or when he would be released.

53. Kraska suffered and continues to suffer from embarrassment, emotional injury, harm to his personal and professional reputation, and public ridicule.

### **COUNT III**

#### **Plaintiff v. Individual Defendants Fourth Amendment – False Arrest/False Imprisonment Pursuant to 42 U.S.C. § 1983**

54. Paragraphs 1-53 are stated herein by reference.

55. To state a claim for false arrest under the Fourth Amendment, a Plaintiff must establish: (1) that there was an arrest; and (2) that the arrest was made without probable cause. See Groman v. Twp. of Manalapan, 47 F.3d 628, 634 (3d Cir. 1995); Dowling v. City of Phila., 855 F.2d 136, 141 (3d Cir.1988).

56. In 1978, the Pennsylvania Legislature specifically limited the courts' contempt powers, by Section 4132 of the Judicial Code:

The power of the several courts of this Commonwealth to issue attachments and to impose summary punishments for contempts of court shall be restricted to the following cases:

(1) The official misconduct of officers of such courts respectively.

(2) Disobedience or neglect by officers, parties, jurors or witnesses of or to the lawful process of the court.

(3) The misbehavior of any person in the presence of the court, thereby obstructing the administration of justice.

42 Pa.C.S. § 4132.

57. A conviction pursuant to section 4132(3) requires proof beyond a reasonable doubt: (1) of misconduct, (2) in the presence of the court, (3) committed with the intent to obstruct the proceedings, (4) which obstructs the administration of justice. See In re Campolongo, 435 A.2d 581, 583 (Pa. 1981); Commonwealth v. Martorano, 563 A.2d 1193 (Pa. Super. Ct. 1989).

58. To obstruct justice, conduct must significantly disrupt proceedings. See In re Campolongo, 435 A.2d at 583.

59. For conduct to constitute an obstruction of the administration of justice, it must significantly disrupt judicial proceedings. Commonwealth v. Rubright, 414 A.2d 106, 110 (Pa. 1980); Commonwealth v. Garrison, 386 A.2d 971, 979 (Pa. 1978); In re Johnson, 359 A.2d 739, 742 (Pa. 1976).

60. Mere affront to the trial judge is not enough. See In re Johnson, 359 A.2d at 743.

61. “[T]hat remarks are injudicious . . . an affront to the dignity or

sensibility of the court . . . or even disrespectful or insulting . . . will not, without more, justify conviction for summary criminal contempt.” Garrison, 386 A.2d at 979.

62. Clearly, a perceived glare from a silent witness does not establish the requisite probable cause for a criminal contempt charge.

63. Moreover, the Pennsylvania Legislature limited the powers and duties of sheriffs to those “authorized or imposed upon them by statute,” 13 P.S. § 40.

64. In this regard, 42 Pa.C.S. § 2921 (2014) provides, “Powers and Duties of Sheriff. The sheriff, either personally or by deputy, shall serve process and execute orders directed to him pursuant to law.”

65. Defendant Clark never issued Defendants Jane/John Doe any lawful order to execute.

66. Defendant Clark never issued a lawful order to Defendants Jane/John Doe to detain Kraska, but directed and permitted them to do so.

67. Defendant Clark never issued a lawful order to Defendants Jane/John Doe to search Kraska’s person or personal belongings.

68. Defendant Clark never issued a lawful order to Defendants Jane/John Doe to seize Kraska’s personal belongings.

69. Defendant Clark never issued a lawful order to Defendants Jane/John

Doe to incarcerate Kraska but knew that they would do so, and permitted them to do so, despite having an opportunity to intervene to prevent them from doing so.

70. The Defendants caused Kraska to be arrested and incarcerated without probable cause.

71. In the alternative, the Defendants had an opportunity to intervene to prevent their Co-defendants from arresting and incarcerating Kraska without probable cause, understood that that was what was occurring, but failed to intervene.

72. As a result of the Defendants' conduct, Kraska sat locked in a holding cell in the basement of the courthouse, being terrorized by other inmates, not knowing why he was locked in the holding cell, or when he would be released.

73. Kraska suffered and continues to suffer from embarrassment, emotional injury, harm to his personal and professional reputation, and public ridicule.

#### **COUNT IV**

##### **Plaintiff v. Defendants Dauphin County and AOPC Pursuant to 42 U.S.C. § 1983 – Municipal Liability**

74. Paragraphs 1-73 are incorporated herein by reference.

75. “Local governing bodies . . . can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation,

or decision officially adopted and promulgated by that body's officers." Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978).

76. The Defendant policymakers of the Defendant County and Defendant AOPC either participated in, authorized, or acquiesced in, the unlawful conduct discussed herein; adopted, implemented, and enforced, policies and practices that did not comport with state and federal law; or failed to adopt, implement, and enforce, policies and practices that comport with state and federal law.

77. The Defendant County and Defendant AOPC maintained or failed to maintain policies, practices, and customs, which were the moving force that resulted in Kraska's constitutional rights being violated.

78. The Defendant County and Defendant AOPC knew that Defendant Clark has used the County sheriff's officers to engage in conduct outside the scope of his authority, such as throwing a citizen's cell phone out of a 5<sup>th</sup> story window.

79. The Defendant County, however, failed to enact policies or provide training that would ensure that its sheriffs would not violate citizens' constitutional rights when requested by Defendant Clark to do so.

80. Likewise, the Defendant AOPC had similar notice of Defendant Clark's conduct and similarly failed to enact policies or provide training that would ensure that the constitutional rights of citizens appearing in Defendant Clark's courtroom

were not violated.

81. Instead of letting Defendant Clark's service come to an end when he reached age 70, the Defendants encouraged and permitted him to take senior status and to continue to serve as a judge in the County.

82. Despite knowing that judges and sheriffs would come into contact with citizens and be responsible for issuing or evaluating orders and to determine their lawfulness, the Defendants failed to provide the Individual Defendants with sufficient relevant training on 42 Pa.C.S. § 4132, 42 Pa.C.S. § 2921, 42 U.S.C. § 1983, or the civil protections provided by the First, Fourth, or Fourteenth Amendments discussed herein.

83. As a result of the Defendants' conduct, Kraska sat locked in a holding cell in the basement of the courthouse, being terrorized by other inmates, not knowing why he was locked in the holding cell, or when he would be released.

84. Kraska suffered and continues to suffer from embarrassment, emotional injury, harm to his personal and professional reputation, and public ridicule.

### **COUNT V**

#### **Plaintiff v. Individual Defendants False Arrest/False Imprisonment Pursuant to Pennsylvania Law**

85. Paragraphs 1-84 are stated herein by reference.

86. To establish false imprisonment/false arrest under Pennsylvania law, a Plaintiff must show that: (1) he had been detained; and (2) the detention was unlawful. Gwynn v. City of Philadelphia, 719 F.3d 295, 304, n.4 (3d Cir. 2013); citing Renk v. City of Pittsburgh, 641 A.2d 289, 293 (Pa. 1994).

87. As explained above, the Individual Defendants unlawfully detained Kraska.

88. As a result of the Defendants' conduct, Kraska sat locked in a holding cell in the basement of the courthouse, being terrorized by other inmates, not knowing why he was locked in the holding cell, or when he would be released.

89. Kraska suffered and continues to suffer from embarrassment, emotional injury, harm to his personal and professional reputation, and public ridicule.

**WHEREFORE**, Plaintiffs respectfully request that judgment be entered in Plaintiffs' favor as follows:

- A. That this Court declare that the Defendants' actions violated Kraska's constitutional and statutory rights;
- B. Compensatory damages;
- C. Punitive damages (except against the Defendant County);
- D. Reasonable attorney's fees and costs;
- E. A jury trial; and,

F. Such other financial or equitable relief as is reasonable and just.

**Jury Trial Demand**

Plaintiff respectfully requests a trial by jury on all claims/issues in this matter that may be tried to a jury.

**Respectfully Submitted,**



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**DEVON M. JACOB, ESQUIRE**

Pa. Sup. Ct. I.D. 89182

Counsel for Plaintiff

**Date: November 5, 2014**

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