

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

ASHTON R. O'DWYER, JR.	*	CIVIL ACTION
	*	
VERSUS	*	NO. 06-7280
	*	
THE STATE OF LOUISIANA, ET AL.	*	SECTION "C"
	*	JUDGE HELEN G. BERRIGAN
	*	
	*	MAG. DIV. (5)
	*	MAGISTRATE JUDGE CHASEZ
* * * * *		

**PLAINTIFF'S
COURT-ORDERED
SUPPLEMENTAL AND AMENDED PETITION**

COMES NOW Ashton R. O'Dwyer, Jr., plaintiff, appearing *in propria persona*, pursuant to an Order of This Honorable Court of April 11, 2007 (Record Document No. 111), and amends the Petition (Record Document No. 1) of record herein in order to comply with the directives of the said Court Order and to accomplish the following:

1. To correct typographical errors in the original Petition;
2. To add additional parties defendant;
3. To assert additional causes of action and theories of recovery; and
4. To augment and supplement his original factual and legal allegations against defendants who remain parties to this litigation.

CORRECTION OF TYPOGRAPHICAL ERRORS

1.

In Article 5 of the original Petition, plaintiff pleaded “. . . and ordered and/or committed the following constitutional additional torts against plaintiff, his person and his property . . .”, when he had intended to plead “. . . and ordered and/or committed the following additional constitutional torts against plaintiff, his person and his property”. . .”

2.

Plaintiff’s original Prayer contained the following phrase “. . . together with pre-judgment interests. . .”, when he had intended to pray for “pre-judgment interest”.

ADDITIONAL DEFENDANTS

3.

1. Made additional defendants herein are the following:
 1. Charles B. Plattsmier, Jr., who is sued both individually and in his official capacity as Chief Disciplinary Counsel, Office of the Disciplinary Counsel for the Louisiana Supreme Court.
 2. The Office of the Disciplinary Counsel for the Louisiana Supreme Court.
 3. The Louisiana Supreme Court, which is a body politic identified as part of one of the three branches of Government identified in the Louisiana Constitution of 1974, and more particularly in Article II, §1 and Article V, §1. N.B. Plaintiff’s cause of action against the Louisiana Supreme Court is limited to his seeking relief pursuant

to the Louisiana Public Records Act, LSA-R.S. 44:1, et seq., and the Louisiana Constitution of 1974, Article XII, §3. See infra.

4. The Attorney's Liability Assurance Society, Inc.
5. The United States of America.

ADDITIONAL CAUSES OF ACTION

4.

Plaintiff avers that the defendants who remain parties to this litigation, as well as certain of the additional defendants, and others not yet joined against whom plaintiff reserves all rights, committed the intentional tort of conspiracy¹ against plaintiff, which resulted in plaintiff becoming the victim of brutal assault and battery, including the using of excessive force under the facts and circumstances, the victim of torture, the victim of false imprisonment by causing plaintiff to be illegally taken into the custody of so-called "law-enforcement", who were in reality thugs and hooligans, a/k/a "Goons with guns and badges", and held against his will, and the victim of intentional infliction of emotional distress. Plaintiff also avers that defendants Kimball, Plattsmier and the Office of the Disciplinary Counsel committed and conspired to commit a tort akin to "malicious prosecution", by maliciously causing plaintiff to be investigated for "misconduct" under the Rules of Professional Conduct during the summer of 2006. Plaintiff avers that the said "investigation" was malevolently motivated and that it was designed solely for

¹ Under Louisiana law, the term "conspiracy" generally means a plan by two or more persons to accomplish some unlawful, immoral, criminal or evil purpose, either as a means or as an ultimate end. He who conspires with another person to commit an intentional or willful act is answerable in solido with that person for the damage caused by such act. Once the conspiracy has been established, the act done by one in furtherance of the unlawful design is in law the act of all because the foundation of conspiracy law is to treat all co-conspirators as one. If a conspiracy is conceived and executed, as plaintiff alleges occurred in this case, and private injury results (the photographs of plaintiff's physical injuries, and plaintiff's medical records, attached as Exhibit Nos. 6, 7 and 8, do not lie), then the one so injured has a right of action against all of the conspirators. Ross v. Conoco, Inc., 02-C-0299, Louisiana Supreme Court, October 15, 2002.

purposes of harassment and retaliation in the hope that, if enough mud got thrown, maybe some of it would stick.

Plaintiff also avers that the defendants who remain parties to this litigation, as well as certain of the additional defendants, and others against whom plaintiff reserves all rights, have committed the intentional torts of obstruction of justice and spoliation of evidence. See infra.

**MORE DETAILED PLEADING OF THE ALLEGATIONS
CONTAINED IN ARTICLES 6 THROUGH 33.**

5.

Plaintiff amends and substitutes the allegations contained in Articles 6 through 33 of his original Petition by pleading as follows:

TIMELINE

MONDAY, AUGUST 29, 2005, AND DURING THE NEXT 2 WEEKS:

In the aftermath of Hurricane KATRINA, which plaintiff's property survived relatively in tact, and as the magnitude of the damages suffered by the citizenry of the Greater New Orleans Metropolitan Area as a result of incompetence, malfeasance and downright criminal and willful misconduct by elected and appointed public officials, at all levels of government, became apparent for the world to see, plaintiff exercised his First Amendment right to express certain opinions to members of the media who solicited his opinion. Plaintiff also exercised his Second Amendment right to bear arms and to protect his property in the face of a complete breakdown of law and order in the City of New Orleans after the storm. Had plaintiff not done so, plaintiff avers that his home, and many

of his neighbors' homes, would have been looted and/or vandalized, as were so many homes and businesses in the City in the aftermath of the storm. Original Petition, Article 6.

SHORTLY PRIOR TO THE WEEKEND OF FRIDAY, SATURDAY AND SUNDAY, SEPTEMBER 9, 10 AND 11, 2005:

Shortly before or during the course of the September 9, 10 and 11, 2005, weekend, in the face of repeated intimidating, conflicting, confusing and illegal statements from elected and appointed State and local officials, plaintiff became fearful that law enforcement would attempt to forcibly evict him from his home, which he was legally occupying.² Accordingly, he contacted defendant Talley, who was temporarily residing in Houston, Texas, by cellular telephone and requested that he make arrangements for a videographer to stay at plaintiff's residence, so that any attempt to evict plaintiff from his residence could be preserved for posterity on videotape. Talley says he will attempt to do so. Original Petition, Article 7.

SUNDAY, SEPTEMBER 11, 2005:

A meeting is held in Baton Rouge, Louisiana. Among the attendees of the meeting are Associate Justice of the Louisiana Supreme Court, Catherine D. Kimball, the then Louisiana State Bar Association President, Frank Neuner, and Chief Disciplinary Counsel Charles B. Plattsmier, Jr., who works for Kimball. During the meeting, plaintiff's name is mentioned in the context of media interviews. Plaintiff avers, upon information and belief, that during the meeting, defendant Kimball

² Plaintiff's instincts were 100% correct. See entry for Tuesday, September 20, 2005, *infra*.

stated, "Somebody has got to shut that guy up; he's giving us all a bad name", or words to that effect.³ Plaintiff further avers, upon information and belief, that defendant Plattsmier stated "I know some of his (plaintiff's) law partners; I'll contact them to learn more about him", which he then proceeded to do.

MONDAY, SEPTEMBER 12, 2005:

Having not heard back from defendant Talley, plaintiff again called defendant Talley, reiterating his prior request that Talley make arrangements for a videographer, which defendant Talley said he would attempt to accomplish. Original Petition, Article 7.

WEDNESDAY, SEPTEMBER 14, 2005:

Plaintiff is called by defendant Talley, who plaintiff believed was calling him concerning the request for a videographer to stay at plaintiff's residence, so that any attempt to evict plaintiff from his residence could be preserved for posterity on videotape. However, Talley was calling for an entirely different reason, namely, to inform plaintiff that plaintiff had been "suspended from the practice of law." Upon asking defendant Talley, "By whom?", defendant Talley identified defendant Plattsmier. Plaintiff then asked defendant Talley for what reason(s) plaintiff had been suspended

³ Upon information and belief, the "back-pedaling", i.e., the lying, has already begun to occur. Plaintiff avers, upon information and belief, that defendant Kimball recently publicly admitted to having said "That guy has got to shut up". Although defendant Kimball apparently sees a difference between "Somebody has got to shut that guy up" and "That guy has got to shut up", plaintiff avers that it is "a distinction without any difference". If defendant Kimball simply had wanted plaintiff "to shut up", why didn't she simply call plaintiff and ask him to do so? Why was it necessary for defendant Plattsmier to contact plaintiff's law partners if all defendant Kimball wanted was for plaintiff "to shut up" as opposed to "Somebody has got to shut that guy up"?

from the practice of law, without notice and without hearing, but defendant Talley said he had no details, but that perhaps another partner, defendant Shea, who he understood had been in communication with defendant Plattsmier, might be in a position to furnish some details. Defendant Talley further stated that defendant Shea and other unnamed individuals within Lemle & Kelleher, L.L.P., had “influence” with defendant Plattsmier, and that he (Talley) had been authorized to inform plaintiff that his suspension from the practice of law would be “lifted”, and his “ability to earn a living⁴ would not be impaired”, if plaintiff acceded to the following three specific conditions:

1. Cease and desist from speaking with radio, TV or print journalists;
2. Surrender all weapons at 6034 St. Charles Avenue to lawful authority; and
3. Vacate 6034 St. Charles Avenue.

Plaintiff demurred verbally. Original Petition, Articles 8 and 9.

THURSDAY, SEPTEMBER 15, 2005:

Acting upon instructions from defendant Edwards, another partner of Lemle & Kelleher, William R. Forester, hand delivered to plaintiff a hard copy of the attached facsimile dated September 15, 2005, a copy of which is appended hereto and marked for identification as Exhibit No. 1. Plaintiff did not immediately reply to Exhibit No. 1. Instead, on Friday, September 16, 2005, plaintiff again spoke with defendant Talley by telephone, during which conversation defendant Talley emphasized to

⁴ However, defendant Talley specifically implied, “but not at Lemle & Kelleher.”

plaintiff that defendant Plattsmier had “required” that the firm transmit Exhibit No. 1 to plaintiff. During said conversation with defendant Talley, plaintiff severed his thirty-five (35) year relationship with the law firm of Lemle & Kelleher. Original Petition, Article 11.

SATURDAY, SEPTEMBER 17, 2005:

Plaintiff is visited at his home by an entourage which included Frank Neuner, the then-Bar Association President, who had been present at the meeting also attended by defendants Kimball and Plattsmier the prior Sunday in Baton Rouge, as well as defendant Burton Guidry, who is an employee of the Louisiana Department of Justice.⁵ The entourage also included a co-employee of defendant Guidry with the Louisiana Department of Justice, against whom plaintiff reserves all rights. Immediately prior to visiting plaintiff’s home at 6034 St. Charles Avenue, which was the first time any of the members of the entourage had ever set foot on plaintiff’s property, or attempted social “intercourse” with plaintiff during their lifetime(s), the entourage had been given a “Grand Tour” of the temporary jail facility at the Union Passenger Terminal,⁶ where plaintiff ultimately was tortured and illegally detained. See *infra*.

⁵ Another employee of the Louisiana Department of Justice is Paul B. Deal, who is a Supervisory Attorney. Mr. Deal is a former partner of Lemle & Kelleher. If discovery in this case reveals that Mr. Deal was complicit in defendant Guidry’s visit to plaintiff’s home, or in what transpired thereafter, then plaintiff reserves all rights against Mr. Deal.

⁶ Plaintiff only learned about the “Grand Tour” of the temporary jail facility recently, during an informal telephone conversation with Mr. Neuner.

During the visit, plaintiff specifically asked Mr. Neuner if he had heard anything about plaintiff's having been "suspended from the practice of law", to which Mr. Neuner replied that he had no such knowledge.

Plaintiff avers, upon information and belief, that defendant Guidry and Mr. Neuner were doing someone else's "bidding" by visiting plaintiff at his home, and that defendant Guidry acted as "an advance man" for what ultimately happened to plaintiff during the early morning hours of September 20, 2005, and thereafter, at the hands of the Louisiana State Police, and other employees of the State of Louisiana.

While he was at plaintiff's home, defendant Guidry told plaintiff that complaints had been made about plaintiff "at the highest levels of government", which plaintiff, who had personally experienced the government's complete incompetence and malfeasance, sloughed off with a "They're the ones who need to worry" attitude.

Just before defendant Guidry departed plaintiff's home, he walked up to plaintiff and said, "Either you're the bravest man I've ever known, or you're the dumbest son-of-a-bitch on the face of the earth", then giving plaintiff a blessing with his right hand and saying, "God bless you, brother". In retrospect plaintiff looks back on that gesture as the equivalent of a Mafia "kiss of death".

MONDAY, SEPTEMBER 19, 2005:

Plaintiff files the first "Victims of KATRINA" class action lawsuit in the United States District Court for the Eastern District of Louisiana,

which was temporarily sitting in Baton Rouge. Among the specifically named defendants are the United States of America, the State of Louisiana, Governor Blanco, the City of New Orleans, Mayor Nagin, former NOPD Police Superintendent Compass and Criminal Sheriff Gusman, among others.

TUESDAY, SEPTEMBER 20, 2005:

At 0005 hours on Tuesday, September 20, 2005, within 12 hours of his having filed a Class Action Lawsuit bearing Civil Action No. 05-4181 on the docket of the United States District Court for the Eastern District of Louisiana against the United States of America, Governor Blanco, Mayor Nagin, former NOPD Police Superintendent Compass, and Criminal Sheriff Gusman, among others, plaintiff was lawfully occupying his property in uptown New Orleans, watching television (plaintiff had, by this time, procured a gasoline-powered generator), and preparing to retire for the evening when, suddenly and without warning, a dark colored sports utility vehicle emblazoned with "Louisiana State Police" on the passenger side door blocked plaintiff's driveway, following which three or four individuals, who plaintiff believed to be Louisiana State Policemen⁷ (they were dressed in dark "swat-team-like" uniforms) and armed to the teeth with side arms and automatic weapons, approached plaintiff in a very aggressive manner.

⁷ Plaintiff's efforts to determine the identities of these individuals through Louisiana Public Records Act requests have been "stonewalled" by the Louisiana Department of Justice, who plaintiff avers has conspired to obstruct justice and to cover-up the crimes which were committed against plaintiff. See infra.

Plaintiff told the officers that they were not authorized to be on his property and that they should get back on the sidewalk, which is public property. In response, one of the officers told plaintiff, "Sir, you are coming with us; you can either come with us voluntarily or we will remove you from here by force; now what's it going to be?" Plaintiff replied, "I will not resist, but you will have to remove me from my property by force".

Plaintiff was incredulous about his predicament, since he was not guilty of breaking any laws,⁸ and he asked the officers repeatedly, "What's going on here? This is unbelievable! This is America; I'd expect this in the Soviet Union, Communist China, North Korea or Cuba, but not here in America. Who sent you here? Am I under arrest? If so, what are the nature of the charges against me? What's going on here? Why are you doing this to me? What have I done?"

The only responses to plaintiff's inquires were silence or "shut the *?!@^ up".

Upon information and belief, while plaintiff lay face down on the ground, with his hands bound behind his back, one of the officers attempted to gain entry into plaintiff's residence, but was stopped by a houseguest, namely Gerald Pipes Guice, who had come to visit plaintiff at

⁸ At the end of his 16½ hour ordeal, plaintiff was handed a piece of paper, appended hereto and marked for identification as Exhibit No. 2, suggesting that plaintiff had been arrested for "public intoxication", which is a lie. See infra. Additionally, plaintiff does not allow himself to become intoxicated, which condition demonstrates a lack of character in the intoxicated person. Before plaintiff would ever consume alcoholic beverages to the point of intoxication, he would retire. In support of his assertion that he was not intoxicated, plaintiff attaches hereto and makes part hereof the transcript of the Sworn Statement of Harold J. Gagnet dated November 4, 2005, a copy of which is marked for identification as Exhibit No. 3. Plaintiff avers that Mr. Gagnet's sworn testimony is completely true and correct.

his home, stayed for dinner, and opted to spend the night at plaintiff's residence rather than risk being arrested for a curfew violation while returning to his home on Hurst Street after 1800 hours. The reasons for the officer's attempting to gain entry into plaintiff's residence are unknown, but the officer clearly had no legal right to enter plaintiff's residence, because he had no search warrant, to plaintiff's knowledge, and no arrest had been made, or even announced.⁹

Plaintiff was then placed in the back seat of the sports utility vehicle and driven to the Union Passenger Terminal in downtown New Orleans which, upon arrival, appeared to plaintiff to have been rearranged into some sort of temporary detention facility. While enroute to the Union Passenger Terminal, plaintiff continued making inquiries to his kidnapers concerning his status, asking whether he was under arrest and, if so, what were the nature of the charges against him, all to no avail.

Although plaintiff had sustained non-permanent, but painful, bodily injuries when he was thrown to the ground at his residence, upon his arrival at the Union Passenger Terminal plaintiff still believed that what was happening to him was some sort of cruel joke, or hoax. Accordingly, when he was told to pose for a photograph, shirtless, with his hands still bound behind his back, he displayed a "Quasimodo" countenance, until instructed to "be serious". Plaintiff complied.

⁹ Plaintiff avers that his allegations concerning what transpired following the arrival of the State Police on plaintiff's property is supported by the transcript of the Sworn Statement of Gerald Pipes Guice dated November 4, 2005, a copy of which is appended hereto and marked Exhibit No. 4. Plaintiff avers that Mr. Guice's sworn testimony is completely true and correct.

Plaintiff was then taken to a remote, dark corner of the building where one of the officers who had him in custody, and who plaintiff now believes may have been a member of the Donaldsonville Police Department, began pepper spraying plaintiff in the face and over his entire body. The only articles of clothing plaintiff was wearing were a pair of white shorts and Topsiders. After the first bout of pepper spray, plaintiff turned his head to the right and admonished his tormentor, "You didn't have to do that. My hands are cuffed behind my back, for goodness sake! Ashton O'Dwyer is now your worst enemy." These taunts were met with more and more pepper spray.

Additional taunts by plaintiff to his tormentors, like "You gutless dogs", were met with more pepper spray and a flat handed blow to the right side of the head, from behind, to which plaintiff replied, "Is that the best you can do? You gutless dogs! If you were real men, you'd break my nose or break my jaw, but you won't do that, will you, you gutless dogs? Come on, hit me, hit me, hit me, hit me, hit me!" These taunts were met with more and more pepper spray.

Thereafter, another tormentor, who had also engaged in pepper spraying plaintiff, and who plaintiff avers is unfit to wear a badge, much less carry a gun, approached plaintiff very aggressively from the shadows at plaintiff's right front, armed with what appeared to be a 12-gauge pump shotgun with an 18-inch barrel, which he then aimed directly at plaintiff's lower body. This tormentor then fired two to three rounds at plaintiff in

rapid succession and at point-blank range. Although plaintiff felt immediate pain in both thighs, he realized that he was still standing, and although bleeding from the right thigh, no bones were broken. Plaintiff was not sure precisely what was being fired at him, and although it hurt, whatever it was apparently wasn't lethal.

In response to being shot, plaintiff again taunted his tormentors by saying, "Is that the best you can do, you gutless dogs? If you were real men you'd aim that shotgun at my face, or better yet, you'd pull your side arms and put a bullet through my forehead, but you won't do that will you, you gutless dogs?" These taunts were met by additional shotgun blasts to both thighs. Plaintiff avers that as of this time he had been hit a minimum of four and possibly as many as seven times.

Plaintiff was then escorted by his tormentors to the back of the building, and outside, where he was taken down a line of Guantanamo-style, chain-link-fence "dog cages". which appeared to have fairly large numbers of people in them. Plaintiff was taken to a remote dog cage at the far end of the row of dog cages. There, the bonds to plaintiff's hands were released and plaintiff was put in his own, personal dog cage. Upon admonishing his tormentors that even the detainees at Guantanamo were treated better than he was being treated, one of the tormentors shouted, "He's a *@?^~ Muslim. Shoot him; shoot him in the *^#?! With that, plaintiff was shot twice more, once in each thigh, at point-blank range with the shotgun, and threatened with additional shots several more times

by the same psychopath who had shot him previously. Plaintiff later recovered two bean bag rounds from the cement floor within his dog cage, learning for the first time what type of rounds had been fired at him.

Plaintiff then became very concerned for his personal safety and well-being, because no one knew where he was, and his requests for the opportunity to make a telephone phone call had been rebuked. Plaintiff honestly believed that it was quite possible that he would be killed, and his body dumped somewhere, and that he would become just another statistic: a "Victim of KATRINA".

Accordingly, in an effort to let other people at the detention facility know who he was, where he lived, and that he was being held illegally, without any charges having been made against him, plaintiff began yelling his name and address, and the circumstances of his kidnapping and false imprisonment, also repeatedly demanding his constitutional rights to know the nature of any charges against him, the right to make bail, the right to make a phone call and the right to speak with a lawyer. This yelling continued intermittently for the next several hours, until daylight.

During this period of time, plaintiff also initiated "negotiations" with his tormentors, thanking them for not injuring him more severely, and telling them that he would grant them a full release and "covenant not to sue", if only they would bring plaintiff paper and pencil to prepare a legal document, which they could then peruse at their leisure, and identify who had ordered the illegal "hit" on plaintiff. In the meantime, during his

rounds around the facility, one of plaintiff's tormentors finally told plaintiff, "You'll be allowed to make a phone call when you get to the State Penitentiary at Angola", which only added to plaintiff's great anxiety.

During the course of the next several hours, and continuing throughout the day, plaintiff's mucus membranes, skin and thighs were a "mess" due to the pepper spray and bean bag rounds, although plaintiff concedes that he was given one small plastic container of water which he used to attempt to wash pepper spray out of his eyes.

At daybreak, plaintiff was taken to another dog cage, which was occupied by four or five other individuals, two of whom had been very brutally beaten about the face by off-duty New Orleans Police Department officers at a barroom in the French Quarter the prior evening. When plaintiff saw what had happened to these individuals, he felt relieved at his own physical condition, although it was still not beyond the realm of possibility that plaintiff might be subjected to further brutality.

At approximately 1000 hours, plaintiff was taken from the dog cage to the main terminal building where he was finger-printed, again without being advised of the nature of any charges against him, although duly demanded. Plaintiff's insistence that his fingerprints were already in the FBI database, since plaintiff was an Officer in the U.S. Army Reserves, and since plaintiff was the holder of a concealed handgun permit, were ignored.

During the course of the day, plaintiff continued attempting to negotiate with his tormentors, trying to reason with them that he should be released immediately, because he had done nothing wrong, and that continued incarceration would not deter him or others from committing any more crime, since no crime had been committed in the first place, and that no "rehabilitation" was either needed or being offered.

At approximately 1100 hours, a medical team of two persons visited plaintiff at his dog cage, asking if plaintiff required medical attention, which plaintiff politely declined as an act of defiance.

At approximately noon, plaintiff and the other individuals in the dog cage witnessed a transport of the inmates from other dog cages, by bus, to the Louisiana State Penitentiary at Angola. Shortly after this transport of other inmates to Angola, plaintiff and the other individuals in the dog cage were advised that they would be released from custody later in the day, but not until 1700 hours, which made no sense whatsoever.

During the course of the day, plaintiff's skin was literally on "fire" as a result of the pepper spray, the heat and humidity. The wounds to plaintiff's thighs made it painful to stand. The injuries to plaintiff's ribs made it painful to sit down or to try to get up after sitting down. There were no chairs or benches to sit on, and the concrete floor of the dog cage conducted heat from the sun, so that sitting on the concrete was like sitting on top of a hot stove. In short, it was a very miserable day.

At approximately 1500 hours, a hose was run into the dog cage and plaintiff was allowed to rinse off, which improved his physical condition only slightly.

At 1700 hours, plaintiff and his fellow inmates began being released, one by one. When plaintiff's turn came, his personal property consisting of a wrist watch was returned to him, and he was handed a piece of paper which is appended hereto and marked for identification as Exhibit No. 2. Plaintiff categorically states that at no time prior to being handed a copy of Exhibit No. 2 was he ever told that he had been arrested for anything, much less for "public intoxication". Plaintiff also categorically states that he was never intoxicated on September 19 or 20, 2005, and that he was never in public prior to being kidnapped at 0005 hours or thereabouts on the 20th. Further, although he was illegally held in custody at the Union Passenger Terminal for 16 ½ hours, he was never subjected to a field sobriety test, a breathalyzer or the drawing of blood. Even further, plaintiff has never been arraigned on any charge of "public intoxication" or on any other charge since the events of September 20, 2005. Plaintiff also avers that his demeanor, words and response to his kidnapping, torture and false imprisonment belie any assertion that he was intoxicated.

Plaintiff attaches hereto and makes part hereof the transcript of a statement given under penalty of perjury to investigators within the Louisiana Department of Justice on October 14, 2005, marked for identification as Exhibit No. 5, in support of his

allegations, supra. Plaintiff further avers that his allegations and the transcript of his statement are true and correct.

Also appended hereto and marked as Exhibits are the following:

Exhibit No. 6 (A through L) - Photographs of the wounds to plaintiff's lower extremities as a result of being shot repeatedly, at point blank range, with a 12-gauge shotgun loaded with beanbag rounds, while plaintiff's hands were cuffed behind his back or while plaintiff was on the other side of a locked chain-link fence from his tormentor.

Exhibit No. 7 (A through D) - Hand written medical records generated by physicians who attended plaintiff, including Dr. Brobson Lutz, on September 21, 2005, September 24, 2005, September 30, 2005, and October 2, 2005.

Exhibit No. 8 (A through K) - Plaintiff's medical records from the Combat Support Hospital at the Convention Center, where plaintiff was treated for an infection of one wound to his right thigh, which swelled to nearly twice its normal size, between October 2 and October 8, 2005.

FRIDAY, SEPTEMBER 23, 2005, APPROXIMATELY 7:00 P.M.

Dave Winn, the Lemle & Kelleher, L.L.P. Office Administrator, returns messages left for him to call plaintiff's Secretary, Victoria Broussard, by placing a telephone from the Lemle & Kelleher Shreveport office to Mrs. Broussard's home in Jefferson Parish. During this telephone conversation, Winn tells Mrs. Broussard that "Ashton was

arrested and acting crazy; he's been on T.V., talking to the media in a crazed manner." Winn also told Mrs. Broussard that in a telephone conversation with "someone at the jail", Winn had informed the "someone" that "Mr. O'Dwyer is a respected lawyer with the law firm of Lemle & Kelleher, and should be released." Winn also told Mrs. Broussard that if he had not made that representation, then "They were going to take Ashton to Angola."

Plaintiff asks rhetorically, "If Members of Lemle & Kelleher, L.L.P., including particularly defendants Edwards, and Shea, were not complicit in plaintiff's being in jail, what was their Office Administrator doing talking with 'someone at the jail'?" Also, what "power" did the Lemle & Kelleher Office Administrator have over "someone at the jail" to successfully persuade that someone that plaintiff should be released rather than taken to Angola?

FRIDAY, OCTOBER 7, 2005

After being informed by the Chief Disciplinary Counsel that he had not been suspended from the practice of law, plaintiff makes a formal disciplinary complaint against three (3) of his former law partners, who plaintiff averred improvidently used the name and stature of the Office of Disciplinary Counsel to cause plaintiff to be falsely advised that he had been suspended from the practice of law, but that the law firm had "influence" with the Disciplinary Counsel and could get the suspension lifted if plaintiff acceded to the demands enumerated, supra.

FRIDAY, OCTOBER 14, 2005

While in Baton Rouge on other business, plaintiff stops at the offices of the Louisiana Department of Justice, where defendant Guidry works. Plaintiff had made numerous attempts between September 20, 2005 and October 14, 2005 to speak with defendant Guidry by telephone, but defendant Guidry never returned any of plaintiff's telephone messages. Although plaintiff was unable to gain an audience with defendant Guidry, or to speak with him by telephone, defendant Guidry did make arrangements for two (2) Investigators within the Louisiana Department of Justice to take a recorded statement from plaintiff regarding the events of September 20, 2005. When plaintiff leaves the offices of the LDOJ, although the Investigators said they would have to "check with our Superiors" within the LDOJ, plaintiff believes the LDOJ will seriously investigate the crimes which were committed against him, which plaintiff reported to the Investigators within the LDOJ.

MONDAY, DECEMBER 12, 2005

An investigator employed by the Louisiana Department of Justice, to whom plaintiff had reported the crimes committed against him, advises plaintiff that his office would not be pursuing the matter any further.

FRIDAY, MARCH 17, 2006

Michael C. Keller, an attorney with the Louisiana Department of Justice, the same State entity that employs defendant Guidry, and who is representing the interests of the State and various State agencies in "Victims of KATRINA" litigation, threatens plaintiff with physical violence during a telephone conversation. The threat is reported in writing to the Judge presiding over Victims of KATRINA litigation, namely the Honorable Stanwood R. Duval, by letter dated March 20, 2006, in which plaintiff advised Judge Duval as follows:

"Lastly, I am informing the Court that on Friday, March 17, 2006, I received a telephone call from Michael C. Keller, Esq., counsel for the State of Louisiana and the Governor who, although he couched his conversation in terms of a "friendly telephone call", invoking only the provisions of Rule 11, clearly "threatened" me. I was the victim of a criminal physical attack within twelve (12) hours of my filing the above-styled and numbered cause; I know when I am being threatened. I was threatened by Mr. Keller. I am advising the Court of this matter, so that if any physical harm should befall me, because I am the victim of an unfortunate accident, or of an armed-robbery gone bad, or should I be struck by lightening, the Court can order investigation by the FBI and/or the Department of Justice." See Exhibit No. 9.

WEDNESDAY, MARCH 29, 2006

Defendant Plattsmier, the Chief Disciplinary Counsel, after dodging plaintiff's telephone calls to his office during the preceding 5 to 6 weeks, informs plaintiff that he "has declined to conduct a formal investigation" into the post-KATRINA conduct of his former law partners. In so doing, the defendant Plattsmier writes, "Whether or not you were in fact ever told that you were suspended by any individual of Lemle &

Kelleher is unknown, but based upon my preliminary inquiry has been flatly denied.”

THURSDAY, AUGUST 17, 2006

Defendant Plattsmier initiates investigation into “allegations about [plaintiff’s] conduct”, requiring plaintiff to respond, in writing. The identities of the persons, firms or corporations, if any, who complained to the Office of Disciplinary Counsel about plaintiff’s conduct are unknown.

LATE SEPTEMBER OR EARLY OCTOBER 2006

One Thursday afternoon, sometime after plaintiff filed his personal lawsuits against the State of Louisiana, and others, plaintiff encounters Paul B. Deal, against whom plaintiff reserves all rights, on the steps at the Federal Courthouse in New Orleans. Deal is a former Lemle & Kelleher, L.L.P. partner and is the current “Office Chief” of the New Orleans office of the Louisiana Department of Justice, which is the State agency which employs the Attorney General of the State of Louisiana and all Assistant Attorneys General. Michael C. Keller, supra, works for Deal. When Deal sees plaintiff, Deal walks up to plaintiff and, in the course of conversation, tells plaintiff, “You’re lucky you didn’t have a broom-stick shoved up your ass.”¹⁰

**PLAINTIFF’S SUPPLEMENTAL ALLEGATIONS
AGAINST DEFENDANT KIMBALL, INCLUDING
INTENTIONAL TORTS OF CONSPIRACY
AND MALICIOUS PROSECUTION**

¹⁰ The “broomstick” comment by Deal was particularly upsetting to plaintiff, since one of his “keepers” at the Union Passenger Terminal had referred to plaintiff as a “bitch”, saying, “We’re going to have fun with this bitch.”

“A free society can exist only to the extent that those charged with enforcing the law respect it themselves. There is no more cruel tyranny than that which is exercised under cover of law, and with the colors of justice.” U.S. v. Jannotti, 673 F.2d 578 (3d Cir. 1982), citing Montesquieu, de l’Esprit des Lois (1978).

6.

On Sunday, September 11, 2005, a meeting was held in Baton Rouge, Louisiana. The purpose of the meeting is unknown to plaintiff at present. Plaintiff also has not yet identified all of the attendees.¹¹ However, three of the attendees were:

- 1) Defendant Catherine D. Kimball, an Associate Justice of the Louisiana Supreme Court;
- 2) Defendant Charles B. Plattsmier, Jr., Chief Disciplinary Counsel, who works for the Louisiana Supreme Court and defendant Kimball; and
- 3) Frank Neuner, who at the time was President of the Louisiana State Bar Association.

Plaintiff avers, upon information and belief, that during the meeting, plaintiff’s name was mentioned by someone in the room, in the context of interviews plaintiff had given to members of the media following Hurricane KATRINA. Plaintiff also avers, upon information and belief, that during the meeting, defendant Kimball stated, “Somebody has got to shut that guy up; he’s giving us all a bad name”, or words to that effect. Plaintiff further avers, upon information and belief, that defendant Plattsmier stated during the meeting, “I know some of his (plaintiff’s) law partners; I’ll find out

¹¹ Discovery has been propounded to defendant Kimball to learn the identities of the other attendees. See Exhibit No. 20, appended hereto, which are plaintiff’s Interrogatories and Requests for Production to defendant Kimball.

more about him from them”, or words to that effect, which defendant Plattsmier then proceeded to accomplish.

Within three (3) days of that meeting in Baton Rouge, plaintiff was falsely informed by his former law partners that plaintiff had been “suspended from the practice of law” by defendant Plattsmier. Within six (6) days of that meeting in Baton Rouge, plaintiff was visited at his home by an entourage which included State Bar President Neuner,¹² who had been present at that meeting in Baton Rouge, and a co-defendant of defendant Kimball, namely Burton Guidry, who is an Assistant Attorney General with the Louisiana Department of Justice. Another Louisiana Department of Justice employee also was a member of the visiting entourage.¹³ Within eight (8) days of that meeting in Baton Rouge, and only two (2) days after the visit to his home by the entourage, which included LDOJ employees and Mr. Neuner, plaintiff was kidnapped from his home in the dark of the night, just after midnight, by Louisiana State Police “Storm Troopers”, who illegally trespassed on plaintiff’s property without any warrant or even any reasonable suspicion that any crime was being committed. These State Police Storm Troopers then brutalized plaintiff and took him, against his will, to the Union Passenger Terminal. Following arrival at that facility, which had been rearranged into a make-shift temporary “jail” facility, more police “Goons from Angola”, who also worked for the State of Louisiana, then proceeded to further brutalize plaintiff by pepper-spraying him and shooting him, repeatedly, at point-blank range with a 12-gauge shotgun loaded with bean-

¹² Incidentally, although plaintiff has known Mr. Neuner for many years, professionally, Mr. Neuner had never before been to plaintiff’s home, or invited plaintiff to his own home.

¹³ Plaintiff also avers, upon information and belief, that immediately prior to arriving at plaintiff’s home, the entourage was given a “Grand Tour” of the temporary jail facility at the Union Passenger Terminal, where plaintiff was tortured and falsely imprisoned by State employees just a few days later. See supra.

bag rounds, while plaintiff's hands were cuffed behind his back or while plaintiff was on the other side of a locked chain-link fence from his tormentor(s).

Plaintiff avers that what was done to him by "law enforcement" had been set in motion by whoever ordered the criminal, gangland-style "hit" in the first place. Plaintiff also avers that he believes it was more than a mere "coincidence" that defendant Kimball and her Chief Disciplinary Counsel were both together at a meeting in Baton Rouge a week before the State Police executed their "hit" on plaintiff at his home, and that plaintiff's name was invoked at that meeting, with plaintiff being falsely informed a few days later that the Chief Disciplinary Counsel had suspended him from the practice of law.

Plaintiff now supplements and amends his allegations against defendant Kimball to aver that he attempted, four or five times, to speak with defendant Kimball personally, prior to suing her, in order to determine, first-hand, precisely what defendant Kimball had said about him, and did, prior to the events of September 20, 2005, or since that time. However, defendant Kimball never accepted any of plaintiff's telephone calls, and never called plaintiff back, although plaintiff left several messages for her at her office, with her Staff.

Plaintiff avers that it is noteworthy ironic that defendant Kimball may have publicly invoked plaintiff's name, when she has never met plaintiff, but that she refused to accept or return any of his telephone calls to her office.

Plaintiff further avers that the allegations contained in this article and the allegations contained in the "Timeline", supra, summarize the salient facts which are known at present about defendant Kimball's complicity in what was done to plaintiff,

which plaintiff avers is a reasonable conclusion to be drawn from the currently known facts and circumstances.

As is the case with the other intentional tortfeasors, who plaintiff avers conspired together to order and have executed the criminal, gangland-style “hit” on plaintiff, defendant Kimball has mischaracterized plaintiff’s claims against her by inordinately focusing on the constitutional nature of certain of plaintiff’s claims. If, as plaintiff believes, defendant Kimball was complicit in what happened to him on September 20, 2005, then far more than federal civil rights statutes are implicated and were violated. Articles 2315 and 2324 of the Louisiana Civil Code provide as follows:

Article 2315: Liability for acts causing damages

Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

Article 2324: Liability as solidary or joint and divisible obligation

A. He who conspires with another person to commit an intentional or willful act is answerable, *in solido*, with that person, for the damage caused by such act.

It is black letter law that “if a reasonable person must have perceived that his actions were certain to cause injurious consequences, then the tortfeasor will be treated by the law as if he intended those consequences, whether he in fact intended them or not.” Faust v. Greater Lakeside Corp., 797 So.2d 748 (La. App. 4th Cir. 2001). Civil Code Article 2323(C) was added in 1996 to provide that the negligence of a plaintiff would no longer reduce recovery against an intentional tortfeasor. In summary, the state torts which plaintiff has alleged against defendant Kimball, and others, in this case are

intentional torts, for which State law provides for redress of grievances against all solidary obligors, without regard to reduction of the award for any negligence on the part of plaintiff.

Criminal statutes which are implicated in this case include:

LSA-R.S. 14:112 – False personation

LSA-R.S. 14:34.1 - Second degree battery

LSA-R.S. 14:34.7 – Aggravated second degree battery

LSA-R.S. 14:35 – Simple battery

LSA-R.S. 14:37 – Aggravated assault

LSA-R.S. 14:37.4 – Aggravated assault with a firearm

LSA-R.S. 14:38 – Simple assault

LSA-R.S. 14:39 – Negligent injury

LSA-R.S. 14:44 – Aggravated kidnapping

LSA-R.S. 14:44.1 – Second degree kidnapping

LSA-R.S. 14:46 – False imprisonment

While criminal statutes are not, in and of themselves, definitive of civil liability, they may serve as guidelines for a finder-of-fact in fixing civil liability.

This case also has clear potential for implicating The Code of Judicial Conduct.

The federal and state constitutional rights impacted by what was done to plaintiff are the very cornerstones of our democratic society, namely the right to property, and its protection, the right to freedom of expression, the right to bear arms, and the right not to be subjected to cruel and unusual punishment. In Gomez v. Toledo, 446 U.S. 635 (1980), Justice Marshall, writing for a unanimous Supreme Court, announced:

By the plain terms of Section 1983, two-and only two-allegations are required in order to state a cause of action under the statute. First, the plaintiff must allege that some person has deprived him of a 'federal right', second, he must allege that the person who has deprived him of that right acted under color of state or territorial law.

Although defendant Kimball has been sued individually, plaintiff clearly has alleged that she conspired with State law enforcement actors. Further, she and her counsel have seen fit to invoke "qualified immunity" which they maintain ". . . shields governmental officials from personal liability if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." What is known is that Justice Kimball said "something" about plaintiff in a meeting in Baton Rouge on Sunday, and eight days later the Louisiana State Police came to "get" plaintiff. In the meantime, plaintiff was falsely informed by his former law partners that he had been suspended from the practice of law by Chief Disciplinary Counsel Plattsmier, who works for defendant Kimball, and who was also present at the Sunday meeting. Additionally, plaintiff had been visited at his house by the then President of the Louisiana State Bar Association, Frank Neuner, who was also present at the meeting with defendant Kimball, and who appeared, unannounced, at plaintiff's home, accompanied by employees of the Louisiana Department of Justice.

So there will be no mistake: plaintiff is alleging that defendant Kimball, although sued individually, used her position and the power of her office to order other State actors to begin doing things that resulted in emotional and physical harm to plaintiff, in violation of both his federal and state protected rights. Plaintiff respectfully submits that

he has sufficiently stated colorable causes of action against defendant Catherine D. Kimball in his pleadings, and that his claims against the said defendant should be allowed to go forward.

Obviously, if as plaintiff believes, defendant Kimball conspired to cause plaintiff physical harm, then the separate claim for intentional infliction of emotional distress pales by comparison. However, upon information and belief, plaintiff avers that even if what defendant Kimball may have done did not result in physical harm to plaintiff, defendant Kimball set in motion a process which resulted in emotional distress to plaintiff, at the very least. Plaintiff has never met defendant Kimball, and yet, if what plaintiff avers to be true was true, then defendant Kimball took it upon herself to become a self-anointed "High Priestess and Protector of the Public from Ashton O'Dwyer". Plaintiff reiterates ". . . that although he hopes it isn't true, and hopes it didn't happen. . . ", if defendant Kimball gave instructions or orders to any State actors, who then inflicted either physical harm or emotional distress on plaintiff, defendant Kimball is complicit and should account for her actions, for as plaintiff has pleaded in his Petition:

43.

Plaintiff avers that the conduct of certain of the defendants, and of as yet unidentified parties, which resulted in the kidnapping, torture and false imprisonment of plaintiff, constituted extreme and outrageous conduct, so outrageous in character, and so extreme in degree, as to go beyond all bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society. Plaintiff further avers that certain of the defendants desired to inflict severe physical injury and emotional distress

on him, or knew that severe physical injury and emotional distress would be certain, or substantially certain, to result from plaintiff's kidnapping, torturing and false imprisonment.

**PLAINTIFF'S ALLEGATIONS AGAINST
DEFENDANT CHARLES B. PLATTSMIER, JR.
FOR INTENTIONAL TORTS, INCLUDING
CONSPIRACY, MALICIOUS PROSECUTION AND
OBSTRUCTION OF JUSTICE**

7.

On October 7, 2005, after having been informed by defendant Plattsmier that he had not been suspended from the practice of law, plaintiff transmitted the following formal complaint of misconduct by Members of the Bar to defendant Plattsmier via facsimile:

October 7, 2005

Charles B. Plattsmier, Esq.
Chief Disciplinary Counsel
Louisiana State Bar Assn.
Fax # 225-293-3300

6034 St. Charles Avenue
N.O. La. 70118
(504) 884-6727

Dear Sir:

This is a formal request that your office commence an investigation into whether the following members of the bar improvidently used your name, and the stature of your office, to intentionally inflict emotional distress on me during September 2005, in the aftermath of Hurricane KATRINA:

Ernest L. Edwards
Charles R. Talley
Larry (sic) Shea

On Wednesday evening, Sept. 14, 2005, I was contacted by Talley via cell phone, and informed that I had been "suspended from the practice of law" by you. Talley could provide no valid reason for the suspension. I had not been served with any formal notice; nor had I been afforded basic due process: an opportunity to confront and cross-examine my accuser and respond to the allegations against me before a duly constituted tribunal.

Talley added that the suspension would be "lifted" upon my compliance with the following three conditions:

- 1) Cease and desist speaking with radio, T.V. and print journalists (i.e. "muzzle" myself, in violation of my First Amendment rights to freedom of speech);
- 2) Surrender my legal weapons to "lawful" authority (i.e. to agree not to do what the Second Amendment guarantees is my right to do, namely protect my property); and
- 3) Immediately vacate my home at 6034 St. Charles Ave. N.O. La. 70118, which I had been protecting and guarding since the approach of Hurricane KATRINA to the City, because I knew local and state government were incompetent to do so.

Naturally, I demurred.

On Thursday, September 15, 2005, I was hand-delivered the attached facsimile¹⁴ from Edwards bearing the same date. Edwards'

¹⁴ September 15, 2005

Hand Delivery

Mr. Ashton R. O'Dwyer
6034 St. Charles Avenue
New Orleans, LA 70118

Dear Ashton:

As Chairman of Lemle & Kelleher and on behalf of the Executive Committee, I must tell you that your actions and statements to the press are offensive and an embarrassment to the firm and to its lawyers and staff. Your recent statements and conduct do not reflect the standard of professionalism and respect for legal authority demanded of partners at this firm.

Effective immediately, you are relieved of all responsibility and authority to act on behalf of the firm. Moreover, if you do not cease and desist from making public statements to anyone along the lines of prior press interviews and/or you fail to disarm yourself or otherwise fail to cooperate with governmental authorities, the Executive Committee hereby informs you that your partnership in the firm may be terminated without further notice.

Yours truly,

facsimile is remarkable for a number of reasons, not the least of which is that it demonstrates his utter ignorance of the law, and what self-proclaimed "legal authority" can demand of the citizenry.

You will note that your name and office are prominently displayed on Edwards' facsimile of the 15th.

On Friday, September 16, 2005, I called Talley on his cell phone, and dictated to him an E-mail message to be distributed to the Lemle & Kelleher partnership. I am sure Talley will share that E-mail with you. However, Talley made a specific point of telling me that you had "required the firm" to compose, write and deliver to me Edwards' facsimile of the 15th.

I am charging Edwards, Talley and Shea of dishonesty towards me, a brother at the bar, during times which were admittedly stressful, without one's having to worry about his livelihood and financial future. I further charge them with the improvident use of your name and office in a manner which they knew was not authorized by you, and in a manner which they knew would have a deleterious effect on my mental well-being. Lastly, I accuse them - not of not being gentlemen - but of being SCUM and VERMIN, who are unfit to hold licenses to practice law.

Lastly, when you and I last spoke by telephone, you told me that no complaint was pending against me, and that no investigation into misconduct of any type had been initiated. You also told me that my license to practice law had not been suspended. Please extend me the courtesy of a return telephone call, so I can reassure myself that I am still a member of the bar of the State of Louisiana, in good standing.

Respectfully,

S/ Ashton R. O'Dwyer, Jr.

ASHTON R. O'DWYER, JR.
504-884-6727

Lemle & Kelleher, L.L.P.

S/EL Edwards
Ernest L. Edwards, Jr.
Chairman

Cc: Chief Disciplinary Counsel,
Charles B. Plattsmier

Plaintiff expanded his formal charges against defendants Edwards, Talley and Shea in a further missive to defendant Plattsmier dated December 22, 2005:

December 22, 2005
(Dictated) December 21, 2005

Mr. Charles B. Plattsmier
Chief Disciplinary Counsel
4000 South Sherwood Forest Blvd.
Suite 607
Baton Rouge, LA 70816

Dear Mr. Plattsmier:

To further our telephone conversation of this morning, and my facsimile to you of October 7, 2005, this will constitute my formal charges of criminal conduct, and more particularly violation of LSA-R.S. 14:112, and misconduct, in violation of Rule 8.4(a-e) of the Rules of Professional Conduct, by the following Members of the Louisiana State Bar Association during September 2005, in the aftermath of Hurricane KATRINA:

Ernest L. Edwards
Charles R. Talley
Joseph "Larry" Shea

I also charge these individuals with conspiracy to commit the crime of false impersonation, which also constituted violation of Rule 8.4(a-e).

The essential facts which support my charges are set forth in my facsimile to you of October 7, 2005, and need not be repeated here. I would add only that my facsimile to you did not include a copy of yet another written missive which was directed to me by Edwards on September 23, 2005, which also improvidently used your name and office. A copy of that missive, which apparently was left in my mailbox, was not discovered by me in the mailbox until October 4, 2005 at 1130 hours. For your further information, I had ceased to be a Partner with Lemle & Kelleher on Friday, September 16, 2005, when I called Talley via cell phone and dictated to him an E-mail message to be distributed to the Lemle & Kelleher partnership. Accordingly, I can only speculate why Edwards thought it necessary to again use your name and office in his letter to me dated September 23, 2005.

It may be that investigation will reveal that other members of Lemle & Kelleher are guilty of criminal conduct and misconduct in connection with Edwards', Talley's and Shea's unlawful attempts to intimidate and coerce me through the unauthorized use of your name and office in September 2005.

Let me know if I can furnish you additional information.

Yours very truly,

Ashton R. O'Dwyer, Jr.

AROD/vtb
Enclosure

At the time he authored the letter of December 22, 2005, plaintiff had no idea that defendant Plattsmier had, in fact, been complicit in the outrageous criminal conduct which had been directed at him, and plaintiff honestly believed that if the Office of Disciplinary Counsel investigated, then the truth would be revealed, and the world would know precisely who orchestrated, ordered and executed the criminal gangland-style "hit" on plaintiff. More particularly, during telephone conversations with defendant Plattsmier on November 15, 2005 and on December 21, 2005, defendant Plattsmier had lied to plaintiff in several very significant respects:

- 1) He specifically told plaintiff that his only knowledge of plaintiff's post-KATRINA "notoriety" had been his reading of an article featuring plaintiff which appeared in The Wall Street Journal;
- 2) He specifically told plaintiff that he had no knowledge whatsoever of any meeting in Baton Rouge on or about September 11, 2005, at which

defendant Kimball was present, allegedly saying, "Somebody's got to shut that guy up; he's giving us all a bad name" or words to that effect.

- 3) He professed to having "no idea" where defendants Edwards and Talley could have gotten the impression that they were authorized to use his name and the stature of the Office of Disciplinary Counsel in their communications with plaintiff.

Although plaintiff made several attempts after the telephone conversation of December 21, 2005 to speak further with defendant Plattsmier, in order to determine the status of his investigation into alleged misconduct by plaintiff's former law partners, defendant Plattsmier refused to accept plaintiff's telephone calls and failed to return messages left for him with the Receptionist.

By letter dated March 29, 2006, defendant Plattsmier informed plaintiff that the Office of Disciplinary Counsel "has declined to conduct a formal investigation" into the post-KATRINA conduct of plaintiff's former law partners. A copy of defendant Plattsmier's letter of March 29, 2006 is appended hereto and marked for identification as Exhibit No. 10.

Thereafter, plaintiff learned in December 2006, that defendant Plattsmier had lied to him during the telephone conversations with him in November and December 2005. More particularly, in December 2006, plaintiff learned that defendant Plattsmier was, in fact, an attendee at the meeting in Baton Rouge on Sunday, September 11, 2005, and that thereafter he had engaged in numerous conversations with Lemle & Kelleher partners, including particularly defendant Shea, the subject of which went far beyond the contents of The Wall Street Journal article.

However, plaintiff avers that what makes the conduct of defendant Plattsmier even more egregious than plain lying, and his participation in a conspiracy to perpetrate criminal acts against plaintiff under color of law, is the fact that notwithstanding his lies and conspiracy, he later conducted a formal investigation into plaintiff's conduct as a Member of the Bar in "Victims of KATRINA" litigation during the Summer 2006. Plaintiff attaches and marks as Exhibit No. 11 his written submission to Office of Disciplinary Counsel of September 15, 2006, which resulted in plaintiff's exoneration.

In other words, defendant Plattsmier:

- 1) Has repeatedly lied to plaintiff;
- 2) Has conspired to have plaintiff falsely informed that he had been suspended from the practice of law;
- 3) Has conspired to have plaintiff falsely arrested and imprisoned;
- 4) Has conspired to cause plaintiff physical, emotional and professional harm;
- 5) Has conspired to harm plaintiff's reputation by investigating him for absolutely nothing;
- 6) Has conspired to commit and committed obstruction of justice; and
- 7) Has conspired to hide and/or destroy evidence relevant to the factual and legal issues in this case.

**PLAINTIFF'S SUPPLEMENTAL ALLEGATIONS
AGAINST DEFENDANT GUIDRY AND THE
LOUISIANA DEPARTMENT OF JUSTICE**

8.

Plaintiff avers that his allegations against defendant Burton Guidry and against the Louisiana Department of Justice are more than sufficient to state colorable causes of action against said defendants. However, plaintiff further avers that:

As to defendant Burton Guidry, plaintiff concedes that when he was visited at his house by defendant Guidry on Saturday, September 17, 2005, plaintiff was entirely naïve about the purpose of the visit. There were a number of people at plaintiff's home on that date, but plaintiff went out of his way to make defendant Guidry and the people who accompanied him to plaintiff's property, including the then President of the Louisiana State Bar Association, Frank Neuner, feel welcome. Because of the large number of people present at plaintiff's house, and so much activity, plaintiff was able to engage defendant Guidry and Mr. Neuner only in frequently-interrupted "snippets" of small talk. During his conversations with defendant Guidry however, plaintiff learned that complaints had been made about plaintiff's behavior "at the highest levels of government". Plaintiff had just met defendant Guidry, did not wish to be confrontational with him, and had no idea what was going to happen to him early the following Tuesday morning. Accordingly, plaintiff did not press the matter with defendant Guidry any further. Indeed, plaintiff recalls thinking to himself, "Well, if he's talking about Governor Blanco, then what I have said about her must be getting "under her skin". However, plaintiff has the distinct recollection that when defendant Guidry was

preparing to leave plaintiff's home, defendant Guidry walked up to plaintiff and said, "Either you're the bravest man I've ever known, or you're the dumbest son-of-a-bitch on the face of the earth", then giving the plaintiff a blessing with his right hand and saying, "God bless you, Brother". In retrospect, plaintiff looks back on that gesture as the equivalent of a Mafia "kiss of death" and avers, upon information and belief, that defendant Guidry knew that "something" was going to happen to plaintiff, soon, and had been sent to plaintiff's home in order to "case" the situation, determine where weapons were located, etc.

Plaintiff further avers that certain other defendants with whom defendant Guidry conspired actually ordered defendant Guidry to plaintiff's home on Saturday, September 17, 2005, for the purpose of having plaintiff illegally and wrongfully committed to a mental institution. Plaintiff avers that those conspiratorial efforts were thwarted when defendant Guidry reported back to his "handlers", who had ordered him to plaintiff's home: "He's not crazy; he's just angry", or words to that effect. Plaintiff further avers that, following defendant Guidry's report, the Louisiana Department of Justice and other defendants and potential defendants decided to implement Plan "B", which resulted in plaintiff's illegal abduction, torture and false imprisonment during the very early morning hours of September 20, 2005.

**PLAINTIFF'S SUPPLEMENTAL ALLEGATIONS
AGAINST DEFENDANTS NELSON AND IVY**

9.

Defendants John Nelson and Christopher Ivy were sued as intentional tortfeasors for two (2) reasons: (1) because their names and badge numbers specifically appear in

the affidavit attached as Exhibit No. 2, and (2) in order to interrupt prescription against all joint tortfeasors and solidary obligors to plaintiff pursuant to Louisiana Civil Code Article 2324(C). Plaintiff probably would not recognize defendants Nelson or Ivy if plaintiff were to run over them in his car. Upon information and belief, however, defendants Nelson and Ivy had actual knowledge of the false pretext for plaintiff's being taken into police custody on September 20, 2005, and his being illegally detained, and tortured, thereafter, and did nothing to stop the travesty of justice with which plaintiff was visited. One or both of them also rough-handled plaintiff at his home, which was totally unnecessary.

**PLAINTIFF'S SUPPLEMENTAL ALLEGATIONS
AGAINST DEFENDANTS EDWARDS, TALLEY AND SHEA**

10.

Plaintiff avers that the allegations in his pleadings filed thus far are more than sufficient to state colorable causes of action against defendants Edwards, Talley and Shea. Nonetheless, in an abundance of caution, plaintiff also avers as follows:

Thus, the "picture" thus created for the Court's benefit concerning these defendants includes the following elements:

- 1) Defendants found plaintiff's exercise of his First Amendment rights "offensive and an embarrassment", and clearly wanted plaintiff shut up.
- 2) Defendants wanted plaintiff disarmed.
- 3) Defendants wanted plaintiff "to cooperate with governmental authorities", which plaintiff interprets as their wanting plaintiff to "cut and run" from his property and seek shelter in "Plato's Cave" along with defendants, in Baton Rouge, Houston or Shreveport.

Plaintiff also avers that defendants are persons who are prone to use all of the resources which may be available to them to achieve their goals, including police goons.

Plaintiff avers that while he cannot make his allegations beyond all reasonable doubt, he has reasonable bases for believing that a preponderance of the evidence in this case at trial will demonstrate the following:

1. That defendants Edwards, Talley and/or Shea, and/or currently unidentified individuals with Lemle & Kelleher, had direct communications with individuals within the Louisiana Department of Justice and/or the Louisiana Department of Public Safety and Corrections and/or the State Police and/or other State agencies concerning plaintiff, which communications were adverse to plaintiff's interests and which resulted in physical and emotional harm being inflicted upon him;
2. That defendants Edwards, Talley and/or Shea, and/or currently unidentified individuals with Lemle & Kelleher, had conversations with Assistant U.S. Attorney Michael Magner concerning plaintiff, which conversations were adverse to plaintiff's interests and which resulted in plaintiff suffering physical and emotional harm;
3. That defendants Edwards, Talley and/or Shea, and/or other currently unidentified individuals with Lemle & Kelleher, conspired together to inform plaintiff that he had been suspended from the practice of law, when they knew that was not true, and attempted to intimidate plaintiff by invoking the name and office of the Chief Disciplinary Counsel.

By alleging that defendants Edwards, Talley and Shea acted in concert with State and/or Municipal officials, plaintiff avers that he has adequately and properly stated a cause of action against individuals pursuant to 42 U.S.C. §1983:

The phrase ‘under color of State law’ also means that a Section 1983 action can only be brought when ‘the conduct allegedly causing the deprivation of a Federal right [is] fairly attributable to the State,’ or its political subdivisions. This is the same as the test for ‘State action’ under the Fourteenth Amendment. Actions taken by a private defendant meet this test only when he or she has somehow acted in concert with State or local officials. (emphasis supplied). Gelfand, Constitutional Litigation under Section 1983, The Michie Company (1996), at p. 503 (and cases cited therein).

The same authority, quoting the Supreme Court in Gomez v. Toledo, 446 U.S. 635 (1980) articulates only two (2) requirements for alleging a cause of action under 42 U.S.C. §1983:

By the plain terms of §1983, two – and only two – allegations are required in order to state a cause of action under the statute. First, the plaintiff must allege that some person has deprived him of a “federal right”. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law.” Ibid. at pp. 523-524.

Accordingly, if defendants Edwards, Talley and Shea conspired with State or local officials to illegally “hit” plaintiff on September 20, 2005, then plaintiff has not only satisfied the requirements of pleading a cause of action under §1983, but under

Articles 2315 and 2324 of the Louisiana Civil Code, which encompass torts involving assault and battery, intentional infliction of emotional distress, and impose liability in solido on solidary obligors who are complicit in committing torts, as well.

Lastly plaintiff avers that defendants have misconstrued the nature of plaintiffs' allegations that they may be guilty of criminal conduct. While plaintiff concedes that the District Attorney has control of criminal prosecutions, plaintiff has alleged tort liability against defendants, also asserting that, while not definitive of civil liability, criminal statutes may be considered by the finder of fact in determining civil liability. In alleging that defendants have violated statutes, including Civil Code Articles 2315 and 2324, and 42 U.S.C. §1983, et seq., plaintiff also gives notice to defendants of his intention to argue violation of the following criminal statutes to the jury in this case:

LSA-R.S. 14:34.1 - Second degree battery

LSA-R.S. 14:34.7 – Aggravated second degree battery

LSA-R.S. 14:35 – Simple battery

LSA-R.S. 14:37 – Aggravated assault

LSA-R.S. 14:37.4 – Aggravated assault with a firearm

LSA-R.S. 14:38 – Simple assault

LSA-R.S. 14:39 – Negligent injury

LSA-R.S. 14:44 – Aggravated kidnapping

LSA-R.S. 14:44.1 – Second degree kidnapping

LSA-R.S. 14:46 – False imprisonment

**PLAINTIFF'S CAUSES OF ACTION
FOR OBSTRUCTION OF JUSTICE AND
SPOILIATION OF EVIDENCE AND
CONSPIRACY TO COMMIT SAME**

11.

Since September 20, 2005, when plaintiff was the victim of a criminal gangland-style “hit”, which is the subject of this litigation, plaintiff has tried, unsuccessfully, to determine the following:

- 1) Who ordered the criminal gangland-style “hit”?
- 2) Who were the members of the “Goon squad” who abducted plaintiff from his residence?
- 3) Who were the “Gestapo” members who brutalized plaintiff while being illegally detained?¹⁵
- 4) Who was responsible for illegally detaining plaintiff for 16½ hours?¹⁶
- 5) Whether plaintiff’s former law partners were complicit in all or any of the above?
- 6) Whether defendants Kimball and Plattsmier were complicit in all or any of the above and, if so, precisely what roles they played, and with whom did they conspire?

In order to attempt to discover these facts plaintiff did the following, inter alia:

¹⁵ Initially, plaintiff had been under the impression that his tormentors at the Union Passenger Terminal were the same as his original kidnapers, namely the Louisiana State Police. In trying to make small talk during the course of the day with the psychopath who had shot him with bean bag rounds, plaintiff learned that the psychopath was not a college graduate. Upon challenging the psychopath that plaintiff was of the impression that the Louisiana State Police required a college degree, the psychopath said, “I’m not State Police; I’m from Angola”. Plaintiff believes he saw his “Pepper-Sprayer-in-Chief” during the Summer 2006 at a filling station near Donaldsonville, Louisiana, wearing a Donaldsonville Police Department uniform. Plaintiff avers that it is logical to assume that at least some of his tormentors were employees of the Louisiana Department of Public Safety and Corrections, named as a defendant herein.

¹⁶ In point of fact, plaintiff does not know who was operating the temporary detention facility at the Union Passenger Terminal, and by what authority. The facility could have been operated by the Orleans Parish Criminal Sheriff’s Office; it could have been operated by the State of Louisiana; it could have been operated by the Federal Emergency Management Agency. Plaintiff simply does not know, although he has attempted, unsuccessfully, to find out. See infra.

- 1) He retained counsel to inform Lemle & Kelleher, L.L.P. to preserve evidence. Counsel's E-mail to the then Managing Partner of Lemle & Kelleher, L.L.P. of September 30, 2005 is attached and marked for identification as Exhibit No. 12.
- 2) He formally reported the crimes committed against him to the Louisiana Department of Justice to whom he made a Statement Given under Penalty of Perjury on October 14, 2005, attached as Exhibit No. 5.
- 3) He directed correspondence to the Louisiana Department of Justice on November 28, 2005, appended hereto and marked for identification as Exhibit No. 13.
- 4) He directed correspondence to the Louisiana Department of Justice on November 28, 2005, appended hereto and marked for identification as Exhibit No. 14.
- 5) He directed Public Records Act requests to the following:
 - a) The Office of Disciplinary Counsel on December 18, 2006, attached and marked for identification as Exhibit No. 15.
 - b) The Partners of Lemle & Kelleher, L.L.P., who he avers were the *de facto* and *de jure* agents of the State of Louisiana, the Louisiana Department of Justice, the Louisiana Supreme Court, and the Office of Disciplinary Counsel, on December 20, 2006, attached and marked for identification as Exhibit No. 16.
 - c) The Louisiana State Police on December 29, 2006, attached and marked for identification as Exhibit No. 17.

- d) The Louisiana Department of Public Safety and Corrections on December 29, 2006, attached and marked for identification as Exhibit No. 18.
- e) The Louisiana Department of Justice on January 16, 2007, attached and marked for identification as Exhibit No. 19.
- 6) On November 11, 2006, plaintiff propounded Interrogatories and Requests for Production to defendant Kimball, copies of which are appended hereto and marked for identification as Exhibit No. 20.
- 7) Plaintiff propounded Interrogatories and Requests for Production to defendants Edwards, Talley and Shea, copies of which are appended hereto and marked for identification as Exhibit No. 21.
- 8) Plaintiff propounded Requests for Production to the State defendants named herein, copies of which are appended hereto and marked for identification as Exhibit No. 22.

To date, not one document, computer record, verified pleading, or anything else, has been produced in response to any of the requests identified, supra, because defendants are actively engaged in, or have conspired to engage in, obstruction of justice and destruction of evidence in an illegal and wrongful effort to “keep the lid on” the facts of this case. Plaintiff avers that he is entitled to an Order of Court, summarily ordering the production of the identified public records pursuant to the cited statute and constitutional article, plus attorney’s fees and costs, since the requested records are not only public records, but are also relevant and material to the factual and legal issues in

this litigation and are, therefore, discoverable pursuant to Rule 26, Federal Rules of Civil Procedure.

**PLAINTIFF'S SEPARATE CAUSE OF ACTION
AGAINST THE LOUISIANA SUPREME COURT**

12.

On December 18, 2006, plaintiff made a formal request to the Louisiana Supreme Court for Louisiana public records made pursuant to the provisions of the Louisiana Public Records Act, LSA-R.S. 44:1, et seq., and the Louisiana Constitution of 1974, Article XII, §3, a copy of which is appended hereto and marked as Exhibit No. 23.

On December 22, 2006, the Louisiana Supreme Court responded by letter authored by the Deputy Judicial Administrator and General Counsel, a copy of which is appended hereto and marked as Exhibit No. 24.

Plaintiff responded by letter of December 22, 2006, a copy of which is appended hereto and marked for identification as Exhibit No. 25, pointing out the obvious conflict of interests between defendant Kimball's self-interests and the interests of the Louisiana Supreme Court, as well as the "incompatibility of positions" between the Court, on the one hand, and defendant Kimball, on the other hand.

In said letter, Exhibit No. 25, plaintiff also pointed to the following quotations from Bester v. Louisiana Supreme Court Committee on Bar Admissions, 779 So.2d 715 (La. 2001):

"None of the exceptions contained in the public records law specifically apply to the records and documents maintained by the Supreme Court of Louisiana, or the bodies it creates to assist it in its constitutional functions.
779 So. 2d. at p. 720

* * *

We have affirmed on repeated occasions the laudable goals advanced by Article XII, Section 3 of the Constitution and the public records law. The right of the public to have access to public records is a fundamental right, guaranteed by the Constitution. (Citations omitted). We affirm those laudable goals of openness and access today.” 779 So. 2d at p. 721.

The Court’s Deputy Judicial Administrator and General Counsel replied on January 18, 2007, a copy of which is appended hereto and marked for identification as Exhibit No. 26.

Plaintiff avers that the Louisiana public records which have been requested from defendant Kimball, from the Louisiana Supreme Court, and from members of the Staff of the Louisiana Supreme Court, are non-judicial in nature are not related to the Court’s deliberative function, and are neither protected by any exception to the Louisiana Public Records Act or the jurisprudence interpreting the cited statute or Louisiana Constitution Article. Further, the requested records are not privileged or otherwise protected from production and publication. Plaintiff and the public have the right to know what public employees, such as defendants Kimball and Plattsmier, conspired with each other, and/or with others, who acted under color of law, to cause plaintiff physical harm.

Plaintiff specifically waives his right to recover attorney’s fees and costs from the Louisiana Supreme Court pursuant to the Louisiana Public Records Act, but reserves all other rights against the Louisiana Supreme Court.

**PLAINTIFF'S ALLEGATIONS AGAINST
DEFENDANT THE ATTORNEY'S
LIABILITY ASSURANCE SOCIETY, INC.**

13.

Plaintiff avers, upon information and belief, that the Attorney's Liability Assurance Society, a foreign, lawyer-owned, mutual insurance society, which does business within the Eastern District of Louisiana, provided employment practices liability insurance coverage and/or management (read: "mismanagement") liability insurance coverage, and/or advertising liability coverage, and/or liability insurance coverage for defamation, to defendants Edwards, Talley and Shea at the times mentioned in plaintiff's Petition, as supplemented and amended. Plaintiff avers that ALAS is amenable to suit herein, and to direct liability to plaintiff due to acts, errors and omissions on the part of defendants Edwards, Talley and Shea, pursuant to the provisions of the Louisiana Direct Action Statute, LSA-R.S. 22:655.

**PLAINTIFF'S ALLEGATIONS AGAINST
DEFENDANT THE UNITED STATES OF AMERICA**

14.

Also made a defendant herein is the United States of America, which is sued pursuant to the provisions of the Federal Tort Claims Act (28 U.S.C. §2671, et seq.), which waived immunity for suits of this nature, and which is liable unto plaintiff pursuant to the provisions of the federal and state constitutions, and pursuant to state law, including particularly Articles 2315 and 2324 of the Louisiana Civil Code, for the commission of the following constitutional torts against plaintiff:

- a) False arrest;
- b) Kidnapping and/or illegal abduction;

- c) Assault and battery, including using excessive force under the facts and circumstances;
- d) Torture;
- e) False imprisonment and illegal detention for 16½ hours;
- f) Infliction of emotional distress; and
- g) Conspiracy.

Plaintiff also avers a separate and distinct cause of action against the United States of America pursuant to the Freedom of Information Act for the Government's failure to produce documents and things in compliance with the said Act, pursuant to FOIA requests to the Department of Justice and the Federal Bureau of Investigation, already on file.

More particularly, plaintiff avers that by letter dated October 20, 2006, sent via certified mail, return receipt requested, to Jim Letten, United States Attorney for the Eastern District of Louisiana, a copy of which is appended hereto and marked as Exhibit No. 27, plaintiff perfected a valid administrative claim against the United States of America pursuant to the provisions of the Federal Tort Claims Act. Today's date, April 23, 2007, is more than six (6) months after receipt by the U.S. Department of Justice of the aforesaid administrative claim, and plaintiff opts to deem the DOJ's failure to make final disposition of his claim as a denial of his claim 28 U.S.C. §2675(a). Accordingly, plaintiff avers that this action against the United States of America is timely and proper.

More particularly, plaintiff avers that in 1215 A.D., in a small borough outside London called "Runnymede", King John was forced by his barons to sign "The Magna Carta", which document protected the rights of feudal lords, but in so doing also outlined,

for the first time in history, legal procedures that even The King had to follow, which procedures are set out in Article 39 of the document, which states:

“No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.”

It is these basic tenets of freedom, liberty and due process, which plaintiff avers were violated by the United States of America in this instance, causing plaintiff damages.

PLAINTIFF'S CLAIM FOR DAMAGES AGAINST ALL DEFENDANTS

15.

Although plaintiff avers that his prior pleadings are sufficiently specific to include the following claim, plaintiff gives formal notice to each defendant that his claims for damages in this case include claims for actual lost income and loss of future income by virtue of his no longer being a partner in the law firm where he worked for over thirty-five (35) years, the severing of which relationship was illegally and wrongfully caused by defendants and each of them.

TIMELINESS OF THIS ACTION

16.

This action is timely because, with the exception of plaintiff's claim against the Louisiana Supreme Court, this case involves intentional torts and conspiracy to commit same, and the trampling of constitutional rights. Accordingly, interruption of prescription as to one joint tortfeasor interrupted as to all. Additionally, since defendants' tortious conduct, and conspiracy to commit same, continues from day to day, prescription does

not commence running until the conduct causing plaintiff damage has abated, and it has not. South Central Telephone Co. v. Texaco, Inc., 418 So.2d 531 (La. 1982).

17.

Plaintiff reavers and reiterates all of the allegations contained in his original Petition and Demand for Trial by Jury in his action for damages as a result of constitutional torts and civil rights violations, with the exception of those contained in Articles 6 through 33, which have been re-pleaded herein.

WHEREFORE, plaintiff prays for judgment in his favor, and against defendants, jointly, severally, and *in solido*, for the full amount of his damages, both compensatory and punitive, together with prejudgment interest,¹⁷ costs and attorney's fees, and for all other just and equitable relief, including his right to discovery pursuant to Rule 26, and production of the Louisiana public records requested pursuant to the Louisiana Public Records Act and the Louisiana Constitution of 1974, and information to which he is entitled pursuant to The Freedom of Information Act.

Respectfully submitted,

S/Ashton R. O'Dwyer, Jr.

Ashton R. O'Dwyer, Jr.

In Proper Person

Law Offices of Ashton R. O'Dwyer, Jr.

Bar No. 10166

One Canal Place

365 Canal Street, Suite 2670

New Orleans, LA 70130

Tel.: (504) 561-6561

Fax. (504) 561-6560

¹⁷ The original Petition contained the word "interests", which plaintiff intended to be "interest".

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2007, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

kellerm@ag.state.la.us
dealp@ag.state.la.us
glazerp@ag.state.la.us
wiltonp@ag.state.la.us
jamesmullaly1@hotmail.com
jvdirosa@cityofno.com
sdick@fjdlegal.com
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S/Ashton R. O'Dwyer, Jr.