IN THE SUPREME COURT OF PENNSYLVANIA

Docket No. _____

In re: Conflict of Interest of the Office of the Philadelphia District Attorney,

Petition of Maureen Faulkner, Widow of deceased Police Officer Daniel Faulkner

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KING'S BENCH PETITION

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INTRODUCTION

On December 9, 1981, Police Officer Daniel Faulkner was shot in the back by Mumia Abu-Jamal. As Officer Faulkner lay on the ground bleeding, Jamal shot him 4 more times at close range; once through the center of his face. Jamal was convicted by a jury of First Degree Murder in 1982 based on overwhelming evidence, including multiple eyewitness identifications and Jamal's admission: "I shot the mother****er and hope he dies."

The case of *Commonwealth v. Mumia Abu-Jamal* ("*Jamal*") is indisputably the most notorious murder and prosecution in the history of Philadelphia. The subsequent appellate proceedings, which have included no less than four Post-Conviction Relief Act ("PCRA") Petitions, multiple appeals to this Court, and four petitions for writ of certiorari to the United States Supreme Court, have had a tortured and well publicized history spanning four decades.

The case has created prolonged agony for the murder victim's widow and sustained internecine division in the City of Philadelphia. One judge recently describef the case as "one of the most polarizing cases in Philadelphia history."[1] No other case in the City's history demands a more careful and dispassionate adjudication in order to preserve a bilateral sense of justice for Officer Faulkner's widow, law enforcement and the community at large.

[1] *See* Mar. 26, 2019 Trial Court Opinion at 7 (J. Tucker), attached as Exhibit A.

Now pending in the Superior Court at Docket 290 EDA 2019 is Jamal's most recent effort to overturn his conviction, in which the Philadelphia District Attorney is simply refusing to carry out its responsibility to objectively analyze the case and enforce the law. Unfortunately high ranking officials from the Philadelphia District Attorney's Office -- including the District Attorney himself -- suffer from undeniable personal conflicts of interest which are so obvious and so incendiary that the Office's continued representation of the Commonwealth all but guarantees a bias and unjust adjudication of the *Jamal* case.

For example, the current head of the Appellate Unit responsible for defending the *Jamal* conviction, Paul George, was previously Jamal's lawyer who asserted in filed pleadings before this Court that Jamal is innocent and that his conviction was the result of fabricated evidence, subornation of perjury and a false confession.[2] Having asserted that the conviction of Jamal, and therefore the continued defense of that conviction are the products of crimes, *i.e.*, the fabrication of evidence and framing of an innocent man, George cannot simply be "screened" from the case while his employees from the same Appellate Unit which he leads continues to defend what he considers to be criminal acts.

No level of screening can eliminate this conflict, least of all in a District Attorney Office led by Lawrence Krasner, the elected District Attorney, who has

[2] A copy of one of George's Briefs filed on Jamal's behalf is attached hereto as Exhibit "B."

publicly described the former prosecutors who fought to uphold Jamal's conviction as "war criminals." What is more, Krasner has appointed other high ranking officials in his Office and for his transition team who publicly support the same position that George advocated: Jamal's conviction was based on crimes by the police and prosecutors.

For example, Krasner's former paralegal from his private law practice now is the head of the District Attorney's "Reconciliation Unit," despite being an active member of the *Friends of Mumia Abu-Jamal*, an organization that advocates for his release based on the "overwhelming evidence of his innocence." Krasner also appointed a close political advisor as a member of his transition team who publicly celebrates the murder of police officers and who advocates in multiple public forums for Jamal's innocence and that his conviction was based on police fabricating evidence.[3]

Despite the acknowledged conflicts of interest of the Chief of the Appellate Unit, and the many additional troubling appearances of impropriety

[3] It should also not be overlooked that Krasner's wife, Hon. Lisa Rau (Ret.), was partners with David Rudovsky, Esquire, while he represented Jamal in countless efforts to overturn his conviction. *See* Rau LinkedIn Profile attached as Exhibit "L." Rau joined Rudovsky's firm as an associate in 1995 and later became partner in 1997, remaining there as an attorney until 2001. **Ex. L.** Rudovsky and his firm represented Jamal as early as 1995 during his PCRA hearings, *see Com. v. Cook*, 1995 WL 1315980 (Pa. Com Pl. September 15, 1995)(identifying Rudovsky as counsel for Jamal), and he continued to represent Jamal through this Court's review of the PCRA issues in 1998. *See Com. v. Abu-Jamal*, 720 A.2d 121, 122 (Pa. 1998)(Rudovsky as Jamal counsel).

casting a cloud over the ability of Krasner's Office to act as an objective "minister of justice," Krasner refuses to refer the prosecution of the *Jamal* case to the Attorney General under the Commonwealth Attorney Act.[4] The District Attorney's conflicts were highlighted when, during the pendency of Jamal's most recent appeal before the Superior Court, the District Attorney actually consented to Jamal's request for remand to conduct further PCRA hearings based on what Jamal says is "new evidence" of his innocence. Incredibly, the District Attorney's Office consented to the remand and never even contested the legitimacy of the so-called "new evidence." Even more incredibly, prior to doing so, the District Attorney's Office never even bothered consulting with the lead trial prosecutor – James McGill, Esquire ("McGill") – who Jamal is again accusing (falsely) of hiding evidence, bribing witnesses, and purposely selecting a racially biased jury in violation of *Batson*.

McGill, who currently resides in Blue Bell, Pennsylvania, has confirmed in a lengthy, several page Affidavit, that no one from the District Attorney's Office ever contacted him about Jamal's recent, alleged "new evidence," and that if they had, he would have given them detailed information which irrefutably

[4] *See* 71 P.S. § 732-205(a)("The Attorney General shall have the power to prosecute in any county criminal court . . . [u]pon the request of a district attorney who represents that there is the potential for an actual or apparent conflict of interest on the part of the district attorney or his office.")

demonstrated the absurdity of Jamal's current position.[5] Instead of contesting Jamal's new evidence, the District Attorney's Office advised Officer Faulkner's widow, Maureen Faulkner ("Maureen"), that they were consenting to a new hearing. To simply concede the issue now pending in the Superior Court was tantamount to refusing to carry out the District Attorney's responsibility to enforce the law and defend the prosecution of a stone-cold murderer.

This led Maureen to file a *pro se* "Application to Intervene" in the Superior Court for the purpose of calling the conflicts of the District Attorney's Office to the attention of the Superior Court, and requesting the District Attorney's Office to be disqualified so that the Commonwealth could be represented by counsel who was free of conflicts. Krasner and Jamal -- in lockstep -- opposed Petitioner's Application, arguing there was no basis for a victim's family to intervene and that the conflicts did not warrant recusal.[6] The Superior Court denied Petitioner intervenor rights on October 10, 2019 in a *per curiam* order without addressing the serious conflict of interests of the District Attorney's Office.[7]

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[5] A copy of McGill's Affidavit is attached hereto as Exhibit "C."

[6] A copy of the Commonwealth's and Jamal's Answers opposing Petitioner's Application to Intervene are attached hereto as Exhibits "D" and "E", respectively.

[7] A copy of the Superior Court's Docket containing the text of the *per curiam* Order at page 7 is attached as Exhibit "F." Although Krasner and Jamal argued Maureen lacked standing before the Superior Court, the issue of standing here should not serve as an obstacle to this Court

To date, the obvious conflict of interests of Krasner's Office have gone unaddressed. Indeed, since both Krasner and Jamal are apparently satisfied to march side-by-side through the legal proceedings while ignoring the current conflicted representation and the numerous appearances of impropriety, the ethical crisis may never be judicially addressed unless this Court acts.

This Court has previously described a district attorney's conflict of interest as a "direct attack on the adversary system." *Commonwealth v. Lowery*, 460 A.2d 720 (Pa. 1983). Given this Court's Constitutional duty to "conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system," *In re Bruno*, 627 Pa. 505, 553, 101 A.3d 635, 675 (2014), Petitioner respectfully requests the Court exercise its King's Bench authority by ordering the Philadelphia District Attorney's Office to refer the prosecution of the *Jamal* matter to the Attorney General under the Commonwealth Attorney Act, 71 P.S. § 732-205(a).

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addressing the conflict issue. For one, unlike the Superior Court, this Court's King's Bench authority does not yield to "prescribed forms of procedure," *In re Franciscus*, 369 A.2d at 1192–93 (1977), and the Court may even take jurisdiction where no action is pending before any lower court. *In re Bruno*, 627 Pa. 505, 101 A.3d 635, 679 (2014). Issues of standing, therefore, cannot be used to stand in the way of this Court's King's Bench jurisdiction. In any event, given the personal anguish she has had to endure for the better part of four decades, it cannot reasonably be questioned that Maureen is an aggrieved individual such that she has standing to alert this Court of the District Attorney's impermissible conflicts of interest and request an order disqualifying the District Attorney's Office from prosecuting her deceased husband's murder.

STATEMENT OF JURISDICTION

Petitioner calls upon this Court's King's Bench jurisdiction as the "highest court of the Commonwealth . . . . reposed [with] the supreme judicial power." Pa. Const. Art. V, § 2(a). The Court's King's Bench power comprises "every judicial power that the people of the Commonwealth can bestow," *Stander v. Kelly*, 250 A.2d 474, 484 (Pa. 1969), and is a "trust for the people of Pennsylvania." *Chase v. Miller*, 41 Pa. 403, 411 (1862).

The Court has "general supervisory and administrative authority over all the courts . . .," Pa. Const. Art. V, § 10(a)), and pursuant thereto has exercised King's Bench jurisdiction in a variety of circumstances. *In re Bruno*, 553 101 A.3d at 663-64 (exercising King's Bench jurisdiction over dispute concerning suspension of judge); *In re Avellino I*, 690 A.2d 1138, 1140-41, 547 Pa. 385 (1997)(exercising King's Bench over internal judicial dispute concerning assignment of President Judge).

Likewise, the Court has exercised its original jurisdiction pursuant to its exclusive power to regulate the practice of law where, like here, issues arise in the lower courts over attorney disqualification under the Rules of Professional Conduct. *See* Pa. Const. Art. V, § 10(c)("The Supreme Court ***shall*** have the power to prescribe general rules . . . . for the admission to the bar and to the practice of law . . ."); *In re Bruno*, 101 A.3d at 665 ("the Court is responsible for aspects of

the legal profession involving the members of the judiciary indirectly: thus, we oversee bar admission, continuing legal education of attorneys, and are responsible for the Rules of Professional Conduct that govern lawyers and attorney discipline."); *Pirillo v. Hon. Harry A. Takiff*, 341 A.2d 896, 900 (Pa. 1975) (exercising original jurisdiction over attorney disqualification due to conflict of interest); *Moore v. Jamieson*, 306 A.2d 283, 288 (Pa. 1973) (accepting original jurisdiction and issuing writ of prohibition against lower court's ruling disqualifying counsel).

"The Supreme Court's principal obligations are to conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system, all for the protection of the citizens of this Commonwealth." *In re Bruno*, 101 A.2d at 675 (citing *Franciscus,* 471 Pa. 53, 369 A.2d 1190, 1194 (1977); *Avellino I,* 690 A.2d at 1143; *accord In re Melograne,* 585 Pa. 357, 888 A.2d 753, 757 (2005) (disbarment is strongly considered sanction when "attorney who holds judicial office commits misconduct that affects the fairness of an adjudication.")).

"The power of controlling the action of inferior courts is so general and comprehensive that it has never been limited by prescribed forms of procedure or by the particular nature of the writs employed for its exercise." *In re Franciscus*, 369 A.2d at 1192–93 (1977). The Court therefore "would be remiss to interpret

the Court's supervisory authority at King's Bench in narrow terms, contrary to precedent and the transcendent nature and purpose of the power. The Court long ago warned against any judicial inclination to narrow that authority, lest the members of the Court abandon their duty to exercise the power they hold in trust for the people." *In re Bruno*, 101 A.3d at 679; *Commonwealth v. Williams*, 129 A.3d 1199, 1207 (Pa. 2015).

The Court may even assume King's Bench jurisdiction over non-judicial matters and even where no action is pending before any lower court. *In re Bruno*, 101 A.3d at 669; Standard Pa. Practice § 2:134. Indeed, in *Commonwealth v. Williams*, the Court expressly "rejected" the notion that only actions taken by lower tribunals or judges are subject to King's Bench review, noting that "[t]his Court has never adopted such a narrow view of the King's Bench authority and we decline the invitation of the Governor and Williams to do so in the instant case." 129 A.3d at 1207 (citing *Creamer v. Twelve Common Pleas Judges*, 443 Pa. 484, 281 A.2d 57, 58 (1971)(assuming King's Bench authority to determine whether the Governor's appointments to the judiciary fell within his constitutional authority under Article V, Section 13(b) of the Pennsylvania Constitution); *see also Fagan v. Smith*, 615 Pa. 87, 41 A.3d 816 (2012)(assuming King's Bench jurisdiction over lectors' petition for mandamus and ordering the Speaker of the Pennsylvania House of Representatives to issue writs of election for special elections to fill

vacancies in enumerated legislative districts); *Pa. Gaming Control Bd. v. City Council of Phila.,* 593 Pa. 241, 928 A.2d 1255, 1264 n. 6 (2007)(invoking King's Bench jurisdiction as an alternative ground to review a challenge to actions taken by the Philadelphia City Council and the Philadelphia Board of Elections that had profound importance and generated substantial public attention).

In general, the Court invokes its King's Bench authority when "an issue of public importance . . . requires timely intervention . . . to avoid the deleterious effect arising from delays incident to the ordinary process of law," *Williams*, 129 A.3d at 1202, and doing so is "commensurate with its 'ultimate responsibility' for the proper administration and supervision of the judicial system." *In* re *Bruno, 101 A.3d at 671* (citing *Avellino I*, 690 A.2d at 1144 n. 7). This Petition readily meets this standard.

The issue raised here -- a sitting District Attorney and high ranking officials in his office laboring under multiple material conflicts of interest in perhaps the Commonwealth's most divisive murder case -- is of profound public importance. This Court has previously described a district attorney laboring under a conflict of interest as an "inherent evil," *Commonwealth v. Eskridge,* 529 Pa. 387, 390, 604 A.2d 700, 701 (1992), and separately, a "direct attack on the adversary system." *Commonwealth v. Lowery*, 460 A.2d 720 (Pa. 1983).

This Petition presents an even more egregious situation than prior cases addressed by the Court since here the District Attorney's Office is full of high ranking attorneys whose conflicts and public statements show bias in favor of the defense, giving rise to an unprecedented appearance of impropriety where the defendant will be incentivized ***not*** to raise the conflict under the apparent strategy that the conflict benefits him. In this situation, the ethical crisis and direct attack on the adversary system created by the conflict may never be judicially addressed unless this Court exercises its King's Bench power.

STATEMENT OF THE CASE

I. Brief Factual History of the Underlying 1981 Murder Case.

This Court has previously addressed the merits of Jamal's conviction and serial appeals. In one of those decisions, the Court summarized the essential facts presented to the jury as follows:

> The evidence presented at trial established that at approximately 3:55 a.m. on December 9, 1981, Officer Faulkner made a routine car stop on Locust Street between Twelfth and Thirteenth Streets in Center City Philadelphia. The car was driven by the appellant's brother, William Cook. After making the stop, Officer Faulkner called for assistance on his police radio, requesting a police wagon to transport a prisoner. While Faulkner was trying to handcuff Cook, the appellant ran from across the street and shot the officer once in the back. Faulkner was able to fire one shot, which wounded the appellant, but after Faulkner had fallen to the ground the appellant shot him four more times at close range; once through the center of the face.

> The appellant was found slumped against the curb in front of Cook's car and taken into custody by police officers who arrived on the scene within thirty to forty-five seconds. The officers had been in the area and were turning onto Locust Street from Twelfth Street in response to Faulkner's radio request. They were flagged down by a cab driver who had witnessed the shooting while stopped at the intersection of Thirteenth and Locust. Two other pedestrians also witnessed the incident and identified the appellant as the perpetrator, both at the scene and during the trial. At trial, two witnesses, Patricia Durham, a hospital security guard, and Gary Bell, another police officer, testified that Appellant made a statement, at the hospital, to the effect that "I shot him. I hope the motherfucker dies."

Commonwealth v. Abu-Jamal a/k/a Wesley Cook, 521 Pa. 188, 193-94, 555 A.2d 846, 848 (1989). After a jury trial, Jamal was convicted and sentenced to death on May 25, 1983. The evidence of guilt was so overwhelming the Court noted that it had "no doubt as to the sufficiency of the evidence to support the verdict of first degree murder, a point the appellant does not contest." *Id.* at 848. Jamal, however, has never acknowledged his guilt or expressed remorse for the killing.

II. Procedural History.

The procedural history of the *Jamal* case is lengthy and tortured. What was a straightforward – albeit tragic – murder case has "become one of the most polarizing cases in Philadelphia history."[8] After Jamal was found guilty of First

[8] *See* Ex A. Mar. 26, 2019 Opinion at 7 (J. Tucker).

Degree Murder on July 2, 1982, and after post-trial motions were denied, on May 25, 1983, the Court of Common Pleas entered a formal sentence of death.

Jamal then filed a direct appeal, which ultimately resulted in this Court affirming the lower court's verdict and death sentence in 1989.[9] Subsequently, Jamal filed a petition for writ of certiorari to the U.S. Supreme Court which was denied on October 1, 1990.[10] Jamal then filed two separate petitions for rehearing with the U.S. Supreme Court, both of which were denied in June 1991.[11]

Jamal then began to pursue his state post-conviction rights. His first PCRA filing was denied by the trial court in 1995.[12] The denial was affirmed by this Court in a unanimous decision of six Justices ruling that all issues raised were without merit.[13] Jamal again filed a petition for writ of certiorari to the United States Supreme Court, which was denied on October 4, 1999.[14]

On October 15, 1999, Jamal filed a petition for habeas corpus review in the

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9 *Com. v. Abu-Jamal*, 521 Pa. 188, 194, 555 A.2d 846, 848 (1989)

10 *Abu-Jamal v. Pennsylvania*, 498 U.S. 881, 882, 111 S. Ct. 215, 112 L. Ed. 2d 175 (1990).

11 *Abu-Jamal v. Pennsylvania*, 498 U.S. 993, 111 S. Ct. 541, 112 L. Ed. 2d 551 (1990); *Abu-Jamal v. Pennsylvania*, 501 U.S. 1214, 111 S. Ct. 2819, 115 L. Ed. 2d 991 (1991).

12 *Com. v. Wesley Cook a/k/a Mumia Abu-Jamal*, No. 1357, 1995 WL 1315980 (Pa. Com. Pl. Sept. 15, 1995), *aff'd sub nom. Com. v. Abu-Jamal*, 553 Pa. 485, 720 A.2d 79 (1998).

13 *Com. v. Abu-Jamal*, 553 Pa. 485, 500, 720 A.2d 79, 86 (1998).

14 *Abu-Jamal v. Pennsylvania*, 528 U.S. 810, 120 S. Ct. 41, 145 L. Ed. 2d 38 (1999).

District Court for the Eastern District of Pennsylvania. In December 2001, Judge William H. Yohn, Jr. of the United States District Court for the Eastern District of Pennsylvania affirmed Jamal's conviction for first degree murder, but granted the petition as to Jamal's death sentence.[15] In March 2008, the Third Circuit upheld Judge Yohn's decision.[16] Jamal and the Commonwealth both petitioned the U.S. Supreme Court for a writ of certiorari.[17] In April 2009, the U.S. Supreme Court again denied Jamal's petition for writ of certiorari.[18] But on January 19, 2010, the U.S. Supreme Court granted the Commonwealth's Petition for Writ of Certiorari, vacated the District Court's judgment as to the death sentence, and remanded to the Third Circuit for further consideration.[19]

The Third Circuit ultimately affirmed the District Court's grant of habeas

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[15] *Abu Jamal v. Horn*, No. CIV. A. 99-5089, 2001 WL 1609690, at *1 (E.D. Pa. Dec. 18, 2001), *aff'd sub nom. Abu-Jamal v. Horn*, 520 F.3d 272 (3d Cir. 2008), *cert. granted, judgment vacated sub nom. Beard v. Abu-Jamal*, 558 U.S. 1143, 130 S. Ct. 1134, 175 L. Ed. 2d 967 (2010), and *aff'd sub nom. Abu-Jamal v. Sec'y, Pennsylvania Dep't of Corr.*, 643 F.3d 370 (3d Cir. 2011).

[16] *Abu-Jamal v. Horn*, 520 F.3d 272, 275 (3d Cir. 2008), *cert. granted, judgment vacated sub nom. Beard v. Abu-Jamal*, 558 U.S. 1143, 130 S. Ct. 1134, 175 L. Ed. 2d 967 (2010).

[17] It should be noted that during this time period, Jamal filed a series of additional PCRA petitions – each of which were dismissed – and further petitions for Writs of Certiorari, which were similarly denied by the United States Supreme Court. *Com. v. Abu-Jamal*, 596 Pa. 219, 223, 941 A.2d 1263, 1265 (2008); *Abu-Jamal v. Pennsylvania*, 555 U.S. 916, 129 S. Ct. 271, 172 L. Ed. 2d 201 (2008); *Com. v. Abu-Jamal*, 574 Pa. 724, 729, 833 A.2d 719, 722 (2003); *Abu-Jamal v. Pennsylvania*, 541 U.S. 1048, 124 S. Ct. 2173, 158 L. Ed. 2d 742 (2004).

[18] *Abu-Jamal v. Beard*, 556 U.S. 1168, 129 S. Ct. 1910, 173 L. Ed. 2d 1062 (2009).

[19] *Beard v. Abu-Jamal*, 558 U.S. 1143, 130 S. Ct. 1134, 175 L. Ed. 2d 967 (2010).

relief solely as to the jury instruction on mitigation for purposes of the death sentence phase of the trial.[20] Ultimately, in an effort to bring this matter to a close after nearly 30 years, the Commonwealth, through the then District Attorney's Office, did not institute further penalty hearings, and instead agreed to a life sentence in lieu of the death sentence originally handed down by the jury in 1983. Jamal appealed the life sentence in October 2012, and the Pennsylvania Superior Court denied the appeal in July 2013.[21]

Now, based on an extraordinarily thin read of what he calls "new evidence," Jamal is seeking yet another appeal of his conviction. However, as set forth below, the current District Attorney – Larry Krasner – and his administration are rife with conflicts of interest that undermine the integrity of the adversarial system, and raise clear questions of appearances of impropriety that will vitiate the public's faith in justice being done. Krasner and his Chief of Appeals, Paul George, were well-known criminal defense attorneys and political activists. Indeed, George was not simply an activist, but was a member of Jamal's ***legal team*** in prior appeals. Given that this matter has transformed well beyond a murder case, Krasner's decisions on opposing Jamal's appeal cannot be separated from the direct conflicts he and his administration have.

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[20] *Abu-Jamal v. Sec'y, Pennsylvania Dep't of Corr.*, 643 F.3d 370, 372 (3d Cir. 2011).

[21] *Com. v. Abu-Jamal*, No. 3059 EDA 2012, 2013 WL 11257188, at *1 (Pa. Super. Ct. July 9, 2013).

III. The Office of the Philadelphia District Attorney Has Substantial, Personal Conflicts of Interest Due to Employing Former Members of Jamal's Legal Team and Vocal Supporters Of Jamal's Innocence.

Throughout the long-tortured history of the *Jamal* case, Faulkner's widow, Maureen, has remained her deceased husband's steadfast and indefatigable advocate. She, personally, has had to endure Jamal's seemingly never ending, serial appeals and PCRA petitions over the course of the last 40 years. Most recently, Jamal has filed a motion for remand that would be his 5th attempt to overturn his conviction under the Post-Conviction Relief Act, not including his direct appeal and multiple attempts at habeas review in Federal Court. As with all past challenges to his guilt, this latest motion is meritless and invites a vigorous defense. Unfortunately for Maureen Faulkner, the law enforcement community and the community at large, the Commonwealth appears to be lacking a vigorous advocate.

Jamal's latest appeal is currently assigned to an ADA in the Appeals Unit of the District Attorney's Office. That ADA's immediate supervisor is Paul George. As the ADA's immediate supervisor, George is responsible for his performance evaluations, opportunities for promotion, salary increases and other fundamental terms of his employment. Incredibly, before joining the District Attorney's Office, and taking a position supervising the ADA who is assigned to Jamal's latest appeal, George was Jamal's lawyer. In fact, not only was George Jamal's lawyer,

he worked side-by-side with Jamal's current counsel Judith Ritter, Esquire.

In the course of representing Jamal, George signed and filed an appellate brief on behalf of Jamal in which George asserted that the conviction must be overturned as "new facts establish that the prosecution of Appellant (Jamal) was a product of fraud and false evidence deliberately orchestrated by members of the Philadelphia Police Department." *See* Jamal Jun. 2007 Appellate Brief at Ex. B. In George's Statement of the Case, he writes:

- That appellate review is necessary as there is "newly discovered evidence of ***prosecutorial and police fraud*** resulting in the conviction and death judgment rendered against" Jamal. **Ex. B** at p. 3.
- That the prosecution "deliberately withheld" exculpatory evidence. **Ex. B** at p. 7.
- That such new "evidence" included evidence that Cynthia White – the deceased eye witness whose relationship with the District Attorney is currently at issue in Jamal's new PCRA Petition – "committed perjury because of threats she received from law enforcement officers,"
- Cynthia White "received money from police" for her testimony, and the Police supplied "illegal drugs and drug paraphernalia to her in

jail for the purpose of inducing that testimony." **Ex. B** at p. 5.

Since he signed this pleading, George must have had a good faith belief in its accuracy. Indeed, George had an ethical obligation of candor toward the tribunal. *See* Pa. R.P.C. 3.3(a) (Candor Toward the Tribunal: "(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.")

George's pleading is part of the *Jamal* case file and would be reviewed by the ADA working on the current appeal. Therefore, the currently assigned ADA is aware his boss believes that Jamal's conviction was the result of "fraud and false evidence" not only orchestrated by the Philadelphia Police department, but ***sanctioned*** and utilized by prosecutors. Given his ethical obligations, George is obviously incapable of representing the Commonwealth's (and the victim's) interest in this matter. Likewise, any prosecutor he supervises on a daily basis or who is aware of George's attitude toward the case has a similar conflict, which is not curable through an alleged screening of George from the case.

The conflicts of interest and appearances of impropriety do not end with George, since both George and the ADA assigned to the case also work for Larry Krasner. Krasner has publicly referred to former Philadelphia prosecutors, who now work for the State Attorney General, as "war criminals" as a result of their

work as prosecutors in Philadelphia.[22] Two of the lawyers Krasner has characterized as "war criminals" -- Hugh Burns, Esquire and Ron Eisenberg, Esquire -- both worked on defending the guilty verdict in the *Jamal* case; Burns as the Chief of the Appeals Unit and Eisenberg as the Deputy responsible for Appeals.

Importantly, Krasner selected George as his Chief of the Appeals Unit, despite the fact that he represented Jamal and directly opposed Hugh Burns, who represented the Commonwealth during Jamal's PCRA appeals. Indeed, Krasner was aware before hiring George that he had previously been a criminal defense lawyer and would have a conflict in connection with certain cases, including the Jamal case. Krasner was also no doubt aware that George believed Jamal's conviction was the result of "fraud and false evidence."

In addition to hiring George, Krasner also hired George's former law partner, Patricia McKinney, to work as a supervisor in the District Attorney's Office. McKinney was George's partner at the time he represented Jamal and the law firm's name ("George & McKinney") appears on the appellate brief where George asserted the conviction in *Jamal* was based on "fraud and false evidence."

Krasner's decision to hire Jamal's former lawyers and his description of the former prosecutors of Jamal as "war criminals" would be sufficient to conclude

[22] *See* copy of the August 5, 2019 L.A. Times Article where Krasner's accuses former prosecutors of being "war criminals," attached hereto as Exhibit "G."

that there is an untenable appearance of bias in favor of Jamal. However, there is additional overwhelming evidence of Krasner's close associations with the Jamal lawyers and advocates and sympathy to their cause.

For example, Krasner also hired his longtime paralegal and well known Jamal advocate, Jody Dodd ("Dodd"), to work at the District Attorney's Office. Before being hired at the District Attorney's office, Dodd worked with Krasner at his private law firm as "office manager/legal worker."[23] During the entire time she worked for Krasner and before she became a current employee of the District Attorney's Office, Dodd was an active and vocal member of "the International Concerned Family and Friends of Mumia Abu-Jamal" ("Friends of Mumia"). Friends of Mumia describes itself on its website as "a collective of individuals and groups in the New York metropolitan area organizing for the freedom of Mumia Abu-Jamal based on the overwhelming evidence of his innocence."[24] The website includes numerous conspiracy theories about Faulkner's murder with the main premise that "[t]he police and prosecution manufactured the evidence of Mumia's guilt." In 2001, Dodd was listed as the point of contact on a Friends of Mumia document providing talking points regarding alleged police abuse at the

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[23] *See* a copy of the WHYY interview and photograph outside of Krasner's law office attached as Exhibit "H."

[24] *See* www.Freemumia.com

Republican National Convention in Philadelphia.[25] Because she previously worked for Krasner at his private law firm, Dodd has one of the longest relationships with Krasner of any current employee of the District Attorney's Office.

Michael Coard ("Coard") is a longtime colleague of Krasner's and close personal friend. He was a close advisor to Krasner's campaign for District Attorney and a member of Krasner's transition team. Coard has celebrated the killing of police officers on social media by, among other things, posting images of pigs flying to heaven in the immediate aftermath of the shooting of 10 police officers in Dallas, Texas and commenting that he was "Celebrating, Nuff said."[26] (Five of the officers in Dallas died from their wounds. At the time of Coard's post, 3 of the officers were already dead.)

During Krasner's campaign -- shortly before the 2017 primary election when Coard was closely associated with Krasner and his Campaign -- Coard published an editorial in the *Philadelphia Tribune* arguing that Jamal was innocent and that his appeals should be granted.[27] The appeals to which Coard was referring are the same which are now pending before the Superior Court. On his law firm's

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[25] A copy of the Friends of Mumia website identifying Dodd as the point of contact is attached as Exhibit "N."

[26] *See* a copy of the July 7, 2016 Facebook Post of Michael Coard attached as Exhibit "I"; *see also* New York Times Article Re: Dallas Police Shooting attached hereto as Exhibit "J."

[27] *See* April 22, 2017 Philadelphia Tribune Article attached hereto as Exhibit "K."

website, Coard has an endorsement of Krasner, which includes a video commercial created and approved by Krasner. In the video, Coard asserts that he knows Krasner from working together representing activists and that *"everything that I support Larry Krasner supports."*[28]

Krasner's response to the current appeal is also evidence that his views match Coard's. First, he declined to oppose Jamal's Application for Remand. Secondly, when Maureen Faulkner organized a rally in front of his office to protest the decision not to oppose Jamal's remand for further PCRA hearings, Krasner's official, City-paid spokesperson posted a Tweet mocking the protesters because of their race:

Indeed, not only is the District Attorney's Office beset with personal

[28] *See* YouTube Video at https://www.youtube.com/watch?v=-Lx1o9QSY5Y.

conflicts as set forth herein, it has failed to do even the most cursory investigation into the bases for Jamal's requested new PCRA hearing. Jamal and his attorneys are attacking the prosecutorial work of Joseph McGill – the sole trial prosecutor in the Jamal conviction. Despite this, ***no one*** from the District Attorney's Office has contacted McGill since the "new evidence" underlying Jamal's remand request surfaced. **Ex. C.**

Such a failure is inexplicable. McGill was the prosecutor on the case, and his personal notes and correspondence are directly at issue in Jamal's remand request. Were the District Attorney's Office intending to fairly evaluate whether an opposition to Jamal's requested remand was appropriate, evaluating what McGill had to say about this evidence would be critical. The failure to do so raises the appearance of an impropriety concerning the prosecution, including whether, at the explicit or implicit direction of Krasner and George (despite any purported screening), the District Attorney's Office is looking for ways to undo this nearly 40-year old murder conviction.

These circumstances present an extraordinary and unprecedented situation. The *Jamal* case is an international *cause celebre* among criminal justice reform advocates. Krasner and his administration have run on – and sought to impose – sweeping criminal justice reforms, many of which arise from the same activist community that supports Jamal. Krasner's Chief of Appeals is not only an activist,

but a former ***lawyer for Jamal***. The District Attorney's Office is beset by clear and unambiguous conflicts, as well as appearances of impropriety. Despite all this, the District Attorney's Office refuses to recuse itself and seek the intervention of the Attorney General. Where such conflicts exist, and there is no procedural avenue for the public to object, this Court must exercise its King's Bench authority to rectify such a threat to the integrity of the judicial process.

THE COURT SHOULD EXERCISE ITS "KING'S BENCH" AUTHORITY BY DISQUALIFYING THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE FROM THE *JAMAL* MATTER AND REFER PROSECUTION TO THE ATTORNEY GENERAL

The Court should exercise its "King's Bench" authority and disqualify the District Attorney Office from the *Jamal* matter. The prosecution should also be referred to the Attorney General under Section 732-205 of the Commonwealth Attorneys Act, which provides, in pertinent part that:

> (a) Prosecutions. – The Attorney General shall have the power to prosecute in any county criminal court the following cases:
>
> * * * *
>
> (3) Upon the request of a district attorney who lacks resources to conduct an adequate investigation or the prosecution of the criminal case or matter or who represents that there is the potential for an actual or apparent conflict of interest on the part of the district attorney or his office.

71 P.S. § 732-205(a)(3).

There are two fundamental ethical doctrines mandating the disqualification

of the District Attorney's Office. First, under Pa. R.P.C. 1.7(a)(2) a lawyer must be disqualified from a representation where, as here, "there is a significant risk that the representation . . . . will be materially limited by . . . . the lawyer's personal interest." Pa. R.P.C. 1.7(a)(2). As explained below, there are multiple cases where this Court has disqualified a district attorney's office based on a subjective "personal interest" that would give rise to a bias in the matter. The facts underlying Krasner's and his Office's personal interest and bias favoring Jamal are overwhelming and clearly mandate recusal under this Court's precedent. Secondly, because Krasner is a quasi-judicial officer by statute, he and his Office may also be disqualified under the "appearance of impropriety" standard, which is unquestionably triggered here.

I. The Court Should Disqualify the Philadelphia District Attorney's Office Because of Personal Conflicts of Interest under Pa. R.P.C. 1.7(a)(2)

This Court has long recognized that a *personal* conflict of interest requires recusal or disqualification of an entire district attorney's office. *See Commonwealth v. Robinson*, 204 A.3d 326, 351 (Pa. 2018), *cert. denied sub nom. Robinson v. Pennsylvania*, 139 S. Ct. 2719 (2019) (holding that communication of prosecutors and former justice in "Porngate" warranted disqualification of entire district attorney's office because subjective reasons existed for bias in favor of prosecution in PCRA action); *Commonwealth v. Briggs*,

608 Pa. 430, 495, 12 A.3d 291, 331 (2011) (district attorney properly recused where he had personal relationship with victims of crime); *Commonwealth v. Eskridge*, 529 Pa. 387, 389–90, 604 A.2d 700, 701 (1992) (district attorney with monetary interest in guilty verdict conflicted).

The recent *Robinson* decision of this Court indicates precisely why the pending appeal and requested remand of *Jamal* should be addressed by the Attorney General and not the Philadelphia District Attorney's Office. In *Robinson*, the prosecutor opposing the PCRA petition was close friends with a former justice of this Court and he had communicated with that justice in the "Porngate" emails. 204 A.3d at 350. The defendant argued that "the receipt by [the district attorney] of Eakin's emails 'potentially reflects on their reputations individually and on the reputation of the District Attorney's office' and 'potentially colors their assessment of the offensiveness of the emails' and the impact they had on the appellate review of Robinson's case." *Id.* at 346. The defendant argued the prosecutor's "independent judgment" was "impaired." *Id.*

This Court found that having received the "Porngate" communications, the prosecutor and his entire office possessed sufficient "subjective reasons" giving rise to a "personal conflict of interest" that the entire office should be disqualified. *Id.* at 330, 350-51. This Court made the finding in *Robinson* under Pa. R.C.P. 1.7(a)(2)'s personal conflict of interest provision, noting that the prosecutor had a

personal interest in the PCRA Petition in that the receipt of the Porngate emails may give rise to a personal bias in the outcome of the PCRA Petition – the prosecutors may be personally motivated in defending the Justice's conduct. *Id.* at 351. In so holding, the Court noted that "a prosecutor's duty to act as a minister of justice does not end when a conviction is obtained. This role, and the responsibilities attendant to it, extend into the appellate and collateral stages of a criminal case." *Id.* at 347.

Here, Krasner has staffed his office with a cadre of individuals who not only are long-time and public advocates for Jamal's innocence, but also include Jamal's appellate lawyer who signed pleadings detailing an apparent good faith belief that Jamal's conviction was the product of police fraud and criminal misconduct. Krasner and his office, over a period of many years, have taken a very public position in express favor of Jamal and against the prosecution of Jamal.

If anything, Krasner and his Office are ***more*** conflicted with respect to the specific issues in the *Jamal c*ase than the prosecutors in *Robinson*: all that *Robinson* found was a prosecutor's potential bias to protect a judicial officer who had found against the defendant in an appeal warranted disqualification of the prosecutor. In this matter, the assigned ADA will have to proceed "against" Jamal with the knowledge that his direct supervisor and many of his high ranking District Attorney colleagues have long voiced the belief -- some in filed public pleadings --

that Jamal should be free and that his conviction was based on criminal police misconduct. These are all "subjective reasons" tilting the scales of justice in favor of Jamal which are way more significant than those present in *Robinson*, as they go directly to the validity of the actions of the District Attorney's Office against Jamal and the beliefs and positions publicly taken by other colleagues and senior attorneys.

Robinson also forecloses the idea that the mere screening of select members of the District Attorney's Office -- such as George -- would be sufficient to cure the conflicts. In a relevant footnote, this Court presciently stated:

> As discussed below, the conflict of interest in the case at bar preceded this appeal and has pervaded all aspects of these PCRA proceedings. It has touched nearly every member of the DA's office who has been involved in representing the Commonwealth in the instant PCRA matter. Moreover, because we would remand this case for further proceedings, the DA would have had greater prosecutorial discretion in the PCRA court. He would no longer simply be responding to Robinson's arguments, but would make decisions regarding what position the Commonwealth would take as to the challenges leveled by Robinson before the PCRA court, and may have chosen to advocate and present evidence (or not) in support of or against those claims.

Id. at 351 n.28. Thus, under *Robinson*, this Court should find a conflict of interest with respect to the ***entire*** Philadelphia District Attorney's office and order that the Attorney General assume responsibility for the *Jamal* matter. "Screening" mechanisms that the District Attorney seeks to employ will not suffice here.

II. The Philadelphia District Attorney's Office Should Also Be Disqualified For "Appearances" and For "Actual Impropriety."

If Pa. R.P.C. 1.7(a)(2) and *Robinson* were not enough, other positive law of this Commonwealth also requires disqualification of the Philadelphia District Attorney's office. Under statutes applicable to prosecutors and the caselaw that has developed specific to prosecutor conflicts, disqualification must also be ordered because of the appearances of impropriety resulting from all of the above-facts.

In 1983, in two decisions issued two days apart, this Court considered the conflicts of interests of district attorneys in the prosecution of criminal cases in *Commonwealth v. Lowery*, 501 Pa. 124, 460 A.2d 720 (1983) and *Commonwealth v. Harris*, 501 Pa. 178, 460 A.2d 747 (1983).

In *Lowery*, the Court addressed an analogous situation to the present case where the district attorney -- prior to taking office -- acted as defense counsel in a pre-trial suppression motion. The former defense counsel then became the county's district attorney, and on appeal, the district attorney's office -- but not the district attorney himself -- was opposing the criminal defendant's appellate arguments related to the suppression motion. The Court found the "dual position" of the district attorney untenable, noting that the district attorney's office would now be arguing against the legal work that was done by the district attorney as defense counsel:

> The dual position of the District Attorney as counsel for appellee on the suppression matter prior to his assuming that office, followed by his office's direct attack in this appeal on the adequacy of his own defense with respect to the suppression issue now before us poses ***a clear conflict of interest*** in violation of Canons 5 and 9 of the Pennsylvania Code of Professional Responsibility, adopted by this court by order of February 27, 1974, pursuant to our power to regulate the conduct of lawyers under Art. V, § 10 of the Pennsylvania Constitution.

Id. (emphasis added).

Notably, the Court in *Lowery* identified the key issue here, that the District Attorney's subordinates -- not the district attorney himself -- were actually making the legal arguments for the defendant. The Court, however, did not even consider the idea that some sort of "screening" mechanism could have cured the conflict of interest of the district attorney. Instead, the Court imputed the district attorney's conflicts to his assistants, holding that "an attack by an attorney on his own work, even if inadvertent, is never a mere matter of form. It is a direct attack on the adversary system which undermines the total trust and confidence between an attorney and his client necessary to its functioning." *Id.* The Court therefore "quashed" the appeal and remanded so that the trial court could conduct "further proceedings . . . to remove the conflict of interest pursuant to Section 205 of the Commonwealth Attorneys Act." *Id.* (citing 71 P.S. § 732-205).

Two days after *Lowery* was decided, the Court issued a set of plurality opinions in *Harris.* In *Harris*, the current district attorney was formerly a public

defender, who defended *Harris* in connection with Post Conviction Hearing Act appeals following a guilty verdict. 460 A.2d at 748-49. Justice Zappala issued an opinion joined by Justice Larsen, in which he reasoned that "actual impropriety" rather than the "appearance of impropriety" should be required before relief would be granted to a defendant raising an alleged conflict of a district attorney. *Id.* at 749.

This Court in *Robinson* recognized that *Harris* is only a two-justice plurality. *Robinson*, 204 A.3d at 347. As such, it is not entitled to precedential effect. *See Commonwealth v. Baldwin*, 604 Pa. 34, 42, 985 A.2d 830, 835 (2009) ("First, *Jones* is a plurality opinion; as such it has no precedential weight in this case."). And while the Court in *Commonwealth v. Breakiron* appeared to apply the *Harris* "actual impropriety" test to disqualify a prosecutor, 556 Pa. 519, 528, 729 A.2d 1088, 1092 (1999), the Court in *Robinson* also noted that *Breakiron*, "requiring proof of an 'actual impropriety' and not the appearance of impropriety for the disqualification of a prosecutor, arguably conflicts with the Canon 1 of the Code of Judicial Conduct and the statute making the canons applicable to prosecutors." *Id.* at 349 n. 26.

Indeed, the Court in *Robinson* was absolutely correct -- prosecutors in Pennsylvania are subject to the Pennsylvania Rules of Professional Conduct ***and*** the Canons of Judicial Conduct applicable to judges of the Courts of Common

Pleas. *See* 16 Pa. Stat. Ann. § 1401(o)("A district attorney shall be subject to the Rules of Professional Conduct ***and*** the canons of ethics as applied to judges in the courts of common pleas of this Commonwealth insofar as such canons apply to salaries, full-time duties and conflicts of interest.")(emphasis added); *cf. Breakiron*, 729 A.2d at 1092 (applying actual impropriety test rather than appearance of impropriety test).

Thus, a prosecutor, like judges, "shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Pa. C.J.C. 1.2. "Impropriety" includes any "conduct that undermines" the prosecutor's "independence, integrity, or ***impartiality***." Pa. C.J.C., Terminology. "Impartiality" itself is a defined term: "Absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." *Id.* It is well established for judges that, "[i]n order for the integrity of the judiciary to be compromised, we have held that a judge's behavior is not required to rise to a level of actual prejudice, but the appearance of impropriety is sufficient." *In Interest of McFall*, 533 Pa. 24, 34, 617 A.2d 707, 712 (1992) (appearance of impropriety found where judge accepted gift from litigant and cooperated with the FBI in investigation with the expectation of benefit).

Here, consistent with *Robinson*, this Court should be guided by Pennsylvania Canon of Judicial Conduct 1.2 and *Commonwealth v. Darush* in finding that the Philadelphia District Attorney's Office is conflicted and must be disqualified due to the overwhelming facts giving rise to an "appearance of impropriety." *Darush*, 501 Pa. 15, 20, 459 A.2d 727, 732 (1983).[29]

In *Darush*, the judge had allegedly said in a private setting, "that Potter County did not need the presence of the defendant or anyone like him," or words to that effect. 459 A.2d at 730, 732. The Court described the remarks as "vague" and "unsubstantiated," but because the trial judge could not "affirmatively admit or deny making the remarks," and because "a significant minority of the lay community could reasonably question the judge's impartiality," the Court vacated the defendant's sentence and ordered a new sentencing judge on remand. *Id.* at 732.

There is no question that facts questioning the impartiality of Krasner and his Office in this case are far more extreme than *Darush*. Indeed, the appearance of impropriety could not be clearer: George, Krasner, and other staff of the Philadelphia District Attorney's Office have a long record of public bias in favor of Jamal. As such, Canon 1.2 requires their disqualification as prosecutors from the

[29] In doing so, the Court may overrule *Breakiron*, which appears to interpose a standard different than the statutory standard applied to prosecutors, who are officers of the law exercising the Commonwealth's police power.

Jamal case under an "appearance of impropriety" standard.[30]

What is more, even if an "actual impropriety" standard applied -- although it does not -- the facts underlying the personal bias of the District Attorney's Office -- together with the decision not to consult McGill and to consent to Jamal's requested remand -- clearly meets that standard as well. Indeed, just as in *Lowery*, George was personally involved in the defense of Jamal and he made extremely inflammatory allegations against the prosecutor and police that the currently assigned ADA would have to directly confront and argue against. This situation, respectfully, constitutes an "actual impropriety" that would justify the recusal of the entire District Attorney's Office. *Lowery*, *supra*. ("The dual position of the District Attorney as counsel for appellee on the suppression matter prior to his assuming that office, followed by his office's direct attack in this appeal on the adequacy of his own defense with respect to the suppression issue now before us poses ***a clear conflict of interest.***")

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[30] Krasner, George and the District Attorney's Office arguing that disqualification is not warranted here should be viewed skeptically. Indeed, the District Attorney's Office has recently sought the disqualification of the Hon. Scott P. DiClaudio from all criminal cases by filing a "Motion to Disqualify Judge Scott DiClaudio" in the matter of *Commonwealth v. Davis*, CP-51-CR-0001679-2019. A Copy of Krasner's Motion to Disqualify is attached hereto as Exhibit "M." In that Motion, Krasner and the District Attorney's Office argue that Judge DiClaudio should be disqualified from all criminal matters because his girlfriend was a former ADA who filed a discrimination charge against the Office. Krasner acknowledges that "because of the ongoing dispute between Judge DiClaudio's domestic partner and the Office, a reasonable person would question Judge DiClaudio's impartiality in any case in which the Office represents a party." **Ex. M**, Motion to Disqualify at ¶ 5. Here, of course, Krasner and his Office's conflicts in the *Jamal* case run far deeper and are more disturbing. Krasner should be held to the same standard as what he has said warranted disqualification of Judge DiClaudio.

RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests this Court to grant this Petition and exercise its King's Bench authority by disqualifying the Philadelphia District Attorney from the *Jamal* prosecution and order the matter referred to the Attorney General under the Commonwealth Attorney Act.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

Dated: November 12, 2019 By: */s/ George Bochetto*
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