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IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 11 2006
Phil Lombardi, Clerk
U.S. DISTRICT COURT

WE, THE PEOPLE, et al.,
Plaintiff,

Case No. 06-CV-460-TCK-PJC

v.

United States, et al.,
Defendant.

PLAINTIFF'S MOTION TO STRIKE
DEFENDANT'S MOTION TO DISMISS
STRIKE APPEARANCE

COMES NOW, We, the people, and/or I, Carl Weston, Pro se, files this reply to said

Defendant's Motion to Dismiss and states as follows:

I. The Court needs to Note that the Defendant(s) are listed in the Original Petition (individual) capacity, NOT official capacity. How many cases have been dismissed on Fed. R. Civ. Proc. 12(b),(1) and (6) from the courts that We, the people(s) Rights have been violated? What on God's Earth does the Defendant(s), think this Case is about? "DUE PROCESS". Is this Court going to dismiss this Class Action and deny the Plaintiff(s) their "DUE PROCESS" Rights to a JURY TRIAL DEMAND?

Ethics: Participation in Outside Organizations and RGEF Evaluation

The Department of Justice has determined that service by a Federal official in his or her official capacity on the board of directors of an outside organization may, under certain circumstances, constitute a conflict of interest under 18 U.S.C. § 208(a). While conflict concerns may arise based on what actions an employee takes while participating in an outside organization, only service in the following positions ("significant participation") in outside organizations automatically raises potential conflict concerns based merely on official participation in a managerial/fiduciary role:

2. The Defendant(s) are Employee(s) of a State which gets paid by We, the people, of this suit which is in violation of Conflict of Interest. Also, in the so called Defendant's Motion to Dismiss it states issues about one of the Plaintiff's Rodney Class. This Class Action Case No. 06-CV-460-TCK-PJC, is not about Rodney Class which involves "res judicata". This Class Action Case was filed

because We, the people, are fed up with lack of "Due Process" in our Courts across America which is what this Case is about, not an Plaintiff or Captain Kangaroo. If the Defendant(s), can not understand the definition of "Due Process", well, here it is:

DUE PROCESS OF LAW: PROCEDURAL AND SUBSTANTIVE ISSUES

When someone speaks of due process, or receiving their "due", they are usually talking about something that they feel is rightly entitled to them. In fact, that is precisely the historical meaning of due process. Ever since antiquity, every society has had some concept of it. That's because the notion of due process varies from society to society. The basic idea remains constant, but how much a person feels rightly entitled to depends on the historical and cultural context in which they live. Due process is tied to **custom**, which can vary even among regions or localities within a nation. Customs are the regular habits and non-religious rituals of a local people. Customs along with folkways (proverbs and symbols) and norms (guides for behavior) make up the sociological definition of culture. The extent of due process among the customs of a people is the hallmark of a civilized or decent society. Due process generally refers to the regularity, fairness, equality, and degree of justice in both procedures and outcomes.

The ancient Egyptians, for example, required judges to hear at least both sides of a case. The Code of Hammurabi is a type of due process -- something written down so people would know what the laws are. Even the ancient Chinese had some minimal procedures for notice and hearing when people were charged with something. When Jesus was put on trial, He was given the opportunity to reply and present evidence. The Greeks and Romans offered juries and professional orators. In most cases, these were not formal processes; they were the unwritten rules of justice as fairness. They started as customs and became law over time.

The idea of due process in law seems to have emerged only in societies which practiced the accusatorial, or adversary, system. Societies which practiced the inquisitorial system kept people in jail for long periods of time without letting them know the charges, and suspects were often compelled to confess or testify against themselves. The phrase "due process of law" was first used in England sometime during the 13th or 14th century as synonymous for "law of the land", hence, it was made part of the common law and given a natural law interpretation. The American colonists seized upon the phrase, incorporating it into all the state charters and almost every document surrounding the American revolution and Constitutional Convention. Historical records from those time periods seem to indicate the founding fathers thought of due process as fairness.

Fairness is the idea of doing what's best. It may not be perfect, but it's the good and decent thing to do. It requires being level-headed, uniform and regular, when all around you is prejudice, corruption, or the desire of an angry mob to see justice done. Fairness requires breadth and depth. Not only does the outcome have to be fair, but so does everything along the line such as evidence gathering and presentation. Fairness is difficult to put in the form of strict legal rules and principles that cover every situation. Which is fairer?

- A system of rules so strict that even a few innocent people get unfairly punished
- A system not so strict that even a few guilty people go unfairly unpunished

Due process of law holds that the second answer is more correct, for many reasons. On a practical level, there's less of a danger to the whole legal system. If your system is convicting a few innocent, chances are it's railroading many of the guilty. so you've got two problems on your hands -- those who

are falsely imprisoned and those who have a stronger habeas corpus claim. If your system is letting a few guilty slip through, chances are that those lucky evil-doers might change their ways, or in any case, law enforcement or informal methods of social control can pick up the slack. However, on the more important theoretical level, it depends on what kind of system you want to have -- one that just rolls over people indiscriminately -- or one that is individualized and takes into account the need for your society to expand freedom. The U.S. Constitution guarantees due process because it's designed to be a "living document" that expands freedom. Let's look at a few ways it does this:

Definition of Due Process: the exercise of government power under the rule of law with due regard for the essential and fundamental fairness rights of individuals

<p>PROCEDURAL DUE PROCESS - how the law is just; source of fairness in the Constitution; decided mostly through Balancing Tests of interests and consideration of error; related to concept of legitimacy; interpretation is the whole phrase "without due process of law" activating the term "without"</p>	<p>SUBSTANTIVE DUE PROCESS - why the law is just; related to concept of legality; source of fairness beyond the Constitution; decided mostly through Fundamental Rights/Compelling Need Tests; interpretation is the phrase "due process of law" as a continuation from life, liberty, and property</p>
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Rule of law refers to the rules being announced beforehand. Essential and fundamental fairness refers to how important something is for maintaining democracy. Legitimacy refers to how fairly the legal system is perceived. Legality refers to how extensive the legal system is. With the exception of the *ex post facto* clause, the Constitution is mostly concerned with procedural due process, but for every fundamental freedom, there's a larger freedom involved.

EQUIVALENT TYPES OF DUE PROCESS

PROCEDURAL:

SUBSTANTIVE:

freedom of assembly	freedom of association
freedom to vote	freedom to participate
freedom to travel	freedom of movement
freedom from search & seizure	freedom of privacy
freedom of property	freedom to enjoy
freedom from bodily invasion	freedom of choice
etc., etc., etc...etc., etc., etc..	etc., etc., etc...etc., etc., etc..

DUE PROCESS is also related to the incorporation debate since it's mentioned in both the Fifth and Fourteenth amendment. For review purposes, let's look again at the two places due process is mentioned in the Constitution:

- Fifth Amendment -- *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law*

- Fourteenth Amendment -- *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law*

If you were to file a due process claim, which clause would you use - the Fifth or Fourteenth? Well, I've said previously that I think the Fifth is more about substantive due process and the Fourteenth is more about procedural due process, but that's just my interpretation. The correct answer is it depends on your interpretation, and most importantly, your stance toward incorporation, how much of the Bill of Rights is covered by the Fourteenth Amendment. Remember that the Fifth was only intended to apply toward the federal government, but the Fourteenth made it binding on the states.

1. Total Incorporation View - Due Process is shorthand for the first 8 amendments, the whole Bill of Rights. Due process is both a fundamental right and part of essential fairness which permeates the whole Constitution.
2. Selective Incorporation View - Due Process refers to how those explicit fundamental and essential rights are protected. It may also refer to implicit rights, not mentioned in the Constitution, so fundamental and essential that they should not be tampered with nor encroached upon unless there is a compelling need to do so.

Selective incorporation (Number 2) treats due process almost the same as equal protection. However, there's no equal protection clause in the Fifth Amendment. Equal protection is all about discrimination claims, so if selective incorporation is your viewpoint, you would file your claim of racial or sexual discrimination under the Fifth (because you don't want to take any chances on the justices' view toward incorporation; a conservative Court might find some new states' right under the privileges and immunities clause of the Fourteenth). So, that's what most lawyers do -- they file their due process claims under the Fifth, making sure they have federal involvement, and argue that not only were one or more of the specifically outlawed procedures in the Fifth violated, but the whole process substantively violated the principles of essential and fundamental fairness, triggering a shift in the burden of proof to the side of the State to show a compelling need. Of course, there are attorneys who file just as many similar claims under the Fourteenth. It doesn't depend on the type of case, and there's lots of overlap, as the following table shows:

Cases Filed Under the Fifth	Cases Filed Under the Fourteenth
affirmative action cases	affirmative action cases
death penalty cases	abortion cases
discrimination cases	assisted suicide cases
double jeopardy cases	discrimination cases
fair trial cases	fair trial cases
Grand jury cases	intrusions into human body cases
just compensation cases	minority set-asides
privacy cases	privacy cases
self-incrimination cases	political representation cases
sentencing enhancement cases	right to refuse medical treatment cases

A moment ago, the phrase "shifting the burden of proof" was mentioned. That's because due process is closely associated with evidentiary proceedings. Evidence is that area of criminal justice which comes closest to connecting fairness in procedure with fairness in outcome. The most basic rule of evidence is that the State bears the burden of proving. Unless and until that burden is carried by the State, the accused enjoys a presumption of innocence. This presumption is not a right, but a privilege that is attached to the way various "burdens" are laid out in evidence law. There are three burdens and a related concept that are relevant here:

- **burden of proof** -- this determines who wins the trial on a particular issue if the jury or other fact-finder cannot reach a decision one way or the other.
- **burden of persuasion** -- this determines who must convince the judge or jury on a particular issue
- **burden of going forward** -- this determines who has the duty of providing sufficient evidence for the court to take the issue seriously enough to make it subject to debate
- **standard of proof** -- this means that whomever has the burden of persuasion on the ultimate issue of guilt or innocence must prove their points **beyond a reasonable doubt**.

Notice that it's possible to win or lose the trial on points but still lose or win the outcome. That isn't much consolation to someone convicted and sentenced to twenty years in prison, but it becomes of paramount importance when you consider all the twists and turns that an actual trial takes with, for example, a self-defense claim or an insanity defense.

In the self-defense case, witnesses and evidence will be presented on both sides. Suppose there's an equal number of witnesses and evidence on each side, and the jury deadlocks on the self-defense issue. Well, whomever raised the self-defense issue in the first place has the burden of persuasion, and this is most likely the defense, so the defense loses the point of self-defense. However, the defense still wins the trial because the burden of proof is on the prosecution side to prove an absence of self-defense, and they haven't done that either because the jury is deadlocked. This is a classic example of how the burden of proof settles all ties.

Things aren't always in favor of the defendant. It depends upon the flow of argument and which issues and "truths" come up during a trial, and by whom. With the insanity example, it used to be the state had the burden of proving the defendant was NOT insane, but most states now use a method by which the defense has the burden of proof and the prosecution a burden of nonpersuasion. There's all kinds of ways an insanity defense can twist and turn so that the defense winds up winning some points but losing the verdict.

Everything mentioned above about "burdens" and "proof" is intended to illustrate how rules of evidence are examples of procedural due process mixed with substantive due process. Being factually guilty is one thing; being legally guilty is another, and the rules are designed with fairness to each point of view in mind. Virtually every rule of evidence affects the outcome of the case, so it's substantive; but virtually every rule of evidence is about procedure, so it's procedural. The closest thing to substantive due process in the whole of criminal justice procedure is the standard of proof, and that's only because beyond a reasonable doubt is a tough standard.

So, how is freedom expanded by due process? The answer is that it's easy to spot bad procedure. Whether or not it made a substantive difference in the outcome is debatable, and a matter of good faith and reconciliation of error. If only the procedure is bad, the case can be remanded for a new trial with

better procedure. If the substantive due process is bad, a judicial reversal occurs. The substantive part can be enforced independently of the procedural part, giving appellate and Supreme courts the power to strike down all sorts of decisions simply because the verdict is undesirable for some reason. Nothing in the Constitution, outside the Commerce Clause, concentrates such power in any one branch of government. It's a way of bringing states and municipalities up to the federal level, and also a way of signaling which local customs are deemed most desirable. There's nothing to prohibit the states and municipalities from experimenting, and it's those judicial experiments in due process that potentially open the door to newfound freedoms.

Postscript: Some restorative justice processes, like arbitration, mediation, and alternative dispute resolution require an admission of guilt, others a declination to deny guilt, and still others some acceptance of liability. In this sense, restorative justice may compromise the accused's right to a presumption of innocence. The problem with these dispute and mediation centers may be that they are too non-traditional in terms of the role that due process plays. Some counseling sessions may more closely resemble the inquisitorial system.

INTERNET RESOURCES:

[American Civil Liberties Union](#)
[Encarta Encyclopedia Definition of Due Process](#)
[Lectric Library's Mini-Outline on Due Process](#)
[USconstitutionNet's Page on Due Process](#)
[UN Declaration of Human Rights Website](#)

PRINTED RESOURCES:

Fletcher, G. (1998) *Basic Concepts of Criminal Law*. NY: Oxford Univ. Press.
Gora, J. & F. Haiman (1991) *Due Process of Law*. NY: American Civil Liberties Union.
Hoebel, E. (1967) *The Law of Primitive Man*. NY: Oxford Univ. Press.
Keynes, E. (1996) *Liberty, Property, and Privacy: Toward a Jurisprudence of Substantive Due Process*. University Park: Pennsylvania State Univ. Press.
Maine, H. (1975) *Dissertations on Early Law and Custom*. NY: Ayer Publishers.
Maine, H. (2000) *Ancient Law*. Indianapolis: Eard Books.
McGehee, L. (1981) *Due Process of Law under the Federal Constitution*. NY: William Hein & Co.
Mott, R. (1973) *Due Process of Law*. Indianapolis: Da Capo Press.
Nader, L. and H. Todd (1978) *The Disputing Process: Law in Ten Societies*. NY: Columbia Univ. Press.
Sadler, G. (1986) *Relation of Custom to Law*. NY: Fred Rothman & Co.

3. In the said Motion to Dismiss it states in the IV. CONCLUSION, to this or that. Well, all of this is fine and dandy but "Due Process" over rides anything that might be failing and this is no time for Counsel to try and Argue this case. JURY TRIAL DEMANDED! What Counsel Frank M. Strigari, # 78377, is trying to do is Represent the Defendant(s) in "OFFICIAL CAPACITY", and/or his Boss should not do an enter an Appearance for Defer.dant(s) as he has not done. Frank M. Strigari, # 78377. should enter an Appearance to help Prosecute this case for We, the people, not the Defendant(s).

Since the Attorney Generals Office is suppose to be the Chief Prosecuter for the people in a STATE, not against us as the thinking here is backwards.

BREIF

On certiorari to the Court, the United States interpleaded saying that it was the real party in interest, that it was a necessary party; that it had Sovereign Immunity, and that immunity extended to the generals as agents of the United States. Justice Miller's treatment of the "Necessary Party" argument is most interesting. Citing from other cases, principally from Chief Justice Marshall in *Osborn v. Bank of U.S.*, 22 U.S. (9 Wheat.) 738 (1824) he concluded: "Where the State is concerned, the State should be made a party, if it can be done. That it cannot be done (because of immunity) is a sufficient reason for the omission to do it, and the court may proceed to decree against the officers of the State, in all respects as if the State were a party to the record."

See 27 L. Ed. at 176.

Id. at 183.

The reasons identified in Scheuer v. Rhodes, 416 U.S. 232 at 240 for official immunity are more illusory than real. While fear of personal liability may tend to intimidate officials, most officials are or can be covered by insurance or indemnity agreements. The idea that such fears would injure government performance is the same argument as "Doctors must be immune from negligence actions or otherwise hospitals will be intimidated from providing medical services." The question is whether the complexity of rules carved out to immunize government officials become so burdensome so as to chill the people from seeking just redress for grievances with government. As that happens, government loses contact with accountability for the wrongs of its agents, and with that, all motives to become more fair, more kind and more gentle with its people. In *Owen*, 445 U.S. at 629, n. 6, the Court notes that "Ironically, the publication of the libelous documents was caused by City Counselor's assurance that 'the City does have immunity in this area.'" Thus, immunity creates its own Constitutional violations and neither the Judiciary nor Congress have any idea how extensive that problem is. Likewise, when the Court makes immunity policy, it has no scientific support for its finding that "fear of potential liability for doing his official duty" really impairs any public interest. In fact, one can come to the opposite conclusion: That exposure to liability for wrongs in office selects for more honest and diligent officials who know that the best defense to intimidation from potential liability for doing one's job under the Constitution, is to understand and support the Constitution in the performance of that job.

The International Covenant on Civil and Political Rights was adopted by the United Nations on 12/16/66, and signed by the United States on October 5, 1977. The Senate by resolution of 4/2/92, gave its advice and consent to ratification, subject to Reservations, Understandings and Declarations. *Instrument of Ratification*, signed by President George Bush, 6/1/92. There, Art. III, § .3 declares: "That the United States declares that it accepts the competence of the Human Rights Committee to receive and consider communications under Art. 41 in which a State Party claims that another State Party is not fulfilling its obligations under the Covenant."

In the present context, the emphasized clauses obligate the United States Judiciary to free the Constitution's Petition Clause to do its work by undoing the assumption of sovereign immunity. The Covenant is presented for both its binding force as "Supreme Law of the Land", and also for its persuasive force in reason, to help understand the nature of our own Petition Clause, that it is a law of

*reason freely chosen by our founders: **If we now choose it freely as a basis for the organization of free nations, why should we presume that it was less compelling when our Founding Fathers brought the Thirteen Colonies together under one Constitution?***

*The International Covenant's preamble states the purpose of effective judicial remedies notwithstanding the violation is committed by persons acting in official capacity, as follows: "Recognizing that, in accordance with the *Universal Declaration of Human Rights*, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved **if conditions are created whereby everyone may enjoy his civil and political rights**, as well as his economic, social and cultural rights." A condition necessary for enjoyment of rights, is compulsory process of law to protect those rights; and to obtain just redress for their violation.*

Lonergan v. United States, 303 U.S. 33 (1938).

United States v. New York Rayon Co. 329 U.S. 654 (1947).

United States v. Shaw, 309 U.S. 495 (1940).

Brady v. Roosevelt S.S. Co., 317 U.S. 575 (1943).

"Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberate forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of American government...they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones." - Justice Louis Brandeis, *Whitney v. California*, 274 US at 375

"An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."
Norton v. Shelby County, 118 US 425 (1885)

"Where rights secured by the Federal Constitution are involved, there can be no rule-making or legislation which would abrogate them." *Miranda v. Arizona*, 384 US 436 (1966)

"The idea prevails with some -- indeed, it found expression in arguments at the bar -- that we have in this country substantially and practically two national governments; one, to be maintained under the Constitution, with all of its restrictions; the other to be maintained by Congress outside and independently of that instrument, by exercising such powers as other nations of the earth are accustomed to exercise.

"I take leave to say that if the principles thus announced should ever receive the sanction of a majority of this court, a radical and mischievous change in our system of government will be the result. We will, in that event, pass from the era of constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism.

"It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution." See Downes v. Bidwell, 182 U.S. 244 (1901), Harlan dissenting.

"Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law: it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the Government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." Justice Louis Brandeis in Olmstead v. U.S., 277 US at 485. (1928)

"Men are endowed by their Creator with certain unalienable rights, - 'life, liberty, and the pursuit of happiness;' and to 'secure, ' not grant or create. these rights, governments are instituted. That property which a man has honestly acquired he retains full control of, subject to these limitations: First, that he shall not use it to his neighbor's injury, and that does not mean that he must use it for his neighbor's benefit; second, that if he devotes it to a public use, he gives to the public a right to control that use; and third, that whenever the public needs require, the public may take it upon payment of due compensation." BUDD v. PEOPLE OF STATE OF NEW YORK, 143 U.S. 517 (1892)

"Among these unalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others. which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment. The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hinderance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that 'THE PROPERTY WHICH EVERY MAN HAS IN HIS OWN LABOR, AS IT IS THE ORIGINAL FOUNDATION OF ALL OTHER PROPERTY, SO IT IS THE MOST SACRED AND INVOLABLE. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. . . The right to follow any of the common occupations of life is an inalienable right, it was formulated as such under the phrase 'pursuit of happiness' in the declaration of independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals, by investing the latter with a monopoly, is to invade one of the fundamental privileges of the citizen, contrary not only to common right, but, as I think, to the express words of the constitution. It is what no legislature has a right to do; and no contract to that end can be binding on subsequent legislatures. . .'" BUTCHERS' UNION CO. v. CRESCENT CITY CO., 111 U.S. 746 (1884)

"I had thought it self-evident that all men were endowed by their Creator with liberty as one of the cardinal unalienable rights. It is that basic freedom which the Due Process Clause protects, rather than the particular rights or privileges conferred by specific laws or regulations. . . It demeans the holding in *Morrissey* - more importantly it demeans the concept of liberty itself - to ascribe to that holding nothing more than a protection of an interest that the State has created through its own prison regulations. For if

the inmate's protected liberty interests are no greater than the State chooses to allow, he is really little more than the slave described in the 19th century cases. I think it clear that even the inmate retains an unalienable interest in liberty - at the very minimum the right to be treated with dignity - which the Constitution may never ignore." MEACHUM v. FANO, 427 U.S. 215 (1976)

"Decency, security, and liberty alike demand that governmental officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously." - Ibid.

"It is monstrous that courts should aid or abet the lawbreaking police officer. It is abiding truth that '[n]othing can destroy a government more quickly than its own failure to observe its own laws or worse, its disregard of the charter of its own existence.'" Justice Brennan quoting Mapp v. Ohio, 367 US 643, 659 (1961) in Harris v. New York, 401 US 222, 232. (1971)

"We find it intolerable that one constitutional right should have to be surrendered in order to assert another." - Simmons v. U.S. 390 US 389 (1968)

"Many citizens because of their respect for what only appears to be a law are cunningly coerced into waiving their rights due to ignorance." - U.S. v. Minker

INDIVIDUAL SOVEREIGNTY

"When we consider the nature and the theory of our institutions of government, the principles on which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power." Yik Wo v. Hopkins, 118 US 356 (1885)

"There is a clear distinction in this particular case between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the State. The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights." Hale v. Henkel, 201 U.S. 43 at 47 (1905).

Here is the often expressed understanding from the United States Supreme Court, that "in common usage, the term "person" does not include the Sovereign, statutes employing the person are ordinarily construed to exclude the Sovereign." Wilson v. Omaha Tribe, 442 U.S. 653, 667 (1979) (quoting United States v. Cooper Corp., 312 U.S. 600, 604 (1941)). See also United States v. Mine Workers, 330 U.S. 258, 275 (1947).

"A Sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal Right as against the authority that makes the law on which the Right depends." Kawananakoa v. Polyblank, 205 U.S. 349, 353, 27 S. Ct. 526, 527, 51 L. Ed. 834 (1907).

No such ideas obtain here (speaking of America); "at the revolution, the Sovereignty devolved on the

people; and they are truly the Sovereigns of the country, but they are Sovereigns without subjects (unless the African slaves among us may be so called) and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the Sovereignty. Chisholm v. Georgia (February Term, 1793) 2 U.S. 419, 2 Dall. 419, 1 L.Ed 440, pp. 471-472.

INDIVIDUAL'S RIGHT TO RESIST AN UNLAWFUL ARREST

"An illegal arrest is an assault and battery. The person so attempted to be restrained of his liberty has the same right, and only the same right, to use force in defending himself as he would have in repelling any other assault and battery." State v. Robinson 145 Me. 77,72 Atl. 2d 260, 262 (1950).

"The offense of resisting arrest, both at common law and under statute, presupposes a lawful arrest. It is axiomatic (self-evident) that every person has the right to resist an unlawful arrest. In such case the person attempting the arrest stands in the position of a wrongdoer and may be resisted by the use of force, as in self-defense." State v. Mobley 240 N.C. 476, 83 S.E. 2d 100,102 (1954).

THE FOURTH AMENDMENT

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

- United States Constitution

"Constitutional provisions for the security of person and property should be liberally construed." Boyd v. U.S., 116 US 616 (1886)

"...and it is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." Byars v. U.S., 273 US 28 (1927)

"The makers of our Constitution undertook....to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." Olmstead v. U.S., 277 US 438 (1928)

" The permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." Delaware v. Prouse, 99 S.Ct. at 1396

"The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." Carroll v. U.S. 267 US 132, 149

"The essential purpose of the proscriptions of the Fourth Amendment is to impose a standard of "reasonableness"* upon the exercise of discretion by government officials, including law enforcement agents, in order 'to safeguard the privacy and security of individuals against arbitrary invasions...""** Delaware v. Prouse, 99 S.Ct. at 1396.

* See Marshall v. Barlow's Inc., 436 US 307, 315, 98 S.Ct. 1816, 1822 (1978); U.S. v. Brignoni-Ponce, 422 US 873, 878, 95 S.Ct. 2574, 2578, 45 L.Ed.2d 607 (1975); Cady v. Dombrosky, 413 US 433, 439,

93 S.Ct. 2523, 2527, 37 L.Ed.2d 706 (1973); Terry v. Ohio, 392 US 1, 20-21, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889 (1968); Wolf v. Colorado, 338 US 25, 27-28 (1948)

FourthAmendment.com

"The 4th Amendment and the personal rights it secures have a long history. At the very core stands the right of a man to retreat into his home and there be free from unreasonable governmental intrusion."

- Justice Potter Stewart

"In enforcing the Fourth Amendment's prohibition against unreasonable searches and seizures, the Court has insisted upon probable cause as a minimum requirement for a reasonable search permitted by the Constitution." Chambers v. Maroney 399 US 42, 51

"Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government." Brenninger V. U.S. 338 US 160

"The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that "searches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 US 347, 357

"The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." Terry v. Ohio, 392 US 1, 34 (1968)

"It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Terry v. Ohio, 392 US 1, 16 (1968)

"Stopping an automobile and detaining its occupants constitute a "seizure" within meaning of the Fourth and Fourteenth Amendments, even though purpose of stop is limited and resulting detention is quite brief." Delaware v. Prouse, 440 US 648,

"Where property or evidence has been obtained through unconstitutional search and seizure, failure to return the same and to suppress the evidence learned thereby constitutes reversible error. - Boyd v. United States, 116 US 616; Weeks v. United States, 232 US 383; Silverthorne Lumber Co. v. United States, 251 US 385; Gouled v. United States, 255 US 298; Amos v. United States, 255 US 313.

"When officers detained defendant for the purpose of requiring him to identify himself, they performed a "seizure" of his person subject to the requirements of the Fourth Amendment." Brown v. Texas, 443 US at 47

"Application of Texas statute, which makes it a crime to refuse to identify one's self to a police officer who has lawfully stopped one and requested such information, to detain defendant and require him to identify himself violated the Fourth Amendment where officers lacked any reasonable suspicion to believe that defendant was engaged or had engaged in criminal conduct." Brown v. Texas, *supra*.

"While the police have the right to request citizens to answer voluntary questions concerning unsolved crimes they have no right to compel them to answer." Davis v. Mississippi, 394 US 721, 727 n. 6

"In sum then, individuals accosted by police on the basis merely of reasonable suspicion have a right

not to be searched, a right to remain silent, and, as a corollary, a right not to be searched if they choose to remain silent. Justices Brennan, Marshall and Stevens dissenting in Michigan v. DeFillipo 443 US at 45

"The usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony , and that he may only arrest without a warrant one guilty of a misdemeanor if committed in his presence. Kurtz v. Moffitt, 115 US 487; Elk v. U.S., 117 US 529. The rule is sometimes expressed as follows:

"In cases of misdemeanor, a peace officer like a private person has at common law no power of arresting without a warrant except when a breach of the peace has been committed in his presence or there is reasonable ground for supposing that a breach of the peace is about to be committed or renewed in his presence." Halsbury's Laws of England, Vol. 9 part III, 612. The reason for arrest for misdemeanors without warrant at common law was promptly to suppress breaches of the peace, 1 Stephen, History of Criminal Law, 193..." Carrol v. U.S., 267 US 132, 157

"Though the police are honest and their aims worthy, history shows they are not appropriate guardians of the privacy which the Fourth Amendment protects." Jones v. United States 362 U.S. 257, 273 (1959). "

"It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that citizen's be subject to easy arrest." Henry v. United States, 361 U.S. 98, 104 (1959).

"The 4th Amendment and the personal rights it secures have a long history. At the very core stands the right of a man to retreat into his home and there be free from unreasonable governmental intrusion."

- Justice Potter Stewart

THE FIFTH AMENDMENT

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

- United States Constitution

THE SIXTH AMENDMENT

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been priviously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

-United States Constitution

"[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed [440 U.S. 367, 377] fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." Gideon v. Wainright 372 U.S., at 344.

"The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California 422 US 806 (1975)

"The Sixth Amendment, when naturally read, thus implies a right of self-representation. This reading is reinforced by the Amendment's roots in English legal history." Faretta v. California

"In the long history of British criminal jurisprudence, there was only one tribunal that ever adopted a practice of forcing counsel upon an unwilling defendant in a criminal proceeding. The tribunal was the Star Chamber." Faretta v. California

"The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not 'still be done'" Johnson v. Zerbst 304 US 458 (1937)

"The courts indulge every reasonable presumption against waiver of fundamental constitutional rights." Johnson v. Zerbst

"We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." Argersinger v. Hamlin, 407 US 35 (1972)

"A conviction obtained where the accused was denied counsel is treated as void for all purposes." Burgett v. Texas, 389 US 109 (1967)

"The right to counsel exists not only at the trial but also at every stage of a criminal proceeding where substantial rights of a criminal accused might be effected." Mempa v. Ray, 389 US 128, 134 (1967)

THE JURY

"The purpose of a jury is to guard against the exercise of arbitrary power -- to make available the commonsense judgment of the community as a hedge against the over-zealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge." -- Justice Byron White, Taylor v. Louisiana, 419 US 522

"The guaranty of trial by jury contained in the Constitution was intended for a state of war, as well as a state of peace, and is equally binding upon rulers and people at all times and under all circumstances."
Ex parte Milligan, 71 U.S. 2 (1866)

CONCLUSION

WHEREFORE, We, the people, files this Motion to Strike Defendant's Motion to Dismiss and Stike Appearance if any will be filed and/or any other releif this Court might find in the name of Justice.

PLAINTIFF'S MOTION TO STRIKE
DEFENDANT'S MOTION TO DISMISS
STRIKE APPEARANCE

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Carl Weston, certify that a true and correct copy of the forgoing has been dropped in the U.S. Mail to Frank M. Strigari #78377, 30 E. Broad St., 17th Floor, Columbus, Ohio 43215-3428.

Respectfully submitted,



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