**WHO ARE YOU?**

1. Do you plan on challenging the authority of the Government to order you about? What is the purpose of government?[[1]](#footnote-1) What is a citizen?[[2]](#footnote-2) What is the United States of America[[3]](#footnote-3). Are you contractually bound to obey the Constitution? Where does the authority of another man come from? Ones belief system will always get in the way of seeing the truth. Cognitive disonance will make recognizing the truth impossible for some. The story is the indians that first witnessed the Spanish ships of Cortez could not "see" them because that was not in their experience and could not be true.

**The HISTORY of your Status**

What was your status as a man in 1750 in the colonies of America? Were you a 'subject' of King George the 3rd? What is a 'subject"? What was your status in 1787? What happened in 1860's? In the Civil War did the United States continue to be the United States of America in Congress assembled? Did the southern states leave Congress and the Country cease to be? Did Lincoln issue the first executive order? Was that a violation of the separation of powers doctrine. Was that treason? What was the lieber code?

**SOVEREIGNTY**

Each man became sovereign[[4]](#footnote-4) after the revolutionary war because we ceased to be subjects of King George III. You will never find a public servant who will not recognize that the people are sovereign nor controvert/rebutt the right to claim sovereignty in a sworn affidavit. There are lots of court cases that state the people are sovereign. Who are they referring to if not each man and woman. Does that mean you can do whatever you want to other people? No, you must abide by Gods laws that honor the law of reciprocity stated in the bible in Matthew 7:12 "All things whatsoever ye would that men should do to you, do ye so to them; for this is the law and the prophets." all other religions state the same sentiment.

One has to know what rights are and where they come from[[5]](#footnote-5). Other than that the courts have stated the sovereign decrees the law and can't be subject to law[[6]](#footnote-6). What the United States? What does the word "the" signify? If the United States is the union of the serveral states then it would be referred to as "These United States". The signifys one noun or object and so "The United States" is singular and it is a fictional entity. It is a corporation[[7]](#footnote-7). It has been determined by the Supreme court to mean one of 3 things. It's only true purpose and necessity would to be a trust where the men and women inhabitants of the area it identifys as a community are the beneficiars of the trust and the government agents are the 'trustees' or 'fiduciarys' of the trust and carry out the trust to benefit the people who are the beneficiarys. The public officers are fiduciarys.

**COURTS**

One has to see the Attorney as a satanic demon whose job is to deceive[[8]](#footnote-8) who is by common knowledge disliked by all. We have to learn the evidence codes[[9]](#footnote-9). One has to make ones claims in court in the proper manner with affidavits and get your facts and objections into the record. Failure to deny is to admit is a maxim of law[[10]](#footnote-10). An un-rebutted Affidavit stands as truth[[11]](#footnote-11). One must understand that the purpose of Court is to determine the facts and the law and then apply the law to the facts to determine or adjudicate a dismissal or finding of guilt. The judge must be fair and impartial yet he will make presumptions that he is not allowed to make under Common-Law. Imagine a courtroom and there is nothing in there. It is as if its experience is a newborn child. It can't know the sky is blue unless there is testimony that is not disputed that the sky is blue and then in that court the sky is blue. In another court the sky may be orange. That is the true nature of a court (and really it is the jurors that make the court not a judge[[12]](#footnote-12)). IT is to hear and judge facts and law only and to determine what rights there are and what rights have been infringed upon, who has suffered a loss and who shall get remedy..

If you plan on challenging the Government or it's creations (i.e. Corporations), you WILL end up in court[[13]](#footnote-13). Is it a court of record[[14]](#footnote-14)?

What is a fact? What is a Law[[15]](#footnote-15)? How do you get the facts and law into your Court record to have it determined. Who is allowed to make a judicial determination? The jury makes the law and determines the facts[[16]](#footnote-16) in a court of record. The maxim of law is the contract makes the law and has to voluntarily entered into[[17]](#footnote-17). Why? Would it be slavery or involuntary servitude if it was not? Can you be compelled to contract under threat? Can force and coercion ever be lawful unless one is convicted by a jury of a crime?

If you don't testify are any facts put into the record for the jury to determine? If only the cop or opposition are sworn in and on the witness stand they testify then what do you expect to have happen if you have not testified in opposition? Why is it a requirement for the cop to swear in and testfiy, instead of just stating his case from the table? The only facts that are there to be judged are the oppositions. Your affidavit is prima fascie evidence (just an indication there might be something there but not proof of it) that there is possible testimony but until you swear in and testify to the affidavit as yours and as true it contains no facts that they jury can contemplate and a judicial determination can be made upon.

It is deemed you have waived your rights, your objections and everything that is done in court unless you make demands and objections. You have to demand your affidavit be marked as "evidence" by the judge because he isn't going to do it on his own. You have to object to the attorney speaking as everything he says is going to be deemed facts entered into the record when it is always hearsay as he has no firsthand knowledge of any of the important facts to be judged against YOU. The judge has to make a ruling on your objection and it must be either sustained or overruled and merely stating it is 'noted' or 'let's move on" is not a ruling. The rules they made state you can only bring up objections at appeal if he overruled them, you have waived your right to appeal them if he merely notes them. You should state you are taking exception to his overuling your objection at an appeal. You have to know all your rights and demand them or you will have waived them by the rules of the courts, however do rules overcome rights? They can't. The Constitution is superior to any legislated act as stated in Marbury v Madison[[18]](#footnote-18).

You have to study the procedure the court abides by and make your demand to be heard under your right to due process. You have a right to an opening statement which is your conjecture or opinion of how things are. The opposition will object to every statement you make and you can object to his as "hearsay", "conjecture", it has no "relevance". You also get to do a closing argument which can be your pure conjecture where you can tell the jury that the judge cannot order them to act in a prescribed way or it will be evidence of jury tampering and that the jury has the right to determine the law and the facts and you can cite a half dozen court cases[[19]](#footnote-19) in support of this. You can inform them that the purpose of your trial is give justice and that is a full tale of "the truth, the whole "truth and nothing but the truth" and you want to make sure they get to hear your truth and the judge has denied you due process and the right to state your whole truth. You also have a right to allocution[[20]](#footnote-20). After you are sentenced you still have to consent to go to prison and at allocution you can state all the defects in the case before you and I would write it out and enter it into the record as well as verbally state them in open court.

**LAWFUL MONEY**

12. What is money?[[21]](#footnote-21) Are federal reserve notes money[[22]](#footnote-22)? Do you ever receive money? What does the Federal Reserve say they issue[[23]](#footnote-23)? What is legal tender[[24]](#footnote-24)? What is Specie[[25]](#footnote-25)? Are federal reserve notes legal tender? Can the Congress delegate its authority to coin and issue money to the Federal Reserve[[26]](#footnote-26)?

Is there any factual evidence the Strawman creation of the Feds has a DTCC account to pay all debts? Can you be charged with mail fraud for sending A4V's and Bonded Promissory notes? What does Negotiable Instrument[[27]](#footnote-27) mean? Is a negotiable instrument money? Does a negotiable instrument have value? Can you enforce payment of money which is something of intrinsic value in exchange for something of no value? Accepted for value is a acceptance only upon proof of claim that the instrument HAS value. Fictional money has no value and imports no duty or obligation in its 'loaning' or 'recieving' unless you waive your rights and accept that it does, it is always about your free will.

**FICTIONAL ENTITIES**

6. One has to be able to recognize fictional entities. They are easy not to spot as you can never "meet " one.

12. What are the requirements of an employee of the Government[[28]](#footnote-28)? Do the agents of government have to inform you of their authority to issue you demands if you require it[[29]](#footnote-29)?

13. One has to read your State's Constitution, penal codes, vehicle codes , government codes that the agents of government have a known duty and obligation to follow.

14. What is the proper way to combat claims by the government against YOU?

15. Are you the party named on the claim? Is you true name in all CAPITAL LETTERS? Do you have a right to call yourself anything you want?[[30]](#footnote-30) Do you have a post location in a fictitious State like "CA" or "TX"? Do you want to live in a ZIP code location? Was the state of "CA" ever admitted to the union?

If you live in a district of the UNITED STATES are you subject to Congressional jurisdiction? Are all states subsidiary Corporations of the UNITED STATES? Do you have to accept the mail from a fictional entity in a domestic district of the UNITED STATES evidenced by a ZIP code, when you are not on Washington D.C. or a Possession of the UNITED STATES soil? Is there any evidence at the County recorders Office that the United States owns the land you are on, arrested on, the Federal Courthouse sits on? Have you ever looked for it at the County recorders office?

 Do you respond to all claims from others in a timely manner? Did you know that if you accept mail that there is an implied agreement that you recognize and agree that you are the intended party named on the presentment? Did you know that every action requires that you acknowledge and recognize the claimant by accepting Notice or the service of process is void.

There is far too much information to convey it in a day. Only by study on your own and research will you become able to defend yourself and sue others who are agents of the Government for violation of their oath of office and treason against the Constituion by taking jurisdiction where it was not given or REFUSING to hear your case when you do prove you have jurisdiction to have a jury hear your Complaint.

Those who are remarkable and good sources to study are Bill Thornton, Jerry Kirk, Glenn Fearn, the FrogFarmer, Robert Fox, Carl Miller, Jean Keating, Ralph Winterrowd, Robert Menard, Michael Badnarik, Marc Stevens, the Informer, Sheriff Mack, Rod Class, Tim Turner, Lewis Ewing, my friend Gene Kozio, and so many, many others.

These are my mentors and without whom I would know very little. Watch my shows on immafreemann on youtube to see the actual proof of claim for most of my statements.

It is a long and arduous study to find yourself out, and to be able to defend and offend those that are positioning themselves to steal your money and treat you like "booty" or "prize" on the high seas of Admiralty, it takes a whole lotta spine, and for those like me, is our cross to bear.

**MORE**

**Article 1 of the `1849 California Constitution:**

**Sec. 1.**All men are by nature free and independent, and have certain unalienable rights, among which are those of enjoying and defending **life and liberty: acquiring, possessing and protecting property**: and pursuing and obtaining safety and happiness.

So...what does it mean to be free. Do you have free will, are you subject to the orders of another man. The maxim of law states" Consensus facit legem. Consent makes the law. A contract is a law between the parties, which can acquire force only by consent."-Bouviers 1856 law dictionary (Maxims of law). This is because no one will claim authority comes from their gun or because they said so, it is always from a higher power such as the STATE but without a contract voluntarily entered into one must be a slave or under involuntary servitude forced to labor without compensation at the direction of another.[[31]](#footnote-31) Maybe we are under the rule of the Communist manifesto:

**1. Abolition of private property and the application of all rents of land to public purposes.
Americans do these with actions such as the 14th Amendment of the U.S. Constitution (1868), and various zoning, school & property taxes. Also the Bureau of Land Management (Zoning laws are the first step to government property ownership)**

**2. A heavy progressive or graduated income tax.
Americans know this as misapplication of the 16th Amendment of the U.S. Constitution, 1913, The Social Security Act of 1936.; Joint House Resolution 192 of 1933; and various State "income" taxes. We call it "paying your fair share".**

**3. Abolition of all rights of inheritance.
Americans call it Federal & State estate Tax (1916); or reformed Probate Laws, and limited inheritance via arbitrary inheritance tax statutes.**

**4. Confiscation of the property of all emigrants and rebels.
Americans call it government seizures, tax liens, Public "law" 99-570 (1986); Executive order 11490, sections 1205, 2002 which gives private land to the Department of Urban Development; the imprisonment of "terrorists" and those who speak out or write against the "government" (1997 Crime/Terrorist Bill); or the IRS confiscation of property without due process. Asset forfeiture laws are used by DEA, IRS, ATF etc...).**

**5. Centralization of credit in the hands of the state, by means of a national bank with State capital and an exclusive monopoly.
Americans call it the Federal Reserve which is a privately-owned credit/debt system allowed by the Federal Reserve act of 1913. All local banks are members of the Fed system, and are regulated by the Federal Deposit Insurance Corporation (FDIC) another privately-owned corporation. The Federal Reserve Banks issue Fiat Paper Money and practice economically destructive fractional reserve banking.**

**6. Centralization of the means of communications and transportation in the hands of the State.
Americans call it the Federal Communications Commission (FCC) and Department of Transportation (DOT) mandated through the ICC act of 1887, the Commissions Act of 1934, The Interstate Commerce Commission established in 1938, The Federal Aviation Administration, Federal Communications Commission, and Executive orders 11490, 10999, as well as State mandated driver's licenses and Department of Transportation regulations.**

**7. Extension of factories and instruments of production owned by the state, the bringing into cultivation of waste lands, and the improvement of the soil generally in accordance with a common plan.
Americans call it corporate capacity, The Desert Entry Act and The Department of Agriculture… Thus read "controlled or subsidized" rather than "owned"… This is easily seen in these as well as the Department of Commerce and Labor, Department of Interior, the Environmental Protection Agency, Bureau of Land Management, Bureau of Reclamation, Bureau of Mines, National Park Service, and the IRS control of business through corporate regulations.**

**8. Equal liability of all to labor. Establishment of industrial armies, especially for agriculture.
Americans call it Minimum Wage and slave labor like dealing with our Most Favored Nation trade partner; i.e. Communist China. We see it in practice via the Social Security Administration and The Department of Labor. The National debt and inflation caused by the communal bank has caused the need for a two "income" family. Woman in the workplace since the 1920's, the 19th amendment of the U.S. Constitution, the Civil Rights Act of 1964, assorted Socialist Unions, affirmative action, the Federal Public Works Program and of course Executive order 11000.**

**9. Combination of agriculture with manufacturing industries, gradual abolition of the distinction between town and country, by a more equitable distribution of population over the country.
Americans call it the Planning Reorganization act of 1949 , zoning (Title 17 1910-1990) and Super Corporate Farms, as well as Executive orders 11647, 11731 (ten regions) and Public "law" 89-136. These provide for forced relocations and forced sterilization programs, like in China.**

**10. Free education for all children in public schools. Abolition of children's factory labor in its present form. Combination of education with industrial production.
Americans are being taxed to support what we call 'public' schools, but are actually "government force-tax-funded schools " Even private schools are government regulated. The purpose is to train the young to work for the communal debt system. We also call it the Department of Education, the NEA and Outcome Based "Education" . These are used so that all children can be indoctrinated and inculcated with the government propaganda, like "majority rules", and "pay your fair share". WHERE are the words "fair share" in the Constitution, Bill of Rights or the Internal Revenue Code (Title 26)?? NO WHERE is "fair share" even suggested !! The philosophical concept of "fair share" comes from the Communist maxim, "From each according to their ability, to each according to their need! This concept is pure socialism. ... America was made the greatest society by its private initiative WORK ETHIC ... Teaching ourselves and others how to "fish" to be self sufficient and produce plenty of EXTRA commodities to if so desired could be shared with others who might be "needy"... Americans have always voluntarily been the MOST generous and charitable society on the planet.**

**So...those in government service as trustee's of the public trust have overthrown the Republican form of government and replaced it with communism, itsn't that nice, or is it TREASON?**

**CONTRACTS**

Have we entered into lawful contracts? What is a lawful contract[[32]](#footnote-32)? Can you enter into one with a fictional entity? Was there ever any full disclosure?

Learn to qualify your signature on any agreements you make. You have the right to redact (cross out) any sections of any paperwork that gets shoved your way and of course they have the right to refuse to give any service they are providing. The forms you can use to qualify your signature which technically is an autograph because a signature legally speaking can be a stamp applied to something. "Without Recourse" - reserves your rights, "Under Protest" shows you do not voluntarily consent to the signing and is great for W-2-s or Drivers licenses or applications like social security. "Without Recourse" is a bankers acceptance claiming no one can come back on the signer for any reason, they have no recourse to recover anything. "All rights reserved" - obvious. These qualify as special signatures as opposed to a general signature. With a general signature you have given or waived any rights you may have. You most likely will not be able to get a car loan if you sign the application with a qualifying signature as they KNOW what you are doing.

**You've been attacked**

The first thing is to find out who is making the claim on you? Fictional entities cannot send letters so if it's unsigned then find out who the CEO or head of the agency is by doing an online search and get the newest guy or gal. Send all correspondence to a man or woman care of [ C/O] the agency, i.e. Douglas Shulman (I.R.S. commissioner or successor) C/O 1111 Constitution Avenue, Washington, D. C. Your correspondence should be in the form of an affidavit and should be in support of a counterclaim if their claim is serious enough. If it's a debt collector on credit card stuff, I do a debt validation letter to the party who claims to be a "creditor" and then default them, and then you can just get a stamp with the postal approved reason for non-acceptance which is "Refused as addressed" that gets stamped on the debt collectors letters and put back in the system without opening it because it's not addressed to me John Doe, it's addressed to JOHN DOE and I don't live in a state like 'CA' and I don't consent to having a ZIP code so it is "Refused as addressed". If they continue on, and they usually wont then do the counterclaim with exhibits as offers of proof of the default by the original alleged creditor. Same goes for a bank on mortgage stuff. The debt validation letter is a little different but the process is similar. When the State is charging you criminally then I do a "Notice and Demand to Abate the matter" and list all my jurisdictional challenges and offers of proof (exhibits) such as my letter of non-residency to the Post Office, my "Act of State" I.D. that is a picture affidavit notarized that I have sent registered mail to the Governor, CHP, Sheriff, Chief of Police, State Comptroller (the money man), Chief of the State Supreme Court. along with their defaults for non-response. My birth certificate with a termination. My termination of my voter registration and claim I'm not one of the body politic, and any other doc that will show I have given notice that I'm not the party charged, and the State has no jurisdiction over me.

Then I send the DA the Default on the Abatement. Then I would do a "motion to Quash" and object if that gets overruled. Then I would file a Writ of Mandamus to the appellate court to order the lower court to follow the law and note each and every defect they adhered to. ALWAYS ALWAYS ALWAYS write to men and women and not to fictions. You cannot sue the State of California, it does not exist and only represents the collective ownership of all public property held in trust for the beneficiaries YOU and ME real men and women. The true purpose of government is to hold land in trust for the people, we all have a part ownership in the parks, the highways, the lakes, etc. We can never trespass on our own land, but we must be responsible and keep it in a good state for all the other co-owners by not littering or taking value from it. The state cannot take land by eminent domain that would be criminal an act of war against a beneficiary. Unless it's a corporation, out for profit and acting as a pirate with the force of the gun and obviously violating the Declaration of Independence and Articles of Confederation.

Always read your state Constitutions , the early one and the latest one. I always make my claims upon the prohibitions contained in the Constitutions they have an oath to, and less on the Code violations they are guilty of. Of course they only understand civil 'code' pleadings, so keep that in mind. You give them less of a reason to dismiss your case if you get it filed timely, get the administrative part done (make your demand to get paid for the violation of your rights-and properly serve it on the men and women who injured you). Then when no response or a denial of your government tort claim comes, then sue them civilly and/or file criminal charges against them.

Let God's grace be upon you and don't be vindictive, you are doing these things to show the truth and educate those ignorant of the LAW.

1. We hold these truths to be self-evident, that all men are created equal , that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, Deriving their just Powers from the consent of the governed. [↑](#footnote-ref-1)
2. "**Citizenship is membership in a political society**, and implies the **reciprocal obligations** as compensation for each other of **a duty of allegiance on the part of the member and a duty of protection on the part of the society.** " Luria v. United States, 231 U.S. 9 (1913)

"...on "**the fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen**."*See* p. 4, *infra.* The **duty to provide public services is owed to the public at large**, and, absent a special relationship between the police and an individual, no specific legal duty exists." Warren v. District of Columbia, 444 A. 2d 1 - DC: Court of Appeals 1981 [verified]

[3] Subject to the foregoing requirements of due process, "[**t]he constitution of the union constitutes a contract with the members and is the measure of the authority conferred upon the organization to expel or otherwise discipline them."** (Harris v. Nat. Union etc. Cooks & Stewards (1950) 98 Cal.App.2d 733, 736 [221 P.2d 136].) Disciplinary measures which do not conform to the union constitution are void and will not be enforced by the courts. (See, e.g., Hopson v. Nat. Union etc. Cooks, Stewards (1953) 116 Cal.App.2d 320, 327-328 [253 P.2d 733].) Posner v. Utility Workers Union of America (1975) 47 Cal.App.3d 970 [121 Cal.Rptr. 423] [verified] [↑](#footnote-ref-2)
3. Aricles of Confederation: **Article I.** The Stile of this Confederacy shall be **"The United States of America"**; IV: "...the **free inhabitants** of each of these States, **paupers, vagabonds, and fugitives from justice excepted**, shall be entitled to all privileges and immunities of free citizens in the several States;..." [↑](#footnote-ref-3)
4. "...at the Revolution, the **sovereignty devolved on the people**; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves....". CHISHOLM v. GEORGIA (US) 2 Dall 419, 454, 1 L Ed 440, 455 @DALL (1793) pp471-472.

“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.” Yick Wo v. Hopkins 118 U.S. 356; 6 S.Ct. 1064 (1886) [↑](#footnote-ref-4)
5. A man is a creation of God and his rights come from that higher power and not from man. Men can only enter voluntarily into contracts. all men are by nature free [a part of every constitution] [↑](#footnote-ref-5)
6. "The very meaning of **'sovereignty' is that the decree of the sovereign makes law**." American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19

"'Sovereignty' means that the decree of sovereign makes law, and foreign courts cannot condemn influences persuading sovereign to make the decree." Moscow Fire Ins. Co. of Moscow, Russia v. Bank of New York & Trust Co., 294 N.Y.S. 648, 662, 161 Misc. 903.

Ann.Cas. 1047.

“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,…” Kawananokoa v. Polyblank, 205 U.S. 349 (1907) [verified] [↑](#footnote-ref-6)
7. . **A public official is a fiduciary toward the public**, including, in the case of a judge, the litigants who appear before him, and **if he deliberately conceals material information from them, he is guilty of fraud.** McNally v. United States, 483 U.S. 350 (1987) [↑](#footnote-ref-7)
8. "The first thing we do, let's kill all the lawyers". - (Act IV, Scene II). Shakespeare; King Henry VI

In Corpus Juris Secundum 2 it states that a client of an attorney is a ward of the court. Ward of the Court

Wards of court. Infants and persons of unsound mind. Davis' Committee v. Loney, 290 Ky. 644, 162 S.W.2d 189, 190. Their rights must be guarded jealously. Montgomery v. Erie R. Co., C.C.A.N.J., 97 F.2d 289, 292. [blksLaw4thpg.1755] [↑](#footnote-ref-8)
9. Fed Rule 102. Purpose and Construction: These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that **the truth may be ascertained and proceedings justly determined. [can the court make law?]**

Fed Rule 602. Lack of Personal Knowledge: A **witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter**. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of [rule 703](http://www.law.cornell.edu/rules/fre/rules.htm#Rule703), relating to opinion testimony by expert witnesses.

Fed Rules of Evidence Rule 803. **Hearsay Exceptions**; (8**) Public records** and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) **matters observed pursuant to duty imposed by law** as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) **in civil actions and proceedings and against the Government in criminal cases**, factual findings resulting from an investigation made pursuant to authority granted by law, **unless the sources of information** or other circumstances **indicate lack of trustworthiness**. [↑](#footnote-ref-9)
10. Ejus est non nolle, qui potest velle. **He who may consent tacitly, may consent expressly**. Dig. 50, 17, 8.

TACIT: Done or made in silence, implied or indicated, but not actually expressed. Goree v. Midstates Oil Corporation, 205 La. 988, 18 So.2d 591, 596.[blk law4th pg1623] [↑](#footnote-ref-10)
11. "On February 12, 1992, the appellant filed the instant Rule 32, A.R.Cr.P., petition, which was summarily denied on February 13, 1992. The record is **devoid of evidence of an answer or response by the State** to the appellant's petition, as required by Rule 32.7(a), A.R.Cr.P. In [*Smith v. State,* 581 So.2d 1283, 1284 (Ala.Cr.App.1991),](http://scholar.google.com/scholar_case?case=9907939792690372706&q=Bates+v+State+620&hl=en&as_sdt=2,5&scilh=0) this Court held:

"**When the States does not respond to a petitioner's allegations, the unrefuted statement of facts must be taken as true.** [*Chaverst v. State,*517 So.2d 643, 644 (Ala.Cr.App.1987)](http://scholar.google.com/scholar_case?case=8438266729465667417&q=Bates+v+State+620&hl=en&as_sdt=2,5&scilh=0).... A petitioner is entitled to notice as to any grounds of preclusion, so as to enable him to formulate a response. [*Ex parte Rice,* 565 So.2d 606, 608 (Ala.1990)](http://scholar.google.com/scholar_case?case=14306231391393150304&q=Bates+v+State+620&hl=en&as_sdt=2,5&scilh=0)." " Bates v. State, 620 So. 2d 745 - Ala: Court of Criminal Appeals 1992 [verified google scholar]

Moreover, Poole's claim is sufficiently pleaded to satisfy the pleading requirements in Rule 32.3 and Rule 32.6(b), and **his factual allegations were unrefuted by the State;** therefore, they **must be accepted as true.** See [*Bates v. State,* 620 So.2d 745, 746 (Ala.Crim.App.1992)](http://scholar.google.com/scholar_case?case=13719709620674079785&q=Poole+v+State+cr+05+1846&hl=en&as_sdt=2,5&scilh=0) ("`**When the States does not respond to a petitioner's allegations, the unrefuted statement of facts must be taken as true.**'"), quoting [*Smith v. State,* 581 So.2d 1283, 1284 (Ala. Crim.App.1991)](http://scholar.google.com/scholar_case?case=9907939792690372706&q=Poole+v+State+cr+05+1846&hl=en&as_sdt=2,5&scilh=0). In addition, his claim is not precluded by any of the provisions of Rule 32.2.[[5]](http://scholar.google.com/scholar_case?q=Poole+v+State+cr+05+1846&hl=en&as_sdt=2,5&case=3179779786755826157&scilh=0" \l "[5]) Because his claim is not barred, is sufficiently pleaded, and is unrefuted by the State, Poole is entitled to an opportunity to prove his claim. See [*Ford v. State,* 831 So.2d 641, 644 (Ala.Crim.App. 2001)](http://scholar.google.com/scholar_case?case=13803921710576861657&q=Poole+v+State+cr+05+1846&hl=en&as_sdt=2,5&scilh=0)("Once a petitioner has met his burden of pleading so as to avoid summary disposition pursuant to Rule 32.7(d), Ala. R.Crim.P., he is then entitled to an opportunity to present evidence in order to satisfy his burden of proof.").Poole v. State, 988 So. 2d 604 - Ala: Court of Criminal Appeals 2007 [verified google scholare 2013]

"We find guidance in this matter from our sister jurisdictions of Massachusetts and Florida which have established procedures which govern pretrial motions to dismiss for lack of a prima facie case. The Massachusetts procedure was promulgated by opinion in [*Commonwealth v. Brandano,* 359 Mass. 332, 269 N.E.2d 84 (1971)](http://scholar.google.com/scholar_case?case=10469646130615870983&q=Knapstad+v.+The+State+of+Washington&hl=en&as_sdt=2,5&scilh=0). The*Brandano* procedure provides that when dismissal is proposed by the defendant or by the judge without consent of the State, **the defendant shall file an affidavit in support of dismissal which shall contain all facts and law relied upon in justification of dismissal. The State may file a counter affidavit, and, as to matters contained in the affidavits which are in dispute,** there shall be a hearing, unless the judge concludes that on the face of the affidavits the "interests of justice" do not warrant a dismissal. If the judge concludes that the "interests of justice" require a dismissal, findings of fact and reasons for the action must be entered. The State has a right to appeal.*Brandano,* at 337."  State v. Knapstad, 729 P. 2d 48 - Wash: Supreme Court 1986 [verified google scholar 2013] [↑](#footnote-ref-11)
12. [3, 4] The plaintiffs contend that the telegram sent by the defendant Bentz to the circuit court judge of Champaign county was a general appearance. We do not think so. We agree with the law announced in *Feltenstein v. Stein,* 51 Ill. App. 426, **where it is said that the judge is not the court. The court is a legal 538\*538 entity, created by the Constitution and the judge is the presiding officer, only.** Under our system, there are three judges of a circuit court. Each of these judges when he presides, holds court. A telegram to either of these judges or a letter, while addressed to the judge, as the judge of the circuit court of Champaign county, is to the individual and not the court. Rutherford v. Bentz, 104 NE 2d 343 - Ill: Appellate Court 1952 [verified google scholar 7-12] [↑](#footnote-ref-12)
13. COURT. An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in the course of law at times and places previously determined by lawful authority. [Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black's Law Dictionary, 4th Edition, page 425] [↑](#footnote-ref-13)
14. A “court of record” is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and **proceeding according to the course of common law**, its acts and proceedings being enrolled for a perpetual memorial. Jones v Jones 188 Mo. App. 220, 175 S.W. 227,229: Ex parte Gladhill, 8 Metc. , Mass. , 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406,155 N.E. 688, 689 - Blacks 4th pg426 [↑](#footnote-ref-14)
15. Merriam Webster: LAW: **a**(1) **:** a binding custom or practice of a community **:** a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority (2) **:** the whole body of such customs, practices, or rules (3) **:** [common law](http://www.merriam-webster.com/dictionary/common%2Blaw) **b**(1) **:** the control brought about by the existence or enforcement of such law (2) **:** the action of laws considered as a means of redressing wrongs; also **:** [litigation](http://www.merriam-webster.com/dictionary/litigation) (3) **:** the agency of or an agent of established law **c** **:** a rule or order that it is advisable or obligatory to observe **d** **:** something compatible with or enforceable by established law **e** **:** [control](http://www.merriam-webster.com/dictionary/control), [authority](http://www.merriam-webster.com/dictionary/authority) [↑](#footnote-ref-15)
16. **There has evolved in the Anglo-American system an undoubted jury prerogative-in-fact, derived from its power to bring in a general verdict of not guilty in a criminal case, that is not reversible by the court.** The power of **the courts to punish jurors for corrupt or incorrect verdicts**, which persisted after the medieval system of attaint by another jury became obsolete, **was repudiated in 1670** when [Bushell's Case, 124 Eng.Rep. 1006](http://scholar.google.com/scholar_case?about=15784998657751962465&q=U.S.+v.+DOUGHERTY,+473+F.2d.+1113,+1139+%281972&hl=en&as_sdt=2,5) (C.P. 1670) discharged the jurors who had acquitted William Penn of unlawful assembly. **Juries in civil cases became subject to the control of ordering a new trial**; no comparable control evolved for acquittals in criminal cases.

**The pages of history shine on instances of the jury's exercise of its prerogative to disregard uncontradicted evidence and instructions of the judge.** Most often commended are the 18th century acquittal of Peter Zenger of seditious libel, on the plea of Andrew Hamilton, and the 19th century acquittals in prosecutions under the fugitive slave law. The values involved drop a notch when the liberty vindicated by the verdict relates to the defendant's shooting of his wife's paramour, or purchase during Prohibition of alcoholic beverages”.[[31]](http://scholar.google.com/scholar_case?case=12593049014369662351&q=U.S.+v.+DOUGHERTY,+473+F.2d.+1113,+1139+%281972&hl=en&as_sdt=2,5" \l "[32]) United States v. Dougherty, 473 F. 2d 1113 - Court of Appeals, Dist. of Columbia Circuit 1972 [verified-google scholar 6-12]

"The **judge cannot direct a verdict it is true, and the jury has the power to bring in a verdict in the teeth of both law and facts."** Horning v. District of Columbia, 254 US 135 - Supreme Court 1920 [verified] [↑](#footnote-ref-16)
17. Consensus facit legem. Consent makes the law. A contract is a law between the parties, which can acquire force only by consent."-Bouviers 1856 law dictionary (Maxims of law)

CONTRACT: An agreement between two or more parties, preliminary step in making of which is offer by one and acceptance by other, in which minds of parties meet and concur in understanding of terms. Lee v. Travellers’ Ins.Co. of Hartford, Conn., 173 S.C. 185, 175 S.E. 429It is an agreement creating obligation, in which there must be competent parties, subject-matter, legal consideration, mutuality of agreement, and mutuality of obligation, and agreement must not be so vague or uncertain that terms are not ascertainable. H.Liebes & Co. V. Klengenberg, C. C.A. Cal., 23 F.2nd 611, 612 [BlacksLaw4th-1968,pg394]

INVOLUNTARY SERVITUDE. The condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not. See State v.West, 42 Minn. 147, 43 N.W. 845; Ex parte Wilson, 114 U.S. 417, 5 S.Ct. 935, 29 L.Ed. 89; Thompson v. Benton, 117 Mo. 83, 22 S.W. 863, 20 L.R.A. 462; In re Slaughterhouse Cases, 16 Wall. 69, 21 L.Ed. 394; Robertson v. Baldwin, 165 U.S. 275, 17 S.Ct. 326, 41 L.Ed. 715. [↑](#footnote-ref-17)
18. “**If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply**.” Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) verified [↑](#footnote-ref-18)
19. **There has evolved in the Anglo-American system an undoubted jury prerogative-in-fact, derived from its power to bring in a general verdict of not guilty in a criminal case, that is not reversible by the court.** The power of **the courts to punish jurors for corrupt or incorrect verdicts**, which persisted after the medieval system of attaint by another jury became obsolete, **was repudiated in 1670** when [Bushell's Case, 124 Eng.Rep. 1006](http://scholar.google.com/scholar_case?about=15784998657751962465&q=U.S.+v.+DOUGHERTY,+473+F.2d.+1113,+1139+%281972&hl=en&as_sdt=2,5) (C.P. 1670) discharged the jurors who had acquitted William Penn of unlawful assembly. **Juries in civil cases became subject to the control of ordering a new trial**; no comparable control evolved for acquittals in criminal cases.

**The pages of history shine on instances of the jury's exercise of its prerogative to disregard uncontradicted evidence and instructions of the judge.** United States v. Dougherty, 473 F. 2d 1113 - Court of Appeals, Dist. of Columbia Circuit 1972 “It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the province of the court to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to the opinion of the court: For, as on the one hand, it is presumed, that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of law. But still both objects are lawfully, within your power of decision.” Georgia v. Brailsford, 3 US 1 - Supreme Court 1794

"The **judge cannot direct a verdict it is true, and the jury has the power to bring in a verdict in the teeth of both law and facts.** But the **judge always has the right and duty to tell them what the law is upon this or that state of facts that may be found, and he can do the same none the less when the facts are agreed**. If the **facts are agreed the judge may state that fact also,** and when there is no dispute he may say so although there has been no formal agreement." Horning v. District of Columbia, 254 US 135 - Supreme Court 1920 [↑](#footnote-ref-19)
20. FedRulesCrimProcedure 32 (A) By a Party. **Before imposing sentence, the court must:**

(i) **provide the defendant's attorney an opportunity to speak on the defendant's behalf**;

(ii) **address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and**

(iii) provide an attorney for the government an opportunity to speak equivalent to that of the defendant's attorney.

(B) By a Victim. **Before imposing sentence, the court must address any victim of the crime** who is present at sentencing and must permit the victim to be reasonably heard. [↑](#footnote-ref-20)
21. MONEY: In usual and ordinary acceptation it means **gold, silver**, or paper money used as circulating medium of exchange and **does not embrace** **notes**, bonds, evidences of debt, or other personal or real estate. Lane v. Railey, 280 Ky. 319, 133 S.W.2d 74, 79,81. [Blacks Law 4th Ed. pg 1157] [↑](#footnote-ref-21)
22. NOTE: A unilateral instrument containing an express and absolute promise of signer to pay to a specified person or order, or bearer, a definite sum of money at a specified time. Shawano Finance Corporation V. Julius, 214 Wis. 637, 254 N.W. 355 [BlksLaw4th,’68,pg.1210] [↑](#footnote-ref-22)
23. "Modern Money Mechanics"(1994) expressly states that "neither paper currency nor deposits have value as commodities. Intrinsically, a dollar is just a piece of paper, deposits merely book entries", and only "the confidence people have that they will be able to exchange **such money** for other financial assets and for real goods and services..." [↑](#footnote-ref-23)
24. The Constitution itself furnishes no countenance to this distinction. The prohibition is general. It extends to all bills of credit, not to bills of a particular description. That tribunal must be bold indeed, which, without the aid of other explanatory words, could venture on this construction. It is the less admissible in this case because the same clause of the Constitution contains a substantive prohibition to the enactment of tender laws. **The Constitution therefore considers the emission of bills of credit and the enactment of tender laws as distinct operations, independent of each other, which may be separately performed. Both are forbidden.**  To sustain the one, because it is not also the other -- to say that bills of credit may be emitted, if they be not made a tender in payment of debts -- is in effect to expunge that distinct independent prohibition, and to read the clause as if it had been entirely omitted. We are not at liberty to do this. Craig v. Missouri, 29 U.S. (4 Pet.) 410 (1830) verified

"The Act of January 14, 1875, c. 15, "to provide for the resumption [110 U.S. 437] of **specie payments,**" enacted that on and after January 1, 1879, the **Secretary of the Treasury shall redeem in coin the United States legal tender notes** then outstanding on their presentation for redemption at the office of the Assistant Treasurer of the United States in the City of New York, in sums of not less than fifty dollars," Legal Tender Cases, 110 U.S. 421 (1884) [verified] [↑](#footnote-ref-24)
25. SPECIE. **Coin of the precious metals**, of a certain weight and fineness, and bearing the stamp of the government, denoting its value as currency. Trebilcock v. Wilson, 12 Wall. 695, 20 L.Ed. 460; Walkup v. Houston, 65 N.C. 501;. Henry v. Bank of Salina, 5 Hill, N.Y., 536. [blacks 4th-'68] [↑](#footnote-ref-25)
26. “Such declaration of congressional sentiment is not binding upon the State of California as though it were the declaration of her public policy. [13] The **United States of America and the State of California are two separate sovereignties**, each dominant within its own sphere. [14] While this state gives its full support to the national government in the conduct of a war, it does not by virtue of that fact automatically adopt the public policy of the nation as its own.” Redding v. City of Los Angeles (1947) 81 Cal.App.2d 888 [185 P.2d 430]

 “The question is not **what power the Federal Government ought to have**, but **what powers, in fact, have** **been given by the people**. It hardly seems necessary to reiterate that ours is a dual form of government; that **in every state there are two governments** -- the state and the United States. Each State has all governmental powers save such as the people, by their Constitution, have conferred upon the United States, denied to the States, **or reserved to themselves**. The **federal union** is a government **of delegated powers**. It has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted. In this respect, we differ radically from nations where all legislative power, without restriction or limitation, is vested in a parliament or other legislative body subject to no **restrictions except the discretion of its members**.” United States v. Butler, 297 U.S. 1 (1936) Roberts lead op. [verified]

DELEGATION:....Delegatus non potest delegare. **A delegate cannot delegate**; an **agent cannot delegate his functions to a subagent** without the knowledge or consent of the principal; the person to whom an office or duty is delegated cannot lawfully devolve theduty on another, unless he be expressly authorized so to do. 9 Coke, 77; Broom, Max. 840; 2 Kent, Comm. 633; 2 Steph.Comm. 119; Blake v. Allen, 221 N.C. 445, 20 S.E.2d 552, 554. [BlacksLaw4th-pg.513] [↑](#footnote-ref-26)
27. COM §3104. [See Editor's Note following body of statute, regarding interpretation of new subdivision (k).]

 (a) Except as provided in subdivisions (c) and (d), **"negotiable instrument" means an unconditional promise or order to pay a fixed amount of money**, with or without interest or other charges described in the promise or order, if it is all of the following:

 (1) **Is payable to bearer or to order** at the time it is issued or first comes into possession of a holder.

 (2) **Is payable on demand** or at a definite time.

 (3) **Does not state any other undertaking or instruction by the person promising** or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

 (b) "Instrument" means a negotiable instrument. [↑](#footnote-ref-27)
28. U.S. Constitution: Art.6: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary Notwithstanding.

 ….The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and **all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution…** [↑](#footnote-ref-28)
29. “Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rulemaking power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority.” Federal Crop Ins. Corp v. Merrill, 332 U.S. 380 (1947) [verified]

 maxim of law: A l'impossible nul n'est tenu. No one is bound to do what is impossible. 1 Bouv. Inst. n. 601. [refusal to answer] [↑](#footnote-ref-29)
30. Bill Lockyear California A.G. in 2000 in opinon No. 00-205 stated it is a common-law right to change your name without statutory approval. [↑](#footnote-ref-30)
31. INVOLUNTARY SERVITUDE. The condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not. See State v.West, 42 Minn. 147, 43 N.W. 845; Ex parte Wilson, 114 U.S. 417, 5 S.Ct. 935, 29 L.Ed. 89; Thompson v. Benton, 117 Mo. 83, 22 S.W. 863, 20 L.R.A. 462; In re Slaughterhouse Cases, 16 Wall. 69, 21 L.Ed.

394; Robertson v. Baldwin, 165 U.S. 275, 17 S.Ct. 326, 41 L.Ed. 715. [↑](#footnote-ref-31)
32. CONTRACT: An agreement between two or more parties, preliminary step in making of which is offer by one and acceptance by other, in which minds of parties meet and concur in understanding of terms. Lee v. Travellers’ Ins.Co. of Hartford, Conn., 173 S.C. 185, 175 S.E. 429

It is an agreement creating obligation, in which there must be competent parties, subject-matter, legal consideration, mutuality of agreement, and mutuality of obligation, and agreement must not be so vague or uncertain that terms are not ascertainable. H.Liebes & Co. V. Klengenberg, C. C.A. Cal., 23 F.2nd 611, 612 [BlacksLaw4th-1968,pg394] [↑](#footnote-ref-32)