IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 03 2022 03:31 PM
Elizabeth A. Brown
Clerk of Supreme Court

ROBERT BROWN, JR.,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-14-299234-1

Docket No: 85061

RECORD ON APPEAL
VOLUME
7

ATTORNEY FOR APPELLANT
ROBERT BROWN, JR. # 6006120,
PROPER PERSON
330 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89101

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

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at least, can express common sense about the implications of this matter regarding the casings. I've been more than "suggestive" to you both; but I can't seem to prod your minds to spit anything helpful out of your mouths. Case in point: I just mentioned to you that a scenario of an account of events that shows a different, albeit, corroborative account of the placement of all casings in the bedroom, would be an example of the need of a "theory", as you said, and you answered "yes", and further added that it would then need to be shown "how" that "hurts". Sadly, no bells rang in your inconsiderate mind, because I was not "grasping" for straws. I have written to you and previous attorneys at length about the several different accounts given about this incident. And one account seemingly agrees with the placement of the casings. But time and time again, it never registers in your mind, because you probably haven't even read them, or else you just don't give a damn. Have you read the Declaration of Warrant? Isn't it true that the only shootings in that account, which can be certainly placed, are those in the bedroom? I've shown this elsewhere in my documents also. Now I'm sure you're wondering why I would even want to point out an account that seemingly makes the police look "innocent". After all, I've been emphasizing that Esther's testimony makes it look like the police moved the casings. So here is the "theory" in a nutshell, as to how the "innocent" agreeable account actually implicates the police for staging the crime scene. First, I shouldn't have to tell you that it is probable, and indeed likely that, in no

case like this, can it be expected that such a shooting victim will give a full account of the events in such a limited and pressured time. Initially, Esther was able to give an account that only described shootings that took place in the bedroom. Thus, it would have damaged Esther's account, if officers found casings that contradicted what may have been the only "dying declaration" of a victim against her killer. Only an idiot, then, would not understand how the moving of those casings works to condemn whatever suspect they decided to frame. This is common sense that even a child could understand. But it hasn't even dawned on YOU! This State has committed the most outrageous crime, and you are acting like an accomplice. But Esther survived, and filled in every other detail that she could recall, which includes shooting accounts in the living room where there would be casings, if the police hadn't MOVED THEM to corroborate her initial story. Hence, there is the curious concern by the interviewing officer of officer Monica Kehrli, about whether or not she noticed any "bullet casings" or whether the cell phone was "moved". Because BOTH items were MOVED! And I'm not going to let you tell me that it is not relevant that a crime scene was staged by police. I've had enough of your dumb shit. Don't ever come here again to visit me. I mean none of you. I will not come out to see you. This case should have been attacked and dismissed. I'll impute all of this knowledge to you, the D.A. and every other attorn-ey in a Civil suit, while you all intentionally jeopardize my life in the face of these

facts. And because you continue to refuse to return a copy of my correspondences, I'm sending this letter against my will through judge Villani. And should it work to my detriment, I'll send the Supreme Court the transcripts of Villani telling me that you don't have to provide me with copies; and hence the compulsion to go through him for retaining proof of your incompetence and hostility.

Sincerely distressed,

LZK9* Ariyl, Servant of Yahweh

Return
3 copies

May 6, 2020 C.E.

ABEL M. YANEZ, Esq.
IVETTE A. MANINGO, Esq.

ROBERT BROWN - 6006120
CLARK COUNTY DETENTION CENTER

RE: April 8, 2020 letter from Abel Yanez.

As you know, I had previously asked you to have Ivette schedule an eye examine for me months ago. I'm sure that fell on deaf ears, though; so understand that I expect my exam before Dr. Paglini is rescheduled. You both can further disrespect me by ignoring this, but that will simply be the cause of my refusing Paglini's visit.

I'm astonished by the fact that, according to publicized statistics, I have several of the factors that make me vulnerable to being killed by this corona virus. Yet, you are concerned enough to write me a letter about a mere doctor visit, but not these facts concerning me:

(1) Blacks are 3½ times more likely to be killed by this corona virus; and
(2) Persons over 40 years of age are also more likely to be killed; and
(3) Persons with asthma; and
(4) Persons with high blood pressure; and
(5) Persons around many people in enclosed areas; and
(6) Persons having no access to proper medical treatment.
(7) Cases in the U.S. are estimated to be about 10 times higher than reported.

Notwithstanding these factors, certain states are releasing inmates detained on sexual offenses, and violent offenses. And certain guilty persons serving prison sentences are being released after motions were filed by their [thoughtful] attorneys.

These things are against me, and especially because both of you refuse to do anything. And that may be comforting to you, knowing that you and your secular/profane State are an Enemy of the Church of Yahweh, whose Sovereign Immunity I share. But as you know, about a year ago, I charged this secular State with Treason, and an Act of War and Hostility against the Church of Yahweh. In my written "OPEN CONFESSION" (p.8) in court, I plainly told you unbelieving Gentiles that, because of these unrelenting acts, "this nation cannot possibly 'think' that its destruction is not coming from a War that is provoked by a two-thirds rule of those who consented against Yahweh." In other words, an Act of War and Hostility by a State, against an immune Supreme Sovereign is, by law, an Act imputed to the entire nation, by a "majority rule" that "the People" presumptively consented to the judge's Act.

If, however, I am not a representative of the Kingdom and People of Yahweh, then my appeal to Yahweh about these issues should mean nothing to this nation. But if you perceive that your nation and the entire secular world is under the Wrath of not only this global plague, but others that follow, will you continue to imagine that it is you, or this secular State, that will be credited with my appeal to be released? It's no wonder that Scripture shows that you Gentiles will fail to properly respond to your Savior's "coming" (presence) to judge, because all of you are reckless in your own courts!

In Yahshua's Name,

Arif [illegible], Servant of Yahweh [illegible]

NOBLES & YANEZ PLLC

CRIMINAL & CIVIL TRIAL LAWYERS

November 5, 2019

LEGAL MAIL

Mr. Robert Brown, Jr.
ID# 6006120
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

Mr. Brown,

The purpose of this correspondence is to update you on a conversation I had with the District Attorney currently assigned to prosecute your case, Richard Scow. So that you are aware, I happened to speak to him outside of court as we were both there on separate, unrelated cases, not for your case.

Mr. Scow informed me that he was moving to a different team at the District Attorney's Office and that, consequently, your case would be transferred back to the Major Violators Unit at the District Attorney's Office, so that it can be assigned to a different prosecutor. Of course, this will likely mean that the very favorable offer you currently have on the table will be withdrawn once the new prosecuting attorney reviews the case and offer. Mr. Scow told me that the current offer would remain open until at least the next status check on 11/13/19. After that he said he couldn't guarantee that the offer would remain the same. However, I believe that any other prosecutor, especially one on the Major Violators Unit, will withdraw the current offer as it is very good one.

As a reminder, the offer we have previously discussed with you is as follows: Plead guilty to 1st Degree Murder no use (20-50 or 20-life); AND Attempt Murder (2-20); both sides retain the right to argue at the time of sentencing, but the State will not ask for Death or Life without Parole. I am aware of your position on accepting offers, however, it is my ethical duty to inform you of matters like these.

When I spoke to you in court a couple of weeks ago at the last status check, you again expressed to me that you did not want any visits at the jail from anyone on your defense team. I asked you to contact me when you changed your mind and would be willing to

meet with us. I am respectfully requesting that you meet with us to discuss the issues raised in this letter as they have major implications for your case.

Please contact me (or Ivette or Toby) as soon as possible if you are agreeable to meeting with us. I look forward to hearing from you.

Sincerely,

Abel M. Yanez, Esq.

NOBLES & YANEZ PLLC

CRIMINAL & CIVIL TRIAL LAWYERS

September 6, 2019

LEGAL MAIL

FILE COPY

Robert Brown, Jr.
ID # 6006120
Clark County Detention Center
33 S. Casino Center Blvd.
Las Vegas, NV 89101

Dear Mr. Brown:

As I promised last week when we met at CCDC, I attempted to visit you today to further discuss your case. However, I was informed by the correction's officer that you refused my visit. I sincerely hope that you will reconsider your position and meet with me so we can continue to build your defense for trial.

Rather than continue to go to the jail just to be refused a visitation, I will wait to hear from you on when you would like to meet with me. If you prefer to talk over the phone about whatever concerns you may have, please call my office so we can talk. Afternoons are usually best since I am in court most mornings.

Although we may disagree as to legal strategy, including what motions need to be filed or what matters need to be investigated, please be assured that we have your best interests in mind and will always continue to fight on your behalf.

Sincerely,

Abel Yanez, Esq.

324 S. Third St. Suite 2 Las Vegas, NV 89101 · O: (702) 541-6000 · F: (702) 641-6002 · www.noblesyanezlaw.com

From the desk of
Christina Greene, Judicial Executive Assistant
District Court, Department 17– 702-671-4469

To: Ivette A. Maningo
Date: September 4, 2019
Subj: Letter from defendant
Case No. C—14-299234-1

State vs. Robert Brown

This office has received the attached correspondence concerning subject case. Judge Villani has not reviewed the attached document as such review would be considered an ex parte communication. *See* Nevada Code of Judicial Conduct Rule 2.9(A) and (B). The original letter is in your attorney bin.

I am forwarding this correspondence on behalf of your client to proceed as you determine.

Thank you.
/cg
Att.
cc: Richard Scow

File and Return 2 Copies

For in Camera review by judge Michael Villani

C299234

8-28-2019 C.E.

ROBERT BROWN - 6006120

CLARK COUNTY DETENTION CENTER

RECEIVED BY DEPT 17 ON SEP - 4 2019

IVETTE A. MANINGO, Esq.

RE: Every bullet casing being found in the bedroom (i.e., 8 casings)

In your visit today, you told me that bullet casings "get kicked" around crime scene. Ivette, I'm not a four-year-old, that you should tell me something that only your class of pride could only consider. It was, to be clear, amongst the first stupid considerations I could have entertained. The only point you made to me, by that remark, is that you are quick to erect hostile barriers against me. You continue to do this, and then get heated — ever looking for the call button to escape or else run away from the disagreement to your nonsense. Grow up.

Anyhow, you have obviously hired a forensic "expert" that hasn't had a clue about the fact that it is IMPOSSIBLE for all 8 casings to be in the bedroom (ie, according to Esther's testimony). It is so pathetically obvious to me that you are either an incompetent, sub-par, attorney, or you are a dump truck who has no other concern for my life than that of an animal. It is manifest by the fact that I have foolishly given you and Abel so many opportunities to register in your minds a spark of reasoning to me, that you both,

1.

at least, can express common sense about the implications of this matter regarding the casings. I've been more than "suggestive" to you both; but I can't seem to prod your minds to spit anything helpful out of your mouths. Case in point: I just mentioned to you that a scenario of an account of events that shows a different, albeit, corroborative account of the placement of all casings in the bedroom, would be an example of the need of a "theory", as you said, and you answered "yes", and further added that it would then need to be shown "*how*" that "hurts". Sadly, no bells rang in your inconsiderate mind, because I was not "grasping" for straws. I have written to you and previous attorneys at length about the several different accounts given about this incident. And one account seemingly agrees with the placement of the casings. But time and time again, it never registers in your mind, because you probably haven't even read them, or else you just don't give a damn. Have you read the Declaration of Warrant? Isn't it true that the only shootings in that account, which can be certainly placed, are those in the bedroom? I've shown this elsewhere in my documents also. Now I'm sure you're wondering why I would even want to point out an account that seemingly makes the police look "innocent". After all, I've been emphasizing that Esther's *testimony* makes it look like the police moved the casings. So here is the "theory" in a nutshell, as to how the "innocent" agreeable account actually implicates the police for staging the crime scene. First, I shouldn't have to tell you that it is probable, and indeed likely that, in no

case like this, can it be expected that such a shooting victim will give a full account of the events in such a limited and pressured time. Initially, Esther was able to give an account that only described shootings that took place in the bedroom. Thus, it would have damaged Esther's account, if officers found casings that contradicted what may have been the only "dying declaration" of a victim against her killer. Only an idiot, then, would not understand how the moving of those casings works to condemn whatever suspect they decided to frame. This is common sense that even a child could understand. But it hasn't even dawned on YOU! This State has committed the most outrageous crime, and you are acting like an accomplice. But Esther survived, and filled in every other detail that she could recall, which includes shooting accounts in the living room where there would be casings, if the police hadn't MOVED THEM to corroborate her initial story. Hence, there is the curious concern by the interviewing officer of officer Monica Kehrli, about whether or not she noticed any "bullet casings" or whether the cell phone was "moved". Because BOTH items were MOVED! And I'm not going to let you tell me that it is not relevant that a crime scene was staged by police. I've had enough of your dumb shit. Don't ever come here again to visit me. I mean none of you. I will not come out to see you. This case should have been attacked and dismissed. I'll impute all of this knowledge to you, the D.A. and every other attorn-ey in a Civil suit, while you all intentionally jeopardize my life in the face of these

facts. And because you continue to refuse to return a copy of my correspondences, I'm sending this letter against my will through judge Villani. And should it work to my detriment, I'll send the Supreme Court the transcripts of Villani telling me that you don't have to provide me with copies; and hence the compulsion to go through him for retaining proof of your incompetence and hostility.

Sincerely distressed,

LZX9X Ariyl, Servant of Yahweh

Date: July 8, 2019

Ivette A. Maningo, PLLC
400 S. 4th St., Ste. 500
Las Vegas, NV 89101-6207

Dear Attorney Maningo:

CCDC received the enclosed check for transport of Robert Brown, ID# 6006120, however, a Transport Order did not accompany the check.

If transport is still required, please complete a Transport Order and deliver it to CCDC with a check for $200.00

Very truly yours,

Raymond Taie
Supervisor - Court Services/Court Calendars
LVMPD - Clark County Detention Center
Phone (702) 671-3745; Fax (702) 671-3763
Monday thru Thursday 7:30am to 5:30pm
E-Mail: r9473t@lvmpd.com

April 15, 2019

CONFIDENTIAL: CLIENT-ATTOREY COMMUNICATION

Mr. Robert Brown
Clark County Detention Center

RE: State of Nevada v. Brown (C-14-299234-1)

Mr. Brown,

This correspondence is in response to our previous conversations about offers the State of Nevada have made to you and which we have communicated to you. Also, you have brought the issue of plea negotiations to our attention in letters to me and Ivette. One letter was dated 8/23/18 and the other was dated 12/18/18. We wanted to address a couple of issues you have raised in your letters.

First, in Missouri v. Frye, 566 Nev. 134 (2012), the U.S. Supreme Court held that the Sixth Amendment to the U.S Constitution requires a defense attorney to communicate formal plea offers from the prosecution. Therefore, Ivette and I will always inform you of any offers the State makes to resolve your case. By communicating to you the State's offer we are not in any way advising you to accept the offer. Our opinion about the reasonableness of an offer is separate and distinct. Also, please understand that *if* we were to recommend accepting an offer to you, and you wish to reject the offer, this doesn't mean that we are in any way going to fight less for you at trial. Of course, we would hope that you would give our recommendation to accept or reject an offer some weight based on our knowledge and years of experience.

In your letter dated 12/18/18, you make references to offers other inmates have received for their homicide case (i.e., 6-15, 8-20, and 10-25). You explained in that letter that you should receive offers no worse than these other inmates as their cases had more "direct evidence against them, such as DNA." We understand your position. It is a belief that almost many of our clients communicate to us. Many of our clients believe that their offers should be better compared to offers other inmates have received.

However, it is almost impossible to compare one criminal case to another when trying to decide whether an offer is reasonable or not. Many factors go into an offer a defendant receives: facts of the case, defendant's criminal history, available evidence, availability of witnesses, who the prosecutor is, who the judge is, who the defense attorney is, etc. A cursory review of one criminal case and then comparing it to the details of another case to determine whether an offer is reasonable is a losing proposition. The only time a comparison to another defendant's case might be relevant is a case where there are co-defendants who are similarly situated. In sum, our advice is that you cannot compare the reasonableness of any offer made in your case to the offers made in other criminal cases.

Lastly, we wanted to reiterate and make clear the offers you have received from the District Attorney and which we have communicated to you. The first offer was made in August of 2018:

August 2018 (Min 20-50 / Max 36-life)

Plead Guilty to:

(1) 1st Degree Murder (life w/ parole after 20 years OR a term of 50 years w/ eligibility after 20 years); AND
(2) Attempt Murder with Use Deadly Weapon (2-20 years + consecutive 1-20 for the weapon)

Both sides retain the Right to Argue (RTA) at the time of sentencing, but the State will not seek death or Life without Parole.

A second, improved offer, was made in November of 2018:

November 2018 (Min 20-50 / Max 28-life)

Plead Guilty to:

(1) 1st Degree Murder no use (20-50, 20-life); AND
(2) Attempt Murder no use of deadly weapon (2-20)

Both sides retain the RTA at the time of sentencing, but the State will not ask for Death or Life without Parole.

As always, if you wish to further discuss these offers, potential consequences, or any other matter related to your case, please let us know. Thank you.

April 12, 2019

CONFIDENTIAL: CLIENT-ATTOREY COMMUNICATION

Mr. Robert Brown
Clark County Detention Center

RE: State of Nevada v. Brown (C-14-299234-1)

Mr. Brown,

This correspondence is in response to our telephone conversation wherein you informed me of certain case law that you believed was relevant to your case. In particular, as you described it in your letter of 3/8/19, "the Right to use an available alternative Subjective 'reasonable person' standard for the default Objective standard used in Stock Jury Instruction 1.13, and in the various Tests involved in proving Statutory Elements, etc." At a recent jail visit, Ivette and I discussed with you these cases and their applicability to your case. However, pursuant to your request, I wanted to put our opinions in writing.

(1) Gray v. State, 100 Nev. 556 (1985): this case holds that when it comes to the crime of possession of stolen property and whether a "reasonable person" knows or should know that the property was stolen, "the reasonable person standard includes consideration of a defendant's particular mental deficiencies."
(2) Zgombic v. State, 106 Nev. 571 (1990): the issue in this case was whether boots constitute a deadly weapon for purposes of sentence enhancement under NRS 193.165. In its ruling, the Nevada Supreme Court overruled the "functional test" for determining if an object is a deadly weapon and adopted the "inherently dangerous weapon" test. The case was subsequently partially overruled by statute.
(3) McDaniel v. Paty, 435 U.S. 618 (1977): in this case, the U.S. Supreme Court held that a Tennessee statute, which barred ordained ministers from serving as delegates to Tennessee's constitutional convention, was unconstitutional as it violated the Free Exercise Clause of the First Amendment, made applicable to the State by the Fourteenth Amendment.
(4) Potomac Engineers, Inc. v. Walser, 127 F. Supp. 41 (U.S. Dist. 1954): in this case, the federal district court in Washington D.C., held that, under the laws of the District of Colombia, a corporation is not entitled to register and be admitted to practice as a professional engineer.

You informed us that you believe these cases help support the following argument: Because you are an ordained minister, a different legal standard should apply to you, as it relates to the crimes you are charged with, compared to a person who is not a minister, or as you describe them, a "commoner," or "secular" person.

It is our opinion that these cases are not relevant or helpful to your defense. First, the only case cited above that is arguably relevant to your argument is the Gray case. However, in that case, a

standard slightly different than the "reasonable person standard" was relevant to an element of the crime charged: Knowledge.

In your case, the fact of you being an ordained minister is not relevant to any element of the crimes charged in your case. Additionally, we are unaware of any different standard or law that is applicable to a minister for the crimes you are charged with. That is, whether you are a minister, lawyer, doctor, teacher, etc., the law of the crimes you are charged with applies to everyone the same. The only "special treatment" we are aware of, relevant to ministers, is that relating to confessions from a person to his minister, which is contained in NRS 49.255: "A member of the clergy or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to the member of the clergy or priest in his or her professional character."

Hopefully this addresses the questions you had. Please let us know if you wish to further discuss these issues or have any other questions.

3-8-2019 A.D.

To: Abel M. Yanez, Esq.
Ivette A. Maningo, Esq.

From: Robert Brown - 6006120
Clark County Dtn. Ctr.

Re: COUNSELS' NEGLECT OF THE RIGHTS OF THE ACCUSED AND HIS PROFESSION

The following list is based on all documents and proceedings in this case, which have been otherwise transmitted to the present and former attorneys of record, by the Accused and State.

1. A written response to, and requested copies of three letters of discontent sent by the Accused have yet to be given, since over nine months ago. This deprives the Accused of proving a Conflict, etc.

2. Since the time that Attorneys have been assigned to case, no Motions, or Written responses have been given for, or in response to:

(A) The Accused's arguments with supporting legal authorities, for the Right to use an available alternative Subjective "reasonable person" standard for the default Objective standard used in Stock Jury Instruction 1.13, and in the various Tests involved in proving Statutory Elements, etc.

(B) The Accused's documents on Crime Scene Staging by LVMPD in this case.

(C) The Accused's documents on the state's sole victim-witness giving various Perjurous Testimony, and Impeaching Statements.

(D) The Accused's documents on Fabricated Statements given by Officer Monica Kehrli.

(E) The Accused's direction to obtain a deposition from Officer Monica Kehrli, which the present attorney Ivette Maringo had long ago agreed to do.

(F) The Accused's documents on the apparent Tampering or Fabrication of the recorded Audio File and/or Transcription of Officer Monica Kehrli's Voluntary Statement.

(G) The Accused's documents with supporting legal authorities and arguments, for the Right to challenge the lawfulness of the Felony-Murder Rule.

(H) The Accused's documents with supporting legal authorities and arguments for the Right to challenge the Nevada murder statute for violating Article IV, Sec. 17 of Nevada's Constitution, which prohibits a statute from embracing more than one Object and Subject. And this appears to be an issue De Novo; thus, counsels cannot possibly have any grounds to argue against its validity or review by the Court.

(I) The Accused's documents with supporting legal authorities and arguments for the Right to challenge the Nevada murder statute for violating the Rules of Statutory Construction called *Expressio Unius Est Exclusio Alterius* and/or *Ejusdem Generis*. And each of these appear to be an issue De Novo; thus, counsels cannot possibly have any grounds to argue

against their validity or review by the Court.

(J) The Accused's documents with supporting legal authorities and arguments, for the Right to challenge Nevada law for its antiquated practice of Conclusively Presuming and Establishing *Unwritten* Common Law criminal elements against defendants without their knowledge. And this appears to be an issue De Novo; thus, counsels cannot possibly have any grounds to argue against its validity or review by the Court.

(K) The Accused's documents with supporting legal authorities and arguments, for the Right to Sue and be Sued in what the Common Law recognizes as one's "Christian" or Baptism Name, which Name (i.e., Ariy[illegible]) is also an Exclusive and Unique Name belonging to the Accused, since 2001 as a Sole Spiritual Corporation, Registered and Copyrighted with Excluse Use in Commerce, since 2006.

Subject: Re: Robert Brown, ID#6006120
Date: Tuesday, January 16, 2018 at 3:54:46 PM Pacific Standard Time
From: Ivette Maningo
To: Jonathan Clark

Ok...thank you. I appreciate the information. I will talk to my client about this.

From: Jonathan Clark <J8838C@LVMPD.COM>
Date: Tuesday, January 16, 2018 at 3:50 PM
To: Ivette Maningo <iamaningo@iamlawnv.com>
Subject: RE: Robert Brown, ID#6006120

It does apply to books that are legal material. Specifically, it states 2 books/magazines, plus 5 religious books.

From: Ivette Maningo [mailto:iamaningo@iamlawnv.com]
Sent: Tuesday, January 16, 2018 3:47 PM
To: Jonathan Clark <J8838C@LVMPD.COM>
Subject: Re: Robert Brown, ID#6006120

Hello Lieutenant. Thank you very much for your response. I just want to clarify, does the 2-book limit apply even if the books are legal material? I will wait for your response and then will consult with Mr. Brown. If necessary, I will prepare a request for a court order allowing additional materials. Thanks again for getting back to me. Have a good day.

IVETTE AMELBURU MANINGO, ESQ.
THE LAW OFFICES OF IVETTE AMELBURU MANINGO
400 S. 4TH STREET, SUITE 500
LAS VEGAS, NV 89101
PHONE 702-793-4046
FAX 844-793-4046
IAMANINGO@IAMLAWNV.COM

From: Jonathan Clark <J8838C@LVMPD.COM>
Date: Tuesday, January 16, 2018 at 2:11 PM
To: Ivette Maningo <iamaningo@iamlawnv.com>
Subject: Robert Brown, ID#6006120

Ms. Maningo,

Regarding Mr. Robert Brown's legal material, his papers, photographs, etc. have been returned to him. I believe they were returned the same day you authored your letter. However, per S.O.P. 09.08.02, POST OUTLINE - GENERAL HOUSING, Inmates are limited to two (2) books or magazines. Mr. Brown will be able utilize two books at a time and has been told the procedures for having his books exchanged from the property room.

A court order would be needed to provide him more books beyond what policy allows.

Lieutenant Jonathan Clark, P#8838
j8838c@lvmpd.com
Las Vegas Metropolitan Police Department
Detention Services Division – South Tower
702-671-5705

Client says:
he has not received
a lot of discovery
photographs (crime scene photos and personal photos)
& has 5 family pictures ; 5 other misc pictures

THE LAW OFFICES OF
IVETTE AMELBURU MANINGO
A PROFESSIONAL LLC

400 S. 4th Street, Suite 500
Las Vegas, Nevada 89101
Tel. (702) 793-4046
Fax (844) 793-4046
iamaningo@iamlawnv.com

January 2, 2018

Robert Brown, ID# 6006120
Clark County Detention Center
330 South Casino Center
Las Vegas, NV 89101

Re: Requested Case Law

Dear Robert,

Enclosed please find the case (22 pages) you requested I send you, State of Idaho v. Searcy, 798 P.2d 914 (1990).

If you have any questions or concerns, please contact the office.

Thank you,

Ivette Amelburu Maningo, Esq.

Enclosure

798 P.2d 914 (1990)
118 Idaho 632

STATE of Idaho, Plaintiff-Respondent,
v.
Barryngton Eugene SEARCY, Defendant-Appellant.

No. 17835.

Supreme Court of Idaho.

September 5, 1990.

915 *915 William R. Forsberg, St. Anthony, for defendant-appellant.

Jim Jones, Atty. Gen., Lynn E. Thomas, Sol. Gen. (argued), Boise, for plaintiff-respondent.

BAKES, Chief Justice.

Barryngton Eugene Searcy appeals from convictions for first degree murder, robbery and an enhancement for the use of a firearm in the commission of a felony and from the following sentence:

1. First degree murder — determinate life sentence without possibility of parole;

2. Robbery — indeterminate life sentence to be served consecutively to the sentence pronounced for murder, with a minimum of ten years to be served;

3. Use of a firearm in the commission of murder and robbery — an enhancement of ten years;

Searcy raised several issues on appeal, including the argument that I.C. § 18-207[1] unconstitutionally deprived him of his right to due process by forbidding him to plead an independent defense of insanity (mental nonresponsibility).

I

Barry Searcy was convicted of killing Teresa Rice while robbing Jack's Grocery Store in Ashton, Idaho, July 15, 1987. Rice, the mother of two children, owned and operated the store with her husband Michael. Searcy robbed the store in order to get money to buy cocaine. Searcy had staked out the store during its operating hours and hid on top of some coolers in the back room where he waited to either burglarize or rob as the situation dictated. From this hiding spot Searcy could see Rice enter the back room and count out money for storage in the store's safe. Rice then left the back room. As Searcy was leaving his hiding spot Rice returned to the back room and discovered Searcy. A confrontation ensued and Rice was shot in the stomach by Searcy, apparently during a struggle. Searcy testified that he then told Rice that if she opened the safe he would call an ambulance. She did so. Searcy then removed the money from the safe and placed it into his backpack. Searcy did not call an ambulance. Rather, he put his rifle to Rice's head and shot her, killing her instantly.

After leaving the store, Searcy testified that he hid the rifle and money under a rock at a target shooting location near Rexburg, Idaho. The next day Searcy took some of the money and bought a used car with it in order to drive to Salt
916 Lake City, Utah, to purchase more cocaine. On September 13, 1987, some boys discovered the *916 gun, money and Searcy's gloves. The boys showed the items to their fathers who were target shooting nearby. Discovery of these items

lead to the arrest of Searcy.

Searcy was 20 years old at the time he killed Rice. He apparently is chemically dependant on alcohol and cocaine. Searcy's parents were divorced when he was eight. Searcy suffers from a physical condition known as delayed growth syndrome. This condition stunted Searcy's growth, allegedly making him the target of harassment from children in grade school. By the time he reached 15 years of age Searcy had the physical development of a 9 year old. Searcy began hormone treatments, but his growth was limited to 5 feet, 6 inches. Allegedly, the hormone treatments had a bad side effect and Searcy became mean and abusive. This ill effect was worsened by Searcy's introduction and addiction to chemicals: alcohol, marijuana and cocaine.

Searcy increasingly got into trouble as his chemical dependency continued while repeated efforts to treat it were not successful. Searcy committed burglaries, armed robberies, and sold illegal drugs in order to support his addiction to cocaine. Searcy had ambitions of becoming a major drug dealer but he personally used most of the cocaine he purchased. After using up a significant portion of the cocaine he bought from the money he stole from Jack's Grocery, Searcy began to contemplate robbing a bigger store in order to get more money. Instead of committing another robbery, Searcy entered treatment once again. While in treatment, Searcy confessed to a counselor that he had killed Rice.

At trial a jury found Searcy guilty of murder in the first degree by finding both premeditation and by finding that Searcy killed while committing a robbery. Searcy was also found guilty of robbery and of using a firearm while committing a felony.

Over objection, the trial judge at sentencing admitted a victim impact statement from Rice's family. Michael Rice, the victim's husband, indicated in the statement that he favored imposition of the death penalty for Searcy and that he felt it should be swiftly carried out. Nevertheless, the trial judge did not impose the death penalty on Searcy. Instead, the trial judge entered the following sentences on the various counts:

1. First degree murder — determinate life sentence without possibility of parole;

2. Robbery — indeterminate life sentence to be served consecutively to the sentence pronounced for murder, with a minimum of ten years to be served;

3. Use of a firearm in the commission of murder and robbery — an enhancement of ten years;

Searcy appeals from the conviction and sentences raising the following issues.

II

First Searcy argues that I.C. § 18-207 unconstitutionally denies him due process of law because it prevented him from pleading insanity as a defense.[2] Neither the federal nor the state Constitutions contains any language setting forth any such right. Searcy argues, nevertheless, that the disallowance of the insanity defense deprived him of one of the "fundamental principles of liberty and justice which lie at the base of our civil and political institutions," *Herbert v. Louisiana*, 272 U.S. 312, 316, 47 S.Ct. 103, 104, 71 L.Ed. 270 (1926), and thus denied him due process of law. Searcy argues the insanity defense is so deeply rooted in our legal traditions as to be considered fundamental and thus embedded in due process.

917 *917 The insanity defense has had a long and varied history during its development in the common law. As the understanding of the mental processes changed over the centuries, the implications of a criminal defendant's insanity have changed. In more recent times legislatures have enacted statutes regulating and defining the effect of a defendant's claim of mental nonresponsibility. Not surprisingly, there has resulted a wide disparity in the positions taken

on this issue both by legislatures and courts in the various states.[3]

Three states, Idaho, Montana and Utah, have legislatively chosen to reject mental condition as a separate specific defense to a criminal charge. The statutes in these three states, however, expressly permit evidence of mental illness or disability to be presented at trial, not in support of an independent insanity defense, but rather in order to permit the accused to rebut the state's evidence offered to prove that the defendant had the requisite criminal intent or *mens rea* required by I.C. §§ 18-114 and 18-115 to commit the crime charged. I.C. § 18-207;[4] M.C.A. § 46-14-102; U.C. § 76-2-305. In State v. Beam, 109 Idaho 616, 621, 710 P.2d 526, 531 (1985) we upheld I.C. § 18-207 against a related challenge, stating:

> We hold that the three statutes are not in conflict since I.C. §§ 18-114 and 18-115 do not mandate the existence of a defense based upon insanity, but rather I.C. § 18-207 reduces the question of mental condition from the status of a formal defense to that of an evidentiary question. Section 18-207(c), Idaho Code, continues to recognize the basic common law premise that only responsible defendants may be convicted.
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> It is Beam's second argument that I.C. § 18-207 violates the doctrine established by *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970), which held that due process of law requires that the prosecution prove every fact necessary to constitute the crime charged beyond a reasonable doubt. It is
> 918 asserted that I.C. § 18-207 impermissibly relieves the State of that burden, *918 since it operates as a presumption that no defendant can possess such lack of mental capacity as to be unable to formulate the criminal intent. We disagree. I.C. § 18-207(c) specifically provides that a defendant is not prohibited from presenting evidence of mental disease or defect which would negate intent.

While the issue facing us today has never been directly decided by the United States Supreme Court, the language from several opinions of that Court suggests rather convincingly that that Court would conclude that the due process of the fifth amendment does not require the states to provide a criminal defendant with an independent defense of insanity. First, in *Leland v. Oregon*, 343 U.S. 790, 72 S.Ct. 1002, 96 L.Ed. 1302 (1952), the United States Supreme Court rejected an argument that due process required the use of any particular insanity test and upheld an Oregon statute which placed on the criminal defendant the burden of proving his insanity defense, and then by proof beyond a reasonable doubt. In *Powell v. Texas*, 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968), the Supreme Court stated:

> [T]his court has never articulated a general constitutional doctrine of *mens rea.* We cannot cast aside the centuries-long evolution of the collection of interlocking and overlapping concepts which the common law has utilized to assess the moral accountability of an individual for his antisocial deeds. The doctrines of *actus reus, mens rea,* insanity, mistake, justification, and duress have historically provided the tools for a constantly shifting adjustment of the tension between the evolving aims of the criminal law and changing religious, moral, philosophical, and medical views of the nature of man. *This process of adjustment has always been thought to be the province of the States.*[5]

392 U.S. at 535-536, 88 S.Ct. at 2156, 20 L.Ed.2d at 1269 (emphasis added). Justice Marshall, in his *Powell* opinion, stated that "nothing could be less fruitful than for this Court to be impelled into defining some sort of insanity test in constitutional terms." 392 U.S. at 536, 88 S.Ct. at 2156. Justice Rehnquist recently reaffirmed this view in his dissenting opinion in *Ake v. Oklahoma*, 470 U.S. 68, 91, 105 S.Ct. 1087, 1100, 84 L.Ed.2d 53, 71 (1985), in which he wrote:

> [I]t is highly doubtful that due process requires a state to make available an insanity defense to a criminal defendant, but in any event if such a defense is afforded the burden of proving insanity can be placed on the defendant.

In a similar vein, the Ninth Circuit Court of Appeals has very recently rejected the argument that the eighth amendment to the United States Constitution contains any implicit command that mental illness be considered a mitigating circumstance. *Harris v. Pulley*, 885 F.2d 1354 (9th Cir.1989).

The Supreme Court of Montana has upheld a similar Montana statute abolishing the independent defense of insanity, concluding that "Montana's abolition of the insanity defense neither deprives a defendant of his fourth amendment right to due process nor violates the eighth amendment proscription against cruel and unusual punishment. There is no independent constitutional right to plead insanity." *State v. Korell*, 690 P.2d 992 (1984).

In conclusion, on this issue, while there is little authority directly on the question which we must decide today, the only court which has expressly ruled upon this issue has upheld the constitutionality of a state statute abolishing the insanity defense. *State v. Korell, supra*. The only justice of the United States Supreme Court, Chief Justice Rehnquist, who has addressed this specific issue has stated, "It is highly doubtful that due process requires the state to make available an insanity defense to a criminal defendant... ." Finally, from the statement of the United States Supreme Court in *Powell v.*
919 *Texas*, that "nothing *919 could be less fruitful than for this court to be impelled into defining some sort of insanity test in constitutional terms," it is difficult to understand how there could be an insanity defense guaranteed by the United States Constitution which, nevertheless, has no constitutional definition and is subject to differing definitions by the various states, *Powell v. Texas, supra*, and may be subject to differing burdens of proof by the states. *Leland v. Oregon, supra*. Accordingly, we conclude, based upon the foregoing authorities, that due process as expressed in the Constitutions of the United States and of Idaho does not constitutionally mandate an insanity defense and that I.C. § 18-207 does not deprive the defendant Searcy of his due process rights under the state or federal Constitution. *Leland v. Oregon, supra; State v. Korell*, 213 Mont. 316, 690 P.2d 992 (1984); *Leland v. Oregon, supra; Powell v. Texas, supra; State v. Beam, supra*.[6]

III

We now consider Searcy's objection that the trial court erred by denying his motion to strike a victim impact statement which was allegedly used as a basis for arriving at the sentence. Searcy asserts that the sentencing court improperly considered prejudicial remarks contained in the victim impact statement when imposing on Searcy a fixed life prison term. Searcy argues that the victim impact statement was irrelevant to sentencing considerations even though he acknowledges that its use by the sentencing court is mandated by I.C. § 19-5306[7] and I.C.R. 32(b)(1).[8] Searcy argues, however, that the sentencing court was obliged to ignore the victim impact statements based upon the holdings in *Booth v. Maryland*, 482 U.S. 496, 107 S.Ct. 2529, 96 L.Ed.2d 440 (1987), and *State v. Charboneau*, 116 Idaho 129, 774 P.2d 299 (1989). However, those two cases were death penalty cases and the decisions are based on the unique requirements of the eighth amendment of the United States Constitution as it applies to death penalty cases. In the present case where the defendant was not sentenced to death but, rather to a fixed life prison term, the *Booth* and *Charboneau* cases are inapplicable. The sentencing court did not err by denying defendant's motion to strike the victim impact statement.

IV

A.

Searcy argues that the trial court imposed an invalid sentence when it gave a ten-year enhancement both to the determinate life sentence without possibility of parole for the premeditated first degree murder, and a ten-year enhancement to the consecutive indeterminate life sentence imposed for the crime of robbery. As a result, Searcy

920 argues that he should have *920 been present when the trial court corrected the sentence. Both enhancements were based upon I.C. § 19-2520 which provides for an extended sentence for use of a firearm or deadly weapon in the commission of felonies, as were charged here. However, I.C. § 19-2520E provides that "any person convicted of two (2) or more substantive crimes provided for in the above code sections, which crimes arose out of the same indivisible course of conduct, may only be subject to one (1) enhanced penalty."

The trial court recognized that the imposition of the two enhancements violated the above section and, in response to Searcy's I.C.R. 35 motion to correct or reduce sentence, corrected its previous sentence by stating that "the court will correct the sentence and order that the defendant Barryngton Eugene Searcy be sentenced to a term of ten years as an enhancement for having used a deadly weapon in the commission of the crime of murder and the crime of armed robbery."

Searcy argues on appeal that the original sentence (which included two 10-year enhancements) being invalid, the trial court could not correct the invalid sentence without having the defendant present in court, as required by I.C. § 19-2503 which provides that "for the purpose of judgment, if the conviction is for a felony, the defendant must be personally present... ." Searcy also relies on I.C.R. 43(a), which provides:

Rule 43. Presence of the defendant. —

> (a) Presence required. The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, *and at the imposition of sentence,* except as otherwise provided by this rule.

(Emphasis added.) In *Lopez v. State,* 108 Idaho 394, 700 P.2d 16 (1985), this Court held that where "the original sentence was invalid, the sentence was not imposed until the court corrected the judgment." 108 Idaho at 396, 700 P.2d at 18. In *Lopez* we remanded to the trial court with instructions to re-impose a correct sentence at a proceeding at which the defendant was present:

In this case, the original sentence imposed on Searcy which contained two separate enhancements, was invalid since it violated I.C. § 19-2520E. Under *Lopez* the trial court could not correct the sentence without the defendant being present.[9] Accordingly, we remand for correction of the sentence in the defendant's presence. *Lopez v. State, supra.*

B.

Since we are remanding for correction of the invalid sentence in the presence of the defendant, we note two other sentencing claims made by the appellant Searcy. Searcy claims that the trial court erred in imposing a single enhancement against both the first degree murder sentence and the robbery sentence. Furthermore, Searcy argues that a determinate life sentence without possibility of parole cannot be, as a matter of logic, enhanced by a ten-year enhancement under I.C. § 19-2520. Searcy relies on the opinion of the Court of Appeals in *State v. Kaiser,* 106 Idaho 501, 503, 681 P.2d 594, 596 (Ct.App. 1984), in which the Court of Appeals, in reviewing the effect of the enhancement provisions of I.C. § 19-2520, stated that, "A life sentence does not allow for any further `enhancement.'" On petition for review this Court vacated the Court of Appeals decision in *Kaiser,* stating, "Although the reasoning of the Court of Appeals is persuasive regarding fixed life and death penalty sentences, we are convinced that an indeterminate life sentence is a horse of a different color." *State v. Kaiser,* 108 Idaho 17, 19, 696 P.2d 868, 870 (1985). Searcy further relies on the comment of Judge Swanstrom in *State v. Merrifield,* 112 Idaho 365, 732 P.2d 334 (Ct.App. 1987), in which
921 he stated, "It would be a useless act *921 to enhance a fixed life sentence where there is no possibility of parole." We need not resolve whether or not the legislature can enhance a "fixed life sentence where there is no possibility of parole," nor whether such an enhancement is provided by I.C. § 19-2520 if there were only a conviction of first degree

murder in this case. Here, Searcy was convicted of robbery as well as first degree murder. The single 10-year enhancement on the robbery conviction was justified by the statute.

C.

Finally, we consider Searcy's argument that his sentence was unreasonable or unduly severe. As modified in the trial court, Searcy was sentenced to a fixed life term for first degree murder and an indeterminate life term for robbery enhanced by an additional ten years for use of a firearm in the commission of robbery. Each of these two sentences falls within the maximum sentences for each crime. Notably, Searcy may have received the death penalty for the first degree murder conviction. Searcy argues that the district court abused its discretion by basing the sentences entirely on retribution and by failing to consider rehabilitation, societal protection, or deterrence. We disagree. In denying Searcy's I.C.R. 35 motion for reduction of sentence, the district court wrote:

> The Court found that the murder was planned and carried out in an atrocious, cruel and heinous manner and that the sordid circumstances manifested exceptional depravity. Any mitigating circumstances were evasive amounting mainly to his youth. The mitigating circumstances were sufficient to avoid capital punishment, but they can not be expanded to call for further leniency.

We can find no abuse of discretion present in the district court's reasons for sentencing Searcy as it did, especially upon consideration of the cold-blooded nature of the murder of Teresa Rice. Searcy's alleged addiction to cocaine and troubled childhood do not excuse his crime or mandate a lesser sentence. Accordingly, we conclude that the district court did not abuse its discretion in sentencing Searcy as it did in the modified sentence.

The judgment of conviction entered by the trial court herein is affirmed. The trial court's order dated October 3, 1988, correcting the sentence imposed on Searcy in his absence, is vacated and the cause remanded to the trial court for imposition of a valid sentence with the defendant present as required by I.C. § 19-2505, I.C.R. 43(a), and *Lopez v. State*, 108 Idaho 394, 700 P.2d 16 (1985).

BOYLE, J., and WOODLAND, J. pro tem., concur.

JOHNSON, Justice, concurring and dissenting.

I concur with the opinion of the Court, except as to the insanity defense. While I concur in that part of the dissent of Justice McDevitt that deals with the unconstitutionality of the abolition of the insanity defense under the due process clause of the fourteenth amendment, I also would hold independently that the abolition violates the due process clause contained in art. 1, § 13 of the Idaho Constitution.

As this Court said in *Cootz v. State*, 117 Idaho 38, 40-41, 785 P.2d 163, 165-66 (1989):

> We agree that the scope of the Idaho due process clause is not necessarily the same as that of the federal constitution
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> ... .
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> We note with interest that just 100 years ago when our state constitution was being formulated the question of the inclusion of the due process clause was considered. When the proposed art. 1, § 13 was amended to insert the due process clause, the objection was made that the same language existed in the fourteenth amendment to the Constitution of the United States. Despite this objection, the section containing the due process clause was adopted. Proceedings and Debates of the Constitutional Convention of Idaho (1889) 287, 1595. While this does not establish by itself that the scope of our due

922 process clause is different than that of the federal constitution, *922 it does indicate that the drafters of our constitution believed that the federal due process clause did not make it unnecessary for our constitution to guarantee due process of law.

We also note that from time to time this Court has said in passing that our constitutional provision relating to due process of law is substantially the same as that of the United States Constitution. *E.g.*, State v. Peterson, 81 Idaho 233, 236, 340 P.2d 444, 446 (1959). However, we find no decision of this Court that has squarely addressed the question of whether the scope of our due process clause is the same as that of the fourteenth amendment. Today, we conclude that the scope is not necessarily the same. We are prepared to consider the parameters of due process under art. 1, § 13 of our constitution without being necessarily bound by the interpretation given to due process by the United States Supreme Court. *Cf.* State v. Thompson, 114 Idaho 746, 760 P.2d 1162 (1988) (Idaho's constitutional provision prohibiting unreasonable searches and seizures is subject to different interpretation than that given to the fourth amendment.).

We also note that from time to time this Court has decided due process questions with reference to our state constitution only, without considering the scope of the fourteenth amendment. *E.g.*, State v. Evans, 73 Idaho 50, 56, 245 P.2d 788, 791 (1952); White v. Idaho Forest Indus., 98 Idaho 784, 786, 572 P.2d 887, 889 (1977); Melody's Kitchen v. Harris, 114 Idaho 327, 333, 757 P.2d 190, 196 (1988). These cases are evidence that this Court has not always found it necessary to resort to decisions of the United States Supreme Court under the fourteenth amendment to decide what content we will give to our own due process clause.

The insanity defense was well established in the Territory of Idaho at the time of the Idaho Constitutional Convention and continued to be part of our jurisprudence until the legislature purported to abolish it in 1982. It has been part of the process that was due defendants in criminal cases for virtually the entire existence of our Idaho legal system. It is fundamental to our jurisprudence and is protected by the due process clause of art. 1, § 13.

I am aware that there are other death penalty cases that will be argued before this Court within a matter of days that will again raise the issue of the unconstitutionality of the abolition of the insanity defense. Because the insanity defense is fundamental and because of the awesomeness of death penalty cases, I announce to my brethren on this Court today that I will be prepared to address this issue again in these future death penalty cases, despite the ruling of the Court in this case.

McDEVITT, J., concurs.

McDEVITT, Justice, dissenting.

I cannot agree with the majority's conclusion that the due process guarantee of the United States Constitution does not require the availability of the insanity defense in a criminal case.

In support of its conclusion, the majority opinion implies that the statute abolishing the defense in Idaho was previously upheld by this Court in State v. Beam, 109 Idaho 616, 710 P.2d 526 (1985), *cert. denied*, 476 U.S. 1153, 106 S.Ct. 2260, 90 L.Ed.2d 704 (1986). However, the holding in *Beam* is not relevant to the present case. In *Beam*, this Court held that I.C. § 18-207 did not violate the principle of due process that the prosecution must prove every element of a crime beyond a reasonable doubt. In the present case we are faced with the entirely separate issue of whether there is a different principle contained within the concept of due process which would require the availability of a defense of insanity in a criminal case.

The majority next notes that there is no explicit holding from the United States Supreme Court on this issue, and

proceeds to examine several Supreme Court cases seeking some guidance. The opinion states that:

923 [In] *Leland v. Oregon*, 343 U.S. 790, 72 S.Ct. 1002, 96 L.Ed.2d 1302, 96 L.Ed. *923 1302 (1952), the United States Supreme Court rejected an argument that due process required the use of any particular insanity test and upheld an Oregon statute which placed on the criminal defendant the burden of proving his insanity defense, and then by proof beyond a reasonable doubt.

At 636, 798 P.2d at 918.

I do not believe that the holding in *Leland* leads to the conclusion that the insanity defense is not contained within the concept of due process.

One of the remarkable features of the history of the United States since the adoption of the Constitution is the astounding progress of science and technology. It is indisputable that the science of psychiatry has significantly evolved during that period, and that it continues to evolve, not only due to new approaches to conceptualizing mental processes, but also due to the advancement of pharmacological knowledge and even mechanical technologies which serve to enhance our understanding of and the ability to treat mental disorders.

It is this fact which dictated the holding of *Leland v. Oregon* that the Constitution does not require the use of one particular test of criminal responsibility. The Supreme Court noted that the "right and wrong" test of legal insanity was the rule in the majority of American jurisdictions, but stated that:

> The science of psychiatry has made tremendous strides since that test was laid down in M'Naughten's Case, but the progress of science has not reached a point where its learning would compel us to require the states to eliminate the right and wrong test from their criminal law. Moreover, choice of a test of legal sanity involves not only scientific knowledge but questions of basic policy as to the extent to which that knowledge should determine criminal responsibility. This whole problem has evoked wide disagreement among those who have studied it. In these circumstances it is clear that the adoption of the irresistible impulse test is not "implicit in the concept of ordered liberty."

Leland v. Oregon, 343 U.S. at 800-01, 72 S.Ct. at 1008-09 (footnotes omitted).

Thus, the *Leland* decision is properly read to hold that no one test of insanity has been proven so scientifically reliable as to amount to a constitutional prohibition of the use of any other test by the mandates of due process. Instead, the Supreme Court in *Leland* recognizes that the science of psychiatry is not yet so accurate that it has the capacity to formulate a standard that will accurately quantify mental responsibility in all individual cases.

Nor does the fact that the Supreme Court in *Leland* allowed the allocation of the burden of proof of insanity to the defendant indicate any opinion by that Court as to whether the insanity defense is rooted in the Constitution. *Leland* is part of a series of decisions by the Supreme Court which hold that:

> [I]t is normally "within the power of the State to regulate *procedures* under which its laws are carried out, including the burden of producing evidence and the burden of persuasion," and its decision in this regard is not subject to proscription under the Due Process Clause unless "it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental." *Speiser v. Randall*, 357 U.S. 513, 523, 78 S.Ct. 1332, 1341, 2 L.Ed.2d 1460 (1958); *Leland v. Oregon*, 343 U.S. 790, 798, 72 S.Ct. 1002, 1007, 96 L.Ed. 1302 (1952); *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934).

Patterson v. New York, 432 U.S. 197, 201-02, 97 S.Ct. 2319, 2322, 53 L.Ed.2d 281 (1977) (emphasis added).

The case of *In re Winship,* 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970), held that due process requires the prosecution in all cases to prove every element of the crime charged beyond a reasonable doubt. Thus, in *Mullaney v. Wilbur,* 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975), where the Maine statute defined murder as an intentional homicide committed without provocation, the Court held that the burden of proving provocation could not be placed *924 on the defendant. To do so would offend the due process and the mandate of *In re Winship,* because the defendant would then be required to disprove an element of the crime charged.

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By contrast, shifting the burden of proof of extreme emotional disturbance to the defendant in order to reduce the crime from murder to manslaughter did not offend due process in *Patterson v. New York,* 432 U.S. 197, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977), where the state statute defined second degree murder, the crime with which Patterson was charged, as intentional killing (first degree murder being defined as intentional killing with malice aforethought). Extreme provocation was made available as an affirmative defense to murder by statute. Because the defendant was not required to disprove an element of the crime and the state's definition of the crime was within constitutional bounds, the allocation of the burden of proof of the affirmative defense was not violative of the Constitution.

Likewise, in *Martin v. Ohio,* 480 U.S. 228, 107 S.Ct. 1098, 94 L.Ed.2d 267 (1987), Ohio law defined self defense as an affirmative defense subject to proof by the defendant, and defined the crime of murder as purposely causing the death of another with prior calculation or design. The Court held that the state was within its constitutional authority in defining the offense, and that the fact that the defendant was not required to disprove any element of the crime charged sufficed to withstand a due process challenge. The Court noted its prior holding in *Patterson,* and said:

We there emphasized the preeminent role of the States in preventing and dealing with crime and the reluctance of the Court to disturb a State's decision with respect to the definition of criminal conduct and the *procedures* by which the criminal laws are to be enforced in the courts, including the burden of producing evidence and allocating the burden of persuasion.

Martin v. Ohio, 480 U.S. at 232, 107 S.Ct. at 1101 (emphasis added).

Patterson and *Martin* both made prominent reference to *Leland v. Oregon* in the course of their holdings. If the *Leland* holding that the burden of proof of the affirmative defense of insanity may be shifted to the defense is to be read as an implicit holding that the insanity defense is not required by due process, the above cited cases would equally indicate that the traditional concepts of justification or excuse represented by the defenses of extreme provocation and self defense are also not "so rooted in the traditions and conscience of our people" as to be implicit within due process.

This result is not attainable in light of the Supreme Court's analysis in the above cited cases. In each case, the Supreme Court noted that throughout the distant history of the common law and at the time of the adoption of the Due Process Clause of the Fifth Amendment and the ratification of the Fourteenth Amendment, affirmative defenses, including provocation and self defense, were subject to proof by the defendant. It was not until the relatively recent case of *Davis v. United States,* 160 U.S. 469, 16 S.Ct. 353, 40 L.Ed. 499 (1895), wherein the United States Supreme Court shifted the burden of proof to the prosecution in federal courts to disprove insanity as a matter of federal procedure without constitutional basis, that the majority of American jurisdictions reversed the traditional rule and began to place the burden of disproving insanity and other affirmative defenses upon the State. *Mullaney,* 421 U.S. at 693-97, 95 S.Ct. at 1886-88; *Patterson,* 432 U.S. at 203-04, 97 S.Ct. at 2323; *Martin,* 107 S.Ct. at 1103. As the very test of due process depends upon historical traditions, the Supreme Court's repeated emphasis of the history of the affirmative defenses at issue in each of these cases belies the contention that the burden of proof on an issue may only be shifted where the underlying substantive doctrine is constitutionally insignificant.

Thus, it cannot be said that by allowing the burden of proof to be shifted away from the prosecution on issues which are not elements of the crime charged, the Supreme Court is thereby sanctioning the abolition of the underlying substantive

925 *925 criminal legal traditions. Rather, the allocation of the burden of proof has been treated by that court as a *procedural* issue which is left to the sovereign prerogatives of the states, so long as the exercise of that prerogative does not offend the mandates of the federal Constitution. The ponderous history of affirmative defenses, such as heat of passion and self defense outlined by the Supreme Court are significant indicators of the place of those affirmative defenses within the concept of due process in the United States, even though, as in the case of the insanity defense, the United States Supreme Court has not yet had occasion to expressly affix them within the requirements of the Constitution.

The majority opinion next cites the United States Supreme Court opinion in Powell v. Texas, 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968), wherein the Court rejected the appellant's claim that he could not constitutionally be punished for being drunk in public because he was an alcoholic suffering from an irresistible compulsion to drink. The appellant argued that his conviction would be unconstitutional under Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962), where it was held that to convict a person for the mere *status* of being a drug addict, without proof of any positive act, would violate the Eighth Amendment's prohibition against cruel and unusual punishment. The Court disagreed, distinguishing the situation in *Robinson,* where there was no criminal act alleged, from the case before it in *Powell,* where the defendant was convicted for drunk and disorderly *conduct.* The opinion also relied upon the fact that medical knowledge and the state of the record did not permit an authoritative conclusion that alcoholics in general, and Powell in particular, were incapable of controlling the urge to drink, but that even if that were established, there was certainly no evidence that such individuals were irresistibly compelled to drink in public.

The Court further noted that to forbid criminal sanction against any person who could not control their actions would be in effect, the articulation of a static minimum definition of *mens rea* by the Court along the lines of the irresistible impulse test of insanity. Such a holding would irrevocably cement into the Constitution a test of criminal responsibility which itself is the product of a continually changing evolution of scientific knowledge and community ethics, and which is only one of several tests of criminal responsibility that has been used throughout the development of the criminal law:

> Nothing could be less fruitful than for this Court to be impelled into defining some sort of insanity test in constitutional terms. Yet that task would seem to follow inexorably from an extension of *Robinson* to this case. If a person in the "condition" of being a chronic alcoholic cannot be criminally punished as a constitutional matter for being drunk in public, it would seem to follow that a person who contends that, in terms of one test, "his unlawful act was the product of a mental disease or defect," Durham v. United States ... 214 F.2d 862, 875, 45 A.L.R.2d 1430 (1954), would state an issue of constitutional dimension with regard to his criminal responsibility had he been tried under some different and perhaps lesser standard, *e.g.* the right-wrong test of *M'Naughten's Case.* The experimentation of one jurisdiction in that field alone indicates the magnitude of the problem. *See, e.g.,* Carter v. United States ... 252 F.2d 608 ([D.C. Cir.] 1957); Blocker v. United States, 107 U.S.App.D.C. 63, 274 F.2d 572 (1959); Blocker v. United States, 110 U.S.App.D.C. 41, 288 F.2d 853 (1961) (*en banc*); McDonald v. United States, 114 U.S.App.D.C. 120, 312 F.2d 847 (1962) (*en banc*); Washington v. United States, 129 U.S.App.D.C. 29, 390 F.2d 444 (1967). But formulating a constitutional rule would reduce, if not eliminate, that fruitful experimentation, and freeze the developing productive dialogue between law and psychiatry into a rigid constitutional mold. It is simply *not yet time* to write the Constitutional formulas cast in terms whose meaning, let alone relevance, is not yet clear either to doctors or lawyers.

926 *926 Powell, 392 U.S. at 536-37, 88 S.Ct. at 2156 (footnotes omitted) (emphasis added).

The majority opinion cites another passage from *Powell:*

> We cannot case aside the centuries-long evolution of the collection of interlocking and overlapping concepts which the common law has utilized to assess the moral accountability of an individual for his antisocial deeds. The doctrines of *actus reus, mens rea,* insanity, mistake, justification, and duress have

> historically provided the tools for a constantly shifting adjustment of the tension between the evolving aims of the criminal law and changing religious, moral, philosophical, and medical views of the nature of man. This process of adjustment has always been thought to be the province of the States.

Id., 392 U.S. at 535-36, 88 S.Ct. at 2156 (footnotes omitted).

Reading the two passages from *Powell* together, it is clear that the central rationale of the holding is the amorphous nature of some of the fundamental premises of criminal law. The Supreme Court was clearly impressed by the limitations inherent in attempting to define in static terms philosophical concepts which underlie our society's definitions of criminal culpability. The Court has repeatedly indicated that it is the role of the States to structure their criminal legal systems, and that the United States Supreme Court may only proscribe what is forbidden by the Constitution; it has no authority to tell the States how, within the bounds of the Constitution, they should arrange their own affairs. Therefore, as long as a State action does not overreach constitutional limitations, the States are free to define their own community standards of criminal culpability.

In this setting, the Court fully realized that it could not adopt one magic phrase to encompass all issues of moral accountability, in the absence of a particular formulation expressly required by the Constitution, or a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," and thus deemed implicit within the concept of due process. The doctrines enumerated in the majority's excerpt from *Powell: actus reus, mens rea,* insanity, mistake, justification, and duress, have varied so greatly over the course of legal history, and continue to evolve in such unanticipated ways, that the Court rightly recognized that no particular formulation has impeccable credentials in the annals of the common law, or is particularly likely to survive the explosive expansion of human knowledge and understanding.

These are the considerations which underlie the decision in *Powell v. Texas,* and I cannot accept the majority's reading of that opinion as an implicit rejection of the insanity defense as a doctrine rooted in the Constitution. Indeed, the Supreme Court's enumeration of the insanity defense in the cherished and distinguished company of the doctrines of *actus reus, mens rea,* mistake, justification, and duress lends force to the argument that insanity is on equal par with those concepts within the Constitution. Although *Powell* leaves the process of the adjustment of the tension between those concepts to the States, it certainly does not imply that the States may constitutionally abolish each, or any, of those doctrines without running afoul of the Constitution. I cannot believe that the majority would concede that a criminal justice system deprived of those features would comport with due process.

The majority opinion further relies upon the dissent of Justice Rehnquist in the case of *Ake v. Oklahoma,* 470 U.S. 68, 91, 105 S.Ct. 1087, 1098, 84 L.Ed.2d 53 (1985), wherein it was written that, "[i]t is highly doubtful that due process requires a state to make available an insanity defense to a criminal defendant, ..." This observation establishes no precedent, as it is only the lonesome concern of a single dissenter.

The majority opinion also looks for support in a Ninth Circuit Court of Appeals case holding that the Eighth Amendment does not require mental illness to be considered as a mitigating circumstance. That holding addresses the issue of
927 mitigating circumstances, *i.e.,* circumstances to be considered in the post-conviction sentencing *927 decision; this issue is not at all relevant to the question of whether the Constitution permits an individual to be held accountable in the first instance, when the community standard must determine whether the moral blameworthiness of the act permits criminal conviction at all.

Finally, the majority implies that the fact that the Idaho statute abolishing the insanity defense continues to permit psychiatric evidence going to the issue of *mens rea,* or whether the defendant had the capacity to form the intent which is an element of the crime, saves the law from due process challenge. This was the position taken in the Montana case of *State v. Korell,* 213 Mont. 316, 690 P.2d 992 (1984), the only other court to consider the identical issue with which this

Court is presently faced.

The Montana Supreme Court, in considering whether the insanity defense was required by due process, looked into the history of the criminal law and concluded that "[i]nsanity did not come to be generally recognized as an affirmative defense and an independent ground for acquittal until the nineteenth century," and that the insanity defense owed its existence to the older concept of *mens rea*. Korell, 213 Mont. at 329, 690 P.2d at 999. The court concluded that the *mens rea* doctrine was responsible for the earliest manifestations of the insanity defense, in that any ancient criminal legal precepts regarding the mentally ill were founded on the idea that "one who lacks the requisite criminal state of mind may not be convicted or punished." *Id.* Thus, the Montana Supreme Court, and now the majority of this Court, conclude that as long as there is an opportunity for the defendant to disprove the intent to do the act, the Constitution is not offended by the absolute abolition of the insanity defense. I cannot agree.

It is certainly true that the insanity defense and the doctrine of *mens rea* both address the identical concern of criminal culpability. However, that fact does not merge the one concept into the other. It is misleading to look back into the dark ages of English history and declare that according to present standards of human knowledge a particular concept was not sufficiently defined to be recognizable today. In tracing the history of the insanity defense, I believe it is evident that the insanity defense has an independent existence of sufficient duration and significance to entitle it to a place in our American concept of "ordered liberty."

For the above stated reasons, I do not believe that the majority opinion has demonstrated adequate authority for its conclusion that the insanity defense is not required by Fourteenth Amendment due process guarantees of the United States Constitution.

The next logical question to be answered is whether there is adequate authority to conclude that the defense is required by due process.

The test of due process has been variously stated over the years. In *Hebert v. Louisiana*, 272 U.S. 312, 316-17, 47 S.Ct. 103, 104, 71 L.Ed. 270 (1926), the United States Supreme Court held that due process requires that state action to be "consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions and not infrequently are designated as `law of the land.'"

In *Palko v. Connecticut*, 302 U.S. 319, 324-25, 58 S.Ct. 149, 151-52, 82 L.Ed. 288 (1937), Justice Cardozo wrote that those particulars of the Bill of Rights which must be held to apply as against the States through the Fourteenth Amendment Due Process Clause are those which "have been found to be implicit in the concept of ordered liberty, ..." such that "a fair and enlightened system of justice would be impossible without them."

In another case, Cardozo further explained the implications of the phrase "due process" in holding that the state:

> [I]s free to regulate the procedure of its courts in accordance with its own conception of policy and fairness, unless in so doing it offends some principle of justice so rooted in the traditions and conscience
928 *928 of our people as to be ranked as fundamental.

Snyder, 291 U.S. at 105, 54 S.Ct. at 332.

Malinski v. New York, 324 U.S. 401, 413-14, 65 S.Ct. 781, 787, 89 L.Ed. 1029 (1945) (Frankfurter, J., concurring), held that:

> The safeguards of "due process of law" ... summarize the history of freedom of English-speaking peoples running back to the Magna Carta and reflected in the constitutional development of our people.... [Due process of law] expresses a demand for civilized standards of law.

Justice Frankfurter went on to state that:

> "Judicial review of that guaranty of the Fourteenth Amendment inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses... . The judicial judgment in applying the Due Process Clause must move within the limits of accepted notions of justice... ."

Id., 324 U.S. at 416-17, 65 S.Ct. at 789.

Duncan v. Louisiana, 391 U.S. 145, 149, 88 S.Ct. 1444, 1447, 20 L.Ed.2d 491 (1968), in evaluating the place of trial by jury in the Due Process Clause, delineated due process rights as those which are "fundamental to the American scheme of justice, ..."

The underlying theme of these various formulations of "due process" is a sense of historical precedent upon which American institutions were founded and our continuing legal traditions. Thus, the proper focus in evaluating the place of a particular doctrine in the concept of due process is the pervasiveness of the doctrine in the history of the common law. A review of the extensive history of the insanity defense in the law of England and the United States leads to the conclusion that due process does require the availability of that defense to criminal defendants.

The insanity defense existed as an excuse to crime by the time of the reign of Edward I (1272-1307). III Holdsworth, *A History of English Law,* 371 (1908) (hereinafter III Holdsworth); Glueck, *Mental Disorder and the Criminal Law,* 125 (1927) (hereinafter Glueck); Biggs, *The Guilty Mind,* 83 (1955) (hereinafter Biggs). During the reign of Edward II (1307-1321), there was a shift toward recognizing insanity as a complete defense, which was perfected by the time of the ascension of Edward III to the throne (1326-1327). *Id.* The early form of the defense was a special verdict of madness, which entitled the defendant to acquittal by the King. *Id.*

Bracton, writing in approximately 1265 A.D., is praised as the first commentator to compile "by far the most comprehensive ... account of the law of England, written from the very origin of the system down to Blackstone's *Commentaries, ...*" Stephen, *History of the Criminal Law of England,* 199 (1883). He is credited with supplying two of the earliest definitions of insanity in the context of civil liability, the "knowledge" test and the "wild beast" test, which later influenced the conceptual evolution of the criminal law: "A `madman' (*furious*), he said, is one who does not know what he is doing, who lacks in mind and reason (*animo et ratione*), and who is not far removed from the brutes (*et non multum distat a brutis*)." Glueck at 126, quoting *De Legibus et Consuetudinibus Angliae,* (Sir Travers Twiss, ed. 1878). Although this quotation is not made in the context of criminal responsibility, his words were widely used in other writings and judicial opinions. Biggs at 83.

By 1581, the lack of criminal responsibility of the insane appears to be well established, for in that year a standard reference book by William Lambard was printed, and was reprinted at least seven times before 1610, which set forth a test of criminal responsibility to be applied by the courts:

> If a mad man or a naturall foole, or a lunatike in the time of his lunacie, or a childe y apparently hath no knowledge of good nor euil do kil a ma[n], this is no felonious acte, nor anything forfeited by it ... for they
> 929 canot be said to haue any *929 understanding wil. But if upo[n] examinatio[n] it fal out, y they knew what they did, & [that] it was ill, the[n] seemeth it to be otherwise.

Biggs at 83-84, quoting Lambard, *Eirenarcha or of the Office of the Justices of the Peace* at Cap. 21.218.

Fitzherbert was another commentator who offered a test of insanity in the early sixteenth century, defining an insane person as "such a person who cannot account or number twenty pence, nor can tell who was his father or mother, nor

how old he is, etc., so as it may appear he hath no understanding of reason what shall be for his profit, or what for his loss." Glueck at 128.

Coke, in a commentary on the works of Littleton, wrote that:

> [I]n criminal causes, as felonie, etc., the act and wrong of a madman shall not bee imputed to him, for that in those causes, *actus non facit reum, nisi mens sit rea,* and he is *amens (id est), sin mente,* without his mind or discretion; and *furious solo furore punitir,* a madman is only punished by his madnesse.

Glueck, at 130, quoting Coke, *Littleton,* Bk. II, § 247b.

In 1630 another standard reference work was published for use by Justices of the peace. Although it was best known as the definitive legal authority on witchcraft, it also iterated the principle that:

> If one that is *Non compos mentis,* or an ideot, kill a man, this is no felonie; for they haue not knowledge of good or euill nor can have a felonious intent, nor a will or minde to do harme: ...

Biggs at 87, quoting Dalton, *The Country Justice,* 244 (1630).

Hale (1609-1676), who served as Lord Chief Justice of the Court of the King's Bench, is credited with the advocating a rational approach to insanity for the first time in English law by elucidating the relationship of insanity to the "ethical fundamentals of the criminal law":

> Man is naturally endowed with these two faculties, understanding and liberty of will, and therefore is a subject properly capable of a law properly so called, and consequently obnoxious to guilt and punishment for the violation of that law, which in respect of these two great faculties he hath a capacity to obey: The consent of the will is that, which renders human actions either commendable or culpable; as where there is no law, there is no transgression, so regularly where there is no will to commit an offense, there can be no transgression, or just reason to incur the penalty or sanction of that law instituted for the punishment of crimes or offenses. *And, because the liberty or choice of the will presupposeth an act of the understanding to know the thing or action chosen by the will, it follows that, where there is a total defect of the understanding, there is no free act of the will on the choice of things or actions.*

Hale, *Pleas of the Crown,* Vol. I, pp. 13, 15, quoted in Glueck at 132. (emphasis added).

Hale then proceeded to discuss the definition of insanity, classifying it as an accidental defect which may disprove criminal intent. He set forth the test of Fitzherbert, the so-called "twenty pence" test, but concludes that although pre-defined tests may provide evidence of insanity, it is ultimately a question for the jury as to whether a defendant is too mentally ill to be found culpable for criminal acts. It is this passage which causes Glueck to credit Hale with enlightenment on the issue, even though the remainder of Hale's discussion is hampered by an understanding of psychology rooted in superstition and scientific ignorance. For example, Hale distinguishes between permanent and temporary insanity, defining the latter as that type of insanity which is influenced by the phases of the moon.

Hawkins was the next significant commentator on the law of insanity, writing in the late eighteenth century. He wrote that, "[t]he Guilt of offending against any Law whatsoever, necessarily supporting a wilful disobedience, can never justly be imputed to those who are either uncapable of understanding it, or of conforming themselves to it:" Hawkins, *A*
930 *Treatise of the Pleas of the Crown* Vol. I, p. 1 (1724). *930 Hawkins proceeded to elaborate a test for criminal responsibility which heavily influenced the development of the "right-wrong" test still utilized today. He states: "Those who are under a natural Disability of distinguishing between Good and Evil, as Infants under the Age of Discretion, Ideots and Lunaticks, are not punishable by criminal Prosecution whatsoever." Hawkins at p. 2.

In addition to the records created by the early commentators, there is also recorded case law on the subject. In *Rex v. Arnold*, 16 How.St.Tr. 695 (1724), there was evidence to show that the defendant's act was the result of an insane delusion. Judge Tracy's charge to the jury in that case provided precedent for the use of the "wild beast" test, although Glueck points out that the phrase was only one element of a lengthy instruction which set forth many different formulations of the issue. The instruction was as follows:

> If the man be deprived of his reason, and consequently of his intention, he cannot be guilty. ... . It is not every kind of frantic humor or something unaccountable in a man's actions, that points him out to be such a madman as is to be exempted from punishment; it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast, such a one is never the object of punishment. I must leave it to your consideration, whether the condition this man was in, as it is represented to you on one side, or the other, doth shew a man, who knew what he was doing, and was able to distinguish whether he was doing good or evil, and understood what he did... . If you believe he was sensible and had the use of his reason, and understood what he did, then he is not within the exemptions of the law, but is subject to punishment as any other person.

Id. at 764-65, quoted in Glueck at 139, note 2.

In *Earl Ferrer's Case*, 19 How.St.Tr. 886, 948 (1760), the prosecution accepted the notion of an insanity defense in a trial before the House of Lords, arguing for the "right and wrong" test as the appropriate standard. That standard later gained wide acceptance, though other definitions continued to be aired. In *Hadfields Case*, 27 How.St.Tr. 1282 (1800), for example, it was successfully argued by Lord Erskine that the connection of the criminal act to a delusion suffered by the defendant should result in acquittal. Twelve years later, Lord Chief Justice Mansfield in *Bellingham's Case,* cited in *Collinson on Lunacy* at 671 (1812), quoted in Biggs at 90-91, stated the law of insanity as follows:

> If a man were deprived of all power of reasoning, so as not to be able to distinguish whether it was right or wrong to commit the most wicked transaction, he could not certainly do an act against the law. Such a man, so destitute of all power of judgment, could have no intention at all. In order to support this defense, however, it ought to be proved by the most distinct and unquestionable evidence, that the criminal was incapable of judging between right and wrong. It must, in fact, be proven beyond all doubt, that at the time he committed the atrocious act with which he stood charged, he did not consider that murder was a crime against the laws of God and nature.

This instruction is substantially similar to that given later in *Offord's Case,* 5 Car. and P. 168 (1831), cited in Glueck at 151.

And in *Regina v. Oxford,* 9 Car. and P. 525 (1840), the trial judge charged the jury that:

> The question is whether the prisoner was labouring under that species of insanity which satisfies you that he was quite unaware of the nature, character and consequences of the act he was committing, or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act, that it was a crime.

Id. at 537.

Elsewhere, the jury was charged that it should inquire "whether the evidence given proves a disease of the mind as of a
931 person *931 quite incapable of distinguishing right from wrong." *Id.* at 547.

In 1812 two other cases were tried in England, *Parker's Case,* and *Bowler's Case.* In *Bowler's Case,* Justice LeBlanc charged the jury that:

> [I]t was for them to determine whether the Prisoner when he committed the offence ... was or was not incapable of distinguishing right from wrong, or under the influence of any illusion in respect of the prosecutor which rendered his mind at the moment insensible of the nature of the act he was about to commit, since in that case he would not be legally responsible for his conduct.

Biggs at 92, quoting *Collinson on Lunacy* at 673.

American case law followed the development of the English cases and commentators in the rare instances that insanity was pleaded as a defense to crimes up until the holding in *M'Naughten's Case*, 8 Eng.Rep. 718 (H.L. 1843). Glueck at 154, notes two early American cases which substantially represent the law as it existed in the United States up to that time, *In re Clark* 1 City Hall Recorder (N.Y.) 176 (1816), and *In re Ball*, 2 City Hall Recorder (N.Y.) 85 (1817). Glueck also cites *United States v. Clarke,* 25 F.Cas. (14811) 454, 2 Cranch. C.C. 158 (1818); and *Pienovi's Case,* 3 City H. Recorder (N.Y.) 123 (1818) as other early United States cases involving insanity. Glueck at 156.

The jury in *In re Clark* was instructed pursuant to the "right and wrong" concept of insanity that:

> [I]t is not every degree of madness or insanity, which abridges the responsibility attached to the commission of a crime. — In that species of madness, where the prisoner has lucid intervals; if during those intervals, and when capable of distinguishing good from evil, he perpetrates an offence, he is responsible. The principal subject of inquiry, therefore, in this case, is, whether the prisoner, at the time he committed this offence, had sufficient capacity to discern good from evil. — Should the jury believe he had such capacity, it would be their duty to find him guilty.

Quoted in Glueck at 154.

And in *In re Ball,* the jury was likewise instructed that upon the defense of insanity, "[t]he only question on the part of this case is, whether, at the time he committed the offence, he was capable of distinguishing good from evil?" *Id.* at 155.

At last, in 1843, the case of *M'Naughten* was decided, leaving an indelible mark upon the law of insanity in both England and the United States. Due to public outcry resulting from the fame of the victim and the acquittal of the defendant in that case, the House of Lords requested an opinion from the Justices on the state of the insanity defense in the law. Because of the hypothetical nature of the questions put to the Justices by the House of Lords, the precedential authority of their answers is in doubt. For the same reason, the judges were cautious in framing their answers, with the result that their conclusions are vague and contradictory. Biggs at 107-08. Nevertheless, the answers represented the opinion of England's justices on the contemporary state of the law of insanity, and the formulation of the insanity defense since 1843 in England and the United States is founded upon those answers. Stephen, *History of the Criminal Law of England* 154 (1883). Thus, the first uniform test of insanity is derived from answers to the question of how the issue of insanity ought to be presented to a jury; the response was that "it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong." Answers of the Justices to Questions II and III, quoted in Glueck at 179.

There have been many cases in early American legal history addressing the issue of insanity as a criminal defense
932 since *M'Naughten,* cases which are better characterized by their inconsistency than any *932 degree of uniformity.[10] However, the appropriateness of the defense has rarely been questioned, and only a few American jurisdictions have ever attempted to eliminate the concept from their criminal justice systems.

There were three legislative attempts to abolish the insanity defense between 1910 and 1931. Each of those legislative enactments were overturned by the respective state Supreme Courts. The Montana Supreme Court, in its recent decision upholding the 1979 abolition of the defense in Montana, effortlessly distinguished those three cases because "

[t]hey interpret statutes that precluded *any* trial testimony of mental condition, including that which would cast doubt on the defendant's state of mind at the time he committed the charged offense." Korell, 213 Mont. at 329, 690 P.2d at 999 (emphasis in original). The *Korell* court felt that Montana's allowance for psychiatric evidence going to the issue of *mens rea* at trial removed any precedential value from those three prior cases. However, I believe that two of those cases have greater applicability to the issues faced in *Korell* and by this Court than the Montana Supreme Court would allow.

In State v. Strasburg, 60 Wash. 106, 110 P. 1020 (1910), the statute at issue did not explicitly forbid any psychiatric evidence going to the issue of *mens rea.* Rather, the statute merely provided that no evidence could be admitted to
933 prove that at *933 the time of the commission of the crime the defendant "was unable, by reason of his insanity, idiocy or imbecility, to comprehend the nature and quality of the act committed, or to understand that it was wrong; or that he was afflicted with a morbid propensity to commit prohibited acts." Strasburg, 60 Wash. at 111-12, 110 P. at 1021.

In analyzing the statute and concluding that it was an unconstitutional deprivation of the right to jury trial, the *Strasburg* Court considered the test of what constituted the right to jury trial as that which "existed in the territory at the time when the Constitution was adopted." Strasburg, 60 Wash. at 115, 110 P. at 1022. In applying that test, the Court went through a lengthy analysis of the state of the insanity defense in the history of the common law. Some of the early authorities cited discussing the insanity defense, as noted by the *Korell* Court, could equally apply to the parallel concept of *mens rea.* However, there are other authorities cited in *Strasburg* which speak to the question of whether, in having the intent to commit an act, the defendant had the concurrent ability to distinguish between right and wrong, or the ability to control the action, such that "he is not a responsible moral agent and is not punishable for criminal acts." *Id.,* citing Commonwealth v. Rogers, 48 Mass. (7 Metc.) 500, 41 Am.Dec. 458 (1944).

The Court concluded that "it seems too plain for argument that one accused of a crime had the right prior to and at the time of the adoption of our Constitution to show as a fact in his defense that he was insane when he committed the act charged against him." Therefore, I do not believe that the rationale of the *Strasburg* holding may be interpreted as need for *mens rea* alone.

Sinclair v. State, 161 Miss. 142, 132 So. 581 (1931), also speaks of insanity in terms broader than mere intent:

> Insanity to the extent that the reason is totally destroyed so as to prevent the insane person from knowing right from wrong, or the nature and probable consequence of his act, has always been a complete defense to all crimes from the earliest ages of the common law. The common law proceeds upon an idea that before there can be a crime there must be an intelligence capable of comprehending the act prohibited, and the probable consequence of the act, and that the act is wrong. Shall such an insane person be branded with the stigma of felony when he was wholly unable to comprehend the nature and quality of the act designated, and is it competent for the Legislature to make an act a felony and brand the person with the stigma of disgrace under such circumstances?

Sinclair, 161 Miss. at 158, 132 So. at 583 (Ethridge, J., specially concurring).

In analyzing the statute in question under the due process requirements of the federal Constitution, the Court found several deficiencies, only one of which was the fact that the statute had the effect of presuming the element of intent in a criminal trial. The Court also found that there was no rational relationship to any legitimate government purpose in abolishing the defense. In addition, the Court concluded that the law violated due process because it had procedural deficiencies. Under the statute a judge had the power to make an unappealable determination (of insanity after conviction) without a hearing or any burden of proof. This decision would determine whether the convicted defendant would be incarcerated in a penitentiary or in a facility for the mentally ill. For all these reasons the statute was held to violate due process.

And in applying the principles of the Eighth Amendment's prohibition against cruel and unusual punishment, the *Sinclair*

Court noted the longstanding and fundamental nature of the insanity defense throughout the common law in the strongest terms. *Id.* at 584, 132 So. 581.

The third instance of attempted abolition of the insanity defense occurred in Louisiana, and was overturned in *State v. Lange*, 168 La. 958, 123 So. 639 (1929). In that case, the statute was struck down on state constitutional grounds. That decision is therefore not relevant to the federal constitutional issue we face today.

934 *934 Another, albeit less authoritative, test of whether a particular doctrine is "implicit in the concept of ordered liberty" other than the history of the legal concept, is the unanimity with which the doctrine is adopted among American jurisdictions. With the exception of the three attempted legislative abolitions of the insanity defense noted above, and the recent rejections of the defense in Montana (1979), Idaho (1982) and Utah (1983), the insanity defense has been universally accepted in all American jurisdictions throughout this nation's history. These legislative judgments are not the sole test of which concepts are "fundamental" to our system of jurisprudence, but as the Supreme Court has noted in the context of judging "evolving standards of decency" under the Eighth Amendment, such legislation is "an objective indicator of contemporary values upon which we can rely." *Penry v. Lynaugh*, 492 U.S. ___, ___, 109 S.Ct. 2934, 2955, 106 L.Ed.2d 256 (1989). There has not been universal acceptance of one particular test of insanity, and the burden of proof of the defense is variously allocated in different jurisdictions. See *American Bar Association Policy on the Insanity Defense,* Standing Committee of Association Standards for Criminal Justice and Commission on the Mentally Disabled (February 9, 1983), Appendix One. However, this fact is adequately accounted for by the difficult and changing nature of the subject matter and the inherent authority of the States to define their criminal laws as they see fit within the limits of the federal Constitution.

As the United States Supreme Court has not addressed this issue directly, I must also resort to indirect analogies from that Court's decisions in order to support the contention that due process requires an insanity defense in criminal cases.

In *Penry,* the issue was whether the Eighth Amendment rule against cruel and unusual punishment prohibited the execution of a mentally retarded defendant. In the course of its opinion, the Court examined the treatment of the retarded and insane in the common law, and concluded that the early authorities which formed the foundation of the modern insanity defense, including those cited above, constituted a "common law prohibition against punishing `idiots' for their crimes." *Id.,* 492 U.S. at ___, 109 S.Ct. at 2954. Nevertheless, the Court ultimately concluded that there was no bar to the execution of Penry. The central rationale was that there were other screening mechanisms in place in the criminal justice system which would measure the mental competence and related culpability of the accused. The Court reasoned that "[b]ecause of the protections afforded by the insanity defense today, such a person is not likely to be convicted or face the prospect of punishment." *Id.* Thus, if the trier of fact rejected an insanity defense as to the defendant's mental condition at the time of the crime, which would constitute an implicit finding of culpability, then there was no reason to distinguish the defendant with a lesser intelligence quotient from other defendants in defining an applicable range of sentencing alternatives. The rule of *Penry* cannot apply in jurisdictions that lack an insanity defense; otherwise there would exist the danger of imposing capital punishment against the mentally incompetent, in violation of the Eighth Amendment.

Also relevant is the Supreme Court case of *Leland v. Oregon*. That case, in conjunction with the holdings of *In re Winship* and *Martin v. Ohio,* belie the argument advanced by the Montana Supreme Court in *Korell* that due process is satisfied as long as some element of *mens rea* is preserved in the process of the abolition of the insanity defense. Those three cases, read together, establish that the issues of *mens rea* and insanity are not one and the same.

As noted previously, the United States Supreme Court in *Winship* held that due process requires the prosecution to prove every element of the crime charged beyond a reasonable doubt. However, that holding would not apply to affirmative defenses, as they are not considered to be an element of the crime. Rather, affirmative defenses are generally categorized as excuse or justification for the crime, so that even though all of the elements of the crime be

935 proven, *935 the accused may avoid conviction. In *Leland,* the Court characterized the issue of insanity as a defense in the course of holding that the burden of proof to prove insanity could be placed on the defendant. *Patterson* and *Martin* confirmed this interpretation of *Winship*.

Under the rules enunciated in those cases, if the insanity defense is no more than an issue of whether the defendant entertained the necessary *mens rea* to commit the crime, then the holding of *Leland* must fall, and the prosecution must bear the burden of proving the sanity of every defendant. For *Leland* and *Winship* to exist in harmony under such an interpretation, it would have to be concluded that the state could define all crimes in such a way as to eliminate the requirement of *mens rea* as an element of the crime, characterize a lack of intent as an affirmative defense, and thus shift the burden of proof to the defense to prove that there was no intent to commit the act charged. It is my belief that such a reading of the Supreme Court's holdings in this area is too strained to merit serious consideration.

The idea that due process is satisfied by allowing the defendant to produce psychiatric evidence in order to negate criminal intent ignores the historical rationale for the defense. "The issue of criminal blameworthiness merits deeper inquiry [than whether the defendant harbored the requisite *mens rea* for the offense] because it implies a certain *quality* of knowledge and intent transcending a minimal awareness and purposefulness." ABA Criminal Justice Mental Health Standards at 337 (1984) (emphasis in original).

This idea is supported by the historical development of the insanity defense in conjunction with the parallel evolution of *mens rea*. The development of the law of homicide is a case in point. While in the 13th century insanity made one eligible for royal pardon for the offense of homicide, it was not until the year 1389 that there was acknowledgement of differing levels of culpability in homicide. In that year the decree of 13 Richard II, declaring killing done with "malice prepense" ineligible for royal pardon, constituted "the first statutory recognition of the expression `malice aforethought.'" Sayre, *Mens Rea,* 45 Harvard L.Rev. 974, 996 (1931). It was not until the period between 1496-1547 that homicides were classified under the law according to differing levels of culpability. *Id.* at 996-97.

There would have been no need for the development of the insanity defense if it had been merely a variant formulation of the *mens rea* doctrine. While *mens rea* is concerned with the guilty mind, the defense of insanity questions whether the guilty mind with which the act is done is a product of voluntary and rational choice. "The conception of blameworthiness or moral guilt is necessarily based upon a free mind voluntarily choosing evil rather than good; there can be no criminality in the sense of moral shortcoming if there is no freedom of choice or normality of will capable of exercising a free choice." *Id.* at 1004.

Based upon all of the foregoing authority, I must dissent from the majority's conclusion that the abolition of the insanity defense does not amount to the deprivation of due process under the United States Constitution. As I have concluded that the federal Constitution requires the availability of the insanity defense, I do not address the question of the status of the defense under the Idaho State Constitution.

[1] I.C. § 18-207 reads as follows:

18-207. Mental condition not a defense — Provision for treatment during incarceration — Reception of evidence. — (a) Mental condition shall not be a defense to any charge of criminal conduct.

(b) If by the provisions of section 19-2523, Idaho Code, the court finds that one convicted of crime suffers from any mental condition requiring treatment, such person shall be committed to the board of correction or such city or county official as provided by law for placement in an appropriate facility for treatment, having regard for such conditions of security as the case may require. In the event a sentence of incarceration has been imposed, the defendant shall receive treatment in a facility which provides for incarceration or less restrictive confinement. In the event that a course of treatment thus commenced shall be concluded prior to the expiration of the sentence imposed, the offender shall remain liable for the remainder of such sentence, but shall have credit for time incarcerated for treatment.

(c) Nothing herein is intended to prevent the admission of expert evidence on the issues of mens rea or any state of mind which is

an element of the offense, subject to the rules of evidence.

[2] The State argues that Searcy did not raise the issue before the trial court, and therefore it was waived. We observe, however, that the defense presented testimony from a psychiatric expert, Dr. Kenneth Ash, concerning alleged facts which may have some bearing on Searcy's claim that he was mentally nonresponsible for the killing of Rice. We conclude that Searcy arguably raised this issue before the trial court and thus it is preserved. However, we reject Searcy's claim. As discussed hereafter, there is no due process right under either the United States or Idaho Constitution to present such a defense. Rather, it is the prerogative of the legislature to decide (1) whether such a defense is available, and (2) what form such a defense will take.

[3] One of the earliest formulations of the insanity defense and one still in use in as many as sixteen states is the *M'Naghten* rule. This rule is stated as follows:

[T]o establish a defense on the ground of insanity, it must be clearly proven that, at the time of the committing of the act, the party accused was labouring under such a defective reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.

M'Naghten's Case, 8 Eng.Rep. 718, 722 (1843).

Another test broadens the scope of the *M'Naghten* rule to include those who knew that their actions were wrong but who, as a result of a "disease of the mind," were unable to exercise control over their actions. This "irresistible impulse" test is used to supplement the *M'Naghten* rule in approximately five states.

Many states follow a variation of the American Law Institute (ALI) test which is a combination of the M'Naghten Rule and the "irresistible impulse" test. The ALI standard reads:

(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of the law.

(2) As used in this article, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

American Law Institute, Model Penal Code (Proposed Official Draft, 1962), § 4.01, at p. 74. Among those states which follow the ALI test, some favor the word "wrongfulness" instead of "criminality." Still others remove the word "substantial."

New Hampshire is the only state which follows the *Durham* rule or "product" test. As set forth in *Durham v. United States*, 214 F.2d 862, 874-875 (D.C. 1954), "a defendant is not criminally responsible if his unlawful act was a product of mental disease or defect."

Three other states have adopted unique standards drawing in part from the cognitive right-wrong language of the *M'Naghten* rule and the "irresistible impulse" test while adding other considerations, such as "prevailing community standards" and "legal and moral aspects of responsibility."

See, generally, I. Keilitz & J.P. Fulton, *The Insanity Defense and its Alternatives: A Guide for Policymakers,* Institute on Mental Disability and the Law, National Center for State Courts (October 1983).

[4] I.C. § 18-207(c) provides: "Nothing herein is intended to prevent the admission of expert evidence on the issues of mens rea or any state of mind which is an element of the offense, subject to the rules of evidence."

[5] Although the Court in *Powell* stated that "this court has never articulated a general constitutional doctrine of *mens rea*," the Idaho state statutory scheme retains on the prosecution the burden of proving the requisite state of mind, *i.e., mens rea,* and the other essential elements of the crime beyond a reasonable doubt, *State v. Beam*, 109 Idaho 616, 710 P.2d 526 (1985).

[6] Three early state court decisions holding that statutes which abolish the insanity defense are unconstitutional are distinguishable because those decisions had involved state statutes which precluded any trial testimony of mental condition, including trial testimony which would have rebutted the state's evidence of the defendant's state of mind, *i.e., mens rea,* at the time he committed the offense. Those cases are *State v. Lange*, 168 La. 958, 123 So. 639 (1929); *Sinclair v. State*, 161 Miss. 142, 132 So. 581 (1931); and *State v. Strasburg*, 60 Wash. 106, 110 P. 1020 (1910).

[7] I.C. § 19-5306 provides in pertinent part:

(1) Upon request, each victim of a felony offense shall be:

.....

(b) Consulted by the presentence investigator during preparation of the presentence report and have included in that report a statement of the impact which the defendant's criminal conduct has upon the victim;

(c) Afforded the opportunity to address under oath, the court at sentencing;

... .

[8] I.C.R. 32 provides in pertinent part:

.....

(b) Contents of presentence report... . [W]henever a full presentence report is ordered, it shall contain the following elements:

(1) The description of the situation surrounding the criminal activity with which the defendant has been charged, including the defendant's version of the criminal act and his explanation for the act, the arresting officers's version or report of the offense, where available, *and the victim's version where relevant to the sentencing decision.*

... .

(Emphasis added.)

[9] I.C.R. 43(c)(4) provides that the defendant need not be present if the trial court reduces a sentence under I.C.R. 35 based on leniency and not because the court is correcting an invalid sentence. However, if the sentence is invalid, the presence of the defendant is mandated by our decision in *Lopez v. State, supra*. *See also* *State v. Money*, 109 Idaho 757, 710 P.2d 667 (Ct.App. 1985).

[10] Cases addressing the right and wrong test of insanity: *State v. Shippey*, 10 Minn. 223 (1865); *Flanagan v. People*, 52 N.Y. 467 (1873); *Cunningham v. State*, 56 Miss. 269 (1879); *Guiteau's Case*, 10 F. 161 (D.C. Cir.1882); *State v. Mowry*, 37 Kan. 369, 15 P. 282 (1887); *State v. Alexander*, 30 S.C. 74, 8 S.E. 440 (1889); *State v. Zorn*, 22 Or. 591, 30 P. 317 (1892); *State v. Harrison*, 36 W. Va. 729, 15 S.E. 982 (1892); *State v. O'Neil*, 51 Kan. 651, 33 P. 287 (1893); *State v. Hartley*, 22 Nev. 342, 40 P. 372 (1895); *Knights v. State*, 58 Neb. 225, 78 N.W. 508 (1899); *People v. Methever*, 132 Cal. 326, 64 P. 481 (1901); *Maas v. Territory*, 10 Okla. 714, 63 P. 960 (1900); *State v. Knight*, 95 Me. 467, 50 A. 276 (1901); *Schwartz v. State*, 65 Neb. 196, 91 N.W. 190 (1902); *People v. Silverman*, 181 N.Y. 235, 73 N.E. 980 (1905); *Turner v. Territory*, 15 Okla. 557, 82 P. 650 (1905); *State v. Wetter*, 11 Idaho 433, 83 P. 341 (1905); *People v. Willard*, 150 Cal. 543, 89 P. 124 (1907); *Duthey v. State*, 131 Wis. 178, 111 N.W. 222 (1907); *State v. Paulsgrove*, 203 Mo. 193, 101 S.W. 27 (1907); *Smith v. State*, 95 Miss. 786, 49 So. 945 (1909); *State v. Maioni*, 78 N.J.L. 339, 74 A. 526 (1909); *People v. Carlin*, 194 N.Y. 448, 87 N.E. 805 (1909); *State v. Brown*, 36 Utah 46, 102 P. 641 (1909); *State v. Craig*, 52 Wash. 66, 100 P. 167 (1909); *Oborn v. State*, 143 Wis. 249, 126 N.W. 737 (1910); *State v. Hassing*, 60 Or. 81, 118 P. 195 (1911); *State v. Jackson*, 87 S.C. 407, 69 S.E. 883 (1911); *State v. Riddle*, 245 Mo. 451, 150 S.W. 1044 (1912); *People v. Ashland*, 20 Cal. App. 168, 128 P. 798 (1912); *State v. English*, 164 N.C. 497, 80 S.E. 72 (1913); *People v. Harris*, 169 Cal. 53, 145 P. 520 (1914); *People v. Bundy*, 168 Cal. 777, 145 P. 537 (1914); *Bond v. State*, 129 Tenn. 75, 165 S.W. 229 (1914); *Perkins v. U.S.*, 228 F. 408 (1915); *State v. Anselmo*, 46 Utah 137, 148 P. 1071 (1915); *People v. Schmidt*, 216 N.Y. 324, 110 N.E. 945 (1915); *State v. Clancy*, 38 Nev. 181, 147 P. 449 (1915); *State v. Cooper*, 170 N.C. 719, 87 S.E. 50 (1915); *State v. Alie*, 82 W. Va. 601, 96 S.E. 1011 (1918); *Hall v. State*, 78 Fla. 420, 83 So. 513 (1919); *People v. Williams*, 184 Cal. 590, 194 P. 1019 (1920); *State v. Miller*, 225 S.W. 913 (Mo. 1920); *McNeill v. State*, 18 Okla. Crim. 1, 192 P. 256 (Okla. 1920); *State v. Bramlett*, 114 S.C. 389, 103 S.E. 755 (1920); *State v. Weagley*, 286 Mo. 677, 228 S.W. 817 (1921); *State v. Carrigan*, 94 N.J.L. 566, 111 A. 927 (1921); *Lautario v. State*, 23 Ariz. 15, 201 P. 91 (1921); *Kraus v. State*, 108 Neb. 331, 187 N.W. 895 (1922); *Swann v. State*, 92 Tex.Crim.Rep. 153, 242 S.W. 735 (1922); *Craven v. State*, 93 Tex. Crim.Rep. 328, 247 S.W. 515 (1923).

Cases addressing the "irresistible impulse" test: *Commonwealth v. Rogers*, 48 Mass. (7 Met.) 500 (1844); *Commonwealth v. Mosler*, 4 Pa. 264 (1846); *State v. Felter*, 25 Iowa 67 (1868); *Blackburn v. State*, 23 Ohio 146 (1872); *State v. Johnson*, 40 Conn. 136 (1873); *People v. Finley*, 38 Mich. 482 (1878); *Boswell v. State*, 63 Ala. 307 (1879); *Dejarnette v. Commonwealth*, 75 Va. 867 (1881); *Parsons v. State*, 81 Ala. 577, 2 So. 854 (1886); *Williams v. State*, 50 Ark. 511, 9 S.W. 5 (1888); *Taylor v. United States*, 7

App.D.C. 27 (1895); *Commonwealth v. Gilbert*, 165 Mass. 45, 42 N.E. 336 (1895); *Carr v. State*, 96 Ga. 284, 22 S.E. 570 (1895); *State v. Peel*, 23 Mont. 358, 59 P. 169 (1899); *State v. McCullough*, 114 Iowa 532, 87 N.W. 503 (1901); *Doherty v. State*, 73 Vt. 380, 50 A. 1113 (1901); *State v. Jack*, 20 Del. 470, 58 A. 833 (1903); *State v. McGruder*, 125 Iowa 741, 101 N.W. 646 (1904); *State v. Lyons*, 113 La. 959, 37 So. 890 (1904); *Territory v. Kennedy*, 15 N.M. 556, 110 P. 854 (1910); *Hall v. Commonwealth*, 155 Ky. 541, 159 S.W. 1155 (1913); *Ryan v. People*, 60 Colo. 425, 153 P. 756 (1915); *Flanders v. State*, 24 Wyo. 81, 156 P. 39 (1916); *People v. Lowhone*, 292 Ill. 32, 126 N.E. 620 (1920); *Morgan v. State*, 190 Ind. 411, 130 N.E. 528 (1921).

See also *State v. Pike*, 49 N.H. 399 (1870); *Hardy v. Merrill*, 56 N.H. 227 (1875).

THE LAW OFFICES OF
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January 9, 2018

Lieutenant Jonathan Clark (#8838)
Clark County Detention Center
330 South Casino Center
Las Vegas, NV 89101
ccdc@lvmpd.com

Via Email and US Mail

Re: **Robert Brown, ID# 6006120**
Property

Dear Lieutenant Clark,

Please be advised that I represent Mr. Robert Brown (inmate # 6006120) who is currently pending trial and housed at the Clark County Detention Center. Mr. Brown has been incarcerated at the facility for almost four (4) years and has had little to no disciplinary issues during that time. In fact, he has been housed in a minimal security setting within the facility and otherwise recognized for his good behavior. However, due to a recent incident, Robert received a write-up. In the process, his property was removed from his possession. It is my understanding that he has submitted numerous requests/grievances in an attempt to have his property returned. However, to date, he has not received most of his property. Mr. Brown is very involved in the preparation of his case and has a significant amount of legal discovery and research, as well as reading materials that he is requesting be returned to him. Duplicating these materials would be time consuming and costly to the County.

I am writing in an attempt to try to facilitate the resolution of this matter and am hopeful that I can speak to you directly in this regard. I am of course available to meet you at the jail to discuss this issue or if you prefer, you can contact me by phone at my office number or directly on my cell at (702)682-8941.

Thank you in advance for your patience, prompt response, and cooperation in this matter. I look forward to hearing from you in the immediate future.

Sincerely,

Ivette Amelburu Maningo, Esq.

cc: Patricia Palm, Esq.
Robert Brown

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June 29, 2020

Lieutenant Jonathan Clark (#8838)
Clark County Detention Center
330 South Casino Center
Las Vegas, NV 89101
ccdc@lvmpd.com

Via Email and US Mail

Re: **Robert Brown, ID# 6006120**
Property

Dear Lieutenant Clark,

Please be advised that I represent Mr. Robert Brown (inmate # 6006120) who is currently pending trial on a capital case and is housed at the Clark County Detention Center.

Mr. Brown has a significant amount of discovery that he is reviewing to assist his team in his defense. As such, he has requested two (2) banker boxes so he can organize and maintain his discovery in. I was informed that I should address this issue with you. Please advise me of the process regarding ordering and paying for two (2) banker boxes for my client. You may email me or call on my office number or directly on my cell at (702)682-8941 any time. Of course, if you prefer, I am also available to meet you at the jail to discuss this process.

Thank you in advance for your prompt response and cooperation in this matter. I look forward to hearing from you in the immediate future.

Sincerely,

Ivette Amelburu Maningo, Esq.

cc: Abel Yanez, Esq.
Robert Brown

ICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ROBERT BROWN, Id No. 6006120, Defendant.	CASE NO. C-14-299234-1 DEPT. NO. XVII **SUBPOENA-CRIMINAL DUCES TECUM**

THE STATE OF NEVADA SENDS GREETINGS TO:

CLARK COUNTY DETENTION CENTER, CUSTODIAN OF RECORDS
330 SOUTH CASINO CENTER BLVD, LAS VEGAS, NV 89101

YOU ARE HEREBY COMMANDED, that all and singular, business and other excuses set aside, you appear for hearing and produce the following records on September 16, 2018 at 9:00 a.m.:

* * *ANY / ALL RECORDS TO INCLUDE KITES, DISCIPLINARY, CLASSIFICATION, AND VISITATION RECORDS FOR **ROBERT BROWN, Id.# 6006120**; Date of Birth: **12/24/1969**; SSN: **553-19-4516**; FROM THE DATE OF **JANUARY 2014 through PRESENT**.

In Lieu of appearing personally, you may comply with this subpoena by producing and furnishing said records to The Law Offices of Ivette Amelburu Maningo, 400 S. 4th St., Suite 500, Las Vegas, NV 89101 ***by September 13, 2019***.

If you fail to comply, you may be deemed guilty of contempt of Court and liable to pay up to a FIVE HUNDRED DOLLAR ($500.00) fine.

Dated this ____ day of _____ 2019.

The Law Offices of Ivette Amelburu Maningo

By _____

IVETTE AMELBURU MANINGO, ESQ.
Nevada Bar No. 7076
Court-Appointed Attorney for Defendant
400 S. 4th Street, #500
Las Vegas, NV 89101
Phone: (702) 793-4046; Fax: (844) 793-4046

****Please call Investigator Toby Tobaisson at 702-379-7387 when ready for pick up****

090919 14:24 DSD REC SUB

September 10, 2019

Ivette Amelburu Maningo, Esq.
400 S. 4th Street, #500
Las Vegas, NV 89101

Re: Robert Brown ID#6006120
C-14-299234-1

Dear Ivette:

The Las Vegas Metropolitan Police Department (LVMPD) Records Bureau is in receipt of your subpoena requesting any/all records. Your subpoena commands appearance and records to be produced to your law firm by September 13, 2019.

Please provide a copy of the order authorizing the subpoena for pre-trial production pursuant to NRS 174.335(3), as explained in the attached Justice Court and District Court Order.

If you have any further questions, please contact the LVMPD Office of General Counsel at (702) 828-3310.

Respectfully,

JOSEPH LOMBARDO, SHERIFF

By: _____

cc: Richard Scow
Chief Deputy District Attorney

Electronically Filed
11/22/2016 11:25:33 AM

CLERK OF THE COURT

ORDR
LIESL FREEDMAN
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Nevada Bar No. 005309
CHARLOTTE M. BIBLE
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Nevada State Bar No. 002751
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Attorneys for Las Vegas Metropolitan
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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff

vs.

[redacted]

Defendant.

Case No. C-16-317596-1
Dept. No. XXI

ORDER

This matter having come before the Court on October 20, 2016 on Defendant's Motion for an Order Directing LVMPD to Show Cause Why It Should Not be Held in Contempt of Court, Sarah K. Hawkins, Deputy Public Defender, and Nancy Lemcke, Deputy Public Defender, appearing on behalf of Defendant, [redacted] Jay Raman, Chief Deputy District Attorney, appearing on behalf of the State, and real party in interest, Las Vegas Metropolitan Police Department (LVMPD), represented by its counsel, Charlotte M. Bible, Assistant General Counsel, and the Court having considered all papers and pleadings on file in this matter and oral argument of counsel, the Court makes the following findings:

Defense counsel does not have the authority to subpoena records prior to trial, pre-trial discovery, without a Court order pursuant to NRS 174.335(3);

Defense counsel has authority to subpoena witnesses to a hearing, motion or trial and may direct the witnesses bring documents to the hearing, motion or trial;

The defense should obtain discovery from the prosecutor, but when defense counsel believes records are discoverable and the State does not comply with the defense counsel's request, defense counsel's remedy is to place a motion on calendar and obtain a Court order to subpoena records from a third party prior to trial;

A motion seeking an order from the Court to subpoena records from a third party must provide proof of the relevancy of the records or information sought;

LVMPD will not be held in contempt.

NOW THEREFORE, good cause appearing,

IT IS HEREBY ORDERED that Defendant's Motion for Order Directing LVMPD To Show Cause Why It Should Not Be Held In Contempt Of Court is denied.

IT IS FURTHER ORDERED that LVMPD will provide an affidavit verifying the records produced in response to Defendant's request for numerous event numbers concerning her client are all the records responsive to the request of Defendant.

DATED this 17th day of November 2016.

Valerie Adair
District Court Judge

Submitted by:

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

-vs-

ROBERT BROWN, JR.,

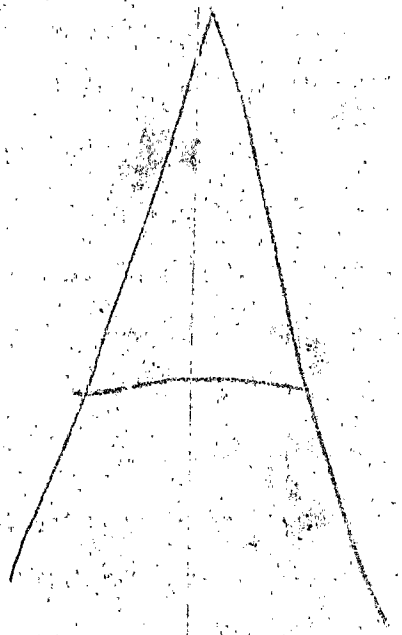
Defendant(s).

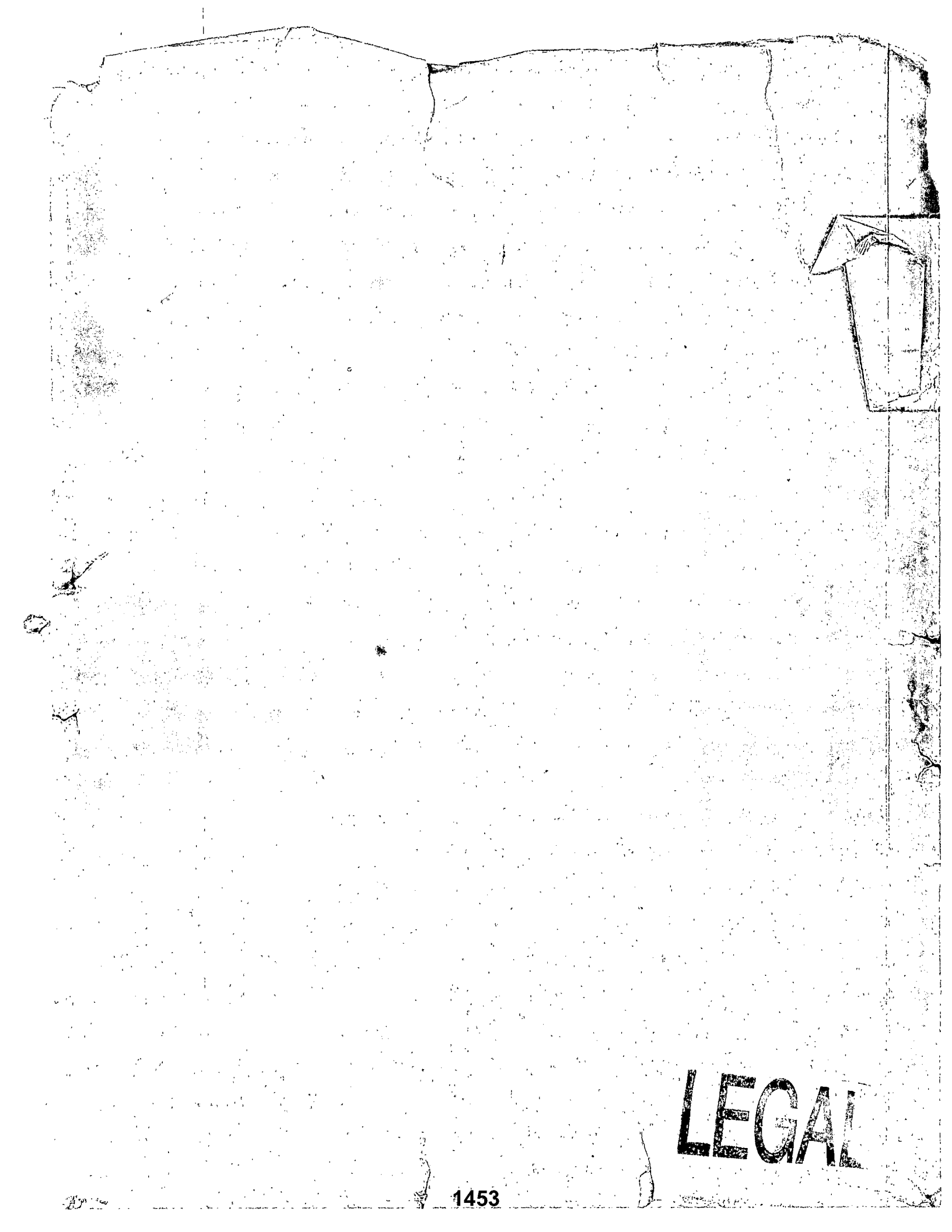
CASE NO. C299234-1

DEPT. NO. 6

First Draft Motion (copy)

Extended pp. 34, 39




LEGAL

CLARK v. NEVADA, 95 Nev. 24 (1979):

1) Presumption of sanity is *not* dispelled once evidence of insanity is introduced even if not rebutted by prosecution. See Daniels, infra

ARIZONA v. DANIELS, 106 Ariz. 497 (1970):

1) Statutory presumptions do *not* vanish as do presumptions of law or fact (citing Udall on Evidence, § 193).

BARNES v. U.S., 412 U.S. 837 (1973):

1) Presumptions of the existence of elements have no place in Constitutional framework. See Gainey, infra, 3; Tot, infra, 2

DAVIS v. U.S., 160 U.S. 469 (1985):

1) Burden is on prosecution that defendant belongs to presumed sane class capable of crime.

2) Presumption of sanity is justified by the general experience of mankind and public safety. See Lewis, supra, 2

ULSTER COUNTY v. ALLEN, 442 U.S. 140 (1979):

1) Mandatory presumptions tell a jury they must find elemental fact from basic fact. See Francis, supra, 2; Sandstrom, infra, Carella, infra

2) Presumptions curtail factfinders freedom to assess evidence independently.

3) Presumed fact must pass beyond a reasonable doubt test + Rational Connection test. See Leary, infra:

MULLANEY v. WILBUR, 421 U.S. 684 (1975):

1.) Difficulty in proving intent does not justify using a presumption to shift the burden of proof to defendant, since the burden of proving subjective element is already mitigated by the use of objective criterion. See Tot, infra, 1

TOT v. U.S., 319 U.S. 463 (1943):

1.) Use of burden-shifting presumption because defendant has better means of proof, not permitted.

2.) Due Process limits legislature making proof of basic fact, evidence of the existence of the ultimate fact presumed, upon which guilt is predicated. See Gainey, infra, 3

STATE v. BURALLI, 27 Nev. 41 (1903):

1.) In criminal cases, State must allege every element, and nothing can be presumed against a defendant. See Brackeen, supra

SANDSTROM v. MONTANA, 442 U.S. 510 (1979):

1.) Conclusive presumptions are technically not presumptions but the law's irrebuttable direction to a jury to find the element. See Lewis, supra, 1; Francis, supra, 1; VLANDIS, infra

VLANDIS v. KLINE, 412 U.S. 441 (1973):

1.) Attack on conclusive presumptions usually succeed, because they deny a right to a hearing. See Lewis, supra, 1; Francis, supra, 1

c.

U.S. v. GAINEY, 380 U.S. 63 (1965):

1.) Burden-shifting presumption that pressures a defendant to explain or testify, amounts to improper comment on a defendant's right to remain silent. See NV Constitution, Art. 1, Sec. 12

2.) Statutory presumptions are not interchangeable for all uses & purposes.

3.) It is not within the province of a legislature to declare anyone guilty or presumptively guilty of a crime. See Tot, supra, 2 Buralli, supra; Barnes, supra

4.) Congress is not authorized to *direct* juries as to what conclusions they may or must draw. See Sandstrom, supra, 1; *Francis*, supra, 2

CARELLA v. CALIFORNIA, 491 U.S. 263 (1989):

1.) Jury's failure to make any factual determination of elemental fact, condemned. See Sandstrom, supra, 1; Ulster, supra

NEDER v. U.S., 527 U.S. 1 (1999):

1.) In a criminal case, if a defendant fails to rebut or overthrow a presumption, there cannot be a directed verdict of guilt against him, as was permitted at common law. See NRS 47.230(2); Johnson, infra; *Marshall*, infra

WASHINGTON v. JACKSON, 112 Wn. 2d. 867 (1989):

1.) Stacking inferences not permitted. See Peoples Bank, infra

2.) Only one conclusion in presumption allowed.

HOLLIS v. NEVADA, 96 Nev. 207 (1980):

1. Presumption of essential element (intent) not harmless, violating NRS 47.230. See Morissette, infra.

MORISSETTE v. U.S., 342 U.S. 246 (1952):

1. Question of intent can never be a question of law (by a presumption), but is a question of fact for a jury to decide. See Johnson, infra

CONNETICUT v. JOHNSON, 460 U.S. 73 (1983):

1. Conclusive presumption of intent amounts to a directed verdict against the accused. See Neder, supra; Hollis, supra

MARSHALL v. NEVADA, 95 Nev. 802 (1979):

1. NRS 47.230(2) commands that a judge shall not direct a jury to find a presumed fact against the accused. See Gainey, supra, 4; Neder, supra

PEOPLES BANK OF SANFORD v. FIDELITY & DEPOSIT CO., 4 Supp. 379 (1933):

1. Another presumption cannot arise from 1st presumption without evidence to support the 1st. See Jackson, supra, 1

LEARY v. U.S., 395 U.S. 6 (1969):

1. Rational Connection test (for presumptions) between fact proved & ultimate fact presumed is by nature highly empirical. Ulster, supra, 3

e

EMPLRS INS. CO OF NEVADA v. DANIELS, 122 Nev. 1009 (2006):

1) Conclusive or irrebuttable presumptions cannot be overcome by any additional evidence or argument. See Francis, supra, 2

COMMONWEALTH v. DiFRANCESCO, 458 Pa. (1974):

1) Inferences and Presumptions cannot be employed to prove the elements of a crime.

Extended

1. SANITY: AN INDISPENSABLE, "UNWRITTEN" ELEMENT OF CRIME

Unbeknownst to much of society, it has long been the practice of legislatures to *omit* essential "common law" elements of crime from their statutes. Amongst other terms, "common law" means "unwritten law", which, because of its "immemorial usage", has been *deemed* by law to be "traditionally" an inherent part of the indispensable proof necessary for a prosecutor to prove, in order to constitute crime in all cases.

J.G. SUTHERLAND, Statutes and Statutory Construction (1891), § 239: "To discover," says Pollock, C.B., "the true construction of any particular clause of a statute, the first thing to be attended to no doubt, is the actual language of the clause itself, as introduced by the preamble; second the words or expressions which obviously are by design omitted." (quoting, ATTORNEY-GENERAL v. SILLEM, 2 H. & C. 515)

§ 355. "The mental elements of most crimes is marked by one of the words 'maliciously,' 'fraudulently,' 'negligently,' or 'knowingly;' but it is the general... practice of the legislature to leave unexpressed some of the mental elements of crime. In all cases whatever, competent age, sanity, and some degree of freedom from some kinds of coercion, are assumed to be essential to criminality, but I do not believe they are ever introduced into any statute by which any particular crime is defined..." id.

(a) As stated here, the "sanity" omitted ("not introduced into any statute") belongs to the required "mental elements" of crime (i.e, Mens Rea), as opposed to the "sanity" that is not an element of crime (i.e, legal sanity).

Although this term is bifurcated, the courts very often confuse this term without clarification. The reader is thus cautioned herein to discern which "sanity" is true or else misleading. To be clear, however, regarding the required, albeit traditionally omitted element by legislatures, notice the following:

RIVERA v. DELAWARE, 429 U.S. 877 (1976):
"Sanity is an ingredient of mens rea..."

U.S. v. BYERS, 1980 U.S. App. Lexis 11099:
"Sanity is a condition of criminal guilt." (citing U.S. v. MALCOLM, 475 F2d 420 (9th Cir. 1973))(dissent)

U.S. v. MALCOLM, 475 F.2d. 420 (1973 9th Cir.):
"... sanity at the time of the offense is one of the components of guilt when it involves a particular state of mind which is an essential element of the offense charged..." (opinion)

U.S. v. ALVAREZ, 519 F.2d. 1036 (1975 3rd Cir.):
"Sanity is a matter going to guilt or innocence..."

(Quoting, REGINA v. TOLSON, L.R. 23 Q.B. Div. 168 (1889)). See also, STAPLES v. U.S., 511 U.S. 600 (1994)(same, citing QUEEN v. TOLSON)

It is important to note, however, that about 11 years after Tolson, the D.C. legislature derogated from the scope of the unwritten common law element of "sound memory" (sanity), by quietly writing that element into its statute for 1st degree murder. See, 34 Cong. Rec. 3497 (1901); and D.C. Ann. § 22-2101. See also KEEDY, A Problem of First Degree Murder, Penn. L. Rev. 99 (1950), at n. 139-44

And no more than two (2) years after passing its amended statute, a D.C. court expressed a prior knowledge of the fact that the "sound memory" (sanity) element was already applicable when it stated that its amended code "is not a new or statutory definition of murder, but is simply the common law definition of that crime." HILL v. U.S., 22 App. D.C. 395 (1903) @

The common law elements of murder are given by Blackstone as follows:

"when a person, of sound memory and discretion, unlawfully killeth any reasonable creature in being and under the king's peace, with malice aforethought, either express or implied."
4 BLACKSTONE, Comm. § 195 (Quoting, COKE'S, 3 Inst. 47 (1644))

And although the unwritten common law element of sanity ("sound memory"), e.g., is not seen written in nearly

@ In Hill, the court also addressed whether an indictment ought to allege the "sound memory and discretion" elements against a charge that it would be fatally defective without them. See also, U.S. v. GREENE, 489 F.2d 1145 (1973)(counsel arguing indictment was fatally defective for omitting said elements) The court in Hill answered in the negative, without any attempt to elaborate. Needless to say, however, there exists plenty of case law affirming the cx's Hill's position, on the ground that 1st degree murder is a legal conclusion, and not the crime of murder itself. A party is deemed to have sufficient "notice" when the elements of murder are properly alleged. See, e.g., NEVADA v. MILLAIN (1867)

Thus counsel in Greene was not arguing from the grounds of statutory construction, nor from a Due Process violation in light of the rulings of In re Winship and Francis v. Franklin, or NY v. Patterson, which had not yet come down.

Although on point, the issues herein are distinguishable from the argument in Greene, regarding the omitted elements of "sound memory and discretion". Those elements were in the D.C. statute, and were for 1st degree murder. Here, however, those elements are not written anywhere in the murder statutes, but are being presumed (unconstitutionally established for murder).

all statutes, a D.C. court did not fail to impute to the entire United States, knowledge that such unwritten elements are nonetheless "understood" by learned judicial minds to be a part of the definition of murder statutes. Thus, after citing the common law elements of murder by Blackstone, supra, the court in Guiteau's case said:

"This is substantially the definition of the crime as known for several hundred years and as now understood in the United States (See Wharton, Crim. Law Vol. 2, Sec. 930)." U.S. v. GUITEAU, 1 Mackey 498 (1882)

See also, CHITTY, 2 Crim. Law, 724

Indeed, the Nevada Supreme Court has "understood" and applied the omitted common law elements to its incompletely defined murder statute. Notice the 5 underlined common law elements, which are not written as a part of its murder statute:

NEVADA v. THOMPSON, 12 Nev. 140 (1877): "Under the common law an unlawful killing of a reasonable[1] creature in being,[2] in the peace of the state,[3] with malice aforethought, by a person[4] of sound memory and discretion,[5] was murder, and the punishment therefor was death. Under the statute a

commission of the same act, in like manner and with the same intent, completes the crime of murder. [ ] The general definition of murder in the statute includes both degrees, the same as at common law[a] it included all cases of Felonious homicide..."

Cf. NEVADA v. MILLAIN, 3 Nev. 409 (1867); STATE v. BLACKWELL, 65 Nev. 405 (1948); STATE v. MUNIOS, 44 Nev. 353 (1921) (all applying Blackstone's definition); COLLMAN v. STATE, 116 Nev. 687 (2000) (stating that, in Nevada, its statutory crime of murder is "consistent with the common law"); and STATE v. HARTE, 124 Nev. 969 (2008) (State arguing for beginning with "the common law definition of murder" rather than the statutory "definition of first-degree murder")[a].

The acknowledgments and applications above are simply a compliance with rules of statutory construction or interpretation See, J.G. SUTHERLAND, supra, § 253; NRS 1.030 and 193.050; and LaFAVE, Principles of Criminal Law (2010), § 2.2 (L): Borrowed Statutes.

U.S. v. MELTON, 34 F3d 1021 (2003): "Where a state crime is defined by specific and identifiable common law elements, rather than by a specific statute, the common law definition of a crime serves as a functional equivalent of a statutory definition."

See also, In Re ESTATE of LEWIS, 39 Nev. 445 (1916) (citing, 2 LEWIS' Sutherland, Stat. Constr. 757, 2d Ed.); STATE v. CASTANEDA (2010).[b]

(a) J.G. SUTHERLAND, § 333:

"A judicial construction of a statute of long standing has force as a precedent from the presumption that the legislature is aware of it, and its silence a tacit admission that such construction is correct." (citing PHELAN v. JOHNSON, 7 Ir. L. at p. 535)

(b) MOSER v. STATE, 91 Nev. 809 (1975)

"Words in a statute having a well defined meaning at common law are presumed to be used in their common law sense unless it clearly appears that another meaning was intended

WILLIAMS v. CLARK, 118 Nev. 473 (2002)

"Finally, we generally presume that a statutory term has its common law meaning."

4.A

Notwithstanding the almost deafly silence at present, the Supreme Court of Nevada had long ago, in very clear and unambiguous terms, conceded to the fact that the unwritten, essential common law element of "sanity" must be proved by the prosecution. And this truth was still admitted, even *after* the objective "M'Naghten rule" test for legal "insanity" was officially adopted in *Lewis*.

NEVADA v. LEWIS, 20 Nev. 333 (1889): "It is undoubtedly true that it is incumbent upon the prosecution to prove every fact that is material, essential and necessary to constitute the crime... which of course includes the sanity of the defendant." See U.S. v. BYRD (1984), infra, p. 11

Such an admission coming from amongst jurisdictions that utilize a burden of persuasion-shifting "affirmative defense" ("insanity"), is nevertheless the same admission made from amongst other jurisdictions who, instead, utilize a burden of production-shifting "presumption of law" (i.e., "presumption of sanity").

DAVIS v. U.S., 160 U.S. 469 (1895): "Sanity is an ingredient in crime as essential as the overt act, and if sanity is wanting there can be no crime..." (citing CHASE v. PEOPLE, 40 Illinois, 352, 358; and HOPPS v. PEOPLE, 31 Illinois, 358, 392)

"Upon whom then must rest the burden of proving that the accused, whose life it is sought to take under the forms of law, belongs to a [sane] class capable of committing crime? On principle, it must rest upon those who affirm that he has committed the crime for which he is indicted." DAVIS, supra. (emphasis mine)

2. NO SHIFTING THE BURDEN OF PROOF TO A DEFENDANT WHEN "UNLAWFULNESS" or "MALICE" IS AN ELEMENT OF OFFENSE

Nevada law recognizes that, when a crime requires the elements of 'unlawfulness' or 'malice', the prosecutor must prove the absence of a justifiable or excusing defense.

YBARRA v. WOLFF, 662 F. Supp. 44 (1987): "Both the definition of murder and malice under Nevada law require the prosecutor to show that the killing was done unlawfully, and without justification, such as self-defense. See Kelso v. State, 95 Nev. 37 (1979). In Nevada, therefore, the state must also bear the burden on self-defense, in that unlawfulness is an element of the crime itself."

BARONE v. NEVADA, 109 Nev. 778 (1993): "Moreover, in HILL v. STATE, 98 Nev. 295 (1982), this court held that the burden of proving absence of justification or excuse for homicide resides with the state."

See also, PIERRE v. STATE, 96 Nev. 887 (1980) (citing, MULLANEY v. WILBUR, 421 U.S. 684 (1975))

The state's burden not only includes proving absence of justification and excuse, but also mitigation.

MORELAND, The Law of Homicide (1952), p. 58 at n. 20:

"In brief, malice in the legal sense imports (1) the absence of all elements of justification, excuse or substantial mitigation, and (2) the presence of either (a) an actual intent to cause the particular social harm of the same general nature, or (b) the wanton and wilful doing of an act with knowledge of the circumstances indicating awareness of a plain and strong likelihood that such harm may result." (quoting, PERKINS, Rationale of Mens Rea (1939), 52 Harv. L. Rev. 905, 917)

DUBBER, Criminal Law: Model Penal Code (2002), p. 190 at n. 14: "What's more, the Model Penal Code classifies (the absence of) justifications and excuses not merely as offense elements, but as *material* elements." (emphasis original) (citing, MPC §1.13(10))

Moreover, under any such appropriate defense, a prosecutor may not shift the burden of proof to a defendant.

KELSO v. NEVADA, 95 Nev. 37 (1979): "However, when the defense by its nature, disproves a fact essential to the offense as defined by the state, the burden may not be shifted to a defendant, since doing so dilutes the State's own due process burden of proving, beyond a reasonable doubt, every element of the crime charged." (citing, PATTERSON v. NEW YORK, 432 U.S. 197 (1977))

Under examination of at least two (2) similar defenses, it can be easily seen that, against due process, Nevada law shifts the burden to a defendant, after it presumptively establishes, as proof, the element of sanity.

The first is a "no defense" defense, and the second is a "non-sanity" defense. I do not say, "insanity", since that is taken for a specific type of objectively found "legal" condition of mind that a defendant claims to have had at the time of an offense. In this latter respect:

"Insanity is, strictly speaking, then, no longer an "affirmative defense." CHRISTIE & PYE, Criminal Presumptions, Duke L.J. 919, 936

Put another way, a defendant putting on either of the two (2) defenses mentioned, is not conceding to any element, which is the essence of an "affirmative" defense.

Yet, under no exceptions, Nevada law has made "insanity" a burden of persuasion-shifting "affirmative" defense, notwithstanding its own ruling in Kelso and Barone, supra.

CLARK v. NEVADA, 95 Nev. 24 (1979): "It is well settled in Nevada that insanity is an affirmative defense and that the accused is presumed to be sane absent proof of insanity by a preponderence of the evidence." [citations omitted]

@ MALLIN v. FARMERS INS. EXCH, 108 Nev. 788 (1992):

"The criminal law deals with a particular species of mental incapacity that has a meaning only when associated with the ends and purposes of the criminal law."

FINGER v. NEVADA, 117 Nev. 548 (2001):

"Legal insanity has a precise and extremely narrow definition in Nevada law."

To better understand Nevada's outrageous contempt, thus far, for constitutional fairness and due process, a clarification is due here, concerning what its cunning burden-shifting device has accomplished.

FIRST. Nevada's legislature *omits* the essential common law element of "sanity" from the sight of its statutes.

SECOND. It then utilizes an *abstract* general presumption of law (the "presumption of sanity"), to establish for the prosecution, *proof* of that element, even against *particular* circumstances in a case.

THIRD. It is careful *not* to mention the non-existence of, or the non-writing of the element of sanity, while converting it into an unconstitutional burden of persuasion-shifting "affirmative defense", which then requires a defendant — at peril of his life — to first *admit* to the act, which also violates the 5th Amendment right against self-incrimination.

These facts render Nevada's murder statute fatally defective under constitutional law and modern jurisprudence, by the use of two conflicting legal devices — one procedural, and the other evidentiary. See

3. AN UNCONSTITUTIONAL LEGAL DEVICE:

(a) PROCEDURAL: OMISSION & BURDEN SHIFT OF CRITICAL ELEMENT

(1.) THE CASE PRECEDENT OF PATTERSON v. NEW YORK

Since Nevada's admission that the unwritten element of sanity must be proved by a prosecutor, the Supreme Court of Nevada has since been deceptive about this understood fact.

See, e.g., ROGERS v. STATE, 101 Nev. 457 (1985)("sanity is not an element of an offense"). Cf. YBARRA v. STATE, 100 Nev. 167 (1984); and CLARK v. STATE, 95 Nev. 24 (1979).

It must be stated here, however, that the statements above are not based on any change in law regarding the required proof of the *mental* element of sanity" in all cases whatever." See, J.G. SUTHERLAND, supra, §355. Rather, it stems from the fact that Nevada law, like many others, have cleverly created another meaning out of the same term "sanity". See n. 9.A

U.S. v. BYRD, 834 F.2d. 145 (1987): "Willfulness is not contermius with the legal concept of insanity. Willfulness presumes some degree of sanity in common parlance. However, the affirmative defense of insanity has its own special meaning distinct from the use of the words "sanity" and "insanity" in everyday life.

Indeed, although the accused's sanity is an ingredient of the requisite mens rea, the existence or nonexistence of legal insanity, bears no necessary relationship to the existence or nonexistence of the required mental elements of crime."

Knowing that the required *mental element* of sanity has nothing to do with the in/sanity, about which Nevada law refers to in its "affirmative defense" of *legal* "insanity", it ought to be clear from the ruling in *Patterson* that, Nevada's murder statute is fatally defective.

This is because, as LaFAVE points out, *Patterson* demonstrated that, the only way a legislature can, at the same time, omit and then convert an essential element of an offense into a burden of persuasion-shifting affirmative defense, is if and only if the remaining statutory elements, standing alone still constitute a criminal offense.

LaFAVE, Principles of Criminal Law (2010), § 1.8(c). Affirmative Defenses:

"*Patterson*, as the majority explained, does not give the legislature a free hand "to reallocate burdens of proof by labeling elements as affirmative defenses. The "obvious constitutional limits" to which the majority referred are the various constitutional doctrines that presently exist regarding

the way in which crimes may be defined. Thus, if a crime defined by law as consisting of elements X, Y and Z is reformulated by the legislature so as to consist only of elements X and Y, with non-Z now an affirmative defense to be proved by the defendant, this is permissible under *Patterson* if and only if it is constitutionally permissible to make X plus Y, standing alone, a criminal offence." (citing, PATTERSON v. NEW YORK, 432 U.S. 197 (1977))

To illustrate how *Patterson* renders the NV statutory (X≠Y) definition of murder fatally defective, let us now suppose that the Z elements below constitute the traditionally omitted/"reallocated" common law elements which, as I have already proven, "completes the crime of murder." NEVADA v. THOMPSON, supra.

Thus:

X and Y: (NRS 200.010)(Statute)(Written)
(1.) Unlawfully [kills]; (2.) a [] Human Being; (3.) with Malice Aforethought; (4.) either Express or Implied

Z: (4 BLACKSTONE, Comm., § 195)(Common Law)(Unwritten)
(1.) a Person; (2.) of Sound Memory [Sane]; (3.) and Discretion (4.) a Reasonable [Person]; (5.) under the king's peace

Now, it ought to be clear from the illustration above, that

the Nevada legislature has indeed omitted 5 essential elements of murder, and "reallocated" a burden of proof on more than 1 essential Z element. (a)

Such a "reallocation" by a legislature is fatal under *Patterson*, since X plus Y, standing alone, does not constitute a crime!

Put another way, it is without question that a prosecutor's failure to prove a defendant's sanity ("sound memory"), e.g., at the time of the offense, results in an acquittal of all charges. Since sanity is a prerequisite to proving *any* criminal intent, there can likewise be no criminal offense without that element.

To be sure that this conclusion is not skewed by this observation, let us now suppose that a Z element of "unlawfulness" is the *only* element omitted by the legislature. Under *Patterson*, such a murder statute would pass constitutional muster, since all remaining X and Y elements, standing alone, will still constitute a crime: manslaughter! Once again, put another way, if a prosecutor failed to prove a defendant acted "unlawfully" at the time of the offense, then it would still be possible for a jury to find him guilty of a crime: manslaughter. The same would be true if that Z element were "malice", e.g.

It is important to note that the majority in *Patterson* did not except from its ruling, the "classical elements" (i.e.,

@ E.g., it is not against only a statutorily defined "human being" (X and Y element), which a defense to murder challenges. Rather, it is against the omitted/"reallocated" common law Z element that the victim was a "*reasonable*" [human being], which is challenged by a "lawful", or "duress", or "protection of self or others" defense, etc. The same can be said against the Z element that the victim was "under the King's peace," which by Nevada law, is still alleged by information or indictment that an accused acted "against the peace and dignity of the State of Nevada." DAWSON v. STATE, 108 Nev. 112 (1992)(stating those elements are alleged pursuant to the form required by NRS 179.235). Cf. STATE v. ANDERSON, 4 Nev. 265 (1868).

In any event, this latter unwritten Z element is at issue, like the others, whether or not a defense is put on against them. Otherwise, the State need not allege them, since they are not a part of its statutory (X and Y) elements. A failure to allege them, however, would bring an attack that the State does not have jurisdiction.

U.S. v. BACHMAN, 164 F. Supp. 654 (1979):

"... the indictment may ordinarily be laid down in the language of the statute, unless the statute omits an essential element of the offense or includes it only by implication, in which case the indictment or information should allege it directly & with certainty."

the traditionally omitted unwritten common law elements) alluded to by the minority. And that remark, as quoted by the minority, sounded a clear alarm, since pretending that elements don't exist, simply because a legislature has not written them into its statutory definition, does not preclude a finding of every elemental fact necessary to constitute a crime, which, in the same way, must also be considered for a due process violation. Since, as the minority explained:

"In *Mullaney* we made it clear that *Winship* is not 'limited to a State's definition of the elements of the crime.' 421 U.S., at 699 n. 24." PATTERSON, supra. (J.J. Powell Brennan and Marshall, dissenting) (a.)

As the minority also pointed out, the interpretation of a statute by a State's highest court is also considered to be in the language of a statute.

"In the usual case it is well settled that an authoritive construction by the State's highest court 'puts [appropriate] words in the statute as definitely as if it had been so amended by the legislature.' Winters v. New York, 333 U.S. 507, 514 (1948)." PATTERSON, supra, at n. 7 (emphasis original)

Rem. Nevada's Supreme Court, in *THOMPSON*, supra, named

all of the common law elements, which are omitted from the statutory definition, but which "completes the crime of murder." See p.3, Ln. 21, and Lewis, p.5, Ln. 9.

4. BIFURCATION OF THE PRESUMPTION OF SANITY

Since Nevada law has conveniently considered *mental* sanity no longer an element of crime, despite the aforementioned, it has also cleverly bifurcated that element by means of confusing the "common law" presumption of sanity. Cf. LOS ANGELES COUNTY v. HUMPHRIES, 178 Led. 2d. 460 (2010) (rejecting bifurcated application of the word "person"); and U.S. v. GAINEY, supra, 2 (rejecting use of presumptions for all uses and purposes).

On the one hand, Nevada has acknowledged the presumption of sanity as a *conclusive* "common law" presumption. See NEVADA v. LEWIS, 20 Nev. 333 (1889).

On the other hand, Nevada has acknowledged a presumption of sanity as being a *rebuttable* - and apparently *mandatory* presumption of law, in which the objective M'Naghten rule indispensably sits as the ultimate test for "legal" insanity. See FINGER v. NEVADA, 117 Nev. 548 (2001).

Notwithstanding the conflicting nature of the Lewis and Finger description of the presumption of sanity, supra, a few points about a "common law" presumption is due here.

@ The test for legal sanity goes to show the intent of an act only, which presupposes an evil *purpose* by the Church, e.g. But murder is generally a "purpose" or "result" crime, i.e., the evil purpose or result (death) is foreseen by the accused. Malice is a "mens rea" element, essential to proving the intent was an evil act and an evil *purpose*, unlike the "culpa[bility] test for legal sanity, which goes to show the intent of the act only.

FERNANDEZ y PEREZ v. PEREZ y FERNANDEZ, 202 U.S. 80 (1906):
"Culpa" may imply intent with respect to the act, but not an evil purpose with respect to the result of the act. Malice implies both. 4 Roman, Civ. Law, p. 1017; 4 Falcon, Civ. Code, p. 431."

Thus, by sleight of hand, Nevada law "proves" a Mens Rea criminal element ("sanity"), by a civil "culpa[bility] test, which does not prove the Malice, which only a sane person could have.

The common law presumption of sanity:

- Predates the defense of insanity.
- Predates the objective legal tests for insanity.
- Could not render a law void for a "due process" violation under the common law system from whence it came.
- Was a common law *civil* standard, which was only used arbitrarily in criminal cases.
- Was used under a flexible common law system, which did not confine a law to being based on only one object and subject (e.g., Retribution or Deterrence)
- Is now used under Nevada law, which constitution restricts a law to having only one object and subject (e.g., "Deterrence" of those aimed at in its murder statute)
- Was necessarily determined under the common law system as a "question of fact" (for a jury) by a subjective *moral* standard, since the church was a part of its law.
- Is now determined by a strictly objective "question of law" (for the court) under Nevada law, either because: (1) there is a separation of church and state; and/or because (2) there is a constitutional restriction of having only *one* object and subject for a law which, in the case of murder, would indeed comport with its objective Deterrence basis; and/or (3) statutes are a rule of *civil* conduct, because they do not extend into the subjective domain of morals or religion.

Rem. Murder at common law was not a "statute" crime created by the legislature, but a judicially created "Mala In Se" crime, having subjective *moral* implications, as opposed to strictly objective *legal* ("civil") duty implications.

NOTE: Under the common law, and in accord with "divine law", all members of the Church were "dead in law"/"civilly dead", owing no legal "civil duties" to the civil "state".

Therefore, all members of the Church were deemed by law to have a legal "excuse" against *all* "civil crimes" under a "defect of will" called the "Benefit of Clergy" (sanctuary)

Indeed, there was also acknowledged a true maxim arising out of Scripture that: no man can owe two (2) allegiances, or serve two (2) masters at once.

Moreover, no man or law can deprive or divest another of a right or privilege invested by his Creator.

(a.) The FIRST use of the presumption of sanity is set up by Nevada law against a defendant attempting to establish, by a strictly objective test, only the complete loss of "legal" sanity. That is, the M'Naghten rule is a very narrow test, not aimed at finding the various degrees or shades of subjective "moral" sanity inherent in the range of whatever mens rea or criminal intent is required to constitute an offense.

This presumption of sanity, then, establishes for the prosecution proof of the existence of the only form of sanity that comports with Nevada's claim that "sanity" is, at the same time, "not an element of an offense," and which logically agrees with a type that is *not* founded upon the "common" experience of man. And that type is: a presumption of "legal" sanity founded upon "convenience" and "public policy". See Lewis and Davis, supra. A type having no existence in reality.

This "sanity", then, has nothing at all to do with the indispensable unwritten "common law" element of sanity, which "completes the crime of murder". NEVADA v. THOMPSON, 12 Nev. 140 (1877). See Sec. 1, supra.; and U.S. v. BYRD (1984), supra. (a.)

But such a presumption, as Davis pointed out, "is not a conclusive presumption, which the law upon grounds of public policy forbids to be overthrown or impaired by opposing proof. It is a disputable or... rebuttable presumption." Davis, supra.

Notwithstanding Nevada's contradictions, and the serious differences between a conclusive and mandatory rebuttable presumption, the *force* of the presumption of sanity should be interjected here.

(1.) THE FORCE AND NATURE OF THE PRESUMPTION OF SANITY

The presumption of sanity is an *artificial* presumption, having its "proof" established *not* by any *direct evidence*, since that would lead to an absurd proposition that the law has such evidence about the mental state of every person. Its use, therefore, is "justified" on the ground of a "public policy" need, which is just another way of saying the public has given the law "justification" in convicting you by more efficient & cheap means.

Despite its foundational deficiencies, the presumption of sanity is given the force of a "strong" presumption. This means it ought to be subject to being rebutted or overthrown by a *natural* or *divine* "strong" presumption, or else a "very strong" presumption. Otherwise, a defendant needs to submit "evidence as a whole [that] negatives the existence of the presumed fact." NRS 47.230(2)

NRS 47.230(2) functions merely as smoke and mirrors for the true force and nature of the presumption of sanity

Its true force and nature lies in the fact that it is a "judicially noticed" fact which, automatically enters trial and establishes *proof* of the element of sanity for the prosecution. A defendant's need for a "preponderance of evidence" against it, then, cannot tilt a scale weighing quality of *proof* by the "beyond a reasonable doubt" standard, which quality is also *superior* to evidence!

LEMEL v. SMITH, 64 Nev. 545 (1947):

"Judicial notice takes the place of proof, and is of equal force. As a means of establishing facts, it is therefore superior to evidence. In its appropriate field, it displaces evidence, since, as it stands for proof, it fulfills the object which evidence is designed to fulfill, and makes evidence unnecessary." [citations omitted]

EX PARTE KAIR, 28 Nev. 425 (1903):

"Taking judicial notice of a fact simply does away with the necessity of offering evidence to support that fact."

Thus, against all hypocrisy and constitutional fairness, Nevada law has relieved a prosecutor from its obligation of submitting any evidence on a critical element, while forcing a defendant to vainly submit real, direct evidence to "rebut" a superior "proof" established by the presumption of sanity. See EMPLRs, supra.

@ See CLARK V. NEVADA, 95 Nev. 24 (1979) (rejecting idea that presumption of sanity evaporates with controverted evidence, even if prosecution offers no evidence on subject)

It has also done this while making itself immune to the risk of a 'directed verdict' by a defendant, while subjecting the defendant to the risk of - and indeed the high probability of - a legally impermissible directed verdict against defendants in criminal cases. See Neder, supra.

Moreover, the illusion that a judge can logically weigh inferior evidence against the superior proof of that same judge's judicially noticed fact, amounts to: (1) a judicial "comment on the evidence"; and (2) a trial by judge, and not jury. Both of these being prohibited by Nevada and Federal constitutions. See NV Const. Art. 6, Sec. 12; NRS 3.230; and U.S. Const. 6th Amendment.

Under today's modern jurisprudence, a presumption of law must pass two (2) tests. The "rational connection" test and the "beyond a reasonable doubt" standard required by the U.S. Constitution for criminal cases. See Ulster; Leary, supra. The failure to pass either of these tests will render a statute void for violating due process.

(2.) THE RATIONAL CONNECTION TEST

Unlike a true, abstract rebuttable presumption of law (being general), challenging a presumption of law that is grounded on "convenience" or "public policy" necessarily involves importing an analysis of the *particular* circumstances of a case *before* the tests are applied. And no right can be violated in the process of making a "rational connection" between the basic fact proved and the ultimate elemental fact presumed. See *Leary* supra.

The law, then, has entered the business of "prophesying", since illogically converting the inherent nature of a presumption of law (being abstract) into what amounts to a prophetically foreseen, established, presumption of [specific] *fact*, is no less the office of diviners.

If this 'conversion' is an exception, then another co-existing repugnant 'exception' ought to render this device an intolerable perversion of modern jurisprudence. And yet the ques-

tion remains whether this presumption of law establishes the objective "legal" sanity which a true abstract presumption of law could *not* do, or whether it establishes the subjective "common law" element of *moral* sanity. The answer seems obvious: "legal" sanity. But the "logic" of the need for "convenience" or "public policy", which created the exception to proving subjective common law sanity by "proof" of objective "legal" sanity, also creates an exception to the "rational connection" and "beyond a reasonable doubt" standards, even after analyzing the facts of a particular case, q.v.

As a preliminary matter, it ought to be conceded that a jury could not say that, at the time of any offense, there existed with a defendant, M'Naghten's fictional standard of "legal" sanity *beyond a reasonable doubt*, because M'Naghten is only one of several recognized legal standards. And since the law forces a jury to exclude the others, they are deprived of their own right to make a "rational connection". And this is especially true when a defendant and/or jury members do not come from a M'Naghten jurisdiction.

Moreover, the law has clearly crossed the threshold of reason, since it cannot be assumed for one moment that society would, at the same time, except by a matter of "convenience" or "public policy", their 1st Amendment rights. That is, the law, by its "public policy", must first make out society to be heretics who would rather be forced into

(a) Under the 1st Amendment, a person has a right, (1) to practice their Profession as Freedom of Speech, and (2) to express their Right of Conscience.

asserting a position contrary to the judicially noticeable fact that every Bible teaches its believers that subjective matters of the heart-mind are known by YAHWEH alone. See e.g., 1 Sam. 16:7, and Jer. 17:9-10

Moreover, among other blatant forms of Biblical abominations, the law of Nevada is forcing jurors to bow down (submit) to giving worth[ship](wor-ship) to its own fictitious IDoLs (IDeaLs) which belong to the class of IMAG(ES) or perverted IMAG(inations) of primitive pagan IDeoLogies condemned by the Ten Commandments as IDoLatry. Dt. 4:15-18, and 5:8. For example, it is admitted that the fictitious "reasonable man" standard is an IDeaL (IDoL) that must be given worth[ship] (wor-ship) by a jury, although it bears no real personal relation to the relative character of the natural man. Needless to say, M'Naghten's fictional sanity rule is but another object of wor[th]ship existing only in the IMAGination of the IDoLater that believes it.

Thus, it can never be fairly said, generally, that society willfully believes in IDoLatry beyond a reasonable doubt, so that the law can justify imputing to a jury, its making of a "rational connection" by such idolatrous means. To the contrary, but-for the cunning hi-jacking of a jury's natural perception, for that of IDoLatrous imaginations, they would otherwise be making an (r-rational connection. @

④ Such a coercive, one-sided persuasion is called by Blackstone, "embracery" (obstruction of justice), which taints the offender with "perpetual infamy". 4 BLACKSTONE, Comm., § 140

Or put another way, but-for the law first making an otherwise Bible-believing society into lying heretics and offenders "against God and religion," they would not willfully IDoLize such an ir-rational connection. And this is especially true, when the law knows a jury must do this after it places them under sworn oath to their God. See NRS 160.030(5) and 175.021(1). No doubt, this amounts to a "moral coercion" or "undue influence" by the government against one's "right of conscience," and freedom of speech.

MARSH v. CHAMBERS, 463 U.S. 783 (1983) "The right to conscience, in the religious sphere, is not only implicated when the government engages in direct or indirect coercion It is also implicated when the government requires individuals to support the practices of a faith with which they do not agree."

CHURCH of LUKUMI v. HIALEAH, 508 U.S. 520 (1993) "Neutral generally applicable laws, drafted as they are from the perspective of the nonadherent, have the unavoidable potential of putting the believer to a choice between God and government, while pursuing secular ends, may compel disobedience to what one believes religion demands."

And Blackstone names "Offences against God and religion" as the worst of 13 kinds of public wrongs, even worse than Homicide which ranks 11th, and Property offences which ranks 13th. DUBBER, Model Penal Code (2002), § 242

Therefore, it is not reasonable to suppose that society would willfully perpetrate the greatest of offences in order to advance a mere legal "policy" grounded on "convenience". It is even harder to imagine that they would, after that, make another exception against the "rational connection" requirement for presumptions.

To the contrary, there is a "very strong" presumption that society would, against perpetrating such a serious offence, rather obey their Creator's written will even in the face of man's most extreme and cunning 'legal' dictates that violate one's "right of conscience" and which makes them offend "God and religion".

And because the presumption of sanity is only classified as a "strong" presumption, it ought to be left overthrown or "rebutted" by the aforementioned.

At the very least, then, the burden of persuasion ought to be shifted back to the prosecution to prove beyond a reasonable doubt that such an IDoLatrous form of fictional "sanity" existed with a defendant.

(b.) The SECOND use of the presumption of sanity collaterally supplants the actual subjective mental element of sanity ("sound memory") in murder. Nevada law achieves this by never giving the jury the element of sanity to decide upon, even though it is a part of the concept of Mens Rea. Because Nevada law is only required to prove the "basic facts" of a criminal intent, it is "stacking inferences", by not proving the necessary predicate fact of a subjective degree of sanity. This violates due process, and also redefines the concept of Mens Rea. See Tot, supra, 2.; Buralli, supra; Jackson, supra, 1.; People's Bank, supra; Carella, supra.

The mental elements of 1st degree murder (e.g., premeditation, deliberation, and willfulness) necessarily involve a degree of the common law's subjective element of sanity ("sound memory"). See Byrd (1984), supra; and p. 1 n. a.

The question of criminal intent, then, necessarily involves a moral question for the jury as a right of conscience, against the impersonal, objective, IDolatrous "reasonable man" legal standard. See GRAY v. NEVADA, 100 Nev. 556 (1984) (admitting exception to objective Reasonable Person standard for personal subjective standard) (a).

Defenses that negate Mens Rea, naturally put subjective sanity at issue. Even without a defense, Mens Rea is at issue. Thus, a prosecutor cannot be relieved of proving sanity.

(a.) The fact that Nevada accepts the need for a subjective and personal "Reasonable Person" standard shows that its law cannot properly bring every person within the purview of its one object and subject. This is because its one object and subject is "Deterrence", which is an objective standard that only comports with the objective "Reasonable Person" standard. Making an 'exception' to this creates another object and subject, which violates Art. IV, Sec. 17 of Nevada's Constitution. See STATE v. AH SAM, 15 Nev. 27 (1880); and J.G. SUTHERLAND, supra, §227 (stating, penal laws "can never be expanded against the accused so as to bring within their penalties any person who is not within their letter.")

Alternatively, the law is violating Equal Protection and the required Uniform Operation of a law upon one subject. See Nevada Const. Art. IV, Sec. 21. This is because laws are written "prospectively" anticipating conformity to future circumstances. Yet, it is a judicially noticeable fact that most believers in the Bible are anticipating the success and recognition of the Church with all its subjective spiritual standards, as the one government over all "legal" entities DANIEL 7:13-14. Cf. LaFAVE, supra, §3.2(b)(Classification in statute not accounting for possibility of having new characteristics later.

Mention of the felony-murder rule must also be made here, since its justification for circumventing the need to prove the concept of wrongfulness in a Mens Rea for murder, is by proving an inconsistent intent (a) for a predicate offense. But this erroneously presupposes the non-existence of the subjective element of sanity in the very definition of murder, as well as all other crimes. See Sutherland, pg 239 & 355, supra; and Thompson, supra.

Thus, the felony-murder rule, at once, (1) redefines the concept of Mens Rea; (2) is an exception to proving Malice & Intent; and (3) converts an otherwise unconvertible subjective "common law" element of sanity into an incompatible, albeit, presumptively established objective "legal" sanity; and/or (4) circumvents proving the common law element of sanity altogether.

For case law precedents against such unconstitutional devices, See FINGER v. NEVADA (2001)(repealing statutes that presumptively established unwritten common law element in Mens Rea); and MORISSETTE v. U.S. (1952)(reversed, although statute omitted intent, prosecutor failed to prove understood element)

The felony-murder rule is said to be borrowed from the common law. But confusion is added by Nevada's claim that the object or basis for that rule is "deterrence". See CORTINAS v. STATE, 124 Nev. 1013 (2008) (b).

(a) U.S. v. BIBBINS, 637 F.3d. 1087 (2011):

"We generally interpret statutory provisions containing multiple enumerated offenses to require consistent mens rea elements." [citations omitted] Cf. MPC § 2.02(4) and (10).

For 1st degree murder, e.g., proof of the mens rea of 'willfulness' is consistently required for: Conduct; Circumstances; and Result (death). That is, a prosecutor cannot say a murder was committed under 'willful' Conduct and Circumstances, but the Result (death) was by 'recklessness' or any other inconsistent mens rea.

However, for a 1st degree felony-murder conviction by proof of burglary, e.g., there is no longer a need for proving a consistent mens rea with respect to the Result (death), since burglary can be proved by various mens rea! See e.g., STATE v. CONTRERAS, 118 Nev. 332 (2002)

(b) In Contreras, the object is said to be "general deterrence"

While the law against murder, in general, has been built upon the foundation of "deterrence" for its justification as indicated in the preamble, the felony-murder rule must be an unconstitutional exception to a law having only one object and subject. See NV Const. Art. IV, Sec. 17; and J.G. SUTHERLAND, supra, § 103. This is because the common law did not justify the felony-murder rule upon the ground of "deterrence", but on the prevailing theory at the time, which was retribution! TOMKOVICZ, Endurance of the Felony-Murder Rule, 51 Wash. & Lee L. Rev. 1429 (1994), at n. 92; and ROTH & SUNBY, Felony-Murder Rule, 70 Cornell L. Rev. 446 (1985) at p. 68. (a)

As a matter of logic, the felony-murder rule cannot possibly be justified upon an objective deterrence basis, since there are too many exceptions that would not bring a person within the purview of such an offense.

If deterrence were truly its basis, then the fact that there are exceptions to the objective "reasonable man" (a) standard (See Gray, supra) not only comports with retribution, but destroys the former as the one object of law.

On the other hand, if, after proper consideration that retribution is its basis, then it is clear that it is in violation of Art. IV, Sec. 17, as well as not comporting with the default use of the objective reasonable man standard.

(a.) U.S. v. MOORE, 486 F2d 1139 (1973): "... the law has in recent decades, come to regard this eye for an eye philosophy as an improper basis for punishment." [i.e., "retribution"]

(b.)

Extended

5. THE EFFECTS OF OBJECTIVE SANITY AGAINST RULES OF STATUTORY CONSTRUCTION

Against its claim that its murder statute is "the same as at common law," Nevada law has created a statute that redefines the "sound mind and discretion" elements, for a type that has nothing to do with the concept of "common law" or "tradition". See NRS 193.200. (a.) Those elements in NRS 193.200 look to a strictly objective standard, which cannot be found "without reference to our prior caselaw involving M'Naghten." FINGER v. NEVADA (2001)

Moreover, it is clear from the common law definition of murder, that the elements of "sound memory and discretion qualify the "person", which the law has in its purview.

Rem. Murder is "when a person of sound memory and discretion unlawfully killeth..." 4 BLACKSTONE, Comm. § 195.

This is no trivial matter, since a person, in contemplation of law, can be a subjective natural human, generally, or an objective "legal fiction" strictly. Cf. NRS 0.039. "Person" defined.

(a) NRS 193.200 has the same "sound mind and discretion" elements as 4 Blackstone, Comm., § 195, but applies to them a strictly objective standard via M'Naghten. See Finger, supra. Thus, Nevada law has bifurcated the use of "sound mind"/ sanity to comport with an impermissible two (2) objects of law: (1) "retribution" for subjective cases; and (2) "deterrence" for objective cases. Otherwise, it may be seen as giving the concept of Mens Rea a bifurcated application or new meaning with regard to subjective intent elements. See Humphries (2010), supra, p. 7

Furthermore, the fact that NRS 193.200 applies its elements for "manifesting" intent, necessarily prohibits its use in a Felony-Murder, because such a conviction can be found by the element of Strict Liability, or Negligence, which is not strictly a Mens Rea of "Intent". See Moreland

Several facts manifest Nevada's intent to make its homicide statutes look strictly to an objective legal fiction as the "person" aimed at:

• Unlike the common law, Art. IV, Sec. 17 of Nevada's Constitution restricts a law to having only one object and subject.

• "Deterrence" is the object (a) of Nevada's homicide statutes, which is an objective standard that must necessary look to the objective "reasonable person" legal fiction.

• Statutes, by nature, do not extend into the subjective domain of morals and religion. SUTHERLAND, supra, §8.

• Because law itself is a legal fiction, it cannot, as a matter of logic, speak to the natural human being. It must first create, "Ens Legis", a legal fiction out of a human for the purpose of defining "legal" rights and privileges, etc., which the law can 'recognize'.

• The rights and privileges of a natural human being extend far beyond those of a "person" ens legis, and neither are they interchangeable for all purposes. See, e.g., NORTHWESTERN FERTILIZING CO. v. HYDE PARK, 97 U.S. 659 (1878).

• Statutes were passed much later to protect the unborn natural human against "murder", because the common law did not view them as a "person" ens legis with such rights and privileges, etc. See

(a) See e.g.,

33.A

• Because the presumption of sanity is now grounded on a need for "convenience", it is obvious that the law has opted to not deal with the natural human, and all the subjective questions pertaining to such a real moral being.

• Unlike the common law, because there is a separation of Church and State in this country, @ the influence of a ruling religion upon society via its moral indoctrination, no longer has a bearing upon the question of the degree of a defendant's sanity nor upon what is "Mala In Se".

•

@ Absent any need for a State recognized or legitimizing ceremony, there exists within the concept of a Biblical "marriage", the warning to let no man separate what Yahweh has joined. Yet, our "state", "stat[us]" or "stat[ion]" in life has

Extension

b. BY RULES OF STATUTORY CONSTRUCTION, THE CLASS TO WHICH THE PRESUMED SANE "PERSON" (DEFENDANT) BELONGS, PRECLUDES JURISDICTION OVER A SPIRITUAL PARSON UNDER YAHWEH

1. EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS.

BUTLER V. STATE, 120 Nev. 879 (2004):

"This court has, for more than a century, recognized that the legislature's "mention of one thing or person is in law an exclusion of all other things or persons..." under the expressio unius est exclusio alterius." See also, GALLOWAY V. TRUESDELL, 81 Nev. 13 (1967)(confirming by several Nevada cases)

Under Federal law, the UNITED STATES is defined as a "corporation." 28 USCS, § 3002 (15)(A). A corporation is an association of "persons".

Under State law, the STATE OF NEVADA, e.g., is defined as a "person" or "corporation". NRS 193.0205; 0.039; See BLACK'S LAW DICT.: Corporation; and Person.

Because there is a separation of Church and State in this country by Constitution, the UNITED STATES and the STATE OF NEVADA can only be of the class called a "lay" aggregate corporation of the civil sort. This class is but one of the two contrasted by Blackstone. 1 BLK. Comm., §§ 457-8 (contrasting "lay" corporations with "spiritual" corporations).

The nature of a "lay" corporation is that of an association of "persons" not considered as members of the Church or "Clergy." See Black's Law Dict.: Lay.

1 BLACKSTONE Commentaries, § 384

"The lay... subjects... are not comprehended under the denomination of clergy... [T]he civil state, includes all orders of men... that are not included under... our former division, of clergy..."

It should be noted here that, by Nevada Constitution, its jurisdiction as a "lay" State corporation is restricted to the subject-matter of *one* object and subject. NV Const. Art. IV, Sec. 17

Because Nevada law must aim at only one subject, it is only logical to suppose that it will always opt to charge a subject of its law as belonging to a "State" (i.e., "lay" corporation). To do otherwise, would conflict with the presumption that, by a two-thirds majority rule, all of the people in this country have been deemed to constitute the UNITED STATES (i.e., a "lay" corporation), by making themselves separated from the "Church" by U.S. Constitution.

However, the two-thirds majority rule that establishes the "lay" association for everyone, leaves much room for rebuttal, and also conflicts with the Constitutional requirement that a prosecutor must prove every elemental fact *beyond a reasonable doubt*. Winship.

It has already been shown that a civil "state" (lay corporation) does not include the clergy. 1 BLK, Comm. § 384, supra. Thus, if someone shows he is of a class of "person" excluded by the rule of construction (i.e., a Sole Spiritual Corporation), the "State" of Nevada can have no jurisdiction, since its Constitution restricts its laws to having only one object and subject. NV Const. Art. 4, Sec. 17.

Although there are various ways to establish one's association with a "Spiritual Corporation", a lay "State" may claim jurisdiction over such a person by the claim of a *treaty* with the person (e.g., by the *Union* or Agreement called the Constitution), or by a claim of treaty with the nation to whom the person is subject to. Such a claim shows that a person is in *amity* or *league* with the "State" (lay corporation). Otherwise, a State (lay corporation) and a Church (Spiritual Corporation) would naturally be *enemies* (hostile) to each other. See JAMES 4.4.

ZORACH v. CLAUSON, 343 U.S. 306 (1952):

"... there shall be no concert or *union* or dependency one on the other [of Church and State]. That is the common sense of the matter. Otherwise, the state and religion would be aliens to each other — *hostile*, suspicious, and even *unfriendly*." (emphasis mine) See, e.g., 4 BLK Comm., § 83 (stating a "foreign prince" is necessarily an "enemy" of a King/State, since he "owes no allegiance" to the other) Cf. Biblical Command by the King Yahweh, to the Body ("Church") to "make no *treaty*" with the nations. EX. 34.11-12.

Consequently, [re]claiming one's allegiance to Yahweh, Who owes no allegiance to an inferior Secular/Worldly Civil "State", amounts to "Treason" and a loss of "citizenship" to the "State" (Lay corporation). See 4 BLK Comm, §§ 75; 81-3; and 87.

Although there are various *formal* ways provided for by human laws to effect a loss of subjection to a "State" as its "citizen", one's First Allegiance to Yahweh is by an Oath of Supremacy, which is *first* effected by an *implied* intrinsic original. 1 BLK, Comm., §§ 356-9

4 BLACKSTONE, Commentaries, §§ 356-7:

"[T]he formal profession... or oath of subjection, is nothing more than a declaration in words of what was before implied in law."

Cf. Annotations under 8 USCS, § 1481:

• A person's right to expatriation is not dependent upon consent of government. U.S. ex rel WRONA v. KAMUTH (1936, DC NY) 14 F.Supp. 70.

• A person performs an expatriating act with intent to renounce his citizenship whether or not he knew act was expatriating act. RICHARDS v. SECRETARY OF STATE, DEPT OF STATE (1985, CA9 Cal) 752 F.2d 1413

• Expatriating conduct may be such as to indicate an "implied renunciation of tie." In re R---S--- (1958, BIA) 7 I & N Dec 718

• A person who takes a foreign oath of allegiance to a king, in an informal proceeding, loses his former citizenship. REVEDIN v. ACHESON (1952, CA2 NY) 194 F.2d. 482

• A person may renounce his nationality with or without a claim of allegiance to another nation. DAVIS v. DISTRICT DIRECTOR, IMMIGRATION & NATURALIZATION SERVICE (1979 DC Dist Col) 481 F. Supp. 1178.

It is without question that various religious rites effect an Allegiance or Covenant with Yahweh, e.g., baptism, conversion, confession, profession, etc. The accused (a "Yahwistic" Hebrew Israylite) has accomplished and publicly professed these and other rites.

Moreover, under 18 USCA, § 2381; and Article III, Sec. 3 of the U.S. Constitution, one may be "convicted" of *treason* "on the testimony of two witnesses, or *confession* in open court." Such a simple confession would likewise result in a loss of citizenship & allegiance to the secular civil state (lay corporation), while [re]claiming subjection to Yahweh, as a Spiritual Corporation may be the natural default.

A state would then lose its jurisdiction, since its laws can only embrace one object and subject, to the exclusion of the other(s). NY Const. Art. 4, Sec. 17.

This results from the rule: Expressio Unius Est Exclusio Alterius.

34.5 10.

1. THE INFORMATION OR COMPLAINT IS FATALLY DEFECTIVE, AS IT OMITS ESSENTIAL ELEMENTS OF THE OFFENSE

EX PARTE SCHULTZ, 42 Nev. 254 (1918):

"The complaint lacks essential elements of the crime charged. These cannot be supplied by intendment or implication." [citations omitted]

EX PARTE ROVNIANEK, 41 Nev. 141 (1917):

"It is an elementary principle of criminal proceeding that where the definition of an offense, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition, but it must state the species; it must descend to particulars." (quoting U.S. v. Cruikshank, 92 U.S. 542, 23 Led 588)

PEOPLE v. LOGAN, 1 Nev. 111 (1865):

"Archbold says: 'The want of direct allegation of anything material in the description of the substance, nature or manner of the offense, cannot be supplied by any intendment or implication whatever.' (Archb. Cr. Pr. and Pl. 87.) So strictly observed is this rule, that 'in an indictment for murder the omission of the words *ex malitia praecogitata* is not supplied by the words *felonice murdravit*, although the latter words imply them.' (id)."

ANDERSON v. STATE, 95 Nev. 625 (1979):

"[C]riminal statutes may not be enlarged by implication or intendment beyond the fair meaning of the language used, and will not be held to include other

offenses and persons than those which are clearly described and provided for."

U.S. v. BACHMAN, 164 F.Supp. 898 (1958):

"However, it must be remembered that the offenses charged here are statutory, and, as such, the indictment may ordinarily be laid in the language of the statute, unless the statute omits an essential element of the offense or includes it only by implication, in which case the indictment or information should allege it directly and with certainty. Federal Practice and Procedure, Barron, Vol. 48 Sec. 1914: Reynolds v. U.S., 225 F.2d 123."

4 BLACKSTONE COMMENTARIES, §§ 301-02:

"INDICTMENTS must have a precise and sufficient certainty. The offence itself must also be set forth with clearness and certainty: and in some crimes particular words of art must be used, which are so appropriated by the law to express the precise idea which it entertains of the offence, that no other words, however synonymous they may seem, are capable of doing it.

In indictments for murder, it is necessary to say that the party indicted "murdered", not "killed" or "slew," the other."

U.S. v. RESENDIZ-PONCE, 549 U.S. 102 (2007):

"If one accept the court's opinion, however, the indictment could just as well have omitted the phrase "knowingly and intentionally", since that is under-

stood in "common parlance" and has been an element of attempt for centuries. Would we say that, in a prosecution for first-degree murder, the element of "malice aforethought" could be omitted from the indictment simply because it is commonly understood, and the law has always required it? Surely not.

MEMORANDUM OF LAW

ARGUMENT

a. THE ELEMENTS DEFINING THE ACTOR OF THE CRIME ARE UNCONSTITUTIONALLY PRESUMED BY THEIR OMISSION FROM STATUTES BY THE LEGISLATURE

The State of Nevada has, by intendment or implication, supplied the specific name of an Artificial, Aggregate Lay Corporation of the Civil sort (i.e., the accused's Artificial, Secular "legal" name or Straw Man) as the description of legislatively omitted abstract Common Law elements defining the Actor (i.e., the "Person") accused of the crime. The statute(s) do not define the Actor.

At Common Law and other systems of law, it must be proven that the Actor has the capacity to commit a crime. Thus, the law *defines* the accused Actor as: "a Person of Sound Mind and Discretion." Cf. NRS 193.200. See, e.g., NEVADA v. THOMPSON, 12 Nev. 140 (1877). Cf. 4 BLACKSTONE COMMENTARIES, § 195.

At Common Law, the aforementioned elements defined the Subjective Circumstance or Condition of the accused Actor. Under Nevada law today, however, those elements have been combined to form an Objective Legal Fiction and Term of Art called "sanity".

Nevada law is thus utilizing a Civil Procedural device to presumptively establish subjective elements against Criminal defendants. See STATE v. BURALLI, 27 Nev. 41 (1903) ("...in criminal cases... nothing... can be presumed against a defendant.")

4 BLACKSTONE COMMENTARIES § 277:

"We are next... to take into consideration the proceedings in the courts of criminal jurisdiction, in order to the punishment of offences. These are plain, easy, and regular; the law not admitting any fictions, as in civil causes, to take place where the life, the liberty, and the safety of the subject are more immediately brought into jeopardy." CF BURALL, supra.

Thus far, it can be seen that Nevada law has created an element that is a legal fiction and Term of Art (i.e., "sanity"), but has failed to allege that collective element, as... "no other words, however synonymous they may seem, are capable of doing it." 4 Blk. Comm. §§ 301-02, supra. See People v. Logan; and U.S. v. Resendiz-Ponce supra.

Yet Nevada law has omitted the Term of Art "sanity" from the indictment or complaint and has instead, supplied the fictional name of a "person" to describe with particularity the species of "Person" that has the condition of "sanity", i.e., by intendment or implication. Needless to say, the fictional "legal" name of a person cannot be used to describe an element of an offense, since its very meaning cannot properly be a factor in giving "fair notice" of what the law forbids in plain english.

Moreover, the default use of one's secular "legal" name by Nevada, presupposes that a defendant prefers, and has consented to, having his rights, duties, and responsibilities restricted by statute, to those belonging to such a Law corporate body or "state".

(a.) EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS: PERSON EXCLUDES HUMAN OR HUMAN EXCLUDES PERSON

Nevada's statutory definitions of Murder, Manslaughter, and Involuntary Manslaughter do not name the Actor. It is not known until the Penalty of NRS 200.030, 1., paragraph (d), that the actor is called "a person" within 1st degree murder.

The definition of Voluntary Manslaughter, however, names the actor as "the person" killing, and is associated with the legal fiction, named therein as the objective "reasonable person." As LaFAVE points out, the criteria for distinguishing degrees of murder from manslaughter is by common law subjective standards, and statutory objective standards respectively. LaFAVE, supra, § 8.2. Moreover, as noted above, however, NRS 193.200 blankets "intent" accross all crimes with a strictly objective test, and therefore usurps the role and effect of the "sound mind and discretion" elements it mirrors from the definition of common law murder.

4 BLACKSTONE, Comm. § 195:

Murder is "when a person of sound memory and discretion unlawfully killeth any reasonable creature in being..."

NRS 200.010 defines the victim of murder as "a human being." Again, by rule of statutory interpretation the common law element of "reasonable" must be applied to the victim. See NRS 193.050; NEVADA v. THOMPSON, 12 Nev. 140 (1877); and NEVADA v. MILLAIN, 3 Nev. 409 (1867) (both naming the victim in accord with common law definition, as a "reasonable human being/creature in being."

Thus, we have:

(1) a Person of Sound Memory and Discretion (Actor)

(2) a Reasonable Human Being (Victim)

It is without question that the "reasonableness" of a victim is at issue, generally, especially in defenses. See LaFAVE, supra, § 14 (10) The Reasonable Man. (stating "the test is how the victim's conduct affects a reasonable man") See also LaFAVE's various treatments in dealing with a victim's "unusual conduct" and "careless conduct".

And because the "reasonable" element is "common law" or "tradition", an empirical analysis must be found, since that element is presumed in favor of the victim. And yet, the question would still remain whether the victim's "reasonableness" should be objective or subjective under the circumstances of the particular case.

@ To omit the "reasonable[ness]" of the victim from Nevada's statutory definition of murder, creates an unconstitutional conclusive presumption. See, FRANCIS v. FRANKLIN; BRACKEEN v. NEVADA; STATE v. BURALLI; EMPLRS INS. CO. OF NEVADA v. DANIELS; and COMMONWEALTH v. DiFRANCISCO, supra, section (i)

With these facts in mind about the actor in Nevada's murder statute being a "person", and the victim being a "reasonable human being", a question involving a rule of statutory construction arises.

J.G. SUTHERLAND, supra, § 325, Expressio Unius, Exclusio Alterius. "When a statute defining an offense, designates one class of persons as subject to its penalties, all other persons are deemed to be exempted." [citing Howell v. Stewart, 54 Mo. 400; and 2 W. Bl. 1073; etc.]

It has been demonstrated in this document that the intent of the legislature was to restrict the "person" in Nevada's murder statute to the objective "legal person", which comports with its constitutional restriction of a law having only one object/subject ("deterrence"), which is likewise an objective legal standard.

The next question is whether there are "other persons" excluded by naming the class of actor as a "legal fiction". However, because there is another "person" mentioned in the murder statute (human being), another rule of statutory construction is implicated, involving the effect of context and association of words and phrases.

§ 266. "When two words or expressions are coupled together, one of which generically includes the other, it is obvious that the more general term is used in a meaning excluding the specific one." Id. [Citations omitted]

It is clear that Nevada law uses the word "person" as the broad term that "generically includes" the specific "reasonable human being". See, e.g., NRS 0.039 "Person" defined. Put another way, a defendant convicted as the "person" in murder could not be said to specifically be a "reasonable human being". The actor in no Homicide statute is called "human".

Moreover, in common parlance, it is not said that a "human being" killed so and so, let alone a "reasonable human being." This specific "reasonable human being", therefore, is not contemplated in Nevada's murder statute, with regard to the actor. And because it has been shown above, that the actor contemplated within the purview of the law must be an objective legal person (a.), it necessarily follows that the specific "reasonable human being" belongs to that class as an objective legal fiction. Thus, the objective "reasonable person" ens legis is excluded from the "person" as the one object and subject of murder! This means that the terms of the statute have lost their standing, since its one foundation or basis (Deterrence) necessarily looks to the objective "reasonable person"!

(a) See LaFAVE

38.A

Extension

2. EJUSDEM GENERIS

ORR DITCH & WATER CO. v. JUSTICE CT. OF RENO TOWNSHIP, 64 Nev. 138 (1947):

"The rule of ejusdem generis has been declared to be a specific application of the broader maxim 'noscitur a sociis...'"

Note the following abbreviated rules relating to Ejusdem Generis, by J.G. SUTHERLAND, Statutes and Statutory Construction (1891):

* § 278. A statute treating persons of inferior degree cannot, by any general words, be extended to those of a superior degree.

* § 279. General words are not read according to their natural and usual sense, but are restricted to the same kind or genus as those enumerated.

* § 277. General words following particular words will not include any of a class superior to that to which the particular words belong.

* § 350. Penal statutes cannot be extended by implication or construction.

39, 11.

Under analysis of rules governing Ejusdem Generis, the main question in this case is whether the specific class out of which the specific "person" (lay corporation) named in the Complaint descends from, can embrace the class that a "parson" belongs to (i.e., a sole Spiritual corporation under Yahweh).

The answer may be easily found in the fact that not only is the "Church" a separate and distinct thing from the common people (civil society), but it is a class superior to them for various reasons.

FIRST. Although by Constitution "we the people" (the vulgus-vulgar) agreed to form a lay corporation, it pledged its allegiance to be "one nation under God". 4 USCS, § 4.

SECOND. The fact that "the people" (literally meaning "Vulgar") constitute a "common weal", places it in a class under those called "holy" or "sacred" (literally "separated-set apart") to Yahweh, Who is said to be "above" the world(N) in heaven. Cf. John 3.31; 8.23.

McDANIEL v. PATY, 435 U.S. 618 (1975):

"... the church itself is a thing absolutely separate and distinct from the common wealth." (citing 5 Works of John Locke 21, e. Baldwin ed. 1824)

A "class" is defined as: The order or rank according to which persons or things are arranged or assorted. BLACK'S Law Dict. 6th Ed.

It is without argument that Yahweh has existed before mankind. Therefore, the "body" corporate about which Scripture says He is forming, is a "Spiritual Corporation" under Him. It is therefore *first* in "order" or "rank" with regard to man's later invention of a "lay" corporation. It is thus *superior* in "class" and "person." The same may be said of its "kind" or "sort", etc.

Because Nevada's complaint has descended to name a particular *inferior* artificial lay "person" out of an *inferior* artificial aggregate lay corporation, it cannot extend to a superior.

"A statute treating persons of inferior degree cannot by any general words be extended to those of a superior degree." J.G. SUTHERLAND, § 278, supra. Cf. 1 BLK, Comm, § 3.

"Penal statutes cannot be extended by implication or construction." id., at § 350. See ANDERSON v. STATE, supra.

The accused is a "*parson*" and Sole Spiritual Corporation, practicing a "learned profession" of religion under Yahweh, which class no artificial person can belong to.

U.S. BURWELL v. HOBBY LOBBY STORE, 189 Led 2d 675. ( ):
"... for the exercise of religion is characteristic of natural persons, not artificial legal entities."

POTOMAC ENGINEERS, INC. v. WALSER, 127 F. Supp. 41 ( ):

"It may be added that traditionally only natural persons can practice a learned profession, because only natural persons can be charged with the moral responsibility that the practice of a learned profession requires.... [T]raditionally, the learned professions have been regarded as: the law, medicine, and the ministry.." See BLACK'S Law Dict.: Profession

In re MACFARLAND, 30 App DC 365 (1908):

"The courts have inherent power over artificial persons or corporations, which they have not over the natural person."

(b.) EJUSDEM GENERIS

J.G. SUTHERLAND, supra, § 277:

"There is this further restriction of general words following particular, that the general words will not include any of a class superior to that to which the particular words belong."

1 BLACKSTONE, Comm., § 3, p. 88:

"A statute, which treats of things or persons of an inferior rank, cannot by any general words be extended to those of a superior." Cf. J.G. SUTHERLAND, supra, §§ 278, 325, 350

The "reasonable person" belongs to the class of "artificial persons" ens legis or creatures of statute called "legal fictions". See HELVERING v. STOCKHOLMS ENSKILDA BANK, 293 U.S. 84 (1934)

Rem. The "reasonable person" is aimed at in the one object/subject of the law, and as the victim whose rights are sought to be protected.

First, it cannot be argued against an artificial person having an inferior existence to that of a natural human being. (a.)

HELVERING v. STOCKHOLMS ENSKILDA BANK, 293 U.S. 84 (1934):
"Persons are divided by the law into either natural persons or artificial. Natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic."

ROBERTS v. COOPER, 15 Led. 969, 20 HOW 467 (1858)
"In a word they [artificial and natural persons] are wholly distinct beings." (emphasis mine)

LINN & LANE TIMBER CO. v. U.S., 196 F3d. 593 (1912):
"A corporation is really an association of persons, and no judicial dictum or legislative enactment can alter this fact."

NORTHWESTERN SECURITIES CO. v. U.S, 193 U.S. 197 (1904):
"A corporation, while by fiction of law recognized for some purposes as a person... is not endowed with the inalienable rights of a natural person." (a.)

(a) Compare disadvantages of an "artificial person", which:

1. CUSH v. ALLEN, 13 F. 2d. 299 (1926):
(is incapable of testifying)

2. NORTHWESTERN FERTILIZING CO. v. HYDE, 24 Led. 1036 ( )
(can do only what is permitted by charter)

3. AMERICAN AIRWAYS CHARTERS, INC. v. REGAN, 746 F.2d 865 (1984):
(can only act through its agents, not as pro se)

4. POTOMAC ENGINEERS, INC. v. WALSER, 127 F. Supp. 41 ( ):
(cannot practice a "learned profession")

5. RAILROAD TAX CASES
(cannot be a citizen)

6. WHEELING STEEL CORPORATION v. GLANDER, 96 Led. 1544 ( )
(is not protected by equal protection of the law)

7. RUNDLE v. DELAWARE AND RARITAN CANAL CO., 14 Led. 335 ( )
(can neither plead nor be impleaded in courts of the U.S.)

8. See also, 1 BLACKSTONE, Comm. §§ 463-67.

In law, a "State" or "Government" is a "Person". See under the TITLE 15 (Crimes and Punishments), NRS 193.0205: "Person" defined.

Rem. Under rules of statutory construction, a law is restricted by its Title to having only one object/subject, which cannot belong to a class or kind superior to that expressed in the Title.

The "State" of Nevada belongs to the class of corporation called a "lay" corporation of the "civil" sort. See 1 BLACKSTONE, Comm., § 458.

The legal concept of a "State" involves, inter alia, the "Stat(us)", "Stat(ion)", etc., of the "person" aimed at in the purview of a "Stat(ute)".

Every "person" within Nevada constitutes the "State" as an aggregate "lay" corporation. This is merely the default association of every "person" of a "State", since the "lay" people, by a two-thirds majority rule, have opted for a government not by YAHWEH and His spiritual Biblical Laws, but instead a government "by and for the people."

In contrast to a "lay" corporation, there is the class called "Ecclesiastical" or "Spiritual" corporation. See 1 BLACKSTONE, Comm., § 458. See also Black's Law Dict.

Unlike the common law of England, "christianity" is not a part of the laws of the "State" of Nevada, nor of the federal corporation called the "United States". There is in this country a "separation of Church and State."

Moreover, it is critical to note that the class of corporation/"person" called "Spiritual" does not belong to the class of "artificial persons", but to the class called "natural persons", which is *superior!*

U.S. BURWELL v. HOBBY LOBBY STORE, 189 Led. 2d. 675 (2014):

"... for the exercise of religion is characteristic of natural persons, not artificial entities."

POTOMAC ENGINEERS, INC. v. WALSER, 127 F. Supp. 41 (1954):

"It may be added that traditionally only natural persons can practice a learned profession, because only natural persons can be charged with the moral responsibility that the practice of a learned profession requires. While traditionally the learned professions have been regarded as the law, medicine, and the ministry..."

McDANIEL v. PATY, 435 U.S. 618 (1975):

"... the church itself is a thing absolutely separate and distinct from the common wealth." (citing 5 Works of John Locke 21 (C. Baldwin ed. 1824)) @.

By the U.S. Constitution, the "Plesbiscite" that made the "United States" a "Republic" is the same as saying, "we the 'vulgar'" do not have a *monarch*. See these words underlined, their related words and etymologies in Laird & Lee's Webster's New Standard Dictionary (1758-1843)

Whether "we the people ("the vulgar") were duped or not, by those writing the U.S. Constitution on their behalf, the fact remains that, a "person" has to be a "vulgus"/"mob" to demand a "civil" government, which naturally separates the vulgar from being a "spiritual" corporation or having YAHWEH as its *monarch*.

I say "duped", because the class of "persons" that write the law for "the people" do not belong to the "artificial person" that the lay people established themselves as, which is a "lay" corporation called a "Republic". Legislators belong to the class of "natural persons", because they practice a "learned profession", which an "artificial person" cannot do! See Walser, supra.

(a) 1 BLACKSTONE, Comm. § 364:

"The people... are divisible into two kinds; the clergy and laity."

Note: Blackstone explains that the clergy are not comprehended in law as belonging to the "civil state" like the laity or commonality. id., at § 384

It is no secret that legislators have written laws that exempt themselves as a class. How this is possible is obviously hidden from the general knowledge of the "Commonality" or "lay person".

All this is said to be sure of what class of "person" a statute has in its purview, for which a legislator has written as the one object/subject expressed by the title of that statute. It should now be easy to understand how an artificial "person", aimed at in a statute, excludes the *superior* "natural person" (human being) by rule of Ejusdem Generis.

As the following cases explain, a title of a statute whose subject is "any person or "every person" does not embrace "every human" as a race, but is confined to the legal "person" within the jurisdiction of the "State" (ay corporation. Thus, such a "State" ("person") does not extend to embrace a "foreign state" ("person") or "power" who is "not a citizen" or "does not owe allegiance" to the "State" whose statute aims at "any person" or "every person" that commits a crime against the "State". See U.S. v. PALMER, 4 Led. 471, 3 WHEAT 610 (1818); U.S. v. KATZ, 271 U.S. 354 (1926); HOWARD v. ILLINOIS C.R. CO., 207 U.S. 463 (1908); and CHURCH OF THE HOLY TRINITY v. U.S., 143 U.S. 457 (1892

Maxim: Sublato fundamento, cadit opus.
(With the removal of the foundation, the structure falls)
See OSBORN v. NICHOLSON, 80 U.S. 654 (1872)

SMART v. VALENCIA, 49 Nev. 411 (1926):
"The reason of the law is the soul of the law, and when the reason ceases to exist the law itself should fail." Cf 1 BLK, Comm, § 2, p. 61

6. OATHS (OF ALLEGIANCE AND SUPREMACY TO YAHWEH) AND THE RIGHTS & RESPONSIBILITIES THEREOF

In the administration of government, there may exist two (2) corporations, one of which is the "head", the other is the "body". These may be either "lay" corporations for embracing "artificial persons", or "spiritual" corporations for embracing "spiritual" persons or "parsons".

Under the common law system, the "head" or "caput" is the King, who is a lay "sole corporation" of the "civil" sort. 4 BLACKSTONE, Comm., §§ 457-8.

The people ("common wealth"), whom the King has right to rule over and bring suits against, are called the "body" or lay "aggregate corporation" of the "civil" sort. id.

In this country, however:

"The sovereignty has been transposed from one man to the collective body of the people, and a subject of the King is now a citizen of the state." HENNESSY v. RICHARDSON DRUG CO., 189 U.S. 25 (1903)

In Biblical or Revealed Law, YAHWEH is the Sole Supreme Head to Whom a Body (Spiritual Corporation) owes First Allegiance

Under the common law, allegiance was effected by one of two ways: Express or Implied. 4 BLK. Comm. § 356-7. The original is by an implied "intrinsic allegiance," since the "King" is vested with all rights before his actual coronation. Thus, "the formal profession... or oath of subjection, is nothing more than a declaration in words of what was before implied in law." id.

Blackstone also explains that:

"A man cannot owe two such allegiances, or serve two masters, at once." id., at § 361. Cf. Luke 16:13

Allegiance, however, was absolved or forfeited in several ways: by reconciliation or communion with the see of Rome, id., at § 209; banishment, id, at § 359; by one's own misbehavior, id.; attaintment, id, at § 361; etc.

By Nevada's Constitution, "the paramount allegiance of every citizen is due to the Federal Government..." IN RE RAGGIO, 87 Nev. 369 (1971) (citing NV Const. Art. 1, § 2)

In Biblical or Revealed Law, "the people" (vulgar), as a nation in their natural "state", hope to become united under One Supreme Spiritual Head of Government, Whom this nation recognizes as "God" in their Pledge of Allegiance. @

(a) 4 USCS, § 4 reads in pertinent part:
"... one Nation under God, indivisible..."

The word "Federal" embodies this concept in the United States Federal Constitution. Moreover, it should be noted that the U.S. Constitution only bars "legal coercion and endorsement" for establishing a national religion or church, but does not prevent a State from establishing a State religion or church ("body"). See ELK GROVE UNIFIED SCH. DIST. V. NEWDOW, 542 U.S. 1 (2004); LEE V. WEISMAN, 505 U.S. 577 (1992); and ALLEGHENY COUNTY V. GREATER PITTSBURGH ACLU, 492 U.S. 573 (1989).

Indeed, no law has prevented the establishment and universal recognition of the Spiritual Corporation and Sovereign City-State known as the Vatican.

In Biblical or Revealed Law, the "natural man" who is counted amongst the "vulgar" is provided with a way to escape from the oppressive rule of an earthly secular king, to that of a different type (a Sole Spiritual King). (a.)

This concept is not much different from that found in principals of law or maxims. (b.)

(a.) In the "Exodus" from Egypt the Israylites acknowledged their allegiance to Yahweh, after which Mosheh demanded that the king (pharaoh) let the subjects of Yahweh go.

After their deliverance from "bondage", the people of Yahweh were thereafter commanded to make no treaty with the nations. EXODUS 34:11-12. The same type of deliverance is announced throughout the Book of Revelation against the Last Days' world-ruling "king".

(b.) Ubi jus incertum, ibi jus nullum.
(Where the law is uncertain, there is no law)

Regula pro lege, si deficit lex.
(In default of the law, the maxim rules)

Recurrendum est ad extraordinarium quando non valet ordinarium.
(We must have recourse to the extraordinary when the ordinary fails)

Legisbus sumptis disinentibus, lege naturae utendum est.
(When laws imposed by the state fail, we must act by the law of nature). 2 Roll. R. 298.

Note: The "law of nature" is the Law, as dictated by Yahweh.
1 BLACKSTONE, Comm, §§ 39-43.

Under the United States Code Service, provisions are given regarding allegiance. The ways of losing "nationality" amount to losing "citizenship", and are given in 8 USCS §1481, which are effected by various "expatriating acts":

A person's right to expatriation is not dependent upon consent of government. U.S. ex rel WRONA v. KAMUTH, (1936, DC NY) 14 F. Supp. 70

A person performs an expatriating act with intent to renounce his citizenship whether or not he knew act was expatriating act. RICHARDS v. SECRETARY OF STATE, DEPT OF STATE (1985, CA9 Cal) 752 F.2d. 1413

Expatriating conduct may be such as to indicate an "implied renunciation of tie." In re R---S--- (1958 BIA) 7 I&N Dec 718. (a.)

A person who takes a foreign oath of allegiance to a king, in an informal proceeding, loses his former citizenship. REVEDIN v. ACHESON, (1952, CA2 NY) 194 F.2d. 482

A person may renounce his nationality with or without a claim of allegiance to another nation. DAVIS v. DISTRICT DIRECTOR, IMMIGRATION & NATURALIZATION SERVICE (1979 DC Dist Col) 481 F. Supp. 1178.

(a.) Rem. An Oath of Allegiance is first effected by an "implied" original, since "a king" (Yahshua) is due rights, and His subjects protection, even before His coronation. 1 BLK. Comm. §§ 356-7. Because Yahshua is King (even if w/o coronation), His converts could not be forced to make a "formal" oath. And so, every "newborn" or otherwise, who has not made a "formal" oath of allegiance, is nonetheless still His subject/citizen.

Were it otherwise, one would be led to the absurd proposition that a subject/citizen who has not attained to the age of maturity to make a "formal" oath of allegiance does not owe allegiance or subjection to the laws of the king or state.

Thus, every convert to YAHWEH is a subject/citizen of His Kingdom by an implied original oath of allegiance.

Moreover, allegiance is of two sorts: a "natural" perpetual allegiance, and a "local" temporary allegiance. id. at 357-61. Again, it would be an absurd proposition to 'think' that a headless "body" ("we the people") "under God" who are anticipating their unification as a Spiritual Corporation "under" that "Head", believes their allegiance to today's headless government is permanent! See Revelation 20:4-7; and Daniyl 7:13-14

Thus, secular government, as a mere lay "civil" corporation, is only acting as a secular "defacto king" (i.e., a "usurper"!). See 1 BLACKSTONE, Comm., §359; Cf. "Oath of Supremacy", id., at 356

Under Biblical or Revealed Law, a subject of the King performs certain religious rites, which effect his recognition as being "civilly dead" (i.e., no longer owing a secular king or civil state "civil duties"). E.g., 1 BLACKSTONE, Comm., § 128 (when one "enters into religion"); and Romans 6:1-11 (when one is "buried with Him through baptism into death"), etc. A person in proper allegiance to Yahweh makes a "new covenant" (treaty), which in effect makes all nations and their kings/civil state governments enemies of Yahweh. Hebrews 8:7-13; 9:15 (Cf. Romans, supra); Exodus 23:22; and James 4:4. Thus, no adversarial kingdom or "State" can claim they are in a treaty with Yahweh, so as to claim "jurisdiction" over those in "Covenant" with Yahweh. See Exodus 34:11-12, p. 48, at n. (a).

Put another way, the "covenanted" people of Yahweh have made a "forbidden treaty with a known Superior, albeit, "foreign" enemy of the [civil] state", which, under this government, amounts to "treason", and loss of citizenship. And a conviction thereof may be effected "on the testimony of two witnesses, or confession in open court." See 18 USCA § 2381; and Art. III, Sec. 3, U.S. Constitution.

Rem. The drafters of the U.S. Constitution made a separation between Church and State, as the governing power of these cannot co-exist as a union, because they are enemies of the other.

(a) See 4 BLACKSTONE, Comm., §§75; 81-3; and 87 (describing Treason as a "betrayal" or "breach of faith" of a "natural, a civil, or even a spiritual relation" between the king/state & his subject/citizen), to that of a "foreign prince" or sovereign spiritual prince.

Moreover, Yahweh and His Law makes no alliances with any secular (worldly) king/state, since He is an enemy of such. And according to Blackstone, supra, § 83, a "foreign prince" is necessarily an "enemy", since he "owes no allegiance" to the other!

ZORACH v. CLAUSON, 343 U.S. 306 (1952):

"... there shall be no concert or union or dependency one on the other. [of Church and State] That is the common sense of the matter. Otherwise, the state and religion would be aliens to each other - hostile, suspicious, and even unfriendly." (emphasis mine) (a.)

The fact of the matter is that the states have, by a *legal fiction*, forcibly "joined", subjected, and made *inferior*, even the Church, by a claim that all persons from birth owe a *perpetual* "natural allegiance" and obedience to the *secular* King/State. 1 BLACKSTONE, Comm., §§ 357-8; and §45.

Such a blasphemous claim by a secular government, not only establishes its own "*station*" in life as an "*apo-state*", but makes every religious person and their innocent children *perpetually* offend Yahweh by the same *forced* 'union'.

In Biblical or Revealed Law, however, it is known that such a king/state would betray the "people", and attack the "saints" (sacred), for which reason its government will be destroyed. 1 Samuyl 8; Daniyl 7:21-27; 2 Thessalonians 2:1-4; Revelation 13:1-8; 17:12-16; and 20:4

Moreover, the great "falling away" (*apo-stasy*) prophesied of in Thessalonians, supra, is an historical fact now realized.

It is a judicially recognizable fact that Biblical or Revealed Law teaches that 'Adam (which means Man-kind),

@ Every person may have his own *private* will, which may be in accord with *secular* or *spiritual* purposes.

As a requirement for the administration of a *secular* "civil" government, all opposing *private* wills are forfeited by the "democratic" concept that a two-thirds "*majority* constitutes the "*united*" will of the aggregate corporate body politic. See 1 BLACKSTONE, Comm. §§ 52; 456; and 466.

On the other hand, Biblical or Revealed Law teaches that all *private* wills are forfeited to the *one* Sole Supreme will of The One Supreme King (Yahweh). Psalms 143:10; John 5:30, 6:37-40; 1 Thessalonians 4:1-8; and Romans 12:1-2.

In U.S. law, this concept may be seen reflected in a *sole* Spiritual Corporation like that of the independent *sovereign* city-state called the Vatican. Cf. Biblical "Jerusalem"

Thus, by an undisclosed "unconscionable contract", every U.S *secular* King/State has in fact made every person belonging to Church or religion, an *ago-state* first, and then a hostile "enemy of the state", since the *private* wills of both cannot be in union or dependent on the other.

and an Israylite both owe their first, and hence, "natural allegiance" and obedience to Yahweh, in their respective corporate capacities, at a time when neither of them had an established King or State on earth.

Thus, since the "fall" of Man, Biblical or Reveaed Law has ordered a "re-conciliation" of all mankind to his first state of "sacredness" to Yahweh. Leviticus 16:29-34; and Daniyl 9:24. Cf. 1 BLK, Comm., §§ 43, 54; and 57-8 (observing from creation, first allegiance is to Yahweh) ④

At the same time, however, subjects of Yahweh are ambassadors, or are under the protection of the rights of immunity of ambassadors and their subjects, as provided for by the "law of nations". See 4 BLACKSTONE, Comm., §§ 68-70; and 8 USCS § 1101 (a)(15)(A), etc. The "law of nations" is dependent upon the rules of "natural law" or "law of nature" (of Yahweh). See 1 BLACKSTONE, Comm., § 43.

Under Biblical or Revealed Law, it is taught that the Messian is "Ambassador" of Yahweh, which means He is a "Servant" of, and sent by the Supreme Sovereign King Yahweh. Moreover, "messiah" means "anointed", which includes all the corporate body of the Head ("Servant"/ambassador of Yahweh). 2 Corinthians 1:21-22; Matthew 12:16-21; Luke 4:17-19; 1 Corinthians 12:27-31

④ Although the King (head) in the common law has, by "first allegiance", put the people (body) in subjection to his secular *civil* government, it must be remembered that, unlike the supreme sovereignty in this country, being the *vulgar* ("the people"/body), the king is "divine".

In other words, since they view "God" as king in heaven, His rule over the earth is reflected in the king on earth vicariously. The king is "God", or is owed all allegiance and rights, etc., that reflect "God" as king in heaven.

Needless to say, however, the supreme sovereign power of this country, being the *vulgar* ("the people"/body) does not, and cannot claim it is "divine" or is acting as God, because (1) Yahweh is the Head, and (2) unlike the common law, there is a *separation* of Church and State in this country.

Therefore, first allegiance must be to Yahweh by "oath of supremacy". Cf. Pledge of Allegiance (4 USCS §4)

This means a subject of Yahweh has all rights, duties, privileges, and immunities, etc., due therefrom.

Under the law of nations, "safe-conducts" or "passports" is expressly or impliedly granted to "the subjects of a foreign power in time of mutual war, or committing acts of hostility against such as are in amity, league, or truce" with the nation wherein they reside. 4 BLACKSTONE, Comm. §§ 68-9.

Even if no state in the U.S. recognizes members of the "Church" or subjects of Yahweh with rights under ambassadors, its placing of them in a forced 'union' creates the "hostility" between them, so as to impliedly grant them all "safe-conducts" or "passports". Any offence against the person or property of those under these protections, is a "breach of the public faith... and such offences may... be a just ground of a national war." 4 BLACKSTONE, Comm., § 68; and 1 BLACKSTONE, Comm., §§ 248-50.

Because every state in the U.S. is in violation of these protections, by carrying out legal process and convictions of immune subjects of Yahweh or members of "Church", after making themselves hostile enemies, it is no wonder that Yahweh has announced a declaration of war against all nations, for such offenses.

Daniyl 7:21:

"I was watching, and the same horn was making war against the saints, and prevailing against them..." (Cf. Rev 13:7)

(a) James 4:4

"Adulterers and adultresses! Do you not know that friendship with the world (secular) is enmity (hostility) with Yahweh? Whoever therefore wants to be a friend of the world (secular) makes himself an enemy of Yahweh. (emphasis mine)

Revelation 13:3-4:

"And all the world marveled and followed the beast. So they worshipped the dragon who gave authority to the beast; and they worshipped the beast, saying, "Who is like the beast? Who is able to make war with him?"

Revelation 19:11, 15, 19-20:

"Now I saw heaven opened, and behold, a white horse. And He who sat on him was called Faithful and True, and in righteousness He judges and makes war.

Now out of His mouth goes a sharp sward, that with it He should strike the nations. And He Himself will rule them with a rod of iron. (Cf. 2 Thessalonians 2:8)

And I saw the beast, the kings of the earth, and their armies, gathered together to make war against Him who sat on the horse and against His army. Then the beast was captured and with him the false prophet who worked signs in his presence, by which he deceived those who worshiped his image." (Cf. Daniyl 8:25)

2 Thessalonians 2:3

"Let no one deceive you by any means; for that Day will not come unless the *falling away* (apostasy) comes first, and

1. the man of sin is revealed, the son of perdition, who opposes
2. and exalts himself above all that is called God or that is
3. worshiped..." (emphasis mine, from original Greek NT)
4.
5. It may be that the people in this country have been
6. deceived by "*signs*" that made them all "wonder and follow"
7. this beastly system after their 'union' by constitution,
8. which also created their hostility against their *first*
9. *allegiance* to Yahweh. It is no less understood, however,
10. that the national war they provoked will be met by the
11. revealing of the deception, and the defeat of the beastly
12. system by the *words* of a prophesied Son of Man, which
13. they are anticipating.
14.
15. Although much has been said here, which has religious
16. overtones, there are serious legal implications related
17. thereto.
18. First. The aforementioned are "judicially noticeable" facts,
19. whose knowledge would be imputed to all Bible-believing
20. people, which would include at least the two-thirds "majority"
21. since they made a Pledge of Allegiance to be "under God".
22. Furthermore, a judicially noticed fact is superior to evidence;
23. it is *proof* on the issue. And this gives rise to a *presump-*
24. *tion* that the people believe those facts are true.
25.


See

Second. Statutes are "*pre*-scribed" or written "*prospec*-*tively*", which means they must anticipate changes of circumstances in the *future*, or else they will be found unconstitutional and void. See, e.g., MOREY v. DOUD, 345 U.S. 457 (1957)

A state, then has done nothing to protect or provide for the rights, privileges, or immunities, etc., of an anticipated established "Church" government that will replace its present secular "civil" state government. This is, inter alia, a clear violation of the 1st and 14th Constitutional Amendments.

PRIVILEGIUM CLERICALE (BENEFIT OF CLERGY): A LEGAL EXCUSE OF DEFECT OF WILL

Other than those rights and immunities that a subject of Yahweh ought to have, which are recognized under the law of nations, there is a legal "excuse" of "defect of will" derived from Biblical Law. This excuse was recognized by the common law and was called a "privilege" and also a "statute pardon". 4 BLACKSTONE, Comm. §§ 358-9; 20; and 367. This *privilege* was an *immunity* against most crimes, and especially for those whose penalty was death, like homicides. id. This *privilege* was also called a "matter of *grace*" (*favor* and/or *divine influence*). id. at 241. This *favor*, of course, implies having *friendly* relations. See these words in LAIRD & LEES WEBSTER'S DICT. (1758-1843), e.g.

> This exemption of clergy, which they obtained by the favour of the civil government, they now claimed as their *inherent right*; and as a right of the highest nature, indefeasible, and *jure divino* (divine right)." id., at 359. (emphasis mine)

Although this immunity was later extended to most religions, and even later to the common people, the English legislature had converted "what was at first an unreasonable exemption of particular popish ecclesiastics, into a merciful

(a.) It has already been demonstrated that the "Church" would be a hostile enemy of the state by a forced 'union' with its secular (worldly) government. See pgs. 50-51 and notes. As such, those that remain in union by will, are necessarily apo-states, who have opted to be considered as being either in "amity, league, or truce" with the secular King/State. See p. 53, and ZORACH, at p. 51. Generally, however, the Papacy or Roman Catholic Church was not in "amity, league, or truce" with England's secular King(dom). See 4 BLACKSTONE, Comm. pg. 54-5 (naming various laws against them)

Nevertheless, the Benefit of Clergy began with the "particular popish ecclesiastics," and was later expanded to most religions, and also to the common people of England, infra.

As a chief, or common qualifying criteria between these, it was necessary that they were friendly, albeit, apo-states of a spiritual corporation, who, by "learning and rational religion" were enlightened to being "a body of men, residing in the bowels of a state, and yet independent of its laws." id., at 364. The law of England acknowledged this truth, but later viewed this status as a threat by abuse. By reason of duping them into accepting a friendly, albeit apostate relation, the legislature was able to enact and later abolish the statute pardon

mitigation of the general law, with respect to capital punishment." id., at 364. (cited by U.S. v. FOLSE, 2015 U.S. Dist Lexis 176610)

Extended

LZ44
Arial

I. MODERN JURISPRUDENCE AGAINST PRESUMPTIONS

Unlike the common law, the use of presumptions in this country have been found to void criminal statutes for violating due process. Among the many rulings governing the use of presumptions in criminal cases, the following rulings will serve as a helpful guide for this document.

In Re WINSHIP, 397 U.S. 358 (1970):

1) Prosecution must prove every elemental fact beyond a reasonable doubt. See Brackeen, infra.

FRANCIS v. FRANKLIN, 471 U.S. 307 (1985):

1) Presumptions must be measured by Winship standard, supra.
2) Both conclusive and mandatory rebuttable presumptions are unconstitutional. See Lewis, infra, 1; Ulster, infra, 1; Sandstrom, infra, 1

BRACKEEN v. NEVADA, 104 Nev. 547 (1988):

1) Presumed fact must be proved upon evidence beyond a reasonable doubt if it establishes guilt, or is an element. See Burall, infra

NEVADA v. LEWIS, 20 Nev. 333 (1889):

1) Presumption of sanity is conclusive. See Francis, supra, 2.
2) Presumption of sanity is grounded upon public policy. See Davis, infra, 2

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

-vs-

ROBERT BROWN, JR.,

Defendant(s).

CASE NO. C299234-1

DEPT. NO. 6

(Hypotheticals based on Facts of Case)

Leaving "Seasonal Residence"

1. ARGUMENT provoked accused to leave "seasonal residence" (to? or Calif.?, etc.). See witness statements that the accused often abruptly left to Cali. WITHOUT Notice.
2. INCIDENT (awareness) caused accused to leave "seasonal residence" (due to immovability of amount of "contraband" in said residence). Hence, the accused had expressed no concern of personal involvement in incident over the phone w/ M.R., but only for him to get and keep the accused's "property". See M.R. Statement & Reports, where it is admitted that M.R. (or else someone else) entered the accused's residence BEFORE SWAT, and no LARGE amount of "contraband" is reported as Found. See Note, infra.
3. BUSINESS/RESPONSIBILITY of keeping "seasonal resident" status under DMV & Constable terms.

Note: The Fact that the accused appears to have left w/o packing clothes etc. does not speak to prove an "abrupt" departure out of guilt for incident, because the personal property at the accused's "seasonal residence" was not even 1/5 of the property brought from permanent residence in Cali.

With regard to the wallet found at the accused's "seasonal residence", there was only $1 (one dollar) found and debit cards, etc. But the accused is known to keep: (1) another Cali ID, which was not Found (See all Cali. issued DMV pics, and PROOF fr. Power of Attorney pics fr. NOTARY given to mother AFTER incident); and (2) xtra debit cards kept w/ mother in Cali.

The insignificant amount of money found ($1), can easily be said to suggest that the accused had on his person an amount of sufficient cash, or else the lack of "preparation ("premeditation") against the charges.

In Camera and
Circled items not to be disclosed in court, etc.

Investigator p. 1 of

1. Gather various info (e.g., reputations, habits, etc) on potential witnesses
2. Obtain: text messages and installed apps on...
3. Investigate residence of incident for bullet hole repairs and remnants of slugs in walls, which CSI may have failed to detect.
4. Investigate property management (e.g., for policies and procedures, etc) regarding, but not limited to: (1) Its policies or customs of disclosure to potential renters regarding the property's demographics and history of shootings and violence, etc; (2) how it deals with known occupants who are complained of by other residents about dangerous criminal behavior, etc; (3) It's custom or how it treats a known occupant of an apartment, residing therein, but no longer with any legitimate lessor; and (4) its customs and accomodations & considerations for potential renters with known disabilities in light of the aforementioned.
5. Obtain Credit Card purchase histories of accused, potential witnesses & decedent
6. Obtain Internet access data of accused, potential witnesses and decedent
7. Obtain Arrest record / data of potential witnesses, and decedent
8. Investigate decedent's last workplaces (i.e., employees & employers)
9. Obtain phone call records of potential witness and decedent
10. Obtain cell tower info on K.M. and A.M. for day of and day prior to event
11. Obtain cell tower info on E.M for day of and several days prior to event
12. Obtain cell tower info on decedent for day of and day prior to event
13. Obtain Playstation login data for the accused ("ARIYL") and decedent for 2012
14. Obtain utilities bill statements of accused and decedent NV residencies (2012)
15. Obtain vehicle location data on SUV of accused, license plate "ARIYL" (2012)
16. Obtain all Location Data of accused (e.g., RF readers, GPS, electronics, cell phone, etc) (2012)

...estigate decedent's ex ("Anthony") and associates

...decedent's family racism (i.e., racist activities and history)

19. Investigate the personal & religious internet activities of the accused
20. Investigate and Obtain prosecutors' history of Voir Dire prejudice.
21. Investigate and Obtain prosecutors' history of Misapplication of Law
22. Investigate and Obtain ...
23. Obtain empirical data (e.g., on Presumptions related to Elements of crimes)
24. Obtain SWAT "Risk Matrix" and/or "Operation Plan" for event. Ernst v. City of Eugene
25. Investigate and Obtain info on LUMPD maintaining a "policy" or "custom" prejudicing "seasonal residents"
26. Investigate why others suspects were not pursued. (See CADD & Witness Statements)
27. Investigate why M.R. went into the accused's apartment before SWAT, and the omission of that info in reports by Det. D. Raetz. See his email to CSI K. Taylor on 12-9-13 @ 8:06 am
28. Obtain copy of all e-mails to and from CSIs, and to and From OFFicers.
29. Obtain records from classes decedent attended & statements fr. those seeing accused's SUV
30. Investigate M.R. & his girlFriend about ...
31. Investigate neighbor east of accused for ...
32. Investigate decedent's family for "claims" of giving her money to go to Ariz. court for children
33. Obtain info on when decedent's govt. assistance expired (e.g., Foodstamp allotment)
34. Obtain account info of accused(" ")and snapshots of "installed apps" screens
35. Obtain Google account info of decedent and snapshots of "installed apps" screens
36. Obtain records & files fr." .com" for accused's "ariylh" Google acct. & his others
37. Obtain the accused's "24 Hour Fitness" records for 2012
38. Obtain the accused's "Blockbuster" rental records for 2012
39. Obtain DMV records and pictures of all issued IDs & Driver Licences of the accused
40. Obtain copy of the accused's Power of Attorney docu. w/ Pic fr. Notary of mother
41. Obtain the accused's PayPal issued business debit cards (names of those issued cards)
42. Investigate Canyon Pointe management & maintenance workers for info on repairs etc. of N.N. apt.; & info on how the property of the accused was handled

E.M. & K.M. vehicles several days prior to and after event.

44. Obtain expert witness on Eyewitness testimony (E.F. Loftus) & interview
45. Obtain Crime scene reconstruction expert
46. Obtain Neurologist
47. Obtain SPECT and MRI scan due to previous brain injury, etc
48. Obtain LAPD photos of my brain injury results (i.e., pics of elephant man face)
49.

~~Justice Ct. Pretrial transcripts~~ 7-20-14

~~Pictures of my apt.~~

[~~Briefs (copies and/or review of prior to submittance)~~

~~Motions~~

~~McNaghten rules.~~ Explanation. relevant Case Law

Rational-choice theory. Explanation. relevant Case Law

Automatism. (mental disassociation, agains volun)

PCS: Post Concussion Syndrome

Legal Formalism (theory that law is dif. fr. politic etc)

Legal Realism (theory that law is fr. judicial decisions)

Briggs Law (mand. psych. study for crim culp)

Choice of Law; Choice of jurisdiction

Capitulation (treaty rights, jurisdiction)

Center-of-gravity, doctrine (choice of law, jurisdiction w/ event relev.

Code state
Non code state } comparison. History and background etc

Ambiguity doctrine / Vagueness doctrine

Analytical, Historical, Positivist Jurisprudence (of U.S. law)

jus commune. History and list of applicable laws used by U.S. from common law right, not statute

jus gentium. History and list of applicable laws/statutes etc used by U.S. law ↑ Int. law taken as common

Unwritten law. list of citable case law (includes case law)

Letter of the law / spirit of the law (re relevant to interpreting elements of a statute etc.)

Common law murder

Fundamental law (the Organic law that est. a nations or state's principles) eg = constit.

Natural law

Act of god. list of all "natural phenomena" and [redacted] broadness of definition

Originalism interp according to drafters intent

210.6 (4)

403-1015 - Robert

310-3823 - Chanice

610-662-3005

Philip J. Berg v. Obama

US district Ct Trinity/Leander

8-21-08 08-CV 4083

file Copy

5-23-17

ROBERT BROWN JR., by
Yahshua Ariyl Ha-Kohen, In Pro Persona (Hebrew Israylite, PARSON)
יהושע אראיל הכהן
Under Foreign SOVEREIGNTY & First ALLEGIANCE to YAHWEH, by CORPORATION SOLE, and above all Things TEMPORAL

TO: THE EIGHTH JUDICIAL DISTRICT JUDGE, Dept. IX
Jennifer P. Togliatti

GREETINGS,

It is with deep regret that I must notify you about my present reality. At this time, I cannot foresee a likelihood that I will be afforded the assistance of any stand-by counsel. Such a deprivation has made it impractical for me to submit any further motions, without first being able to consult with counsel.

As you already know, Amanda Gregory is not "250 qualified," and her presence has been continuously objected to, since I filed the motion to proceed In Pro Persona.

On the other hand, I have gained satisfactory progress with the newly assigned investigator, Alberto Fuentes. I do believe that we have developed a workable relationship, unlike every previous court-appointed investigator, which I have complained of. Mr. Fuentes has met me with sound reasoning, and consistent diligence — the likes of which, only a man of Faith could appreciate by such willingness. Notwithstanding Mr. Fuentes' professional obligations, and whatever skills natu

belonging to them as duties, I am confident in my hope that the fruits therefrom will prove profitable.

Moreover, it is by this hope that I implore you with all sincerity to consider all of my previously consistent contentions - against my admissions now before you, for consideration of affording me new counsels.

As a "defendant" In Pro Persona, I believe this gives me a unique opportunity to speak and appeal to you, personally, and not like unto a mere legal entity. But because there is a legal need for one corporate entity (secular society) to motion another corporate entity (a court), such reasoning fails, however, when a court accepts a motion to proceed In Pro Persona. And that has to be especially true, when such a persona does not belong to the "State" (lay corporation), but to the "church" (spiritual corporation). And I do not belong to the common religious body politic, which constitutes those who have agreed to be reduced to a legal fiction in order to govern themselves as, and to be sued amongst themselves as a common "state" corporation. Because truly, that common majority religion establishes no "state religion," but only a "state."

My point is that, in legal contemplation, this "State" is not attempting to sue an individual member within its own corporate body, since there is a constitutional separation of church and state. Such a suit amounts to a private act, against the rights and protections of its own professed, public interests.

The fact is, nearly every witness knows me by my unique corporate spiritual name. And that legal baptism name ("ARIYL") is also protected by way of a legal act of commerce. That is, I have been the sole owner of the unique religious domain name ARIYL.com, including its subsidiary domains, since 2006. And this state will publicly broadcast its attempted prosecution and defamation of said spiritual corporation, while simultaneously refusing my right to be sued by my legal spiritual name. AG Lexis 11 (1993)(AGO 93-12). Such a right is *not* a question of law; it is supposed to be the law.

Furthermore, being denied the rights that accompany being a member of the "church" with all its distinctiveness and purposes of separation, demonstrates to me that I have no business here, and neither is my actual presence wanted here. With that said, I am confident that you know that I cannot possibly have a trial by a jury of my own peers, let alone a fair one. And because it is apparent that all these things have been set against me, I hope that you can at least rationalize my belief that this case has already been decided.

My trust, therefore, is in YAHWEH alone. But far be it from me to think that my Heavenly Father has shown me all these adversities compassing my life, only to have me run headlong into it. No, rather, I find better consolation in knowing that it has never been the nature of the secular world, with all its imagined positive law, to extend its hand to deliver anyone who dwells in a realm naturally opposed to its own.

Nevertheless, I am confronted with a decision, which I can't say is out of my own will. But I believe it to be, nonetheless, a last resort worthy of consideration. And so I beseech you, very personally, and with all due humbleness, to grant me new counsels, who are familiar with, and willing to work with Mr. Fuentes, as well as myself. Clearly, I will understand this to be your last legal effort – conditioned, at least upon an extraordinary effort by me to assist and develop a working relationship with new counsels. And may this letter serve as my affirmation to you, to do so.

Obviously, such consideration will not be done without any cost to me. My efforts to be recognized as a proper ~~parson~~ person will seemingly be lost. Be that as it may, I count it as a necessary leap of faith... made ready for this day.

Sincerely,
With my hand and my own words,
ROBERT BROWN JR.

NAME CHANGE

1. NRS 41.270-290

2. AG Lexis 11 (1993) "There is no language contained within NRS 41.270 through -290 making those provisions the exclusive method for effecting name changes in Nevada. Under the principles of common law a man may change his name at will, by usage, and may sue or be sued in any name by which he is known and recognized. See Emery v. Kipp, 97 P.17, 19 (Cal. 1908). We conclude that this common law right, which allows a person to use any name that he or she sees fit so long as it is not done for any fraudulent purpose, applies to the surname of married women as well. See MALONE v. SULLIVAN, 605 P.2d 447 (Ariz. 1980); DOE v. DUNNING, 549 P.2d 1 (Wash. 1976)."

3. U.S. v. McKAY, 2 F.2d. 257 (1924) "Under the common law a man can change his name at will, provided it is not done with a fraudulent purpose; he may sue and be sued by such adopted name, and will be bound by any contract into which he enters in his adopted name. This is true in the absence of a restrictive statute, and is not abrogated by the fact that a procedure is provided by statute for the change of one's name. 20 Standard Ency. 250; In re McUlta (D.C.) 189 Fed 250; Linton v. Bank, (c.c.) 10 Fed 894."

U.S. v. DUNN, 564 F.2d 348 (9th 1977) ("[I]ndividuals may legally call themselves anything they wish, despite the lay concept of a person's "real" name, provided of course the name is not used for an illegal purpose."

e.g. U.S. v. McCormick, 72 F.3d 1404 (1995) "Because the common law allows a person to freely change his name without legal processes, Thomas's adoption of the Boner name was legally permissible and

thus cannot be deemed false information within the meaning of 42 U.S.C. § 408 (g)(1)."

TITLE 28. § 212. Prisons & Jails." although DDOC had mistakenly assumed that Del. C. § 5901(c), which required prisoners to obtain court order to legally change their names, applied to inmate, it had corrected its mistake and had allowed inmate to use his common law Muslim name in prison." (citing Masjid Muhammad v. Keeve (2008 D.C. Del) 538 F. Supp 2d. 720) Note: Claimant in suit used his religious name for 30 years PRIOR TO incarceration, and thus, was not an INMATE trying to change his name by common law right.

[Enter: Usage history, and court's inevitable usage from its witnesses.]

TITLE 18. Chapter 33. Emblems, Insignia, and Names. § 7. "using internet domain name to operate website is "use in commerce" because it affects party's ability to offer services. Trade Media Holdings Ltd. v. Huang Assocs. (2000, DC) 123 F. Supp 233."

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

-vs-

ROBERT BROWN, JR.,

Defendant(s).

CASE NO. C299234-1

DEPT. NO. 6

A MOTION FOR DISMISSA BY A SUGGESTION OF IMMUNITY

OR

A WRIT OF PROHIBITION, OR MANDAMUS

Second Draft Motion; o.g.

Suggestion of Immunity
or
Prohibition

LEGAL

STATE OF NEVADA Plaintiff vs. ROBERT BROWN (a legal person), accused, by Yahshua "Ariyl" Hakohen, (a Spiritual Corporation Sole), In "Pro Persona"	Case No.: C-14-299234 Dept. No.: XVII

A MOTION FOR DISMISSAL BY A SUGGESTION OF IMMUNITY

or

A WRIT OF PROHIBITION, OR MANDAMUS

COMES NOW, the Accused, ROBERT BROWN, by Ariyl, a foreign public Ecclesiastical Corporation Sole of the Son of Yahweh, and hereby moves this court for a Suggestion of Immunity, or Writ of Prohibition. NRAP 21(a)(1) and 17(a)(1),(10); LOW v. CROWN POINT MINING CO., 2 Nev. 75 (1866); G&M PROPERTIES v. SECOND JUDICIAL DIST. COURT, 95 Nev. 301 (1979); NRS 34.340; Article 6, § 4 of The Nevada Constitution; SAMANTAR v. YOUSUF, 130 S.Ct. 2278, 2291 (2010); COMMONWEALTH v. KOSLOFF, 5 Serg. & RAWLE 545, 545 (Pa. Ct. Oyer & Terminer Phila. 1816); UNITED STATES v. NORIEGA, 117 F.3d. 1206, 1212 (11th Cir. 1997); and THE SCHOONER EXCHANGE, 11 U.S. (7 Cranch) 116 (1812).

This Motion is made and based upon all papers, pleadings, and asserted facts on file, or otherwise recorded, or in the possession of the court (judge, prosecutor, and defense attorneys).

ence.

FACTS

On Jan. 9, 2014, the Accused was forcibly seized in California by a warrant issued from the State of Nevada for a charge of capital murder, inter alia. At and before that time, the State of Nevada *knew* that the Accused is an immune *foreign* public Ecclesiastical *Corporation Sole of the Son of Yahweh*, known as "*Ariyl*." See attached AFFIDAVIT; and ARGUMENT.

Consequently, the Accused expressly rejected Nevada's *jurisdiction* by refusing to sign a Waiver to extradite, and demanded a *Governor's Warrant*.

At arraignment, the Accused was ready to enter a plea, and asked the court if he could do so. Judge Sciscento refused the request by insisting that an attorney be present for him. Thus, Nevada denied and manipulated the only legal opportunity when an Accused could meet its law's demand that a plea against its courts' *in personam jurisdiction*, on the ground of foreign sovereign immunity, can only be made, *without an attorney, at arraignment*. An accused cannot make such a "plea[] through an attorney. This implies leave of court, which acknowledges its jurisdiction." See WILLIAM WYCHE, *A Treatise on the Practice of the Sup. Ct. of Judicature of the State of New York in civil Actions* (New York, Swords 1794), at 109. See also BLACK'S, *Law Dictionary* (6th Ed.): Jurisdiction in personam.

The court postponed the *arraignment* for an attorney pre

Since then, the Accused has fired several attorneys for their refusal to hear his arguments and put on a defense that Nevada's insolvent statutes cannot reach an immune member of the "Church." Every attorney, in collusion with the court, has gone further in usurping its position over the Accused, by denying a defense that amounts to a right to a trial by jury. See COLL. SAV. BANK v. FLA. PREPAID POST-SECONDARY EDUC. EXPENSE BD., 527 U.S. 666, 682 (1999)(speaking of sovereign immunity as a "constitutional right" akin to "the right to trial by jury in criminal cases"). Cited by: NELSON, *Sovereign Immunity as a Doctrine of Personal Jurisdiction*, 115 Harv. L. Rev. 1559 (2002), at 1566, n. 25.

The second attorney appointed by the court was Joshua Tomsheck. At *preliminary*, the Accused repeatedly told justice court judge Sciscento that he does "*not* understand" the charges. In a meeting afterwards with Tomsheck, the Accused began to explain his position against the laws of the State of Nevada having jurisdiction over him. The Accused also informed Tomsheck that he was going to invoke his right to a *Speedy Trial* at district court arraignment. Tomsheck attempted to discourage and insist that the Accused not do so.

At arraignment, in judge Garza's district court, the Accused, again, repeatedly told the judge that he does "*not understand*" the charges. After the judge expressed her frustration with that answer, Tomsheck

interjected with the lie that the Accused had, in depth, discussed the charges with him. Tomsheck did, however, go on to inform the court that:

"My client has often conveyed to me his difficulty with the American legal system and the interpretation of some of our laws..." ARRAIGNMENT, July 21, 2014, at p. 4, Lns 12-14.

Tomsheck and co-chair Peter S. Christiansen subsequently filed a motion to Withdraw, after the Accused filed a Motion to Dismiss Counsels for irreconcilable differences, and for usurping his Speedy Trial right by filing a Motion for a Writ of Habeas Corpus.

The third set of court-appointed attorneys were Andrea Luem and co-chair Amanda Gregory. For over a year, the Accused gained no progress, or agreement that included consideration of the Accused's status in an immune foreign "Church."

The Accused subsequently filed a Motion to Dismiss said counsels, and a Motion to Proceed In Pro Persona, simultaneously. After a competency hearing passed, district court judge Togliatti "granted" the Motions. However, unbeknownst to the Accused, Togliatti re-appointed Amanda Gregory, the non-250 qualified "dismissed" attorney, as the Accused's stand-by counsel of "choice." To no avail, the Accused repeatedly objected to Gregory's

appointment by judge Togliatti, and her presence at the court dates, especially since she was not even a 250- qualified attorney. These objections were responded to, by Togliatti's claim that she "thought" the Accused "didn't want stand-by counsel" and that Gregory was merely "stand-by for stand-by counsel." But the Motions Togliatti "granted" clearly request new stand-by counsel of choice.

Notwithstanding said objections to Gregory's continued presence at court hearings, a Motion for a Bill of Particulars was filed for the Accused ROBERT BROWN, by Aryl, a spiritual Corporation Sole. See attached Motion. The Motion demanded that the State clarify who the Actor is, in its Murder statute, because its "definition" does not literally name one. It only names the Victim as a "human being." District attorney Richard Scow said the element of the Actor is a "person," but moments later said that its a "human being." The Accused objected that the D.A. was "confusing" the elements, because a "human being" is "not a legal fiction", but a "person" is. The D.A. then pointed the Accused not to any part of the statute's definition of murder which might support his claim that the Actor is a "human being," but to a penalty section of murder (NRS 200.030 (4.)), which is a mere statement that: "A person convicted of murder of the first degree is guilty of a category A felony and shall be punished."

Nevertheless, with the State's ambiguous

answer on record, and denial of said motion by judge Togliatti, the Accused set out to draft an extensive motion based partially on the remark in the State's OPPOSITION to said denied motion. On page 9, Lines 16-18 and 23-25 of its OPPOSITION, the State said:

"To the extent that Defendant is claiming that the State must address him by his chosen name of "Yahshua Ariyl Ha-kohen," the State is not in the business of addressing defendants by other than their legal names.

Clearly, had Defendant intended his legal name to be "Yahshua Ariyl Ha-kohen" Defendant should have legally changed his name. Unless and until that happens, the State will continue referring to Defendant by his legal name."

The State plainly failed to comprehend the position of the Accused, because nowhere does his Motion "claim that the State *must* address him by his chosen name," of "Ariyl." The Accused merely pointed out to the State that it will unavoidably bring "Ariyl" into trial, because the State's critical Voluntary Statements, of those that know the Accused, know him exclusively or primarily by "Ariyl", his corporate spiritual name, which cannot be used to correct its inaccurate INFORMATION that nowhere names

"Ariyl," which is not a "juristic person," like "ROBERT BROWN" is. Moreover, the State's remark, supra, is plainly contrary to what a "legal name" is, within NRS 41.270-290.

AG Lexis 11 (1993) "There is no language contained within NRS 41.270 through -290 making those provisions the exclusive method for effecting name changes in Nevada. Under the principles of common law a man may change his name at will, by usage, and may sue or be sued in any name by which he is known and recognized. See Emery v. Kipp, 97 P.17, 19 (Cal. 1908)."

U.S. v. McKAY, 2 F.2d. 257 (1924):

"Under the common law a man can change his name at will, provided it is not done with a fraudulent purpose; he may sue and be sued by such adopted name, and will be bound by any contract into which he enters in his adopted name. This is true in the absence of a restrictive statute, and is not abrogated by the fact that a procedure is provided by statute for the change of one's name. 20 Standard Ency. 250; In re McUlta (D.C.) 189 Fed 250; Linton v. Bank, (c.c.) 10 Fed 894."

U.S. v. McCORMICK, 72 F.3d 1404 (1995):

"... the common law allows a person to freely change his name without legal processes..."

The fact that "Ariyl" is the known, lawfully changed name of the Accused, by which he may be sued in, makes it unduly burdensome to guess whether the Actor element in Nevada's murder statute is the D.A.'s ambiguous "person" or "human being." The Accused could not possibly be expected to intelligently or adequately prepare a defense under such circumstances.

For example: if the Actor element for Nevada's murder statute is taken to be "a human being" (which can never be an artificial "person"), then the Accused could spend many months of gathering case law and arguments to show that the State cannot prove that element. Because ROBERT BROWN is a member of a "State" (a lay aggregate Corporation), which is strictly an artificial "person" who must likewise conform to the strictly objective artificial "reasonable person" standard of conduct. Put another way: the Accused could argue that, because the State failed to formally make "Ariyl" the subject of trial, while knowing he is a professed "Parson" or "Minister" of an Ecclesiastical Corp. Sole (each of which are strictly a "human being" in contemplation of law), it failed to prove that element. See attached ARGUMENT for proof that "Ariyl" is an Ecclesiastical Corporation Sole, that is necessarily in constructive judicial knowledge of the State.

The danger, therefore, in assuming the "human being" element, lies in the fact that the Accused could be SURPRISED by the D.A.'s claim that, although

"Ariyl" was unavoidably brought into trial, it was the juristic "person" ROBERT BROWN that was the subject of the State's case.

On the other hand, if the ambiguous Actor element of murder is assumed to be the strictly juristic "person" ROBERT BROWN, then the Accused could spend months of preparation to argue that, because "Ariyl" was unavoidably brought into trial after the State erroneously refused to recognize and sue the Accused in that legally changed name, it necessarily follows that, the State did not "prove" that "Ariyl" is a juristic "person." This is because "Ariyl" is an Ecclesiastical Corporation Sole, which is strictly a "human being," in contemplation of law. But again, the Accused could be SURPRISED by the D.A.'s claim that "Ariyl" was covered in the State's case, because the term "person," in contemplation of law, also means "human being."

After the Motion for a Bill of Particulars was unjustly denied, the Accused set out to draft an extensive Motion for a Writ of Prohibition, based partially on the denied Motion. Just weeks later, however, the Accused was rushed to a city hospital for an emergency surgery. Upon return to the city jail, the Accused was told by staff that it "lost" all of his property, which included Discovery, dozens of law books, thousands of pages of legal articles, said Motion draft

and notes, etc. Such a loss was irretrievable, monetarily, and by attempt to recompile the same material through random searches. The Accused immediately notified judge Togliatti, who merely asked an officer in court how the jail could "lose" his property; but that officer did not know.

The Accused had, up until this point, done everything to quickly end the State's case. Now, in pro persona, the Accused was forced, against his will, to give up another attempt to quickly end the State's case. With trial quickly approaching at that time, the Accused sent a letter (attached) to judge Togliatti detailing the reasons, which she was aware of, for unwillingly relinquishing his in pro persona status. This included another request that Togliatti dismiss the formerly "dismissed" attorney Amanda Gregory, and appoint new counsels.

Ivette Maningo and co-chair Patricia Palm were then appointed. At this point, the Accused believed he had an investigator and attorneys that intended to help him. Shortly thereafter, however, the Accused sent a letter of discontent, to Ivette Maningo, primarily about Patricia Palm, who subsequently left as co-chair. Ivette Maningo then chose Abel Yanez as co-chair. Shortly after that, the investigator Al Fuentes died.

Ultimately, the Accused filed a Motion to Dismiss Counsels (attached) for their refusal to pursue his

choice of defense (not its strategy) which is his sole right, and for their enmity against the Church, etc. Attached to said Motion is a signed open confession of Treason, which was not even addressed by the court. And shortly after the denial of said Motion, the Accused has refused all visits by the court-appointed defense. The Accused had also informed the court, in said Motion, that he also submitted a BAR complaint against Maningo and Yanez. At this point, it is clear that the State and its court-appointed hostile attorneys will force an Accused capital offender into trial with no agreed upon defense, and with elements of guilt conceded to by said counsels, etc. See attached letter to Abel Yanez dated 1-9-2020.

It should also be known that said counsels have refused to file Motions, at the request of the Accused, about "de novo" matters, not having been addressed by Nevada. In all proven "hypocrisy", and without even knowing the specifics of the de novo matters, judge Villani, in deny the Motion to Dismiss Counsels, stated that counsels "do not have to file" such Motions, because "those matters" have already been addressed by the court "many times." But See, issues in draft, Motion for a Writ of Prohibition, or Mandamus (attached), previously in the possession of counsels. In proving Villani's hypocrisy, the Accused pointed out that he (Villani) had previously told counsels to submit "Stock motions" "Soon"; and that such Motions, also, have already been addressed and "denied" by

the courts "many times" as well. And as such, he (Villani) and counsels "know" that those Motions "will be denied," but are filed "to preserve the issues." Villani's hypocrisy was further pointed out by being told that he and counsels "can't know" if a Motion about *de novo* issues will even be denied; and yet, in his hypocrisy, Villani was saying that counsels "don't have to" file them to likewise "preserve the issues," which is their *duty*. This is clear judicial misconduct, for which this court ought to demand that Villani *recuse* himself.

For the sake of brevity, the Accused reserves further undisclosed matters for this court's request.

I will only add that, at the outset of Maningo's appointment, the Accused clearly expressed his continued aim that his case be resolved as soon as possible. Maningo expressed that she could accomplish that aim in "six months," but assured the Accused that she would do a "good job" if she were given a year." Although hesitant, the Accused agreed. However, about 6 months before his April 2020 trial date, Maningo informed the Accused that the Supreme Court of Nevada, in a multi-defendant reversed case, ordered her to handle that case, which was to begin about 2-3 months before the trial date of the Accused and run past that date. Thus, Maningo expressed that she "had to" postpone the trial date, although the Accused expressed his discontent. It was not until about 3 months before the trial date of the Accused that Maningo asked for a 6 month continuance,

which was granted. This led to the Motion to Dismiss Counsels. Maningo clearly betrayed the confidence and belief that the Accused had, in her assurance of resolving his case soon after her appointment. Such betrayal rose to the level of incompetence, hypocrisy, and ultimately the hostility that now remains, q.v. Maningo should have removed herself as counsel, in light of the expressed aim of an early resolution by the Accused. Maningo had approximately 6 months advance notice, which would have been ample time for new counsel to assist co-chair Abel Yanez. It would be utter hypocrisy on the part of Maningo if she claimed that new counsel could not have been reasonably expected to do so. This is because Maningo herself took on the new multi-defendant 250-case within the same 6 months!

POINTS AND AUTHORITIES

SATOW'S, Guide to Diplomatic Practice 9 (5th Ed., 1979)

"It has been established for several centuries in customary international law that a sovereign or head of state, who comes within the territory of another sovereign is entitled to wide privileges and to ceremonial honors appropriate to his position and dignity, and to full immunity from the criminal, civil and administrative jurisdiction of the state which he is visiting." [Footnote om.]

KALSCHEUR, *Civil Procedure and the Establishment Clause* (2008)(L.J.)

"The protection of the freedom of churches as "sovereigns" not created by the state points to the existence of another sovereignty (the only true sovereignty) - that of God (or gods) - existing "beyond, before, and superior to the state." (quoting, MURRAY, *We Hold These Truths* (1960), at 67. Emphasis original].

Article 3, Section 2 of the UNITED STATES Constitution:

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction.

SOSA, *Customary International Laws...*, 120 Harv. L. Rev. 869, 922 (2007)

"Prior to Erie, and consistent with the view that [customary international law] was treated as nonfederal general

common law, federal and state courts alike applied the [customary international law] of foreign sovereign immunity on the domestic plane without authorization from Congress or the Executive." [emphasis original]

UNITED STATES v. NORIEGA, 117 F.3d. 1206, 1212 (11th, 1997)

"The FSIA addresses neither head-of-state immunity, nor foreign sovereign immunity in the criminal context." CF. SAMANTAR v. YOUSUF, 130 S.Ct. 2278, 2291 (2010).

4 BLACKSTONE, Comm., § 83

(stating that a "foreign prince" is necessarily an "enemy" of its King of England, since he "owes no allegiance" to the other)

Yahweh and His Son are obviously "foreign" sovereigns who owe no allegiance to any secular/profane king.

EXODUS 23.22

"But if you indeed obey His voice and do all that I speak, then I will be an enemy to your enemies and an adversary to your adversaries."

JAMES 4.4

Adulterers and adulteresses! Do you not know that friendship with the [secular] world is enmity with God? Whoever therefore wants to be a friend of the world makes himself an enemy of God." [emphasis mine]

4 BLACKSTONE, Comm., §§ 68-69

(stating that, under the law of nations "safe-conducts" or "passports" is expressly or impliedly granted to "the subjects of a foreign power in time of mutual war; or, committing acts of hostility against such as are in amity, league, or truce" with it.

THE SCHOONER EXCHANGE, 11 U.S. (7 Cranch) 116 (1812)

(noting, there is a presumption that "the sovereign cannot be considered as having imparted to the ordinary tribunals a jurisdiction, which it would be a breach of faith to exercise.")

BOSWELL'S LESSEE v. OTIS, 50 U.S. 336 (1850)

Courts enforcing your [municipal] statutes do not act judicially but merely ministerally, having thus no judicial immunity and unlike courts of law do not obtain jurisdiction by service of process nor even arrest and compelled appearance.

BIGELOW v. STEARNS, 19 Johns. 39, 40-41 (N.Y. Sup. Ct. 1821)

"To give any binding effect to a judgment, it is essential that the Court should have jurisdiction of the person, and of the subject matter..."

MAITLAND, The Corporation Sole, 16 L.Q. Rev. 335 (1900)

(stating, "a church is no person" and "the ecclesiastical corporation sole is no juristic person.")

McDANIEL v. PATY, 435 U.S. 618 (1975)

"... the church is a thing absolutely separate and distinct from the commonwealth." (citing, 5 Works of John Locke 21)

WEISS'S, Concise Trustee Handbook, 2nd Ed.

"Though all courts are familiar with *in personam* (against persons), it is the action *in rem* (against things) which though practiced only in Maritime Law, stealthily operates in every civil and criminal court....

In rem jurisdiction over a man or woman can only exist if the man or woman is a slave, i.e., property or *res* (an object).... See THE ZONG (Gregory v. Gilbert), 99 E.R. 3:233 (K.B. 1783). In nature, *in rem* jurisdiction is exercised over men and women by their Creator, exclusively. Governments can therefore gain only a fictional *in rem* jurisdiction over men by creating various legal devices (personas) for those men to assume limited control of (e.g., citizen, taxpayer, driver, etc.) Since the device is legal fiction, a falsehood made true by force of law, this persona is in fact a legal object or *res*."

Although churches are "things," the remainder of this document's ARGUMENT will prove that it is only the modern religious corporation that the government is able to reduce to a juristic "person," and hence gain its

jurisdiction over it.

BOUVIER'S, *Law Dictionary* (1856) Maxim:

Frustr feruntur legis nisi subditis et obedientibus

Laws are made to no purpose unless for those who are subject and obedient. 7 Co. 13.

LEVITICUS 20.2

"And you shall not walk in the statutes of the nation which I am casting out before you; for they commit all these things, and therefore I abhor them." Cf. LEVITICUS 18.3

ACTS 5.29

"We ought to obey Yahweh rather than men." Cf. 2 TIMOTHY 3.1-5.

COKE, Litt. 70

No man warring for God should be troubled by secular business. [Cf. 2 Timothy 2.4]

4. BLACKSTONE, Commentaries, §§ 68-9

(stating that, under the law of nations "safe-conducts" or "passports" is expressly or *impliedly* granted to the subjects of a foreign power in time of war; or committing acts of hostility against such as are in amity, league, or truce" with the nation wherein they reside.

DANIYL 9.26-27 (NIV)

"... the Anointed One will be cut off...: War will continue until the end..."

ARGUMENT

1. THE RELIGIOUS HISTORY OF MAN: HOLY ISRAYL AND THE PROFANE COMMON PEOPLE

Throughout the religious history of man, the *Holy Scriptures* (Genesis - Revelation) record the existence of Yahweh, which is the Unique proper name of the One "divine" Father and absolute King of heaven and earth, as revealed to His holy children called the *Israylites*. Under the *Israylite* system of faith, "Yahweh is *One*" (absolutely). DEUTERONOMY 6:4. Scholars classify this form of worship as "monotheistic". More properly and simply put: Yahweh is not *two* or *dual*, having no equal or exact opposite to His being. Nor is He *three* or *triune*, having no plurality to His being. It is thus, *One* will that controls the history of man. Because Yahweh is One, there is no equal, or exact opposite, or plurality of wills, that govern the history and destination of man. This conception is unique to Israyl, as a corporate body, or spiritual corporation.

On the other hand, the same *Holy Scriptures* also show that all other nations have a "divine" father over them whom the *Israylites* describe as *Satan* the *Devil*. From the perspective of the *holy* Israylites, these terms "*personify*" the nature and character of all systems of faith among the *unholy, profane, common* people of the world. It made no difference to a *holy* Israylite whether a nation

believed in many gods or "claimed" they believed in one "divine" being, if the name of that being was not Yahweh. Since, in no case can the existence of Yahweh be discounted, it necessarily follows that, to an Israylite, these unholy common people do not worship the *absolute* only One. Hence, none of their systems of faith are governed by the *One* will of Yahweh. What remains, then, for all nations to worship, can only naturally be a *Lie* and *Satan* (meaning "*Adversary*") against the One will of Yahweh. Scholars classify the systems of faith among the nations as "*polytheistic*", which alludes to their *imaginations* that creation is subject to the will of others.

From the perspective of *holy Israyl*, the condition that fallen man is necessarily in, without Yahweh, is that of a *profane State*. Naturally, they do not belong to the One Holy Church, which has the One absolute King over it. Most nations only have an "*idea*" that there must be One absolute King of heaven and earth, to whom they owe subjection. But they believe not, or know not, that His proper Name is Yahweh. Nevertheless, as the common profane people in this country knowingly form their *common Union*, without the One absolute King, they point to His Supremacy by use of the ancient "*ideal*" Canaanite title "*El*", from whence the origin of the term "God" is derived and translated from.

I will now follow the allusions to Yahweh in the processes of how the *common* people establish their own *Union* and secular government, as a natural separation from the One Holy Church.

2. THE LAWS OF YAHWEH ARE SUPREME: ALLUSIONS IN MAN'S LAW THAT HIS LAWS ARE INVIOLABLE

KEILW. 191:

The law of God and the law of the land are all one.

ROBIN v. HARDAWAY, 1 Jefferson 109, 114, 1 Va. Reports Ann. 58, 61 (1772):

The laws of nature are the laws of God, whose authority can be superceded by no power on earth. A legislature must not obstruct our obedience to him from whose punishments they cannot protect us. All human constitutions which contradict his laws, we are in conscience bound to disobey. Such have been the adjudications of our courts of justice. And cited 8 Co. 118. a. Bonham's case. Hob. 87; 7. Co. 14. a. Calvin's case.

CALEB NELSON, *Sovereign Immunity*, 115 Harv. L. Rev. 1559 (2002):

The content of the general law of nations, in turn, was thought to depend partly on the immutable law of nature...

2 ROLL. R. 298

When laws imposed by the state fail, we must act by the law of nature.

1 BLACKSTONE, *Commentaries on the Laws of England*, §41

This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times:

no human laws are of any validity, if contrary to this.

1 BLACKSTONE, supra, at §54:

Those rights then which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, no human legislature has power to abridge or destroy them, unless the owner himself commit some act that amounts to forfeiture.

THE BOISI CENTER PAPERS ON RELIGION IN THE UNITED STATES, *Separation of Church and State*:

According to this view [of the Declaration of Independence], God is to be acknowledged as the creator of humankind and source of "inalienable" rights; but government is properly understood as a human, not divine, institution whose authority and power is derived from citizens themselves, not from God. [emphasis mine]

BOUVIER'S, *Law Dictionary* (1856): *Maxim of Law*:

Rights never die.

1 BLACKSTONE, supra, at §120:

For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature.

3. THE SECULAR ALLEGIANCE ESTABLISHED BY THE COMMON PEOPLE, AND THEIR PRESERVATION OF THEIR RIGHT TO CHANGE

From the perspectives of both holy Israyl and profane commoners, man owes First Allegiance to the absolute King, the Creator of heaven and earth. Since, by "divine" will, the First Man created, obviously had no equal, or society, to be subject to.

From the perspectives of both holy Israyl and the profane commonwealth of England, the reason behind what makes everyone owe "*natural allegiance*" to their kings, ultimately points to the absolute King of heaven and earth, who established their kings. The people are in a *Union* with its "divinely" appointed king, as subjects to the absolute "divine" King. Thus, the people's tie of allegiance to the king is aimed at establishing a "divine" connection and allegiance to its absolute "divine" King, which they may not "naturally" have.

1 BLACKSTONE, supra, at § 354

Allegiance is the tie or *ligamen*, which binds the subject to the king, in return for that protection which the king affords the subject.

1 BLACKSTONE, supra, at §§ 356-357

ALLEGIANCE, both express and implied, is however distinguished by the law into two sorts or species, the one natural; the other local. Natural allegiance is such as is due from all men

born within the king's dominions immediately upon their birth. For immediately upon their birth, they are under the king's protection. Natural allegiance is therefore a debt of gratitude; which cannot be forfeited, cancelled, or altered, by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature.

1 BLACKSTONE, supra, at § 358:

LOCAL allegiance is such as is due from an alien, or stranger born, for so long time as he continues within the king's dominion and protection: and it ceases the instant such stranger transfers himself from this kingdom to another.

1 BLACKSTONE, supra, at § 361:

And this maxim of the law proceeded upon a general principle, that every man owes natural allegiance where he is born, and cannot owe two such allegiances, or serve two masters, at once.

From the legal ideas of the profane commonwealth, it is obvious that others within their *secular* kingdom can only owe *one allegiance*: "local allegiance"; since it is obvious that the common people constitute an inferior and limited, profane *secular* State. No Church sovereign, or any other foreign sovereign within, or born within its limited kingdom, can owe it any, but one ("local") allegiance.

Prior to creating any secular government, it is from the view of the profane commoners, that they are entering into

a *secular* "civil" society, and from thenceforth do they owe its secular king allegiance. Thus, it must be borne in mind that the profane common people constitute a secular "aggregate" corporation, or democratic "society", which accordingly is, and can only be, presumed to "naturally" belong to such a secular State from birth, thereafter. This secular "society", then, that is *tied* to its secular king (a Corporation Sole) in allegiance, is not presumed to be official members of that Corporation Sole, let alone born as such.

But since there exists for the common people of England (and in early America) a *Union* of Church and State, the people reserve the Liberty to change their "situation", by entering into religion. Remember: no legislature can abridge these rights.

1 BLACKSTONE, supra, at § 130

"Next to personal security, the law of England regards, asserts and preserves the personal liberty of individuals. This personal liberty consists in the power of loco-motion, of changing situation, or removing one's person to whatever place one's own inclination may direct."

Should a commoner enter into *religion* or *spiritual* Corporation, he necessarily leaves "civil" society and its *secular* Corporation; thus becoming "civilly dead".

1 BLACKSTONE, supra, at § 128

"The civil death commences if any man... enters into religion." [Cf. VILLALON v. BOWEN, 70 Nev. 456 (1954)]

Upon entering the spiritual Corporation of the Church, secular courts no longer have *jurisdiction* over such a "spiritual" member. He can no longer be held to the inferior moral standards of the common profane people. The "spiritual" member is subject to spiritual magistrates of the Church, and their spiritual interpretation of the law's standards, etc.

It is obvious that, because the common people are profane and subject to their own "experiences", their "legal" moral standards can deteriorate to a "spiritually" intolerable level, by a mere two-thirds majority rule. The "natural" allegiance to such a "civil" society, therefore, is premised on a *legal fiction* that a person was receiving the "*benefits*" or "*advantages*" of its *Union*.

1 BLACKSTONE, supra, at § 121

But every man, when he enters *into society*, gives up a part of his natural liberty, as the price so valuable a purchase; and in consideration of receiving the *advantages* of mutual commerce, obliges himself to those laws, which the *community* has *thought proper* to establish.

1 BLACKSTONE, supra, at § 41

But municipal or civil law regards him also as a citizen, and bound to *other duties* towards his neighbor, than those of mere nature and *religion*: duties, which he has engaged in by enjoying the *benefits* of the *common union*.

Obviously, however, it is a *legal fiction* that everyone is bound to such obligations, since they are enforced upon everyone by a mere presumption of naked assent. Formal allegiance is only required of *public officials*. And any "benefit", moreover, can be outright *rejected*.

BOUVIER'S, *Law Dictionary* (1856): MAXIM:

Potest quis renunciare pro se, et suis, juri quod pro se introductum est.

A man may relinquish, for himself and his heirs, a right which was introduced for his own benefit. See 1 Bouv. Inst. n. 83.

BOUVIER'S, supra, MAXIM:

Invito beneficium non datur.

No one is obliged to accept a benefit against his consent. Dig. 50, 17, 69.

BOUVIER'S, supra, MAXIM:

Nihil tam naturale est, quam eo genere quidque dissolvere, quo colligatum est.

It is very natural that an obligation should not be dissolved but by the same principles which were observed in contracting it. Dig. 50, 17, 35. See 1 Co. 100; 2 Co. Inst. 359.

BOUVIER'S, supra, MAXIM:

Scriptae obligationes scriptis tolluntur, et nude consensus obligatio, contrario consensu dissolvitur.

Written obligations are dissolved by writing, and obligations of naked assent by similar naked assent.

1 BLACKSTONE, supra, at §§ 356-357

"But besides these express engagements, the law also holds that there is an *implied*, original, and *virtual allegiance*, owing from every subject to his sovereign, antecedently to any *express promise*; and *although the subject never swore any faith or allegiance in form.*"

By the same principles, then, it necessarily follows that, allegiance to a "foreign" king is likewise effected without a "formal" agreement/contract. See, e.g., 8 USCS, § 1481 (Ann.)(citing, REVEDIN v. ACHESON, (1952, CA2 NY) 194 F.2d. 482). It only needs to be remembered, then, that Yahweh is a "foreign" king with regard to the State. And because Yahweh and the Holy spiritual Church pre-existed the State, it is clear that the common people, in their natural profane state, preserved their right to *Atonement* or *Re-conciliation* to whomever the "divine" absolute "foreign" king proved to be. Thus, although the common people did not attempt to establish the "divine" kingdom of Yahweh or any other perceived absolute "divine" king, it is nevertheless reasoned that their majority "right" to create a secular government is their participation as *subjects* in His Eternal Laws.

BRENNAN, *Against Sovereignty*, 82 Notre Dame L. Rev. 101, 135 (2006):
"The natural law that gives birth to this right of ours to self-government is itself our intelligent participation as human subjects in the Eternal Law, the mind of the sovereign God sweetly disposing all things to their proper ends."

From the perspective of the common people of early England, having a *Union* of an existing national Church and State, its two-thirds *secular* majority-rule necessarily placed the Church in the *minority*, being "*holy*". The Church members, then, being contemplated as "*re-born*", thus have a "natural allegiance" to, and sovereign immunity of, the "divine" King. They are now a superior *spiritual Corporation*, having immunity from the jurisdiction of *secular* courts. The State acknowledged this as a "*privilege*" called "*Benefit of Clergy*". See 4 BLACKSTONE, Comm., §§ 358-9; and 367. Later, however, the king of England made himself Head over the Church as well, and then "abolished" their immunity, by Acts in 1531 & 1547.

For the common people of the UNITED STATES, however, the implications of *allegiance* and a change of *allegiance*, necessarily have different effects, since there is no human king or national Church to which they can be bound in "natural allegiance" to. The same is true for holy Israyl, which must also be counted within the *minority* of the two-thirds majority rule that established such a *profane* secular government. These effects prevent interference with Israyl's immunity.

4. THE COMMON PEOPLE'S UNION OF CHURCH AND STATE: ITS VALIDITY WITH RESPECT TO HOLY ISRAYL

(A.) ENGLAND'S UNION OF CHURCH AND STATE: AN ACT OF TREASON FOR HOLY ISRAYL

In England they have their *Magna Carta* (Great Charter), ensuring the rights, liberties, and powers of both Church and State. This *instrument* functions as a *Treaty*, which is a *Covenant* and agreement/contract. For the profane common people, such a *Covenant* may seem "logical" and necessary for its *Union* of the "King" (a Corporation Sole) and Church (a Corporation Sole). Because both Corporations Sole equally use all persons as its "*agents*", the profane people who constitute a *lay Aggregate* Corporation are protected from being "swallowed up" or overtaken by such a Corporation Sole. The default recognition of the common people as a profane Corporate body is preserved, and unchangeable, at least, from the perspectives of their own human laws.

From the perspective of the Law of Yahweh, however, such a *Covenant* cannot possibly include holy Israyl, because Israyl is already bound with an "*Everlasting Covenant*" to Yahweh alone. GENESIS 17:7; HEBREWS 13:20-21. And as such, His law prohibits Israyl from making a *Covenant/Treaty* with the profane gentile nations. EXODUS 23:32, 34:12-16; DEUTERONOMY 7:2-4; and 23:6.

HENSFIELD CASE, 11 F. Cas. 1099 (1793):

"Whenever doubts and questions arise relative to the validity, operation or contruction of treaties, or any articles in them, those doubts and questions must be settled according to the maxims and principles of the laws of nations applicable to the case." [See, NELSON; and 2 Boll. R. 298, supra, at p. 21]

Thus, while a nation may, by a legal fiction, deceive itself into presumptively making Israyl a part/ner of its "Union", the Law of Yahweh is clear that it is not possible for Israyl to lawfully bind itself in Treaty with nations that Yahweh has clearly established as hostile enemies. Such an impossibility is manifest by the fact that, such a treasonous offense against Yahweh would, at the same time, make Israyl infamous and consequently barred from even making an Oath.

BOUVIER'S, supra, MAXIM:

Felonia implicatur in quolibet proditione.

Felony is included or implied in every treason. 3 Co. Inst. 15.

BOUVIER'S, supra, MAXIM:

"Repellitur a sacramento infamous.

An infamous person is repelled or prevented from taking an oath. Co. Litt. 158."

Furthermore, the nation that imposes such an instrument upon Israyl, necessarily makes itself a conspirator or instigator

in making Israyl presumptively guilty of "willfully" committing the offense of Treason against Yahweh.

BOUVIER'S, supra, MAXIM:

Plus peccat auctor quam actor.

The instigator of a crime is worse than he who perpetrates it. 5 Co. 99.

Cf. 4 BLACKSTONE, Comm., §§ 81-83, and 87 (defining Treason as a "betrayal" or "breach of faith" of a "natural, a civil, or even a spiritual relation" between the Sovereign and his subject, to that of a "foreign prince")

And a "foreign prince", says Blackstone, is an "enemy", since he "owes no allegiance" to the other. id., at § 83. (citing, inter alia, the "pretended" authority of the "pope")

Put another way, because Yahweh and His Son called the "Messiah" are both a "foreign" Sovereign/King with respect to the Gentile nations, they are necessarily "enemies" in contemplation of law. The entire Biblical history of Israyl and its Law demonstrates this fact. EXODUS 23:22; JAMES 4:4.

And because they are the Supreme power over mortals, they could not stoop to bind themselves to an inferior enemy, let alone their children.

BOUVIER'S, supra, MAXIM:

Postestas suprema seipsum dissolvare potest, ligare non potest.

Supreme power can dissolve, but cannot bind itself.

THE SCHOONER EXCHANGE, 11 U.S. (7 Cranch) 116 (1812)(noting presumption):

"[T]he sovereign cannot be considered as having imparted to the ordinary tribunals a jurisdiction, which it would be a breach of faith to exercise.... The remedy is by opposing Sovereign to Sovereign, not by subjecting him to the ordinary jurisdiction."

Furthermore, the law of England was clear that the *clergy* of Church are not members of its *secular State*, let alone its secular *Civil* society — being *civilly dead*.

1 BLACKSTONE, supra, at § 384

"The lay part of his majesty's subjects, or such of the people as are not comprehended under the denomination of clergy, may be divided.... That part of the nation which falls under our first and most comprehensive division, the civil state, includes all orders of men, from the highest nobleman to the meanest peasant; that are not included under either our former division, of clergy, or under one of the two latter, the military and maritime states."

Even in the U.S., the exclusion of the Church from the State is acknowledged.

McDANIEL v. PATY, 435 U.S. 618 (1975)

"[T]he church itself is a thing absolutely separate and distinct from the common wealth." (citing, 5 Works of John Locke 21)

The logic, and indeed the compelling reason for a secular State's stat-ute law needing to exclude *clergy*, can be easily understood by the fact that *statute* law does not extend into the subjective domain of morals or *religion*.

J.G. SUTHERLAND, Statutes and Statutory Construction, § 8 (1891)

[Statute law] is a rule of *civil* conduct, because it does not extend into the subjective domain of morals or religion.

1 BLACKSTONE, supra, at §§ 119-20

"For the end and intent of such laws belong only to regulate the behavior of mankind, as they are members of society, and stand in various relations to each other, they have consequently no business or concern with any but social or relative duties."

Again, the Church or *Clergy* are not a part of *civil* society, but a *Spiritual* or *Religious* "*thing*", being *civilly dead*. It is, therefor, the profane *common* lay people that have formed a majority-rule *Union* that subjects themselves to an ever-changing "*civil*" law meant to reflect their "common" profane nature. Israyl or the Church of Yahweh, on the other hand, are bound to conform to an eternally fixed moral or religious standard, called the Torah.

And because there is a presumption that a foreign Sovereign "cannot be considered as having imparted to the ordinary tribunals a jurisdiction, which it would be a breach of faith to exercise," it necessarily follows that, the common people or *civil* State did not intend to make the Church *treasonous*, as a matter of law,

but preserved and acknowledged its separateness (sacredness) and distinct Sovereign immunity. Otherwise, the Church would not have had the *Benefit of Clergy*. Furthermore, it was not until the King of England usurped or else made himself the Head of the Church that gave rise to his Acts to abolish her immunity, in order to deal with the encroaching power and abuse of the Catholic Church.

5. THE SEPARATION OF CHURCH AND STATE CORPORATIONS AFTER THE UNITED STATES DECLARED ITS INDEPENDENCE FROM ENGLAND

The UNITED STATES was established by the Crown of England as a mere vassal state and corporation; under its control like any other business.

HELVERING v. STOCKHOLMS ENSKILDA BANK, 293 U.S. 84 (1934)

The United States is a corporation. [citations omitted]

CLEARFIELD TRUST CO. v. U.S., 318 U.S. 363 (1943)

"... Governments descend to the level of a mere private corporation and take on the characteristics of a mere private citizen..."

At the time of the UNITED STATES' alleged "independence" from the control of England, it is important to keep in mind that the King of England was the Head of both State and Church; both of which are classified as *Corporations Sole*. That is, the King is a *Corporation Sole* and the Church also. The State proper, being the "people", is an inferior *Aggregate Corporation*, or *Body Corporate*. Although the UNITED STATES is only an *Aggregate Corporation*, notice the nature of the power that it transferred to itself after its independence.

THE PEOPLE v. HERKIMER, 4 Cowen (NY) 345 (1825)

The people have been ceded all the rights of the King, the former sovereign...

HENNESSY v. RICHARDSON DRUG CO., 189 U.S. 25 (1903)

"The sovereignty has been transposed from one man to the collective body of the people, and a subject of the King is now a citizen of the state."

Although the King of England had previously passed Acts in 1531 & 1547 abolishing the Church's immunity called *Benefit of Clergy*, those Acts did not, and indeed could not, apply to the Sovereign or King himself.

LEWIS v. FISHER, 80 Md 139, 30 A 608

A statute which treats of persons of an inferior rank cannot by any general words be so extended as to embrace a superior.

SIMONIAN v. UNIV. & COMM. COLLEGE SYS., 122 Nev. 187 (2006)

...the word 'persons' ordinarily excludes the sovereign [unless] the King is named therein by special and particular words.

THE PEOPLE v. HERKIMER, 4 Cowen (NY) 345 (1825)

The people or sovereign are not bound by general words in statutes, restrictive of prerogative right, title or interest, unless expressly named. Acts of limitation do not bind the King or people.

It is obvious, then, that the new Supreme Sovereign (the "People") of the UNITED STATES retained and intended to preserve the immunity of the independent Sovereign Church, called *Benefit of Clergy*. This is plainly manifest by the fact that the UNITED STATES did not even abolish the *Benefit of Clergy* until Acts of 1790 and 1827! And again, like its former Sovereign (King), the abolishing Acts do not apply to the Sovereign (the "People"). It can only apply to 'persons', which term is used to designate a *person* of a *rank* less than that of the Supreme Sovereign; or who is otherwise not granted or privileged with such power of, or greater than, the Sovereignty of the "People". An ambassador or the *President* of the UNITED STATES, for example, are such individuals that are granted or else privileged with the Sovereign power and immunities inherent in the "People". But this is the Sovereign power at the *secular State* level, a *civil Body* politic; or *Aggregate Corporation*. The UNITED STATES does not have a *Corporation Sole*, who is an individual Priest-King, acting as the *Head* over the Church, which is a holy (separate) and distinct "divine" Sovereignty. At least One that is not yet realized or acknowledged.

But as a *Body* necessarily has One Head, so also does a *Nation* (aggregate corporation) necessarily have One King or Priest-King (Corporation Sole) over it. Or as a Wife necessarily has One Husband (Head), so also does the Wife only count as his *Body*, which is *under* him. And so the UNITED STATES, although it is barred from creating a national Church, the secular *Nation* or *Body* corporate has

① MAITLAND, The Corporation Sole, 16 L.Q. Rev. 335 (1900)

A corporation is an aggregation of head and body: not a head by itself, nor a body by itself.

P. 39 (note/s)

made it clear that, in legal contemplation, it indeed has a "divine" Head over it.[1]

4 USCS, § 4 (stating, the UNITED STATES is:)
"...one nation *under* God..."

At this point it is necessary to show the critical differences between the nature and purposes of a *State*, and *Church* as *Corporations*. Because the Sovereign immunities of the *Church* are *inherent*, or else gained by individual members, just as those of the *State* are. And the former (inherent) way needs no formal "application" of approval by certain individuals. The King's sons or household, for example, do not need to formally "apply", by application, for the Sovereign immunities or protections that their Father/King is obligated to shield them with, as a matter of *duty* and right. It is also an absurdity to '*think*' that One who is the absolute Supreme Sovereign King would need to stoop to an inferior Sovereign, so as to be "granted" permission to exercise its Supreme Sovereign immunities by an inferior's formal "application".

6. THE NATURE AND PURPOSES OF CORPORATIONS

In early or primative societies, individuals were sued and testified against, generally, by their actual accusers. As societies and kingdoms grew, it became impractical for kings or individuals to make actual appearances to "accuse" another in court. And so a common device derived from business practices, called a "Straw Man", was employed to act as the "persons" in the suit. Simply put, a "*person*" functions in one or two capacities: one *natural*; the other *artifical*.

1 BLACKSTONE, Commentaries on the Laws of England, §§ 119-20

Persons also are divided by the law into either natural persons, or artificial. Natural persons are such as the God of nature formed us: artificial are such as created and devised by human laws for the purposes of society and government; which are called corporations or bodies politic.

1 BLACKSTONE, supra, §§ 460-61

"CORPORATIONS, by the civil law, seem to have been created by the mere act, and voluntary association of their members."

Remember: the "*People*" of this Nation are assumed to have voluntarily assented to be the *Corporation* called the UNITED STATES.

1 BLACKSTONE, supra, §§ 456-58

The honour of originally inventing the political constitutions entirely belongs to the Romans...

The first division of corporations is into aggregate and sole. Corporations aggregate consist of many persons united together into one society.... Corporations Sole consist of one person only and his successors, in some particular station, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense the king is a sole corporation: so is a bishop:... [and] so is every parson and vicar.

ANOTHER division of corporations, either sole or aggregate, is into *ecclesiastical* and *lay*. Ecclesiastical corporations are the members that compose it are entirely spiritual persons; such as bishops; certain deans, and prebendaries; all archdeacons, parsons, and vicars; which are sole corporations:... These are erected for the furtherance of religion, and the perpetuating the rights of the church.

1 BLACKSTONE, supra, § 372

"A PARSON, *persona ecclesiae*, is one that hath full possession of all the rights of a parochial church. He is called parson, *persona*, because by his person the church, which is an invisible body, is represented; and he is in himself a body corporate, in order to protect and defend the rights of the church (which he personates) by a perpetual succession.

[T]he most numerous order of men in the system of

ecclesiastical polity, are the parsons and vicars of parishes."

Another aspect of corporations, is that they are either *Public* or *Private*. In his *Commentaries*, William Blackstone is writing from the perspective of England having a *Union* of Church and State, both of which are *Public* corporations. The State is a *Public* corporation, to the extent that its authority is broad and recognized as over the lesser *Private* domain. An established national Church, therefore, must also be a *Public* corporation if it is to be in a *Union* with the *secular State* and its laws. Every other church whose spiritual mission and teachings that were not in harmony with the Anglican Church of England can only be a *Private* limited corporation.

As any reasonable person could have foretold, England's *Union* of Church and State, and its respect for each other's Sovereignty was doomed to failure at its inception. The State is *secular/worldly* and its Church was alleged to be *holy/spiritual*, which are literal *opposites* and naturally antagonistic to one another. And the Church was not equal to the State in its law making ability; and yet they were both attempting to mutually depend upon one another. Enter the usurpation of the King.

After its independence, the UNITED STATES has obviously made no attempt to repeat England's folly. Hence, it has maintained its *divorce* (separation) of Church and State.

ZORACH v. CLAUSON, 343 U.S. 306 (1952)

...there shall be no concert or union or dependency one on the other [of Church and State]... Otherwise, the State and religion would be aliens to each other - hostile, suspicious, and even unfriendly. [emphasis mine]

GARRY, *The Myth of Separation*, Hostra L. Rev.: Vol. 33: Iss. 2 (2004)

"Although the early Americans may have believed in separation of church and state, they believed in dividing church from state, not God from state."

By its Constitution, the UNITED STATES is barred from establishing a *National* Church, but it is not barred from establishing a *State* Church. If one considers the fact that *Scripture* depicts Yahweh as the only *absolute* King, with an unchangeable Eternal Law called Torah, then it is easy to understand that no secular church could ever be in a *Union* with Him, let alone any secular State, due to its ever-changing statute law which conflicts with His unchangeable "divine" nature. The Law of Yahweh is *Public Law*, and it is without argument that His Law is Supreme. Every corporation, therefore described whether church or state, could only operate as a *Private* inferior corporation because it would not be in conformity with His unchangeable *Public Law*. There could be no such *Union*, because there would not be a *Unity* of like corporation, nor of equal jurisdictions, since the Greater is a *public* Corporation Sole; and the other a limited *private* corporation. Such a *Public* corporation in this circumstance would necessarily have to prohibit the *Private* secular State from exercising jurisdiction over all those that belong to the controlling

Public corporation. This precise difference between a *Public* and *Private* corporation and their non-*Union*, is the very reason why the courts of the UNITED STATES exercise criminal jurisdiction over members of Church; but no church of the UNITED STATES can exercise jurisdiction over any person within any STATE. A State's one-sided criminal jurisdiction over "Church" is not only "*legal*" but necessary, because every "church" of the UNITED STATES is deemed by its law as an "established" *PRIVATE Civil* corporation! When its Constitution, therefore, prohibits the "*establishment*" of a national Church, it is speaking of a *Public* church corporation, the type of which can be in a *Union* with the *Public* state corporation,(1) and its secular, ever-changing laws.

The "legality" of a State exercising jurisdiction over Church and its *Sovereign* immunities fails when the "Church" in question pre-existed the State as a *Public* spiritual corporation, or was otherwise not "established" under the UNITED STATES.

ZOLLMAN, *Powers of Religious Corporations*, 13 Mich. L. Rev. 646 (1914-1915)

"None of [the four forms of religious corporations in the United States] are ecclesiastical corporations in the European sense of the word. All of them owe their existence, not to the authority of the church, but to the authority of the state.

All are private, civil corporations, created merely for the purpose of conducting the temporal affairs of the particular church of which they are the handmaids.

The supreme law of a religious corporation will be found in the laws constituting its charter. The charter of every corporation

(1) See p. 46, n. 1.

is its constitution.... Acting within the charter, the corporation majority is sovereign."

Under this form of "church", it is easy to see the absurdity that a charter of man could be "supreme" law over the Supreme Law of Yahweh called Torah, which is unchangeable. It is also an absurdity that Yahweh would not be the One Absolute Sovereign, but the "majority" would be! But in the eyes of the laws of the UNITED STATES, this precisely defines the nature of every "church" that is "legally" under its jurisdiction.

One must simply look beyond the laws of the UNITED STATES. Remember: every nation takes cognizance of other law, such as the law of Treaties; the law of Nations, which depends partly upon the Law of Yahweh, etc. See pp.21-22. Indeed, one *must* take cognizance of the Supreme Law of Yahweh "when the laws imposed by the State fail," id. Because, as shown above, the word "Church" is redefined by the law/yers of the UNITED STATES to fit the condition that the law/yers wish the UNITED STATES to be in. This deceptive use of words has placed a veil over the understanding of how its *secular Civil* jurisdiction does not, nor can it ever extend over the Sovereign immunity of the members of the *true* Church that is an *Ecclesiastical* corporation of the *Public* sort. Such members distinctly constitute a *Religious* society of *Holy Clergymen*; that is, the exact opposite of a *Civil* society of *Common Laymen*, respectively.

But the word "Church" is not the only term that has been given new meaning that does not apply to the *true* Church, that this document is concerned with. For this reason, it is

necessary that I reference the "old" common law definitions of England, etc.; and applicable legal arguments that concern Religious corporations that *pre-existed* the UNITED STATES. It should be noted also that the aforementioned veil of the law/yers, includes the deception of projecting its own perverted and delusional *perspective* that the UNITED STATES is a *Public* corporation[1]. Because, if the Supreme Sovereign ("the *People*") were made to be honest in their assertion that it is one *Nation* "under God", then they would have to admit that, in no way, from the perspective of *Yahweh*, could its corporation or *Body* politic ever be anything but a *Private* corporation, since it is not in conformity with His unchangeable "divine" Law called Torah! Furthermore, it was a matter of *revelation* that "the GOD of this world" is the *Devil*! 2 CORINTHIANS 4.4; REVELATION 12.9. The UNITED STATES is, therefore, a *Lawless* "*Person*" in contemplation of law, since it cannot be deemed "authorized" by the *Public* law of Yahweh, in its claim to be a *Public* corporation. And the only "GOD" (Head) that can "*legitimately*" complete such a *Lawless* "*Public*" corporate *Body* is: the GOD of this world, i.e, the DEVIL! See 2 THESSALONIANS 2.1-12.

The *knowledge* of the nature of the only "GOD" (Head) that is legitimately associated with the *Lawless* "*Public*" corporate *Body* called the UNITED STATES, is necessarily *imputed* to the *law/yers*. A *presumption* arises, therefore, that the law/yers worship, or are otherwise under the control of the Devil-God, since it necessarily & *Knowingly* placed the UNITED STATES "*under*" such a *Lawless* GOD-DEVIL by a *Pledge of Allegiance*. 4 USCS § 4

① Under Article IV, § 4 of the U.S. Constitution, the early Republic form of government, by "the States in this Union," primarily operated under Public municipal law. This form of government obviously still exists, but must be called on, because mere public policy created by private debt money has reduced the bankrupt corporation called the UNITED STATES to function primarily as a Private corporation. Nevertheless, the fact that it is still a "municipal corporation" means that it opererates in a dual capacity (public and private), whether by its own power, or by delegated power.

7. THE USURPED JURISDICTION OF THE STATE OVER THE CHURCH

KALSCHEUR, *Civil Procedure and the Establishment Clause*, Boston College L.J (2008

"[T]he American understanding of separation of church and state rejects "the jurisdical omnipotence and omni-competence of the state."" (quoting, MURRAY, *We Hold These Truths* (1960), at 68).

"To characterize government and religion as cosovereigns is to recognize that the churches are not simply voluntary organizations that exist at the sufference of the state. They are not simply "jural entities, and not mere creatures of the law deriving their existence from the state. Rather, churches preexisted the state, are transnational, and would continue to exist if the state were suddenly dissolved or distroyed."" (quoting MURRAY, supra, at 55).

"Acknowledging the churches as social actors possessing independent authority that is not of the state places a powerful limit on the power of the state. Such an acknowledgment affirms that the state's assertion of sovereignty is not absolute. The protection of the freedom of churches as "sovereigns" not created by the state points to the existence of another sovereignty (the only true sovereignty) – that of God (or gods) – existing "beyond, before, and superior to the state."" (quoting MURRAY, supra, at 67) [emphasis original]

For corporate Israyl, not only can it be no "jural entit[y]" of the state (supra), but its *Church* of Messiah can also be no 'juristic person'.

MAITLAND, *The Corporation Sole*, 16 L.Q. Rev. 335 (1900)

"... a church is no person in the English temporal law of the later Middle Ages.

... the ecclesiastical corporation sole is no 'juristic person'; he or it is either natural man or juristic abortion.

The failure of the church to become a person for English temporal lawyers is best seen in a rule of law.... A bishop or an abbot can bring a writ of right. A parson cannot. The parson requires a special action, the *iurta utrum*; it is a *singulare beneficum* provided to suit his peculiar needs."

Not only is a *Parson* (a *Corporation Sole*) not a 'juristic person,' he is instead considered to be a *natural man* that is also necessarily in a perpetual *office*.

MAITLAND, supra

"Coke's corporation sole is a man: a man who fulfills an office and can hold land to himself and his successors, but a mortal man.

So here we catch our corporation sole *in articulo mortis*. If God did not create him, then neither the inferior not yet the superior clergy are God's creatures.

If our corporation sole were really an artificial person created by the policy of man we ought to marvel at its incompetence."

From the perspective of the mind of man, it can create a 'person'/corporation as an artificial representation or likeness of itself, in order to protect the rights of individuals within its State. Man is himself necessarily an artificial creation, made only in the "likeness" of the fully "divine" Creator Yahweh, who is immortal. In contemplation of law, therefore, Yahweh created a 'parson'/corporation as an artificial representation, or eternal "divine" likeness of Himself, in order to perpetually protect the rights of the spiritual members of His Church.

RUNDLE et al v. THE DELAWARE and RARITAN CANAL CO., 14 Led 335 ( )

These artificial persons are called corporations. A corporation, therefor, being not a natural person, but a mere creature of the mind, invisible, and intangible, cannot be a citizen of a state, or of the United States, and cannot fall within the terms or power of [the Second Section of Article 3 of the Constitution], and can therefor neither plead nor be impleaded in the courts of the United States. [emphasis mine]

RAILROAD TAX CASES, 13 F. 722 (1882)

"The inference, also, that such an artificial entity 'cannot be a citizen' is a logical conclusion from the premises, which cannot be denied."

There are various reasons why a corporation is not a citizen of a state. For the Church of Messiah it is obvious that: (1)

Yahweh is a "foreign" Sovereign in relation to a secular State; (2) Clergy, also, are not citizens of a State's civil society, being civilly dead; (3) The Church is a 'thing' separate and distinct from the common lay 'persons' that constitute a secular State; (4) A secular citizen is a 'juristic person', which a parson is not; (5) The Church preexisted the State; (6) A corporation is invisible, existing in no way where its "appearance" in a court, etc., may be demanded by, and for, those in the physical realm; (7) Because Yahweh, the absolute King, is necessarily a "foreign" enemy of a State that is in open defiance of His public Law, it is deemed by law that an individual loses his former citizenship, even in an informal proceeding, when he knowingly or unknowingly commits an expatriating act (e.g., taking an Oath of Allegiance) to such a King. REVEDIN v. ACHESON, (1952, CA2 NY) 194 F.2d. 482; and RICHARDS v. SECRETARY OF STATE, Dept. of State (1985, CA9 CAL) 752 F.2d 1413; and (8) The Word of Yahweh says we are not citizens of any country on earth. PHILIPPIANS 3.20; HEBREWS 11. 8-16.

In order for an individual to be "amenable" or liable to be brought before any jurisdiction, as a subject to answer to its law, a court must have both: jurisdiction of the person, and of the subject matter. In a criminal case against an immune Church sovereign, if a State fails to obtain either jurisdiction, then it has no judicial power over that sovereign.

BIGELOW v. STEARNS; 19 Johns. 39, 40-41 (N.Y. Sup. Ct. 1821)

"To give any binding effect to a judgement, it is essential

that the Court should have jurisdiction of the person, and of the subject matter..."

In any event, an immune sovereign cannot even be haled into court without his consent. A court will, however, compel his appearance by arrest; and then assume jurisdiction over his 'person' if he fails to challenge the court's jurisdiction on his own behalf, but pleads through an attorney. This implies leave of court, which acknowledges its jurisdiction. See WILLIAM WYCHE, *A Treatise on the Practice of the Sup. Ct. of Judicature of the State of New York in Civil Actions* (New York, Swords 1794), at 109.

This device of a court may work against State sovereigns and the like; but again, the *Church* and *parson*, etc. is *not* a 'juristic person'. MAITLAND, supra, at p. 48.

BLACK'S, *Law Dictionary*, 6th ed.

Jurisdiction in personam. It may be acquired by an act of the defendant within a jurisdiction under a law by which the defendant impliedly consents to the jurisdiction of the court...

Although an individual is contemplated in law as a 'person', it has also been the common practice of conquerors to reduce conquered people to a 'thing', like *property*. And without exception, Israyl has been conquered by Gentiles, and prevented from having a monarchical king. A *slave* is a *thing/property* in contemplation of law, which is what most of a conquered people

are reduced to. Of course Scripture reveals that it is the judgment of Yahweh to reduce Israyl to a Slave, which is a Thing, due to its rebellion against Yahweh. Notwithstanding the fact that corporate Israyl has been made a Slave of Gentiles, certain individuals remain as holy to Yahweh, and considered as having Yahweh as their Father. EXODUS 13.2 (firstborn males) and PSALMS 68.5 (the fatherless) respectively. In law, this change of status has profound implications for the Gentile nations that treat Israyl as a "Thing", because Israyl has that of a Slave-Master, or Wife-Husband relation to Yahweh. And it is universally known from Scripture that Israyl is generally in rebellion against Yahweh. In law, therefore, when it is widely known that a Master or Husband has an estranged, injurious and rebellious Slave/Thing or Wife, and who consequently causes another injury to a member of a Gentile nation, it is the Master or Husband that must be sought in a case. In U.S. law, when such a one is an immune Sovereign that cannot be compelled or otherwise commanded to "appear" in its courts, then His injurious property/"thing" may be seized, which effects a quasi in rem or "attachment" jurisdiction. This circumvents, or otherwise substitutes for, the court's need to gain jurisdiction over the 'person'. With regard to Yahweh, under these circumstances, it is not only a failure of reason, but blasphemous on the part of U.S. law to reduce Yahweh to a 'juristic person' and 'thing' in the alternative, in order to gain jurisdiction over His property. Thus, a State is "simulating process", which is a criminal offense. See, e.g., ORS 162.355 [1971 c.743 s.210; 1977 c.395 s.1].

PLEADING CONTINUES IN NEXT VOLUME