

# THE COUNTY SHERIFF A CONSTITUTIONAL OFFICER

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By what Authority, December 10, 2014

THE COUNTY SHERIFF IS A CONSTITUTIONAL OFFICER ELECTED BY THE PEOPLE BOUND BY OATH as guardian of the Peoples' unalienable rights secured by the Constitution. The United States Constitution and its capstone Bill of Prohibitions (Rights) is the "Law of the Land" and all statutes and state constitutions repugnant to the Constitution are null and void. If the Sheriff is ignorant to the Constitution it would stand to reason that he is in violation of his oath, not knowing when judges and politicians violate the law, and thereby technically guilty of treason.

**United States Constitution Article VI.** This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the **SUPREME LAW OF THE LAND**; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

"All laws, rules and practices which are repugnant to the Constitution are null and void" - **Marbury v. Madison, 5th US (2 Cranch) 137, 180**

"Law of the land," "due course of law," and "due process of law" are synonymous." -- **People v. Skinner, Cal., 110 P.2d 41, 45; State v. Rossi, 71 R.I. 284, 43 A.2d 323, 326; Direct Plumbing Supply Co. v. City of Dayton, 138 Ohio St. 540, 38 N.E.2d 70, 72, 137 A.L.R. 1058; Stoner v. Higginson, 316 Pa. 481, 175 A. 527, 531**

"Common Law as distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England." -- **1 Kent, Comm. 492. Western Union Tel. Co. v. Call Pub. Co., 21 S.Ct. 561, 181 U.S. 92, 45 L.Ed. 765; Barry v. Port Jervis, 72 N.Y.S. 104, 64 App. Div. 268; U. S. v. Miller, D.C.Wash., 236 F. 798, 800.**

## SHERIFF IS CHIEF EXECUTIVE, ADMINISTRATIVE & LAW ENFORCEMENT OFFICER

"The Sheriff is the "Chief Executive and Administrative Officer" of a county chosen by popular election. His principal duties are in aid of the criminal and civil **courts of record**<sup>1</sup> [common law courts]; such as

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<sup>1</sup> A "COURT OF RECORD" is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial." -- Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689. COURTS OF RECORD & COURTS NOT OF RECORD -- The former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. [3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex

*...serving process, summoning juries [not the prosecutor who works for the municipality], executing judgments, holding judicial sales and the like. He is also the chief conservator of the peace within his territorial jurisdiction."* -- **Harston v. Langston, Tex.Civ. App., 292 S.W. 648, 650.**

The Sheriff being the Chief Law Enforcement Officer (CLEO) and highest Peace Officer of the entire County in which he was elected to secure the peace; unlike the State Police and Municipal Police, being code enforcement officers serving the corporation and not the People in a conflict of interest having no constitutional authority or concerns. Whereas the Sheriff reports directly to the People and not the corporation, the duties, responsibilities and authorities of the County Sheriff (a constitutional officer) are, at a minimum, the same as they were when the State Constitutions were originally written.

The duties, responsibilities and authorities of the Sheriff cannot be diminished by those in the legislature, courts and state constitutions. When it comes to enforcing the Law (US Constitution) the Sheriff being the "Chief Law Enforcement Officer" answers to no one, not even the Governor; Like any other elected official the Sheriff cannot be removed from office by another elected official, he can only be removed by the People at the ballot box or by an indictment or presentment by a Grand Jury.

If the Sheriff needs to consult a judge or bureaucrat to know when they exceeded their authority it's no different than consulting with the fox concerning the hen house. Lysander Spooner, in Trial by Jury, 1852 said; "*Any government that is its own judge of, and determines authoritatively for the people, what are its own powers over the people, is an absolute government of course; It has all the powers that it chooses to exercise. There is no other -- or at least no more accurate -- definition of despotism than this. On the other hand, any people, that judge of, and determine authoritatively for the government, what are their own liberties against the government, of course retain all the liberties they wish to enjoy. And this is freedom. At least, it is freedom to them; because, although it may be theoretically imperfect, it, nevertheless, corresponds to their highest notions of freedom.*" If the Sheriff cannot ascertain if the government is violating the rights of the People without asking the fox how can he perform his duty?

### **CONSTITUTIONAL OFFICER -V- CODE ENFORCEMENT OFFICERS**

The principal challenges to the Sheriff are code enforcement officers. Codes (statutes) that control the behavior of People are repugnant to the Constitution and are therefore null and void while the Sheriff has a duty to uphold the Constitution. This poses a sharp contrast seeing he must obey the following United States Supreme Court rulings and Constitution in order to uphold his oath.

- "*For a crime to exist there must be an injured party there can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights.*"-- **Sherar v. Cullen, 481 F. 945.**
- "*The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose, since its unconstitutionality dates from the time of its enactment... In legal contemplation, it is as inoperative as if it had never been passed... Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no*

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parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heinger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231].

*right, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it... A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing law. Indeed insofar as a statute runs counter to the fundamental law of the land, (the Constitution) it is superseded thereby. No one is bound to obey an unconstitutional law and no courts are bound to enforce it."* -- **Bonnett v. Vallier, 116 N.W. 885, 136 Wis. 193 (1908); NORTON v. SHELBY COUNTY, 118 U.S. 425 (1886)**

- *"...every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowman without his consent."* -- **Cruden v. Neale, 2 N.C. 338 (1796) 2 S.E.**
- *"Under our system of government upon the individuality and intelligence of the citizen, the state does not claim to control him/her, except as his/her conduct to others, leaving him/her the sole judge as to all that affects himself/herself."* -- **Mugler v. Kansas 123 U.S. 623, 659-60**
- *"Statutes that violate the plain and obvious principles of common right and common reason are null and void."* -- **Bennett v. Boggs, 1 Baldw 60.**
- *"The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."* -- **Davis v. Wechsler, 263 US 22, at 24**
- *"A State may not impose a charge for the enjoyment of a right granted by the Federal Constitution."* -- **Murdock v. Pennsylvania, 319 U.S. 105, at 113**
- *"The State cannot diminish rights of the people."* -- **Hertado v. California, 110 U.S. 516**
- *"The Claim and exercise of a Constitutional Right cannot be converted into a crime."* -- **Miller v. U.S., 230 F 2d 486. 489**
- *"There can be no sanction or penalty imposed upon one because of his exercise of Constitutional Rights."* -- **Sherar v. Cullen, 481 F. 2d 946 (1973)**
- *"The practice of law cannot be licensed by any state."* -- **Schware v. Board of Examiners, United State Reports 353 U.S. pages 238, 239**
- *"The practice of law is an occupational of common right."* [Sims v. Aherns, 271 SW 720 (1925)]
- *"Litigants can be assisted by unlicensed laymen during judicial proceedings. [Brotherhood of Trainmen" v. Virginia ex rel. Virginia State Bar, 377 U.S. 1; v. Wainwright, 372 U.S. 335; Argersinger v. Hamlin, Sheriff 407 U.S. 425]*
- *"...those things which are considered as inalienable rights which all citizens possess cannot be licensed since those acts are not held to be a privilege."* City of Chicago v. Collins, 51 N.E. 907, 910
- *"The right of the citizen to travel upon the public highways and to transport his property thereon, either by carriage or by automobile, is not a mere privilege which a city may prohibit or permit at will, but a common right which he has under the right to life, liberty, and the pursuit of happiness."* -- **Thompson v Smith, 154 SE 579**

- "Constitutional 'rights' would be of little value if they could be indirectly denied." -- **Gomillion v. Lightfoot, 364 U.S. 155 (1966), cited also in Smith v. Allwright, 321 U.S. 649.644**
- We find it intolerable that one constitutional right should have to be surrendered in order to assert another. -- **Simmons vs. U.S. 390, U.S. 389(1968)**
- "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them" -- **Miranda v. Arizona, 384 U.S. 436, 491**
- "*If the state converts a liberty into a privilege the citizen can engage in the right with impunity*" -- **Shuttlesworth v Birmingham , 373 USs 262**
- "*Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts And the law is the definition and limitation of power ... For, the very idea that man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.*" -- **Yick Wo v. Hopkins, 118 US 356, 370**
- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof -- **Amendment I**
- Congress shall make no law abridging the freedom of speech -- **Amendment I**
- Congress shall make no law abridging the freedom of the press -- **Amendment I**
- Congress shall make no law prohibiting the right of the people peaceably to assemble -- **Amendment I**
- Congress shall make no law prohibiting the free exercise to petition the Government for a redress of grievances. -- **Amendment I**
- A well-regulated Militia, being necessary to the security of a Free State shall not be infringed. -- **Amendment II**
- The right of the people to keep and bear Arms shall not be infringed. -- **Amendment II**
- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. -- **Amendment IV**
- No Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. -- **Amendment IV**
- No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury -- **Amendment V**

- No person shall be subject for the same offence to be twice put in jeopardy of life or limb; -- **Amendment V**
- No person shall be compelled in any criminal case to be a witness against himself -- **Amendment V**
- No person shall be deprived of life, liberty, or property, without due process of law; -- **Amendment V**

## **STATE OF EMERGENCY**

It is the Sheriffs job to maintain order and peace in their county in a state of emergency not the federal government and certainly not the armed forces. Nor does the federal government have the authority to call martial-law. Martial law has only been applied in occupied countries in order to subvert the will of the People. The Sheriff has the authority to call the militia (We the People) to assist him in extraordinary circumstances called posse comitatus. The county belongs to the People and in an emergency "We the People" need to come together under the Sheriff to secure our county, not hand it over to foreign powers.

**POSSE COMITATUS** *"The power or force of the county, the entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases; as to aid him in keeping the peace, in pursuing and arresting felons, etc."* **1 Bl.Comm. 343; Com. v, Martin, 7 Pa.Dist.R. 224.**

**The Bill of Rights Amendment II states;** *"A well-regulated Militia, being necessary to the security of a Free State shall not be infringed."*

Therefore the Sheriff being Chief Executive, Administrative, Chief Law Enforcement Officer (CLEO) and highest Peace Officer of the entire County in which he was elected has the absolute authority to arrest even the Governor or a Judge and then call the Grand Jury directly for an indictment, he need not get permission from the district attorney.

## **AMERICA RUNS ON FICTION OF LAW**

**FICTION OF LAW** – *"Something known to be false is assumed to be true."* **Ryan v. Motor Credit Co., 130 N.J.Eq. 531, 23 A.2d 607, 621.** *"That statutes which would deprive a citizen of the rights of person or property without a regular trial, according to the course and usage of common law, would not be the law of the land"*. **Hoke vs. Henderson,15, N.C.15,25 AM Dec 677.** Our elected servants are out of control, America operates on fiction of law and it is the duty of the Sheriff, working with the People if necessary, to protect the unalienable rights of the People by simply enforcing the aforesaid laws.

## **ONLY THE PEOPLE CAN SAVE AMERICA**

*And it is the Sheriffs duty to lawfully protect and serve the People*

*"Educate and inform the whole mass of the people... They are the only sure reliance for the preservation of our liberty."* -- **Thomas Jefferson**

*"I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power."* -- **Thomas Jefferson**

*"An enlightened citizenry is indispensable for the proper functioning of a republic. Self-government is not possible unless the citizens are educated sufficiently to enable them to exercise oversight. It is therefore imperative that the nation see to it that a suitable education be provided for all its citizens."* -- **Thomas Jefferson**

*"If a nation expects to be ignorant and free in a state of civilization, it expects what never was and never will be."* -- **Thomas Jefferson**

**Power of the Grand Jury** – *"In a stunning 6 to 3 decision Justice Antonin Scalia, writing for the majority, confirmed that the American grand jury is neither part of the judicial, executive nor legislative branches of government, but instead belongs to the people; It is in effect a fourth branch of government "governed" and administered to directly by and on behalf of the American people, and its authority emanates from the Bill of Rights."* -- **United States -v- Williams.**

If the American Sheriffs were to wake-up to their aforesaid duties and work with the awakened People across America to enforce the law with arrests and indictments, we could save America from the tyrants that are destroying our American way of life. We the People are ready, are you? Go to [www.NationalLibertyAlliance.org](http://www.NationalLibertyAlliance.org) for a free civics course and let's return America to her roots.

**WE THE PEOPLE**