

5 **UNIFIED NEW YORK COMMON LAW GRAND JURY:**

FILED MAY 20<sup>TH</sup> 2014 IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK CASE NO. 1:14-CV-552 GTS/CFH

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**MEMORANDUM OF LAW**

**COURT OF LAW v COURT OF EQUITY**

15 The purpose of this memorandum is to establish the difference between a: “Court of Law” and a  
“Court of Equity”. Just who’s court is it, the Lord high or the People?

The Title<sup>1</sup> Chancellor [Blacks 4th] means the Lord high; In England, the highest judicial  
functionary in the kingdom. He exercises many functions and powers over and above the  
jurisdiction which he exercises in his judicial capacity in the supreme court of judicature, of  
20 which he is the head. In American law, this is the name given in some states to the judge (or the  
presiding judge) of a court of chancery. Bouvier’s defines chancellor as an officer appointed to  
preside over a court of chancery, invested with various powers in the several states; An officer  
bearing this title is to be found in most countries of Europe, and is generally invested with  
extensive authority. The title and office of chancellor came to us from England. Many of our  
25 state constitutions provide for the appointment of this officer, who is by them, and by the law of  
the several states, invested with power [*contrary to the US Constitution*] as they provide. In all  
he seems to have had a supervision of all charters, letters, and such other public instruments of  
the crown, as were authenticated in the most solemn manner; and when seals came into use, he  
had the custody of the public seal. Vide Encyclopedie, b. t.; Encycl. Amer. h. t.; Dict. de Jur. h.  
30 t.; Merl. Rep. h. t.; 4 Vin. Ab. 374; Blake's Ch. Index, h. t.; Woodes. Lect. 95.;

*“Courts of chancery exercise jurisdiction at law, but mainly in equity. It is not easy to determine  
how courts of equity originally obtained the jurisdiction they now exercise. Their authority, and  
the extent of it, have been subjects of much question, but time has firmly established them; and  
the limits of their jurisdiction seem to be in a great degree fixed and ascertained”*. 1 Story on Eq.  
35 ch. 2; Mitf. Pl. Introd.; Coop. Eq. Pl. Introd. See also Butler's Reminiscences, 38, 40; 3 Bl. Com.  
435; 2 Bin. 135; 4 Bin. 50; 6 Bin. 162; 2 Serg. & R. 356; 9 Serg. & R. 315;

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<sup>1</sup> Article I Section 9 Clause 8 No title of nobility shall be granted by the United States:

The judge of the court of chancery, often called a court of equity, bears the title of chancellor. "American courts of equity are, in some instances, distinct from those of law, in others, the same  
40 tribunals exercise the jurisdiction both of courts of law and equity, though their forms of proceeding are different in their two capacities. The supreme court of the United States, and the circuit courts, are invested with general equity powers, and act either as courts' of law or equity, according to the form of the process and the subject of adjudication, see Blacks 4<sup>th</sup>.

In some of the states, as New York, Virginia, and South Carolina, the equity court is a distinct  
45 tribunal, having its appropriate judge, or chancellor, and officers. In most of the states, the two jurisdictions centre in the same judicial officers, as in the courts of the United States; and the extent of equity jurisdiction and proceedings is very various in the different states, being very ample in Connecticut, New York, New Jersey, Maryland, Virginia, and South Carolina, and more restricted in Maine, Massachusetts, Rhode Island, and Pennsylvania. But the salutary  
50 influence of these powers on the judicial administration generally, by the adaptation of chancery forms and modes of proceeding to many cases in which a court of law affords but an imperfect remedy, or no remedy at all, is producing a gradual extension of them in those states where they have been, heretofore, very limited," see Blacks 4<sup>th</sup>.

The jurisdiction of a court of equity differs essentially from that of a court of law. The remedies  
55 for wrongs, or for the enforcement of rights, may be distinguished into two classes those which are administered in courts of law, and those which are administered in courts of equity. The rights secured by the former are called legal; those secured by the latter are called equitable. The former are said to be rights and remedies at common law, because recognized and enforced in courts of common law. The latter are said to be rights and remedies in equity, because they are  
60 administered in courts of equity or chancery, or by proceedings in other courts analogous to those in courts of equity or chancery, see Blacks 4<sup>th</sup>.

Court of "Law" means Court of Common Law - a court for the People CORAM IPSO REGE -  
BEFORE THE KING HIMSELF. "A court of record is a judicial tribunal having attributes and  
65 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. "The judgment of a court of record whose jurisdiction is final, is as  
conclusive on all the world as the judgment of this court would be. It is as conclusive on this  
70 court as it is on other courts. It puts an end to inquiry concerning the fact, by deciding it"; - Ex parte Watkins, 3 Pet., at 202-203. [412 U.S. 218, 255]; SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218 (1973) 412 U.S. 218 A court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or  
75 remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced. - N.Y.JUD.LAW §753: (A)

New York State Constitution Article VI. §1.b: The court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court, the family court, the courts or court of civil and criminal jurisdiction of the city of New York, and such other courts as the legislature may determine shall be courts of record. Article VI §3 b (2).

80 ... As of right, from a judgment or order of a court of record of original jurisdiction which finally determines an action or special proceeding where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court.

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### ALL JUDGES' ACTIONS MUST BE AUTHORIZED BY LAW

Any act of congress, any decision of judges that avert the authority of the People is an act of high treason. The People ordained and established Article III Section 1<sup>2</sup> thereby vesting judicial power in "One Supreme Court" and inferior courts as the Congress may ordain and establish. Therefore all United States District Courts<sup>3</sup> are Article III courts and judges hold their offices during good behavior<sup>4</sup>, which means all Judges' actions must be authorized by law. Since Article VI<sup>5</sup> is clear that judges in every state shall be bound by the supreme law of the land which includes every village, town, city, county and state judge that hold office during good behavior.

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Article III Section 2<sup>6</sup> Extends judicial power to all cases in law<sup>7</sup> and equity<sup>8</sup>, occurring under (1) the Constitution; (2) laws of the United States; (3) treaties made; (4) cases affecting

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<sup>2</sup> **Article III Section 1.** "THE JUDICIAL POWER OF THE UNITED STATES, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior..."

<sup>3</sup> **DISTRICT COURTS.** Courts of the United States, each having territorial jurisdiction over a district, which may include % whole state or only part of it. Each of these courts is presided over by one judge, who must reside within the district. These courts have original jurisdiction over all admiralty and maritime causes and all proceedings in bankruptcy, and over all penal and criminal matters cognizable under the laws of the United States, exclusive jurisdiction over which is not vested either in the supreme or circuit courts. Also inferior courts in Colorado, Idaho, Iowa, Kansas, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Texas, Utah, and Wyoming, are also called "district courts." Their jurisdiction is for the most part similar to that of county courts (q. v.).

<sup>4</sup> **GOOD BEHAVIOR.** The term "good behavior" means conduct that is authorized by law, and "bad behavior" means conduct such as the law will punish. State v. Hardin, 183 N.C. 815, 112 S.E. 593, 594. Orderly and lawful conduct; Huyser v. Com., 25 Ky.L. Rep. 608, 76 S.W. 175; In re Spenser, 22 Fed.Cas. 921. "Good behavior," means merely conduct conformable to law, or to the particular law theretofore breached. Ex parte Hamm, 24 N.M. 33, 172 P. 190, 191, L.R. A.1918D, 694; Baker v. Commonwealth, 181 Ky. 437, 205 S.W. 399

<sup>5</sup> **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

<sup>6</sup> **Article III Section 2.** The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls; --to all cases of admiralty and maritime jurisdiction; -- to controversies to which the United States shall be a party; --to controversies between two or more states; -- between a state and citizens of another state; -- between citizens of different states; --between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

<sup>7</sup> **AT LAW.** [Black's Law 4th] According to law; by, for, or in law; particularly in distinction from that which is done in or according to equity; or in titles such as sergeant at law, barrister at law, attorney or counselor at law. Hooker v. Nichols, 116 N.C. 157, 21 S.E. 208. ALL CASES AT LAW. Within constitutional guaranty of jury trial, refers to common law actions as distinguished from causes in equity and certain other proceedings. Breimhorst v. Beck-man, 227 Minn. 409, 35 N.W.2d 719, 734.

ambassadors, public ministers and consuls; (5) admiralty and maritime jurisdiction; (6) controversies to which the United States shall be a party; (7) controversies between two or more states;-- between a state and citizens of another state;-- between citizens of different states;-- between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states; (8) cases affecting ambassadors, other public ministers and consuls: The People did not authorize chancery courts under equity nor did we the People authorize admiralty or maritime law of the sea upon the People in place of the law of the land, established or ascertained a fraud is a fraud.

The Jurisdiction of the United States District Courts assumed under equity is consensual by deceit, because all BAR lawyers and judges are taught in BAR schools to proceed as chancery courts<sup>9</sup>, in the name of equity courts<sup>10</sup>, which are not courts of record, which proceed according to statutes, unwittingly, as some form of hybrid of equity, admiralty and maritime court, ruled by a Judge de facto<sup>11</sup>, settling commercial accounts in favor of Corporatism<sup>12</sup>, thereby hijacking the People, unaware, into foreign courts of fiction. This similarity has trickled down to every state, county, city, town and village court in America.

*“It is presumed that this custom arises from the circumstance that the equity jurisdiction which is exercised by the courts of the various states is assimilated to that possessed by the English courts of chancery. Indeed, in some of the states it is made identical therewith by statute, so far as conformable to our institutions”.* Wagner v. Armstrong, 93 Ohio St. 443, 113 N.E. 397, 401.

The People, by an unalienable right, should have courts’ of justice presumed unless declared of themselves, different. As a substitute nisi prius<sup>13</sup> clandestine courts are deceitfully opened by BAR lawyers and judges in virtually every court of America. But when a People proceed obsta

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<sup>8</sup> **EQUITY.**, in its technical and scientific legal use, means neither natural justice nor even all that portion of natural justice which is susceptible of being judicially enforced. It has a precise, limited, and definite signification, and is used to denote a system of justice which was administered in a particular court,-the English high court of chancery,- which system can only be understood and explained by studying the history of that court, and how it came to exercise what is known as its extraordinary jurisdiction. Bisp.Eq. §1.

<sup>9</sup> **COURT OF CHANCERY.** A court having the jurisdiction of a chancellor; a court administering equity and proceeding according to the forms and principles of equity. In England, prior to the judicature acts, the style of the court possessing the largest equitable powers and jurisdiction was the "high court of chancery." In some of the United States, the title "court of chancery" is applied to a court possessing general equity powers, distinct from the courts of common law. Parmeter v. Bourne, 8 Wash. 45, 35 P. 586; Bull v. International Power Co., 84 N.J.Eq. 209, 93 A. 86, 88.

<sup>10</sup> **COURT OF EQUITY.** A court which has jurisdiction in equity, which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity, and which follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law. Thomas v. Phillips, 4 Smedes & M., Miss., 423. **The terms "equity" and "chancery,"** "court of equity" and "court of chancery," are constantly used as synonymous in the United States. It is presumed that this custom arises from the circumstance that the equity jurisdiction which is exercised by the courts of the various states is assimilated to that possessed by the English courts of chancery. Indeed, in some of the states it is made identical therewith by statute, so far as conformable to our institutions. Wagner v. Armstrong, 93 Ohio St. 443, 113 N.E. 397, 401.;

<sup>11</sup> **JUDGE DE FACTO.** One who holds and exercises the office of a judge under color of lawful authority and by a title valid on its face, though he has not full right to the office, as where he was appointed under an unconstitutional statute, or by an usurper of the appointing power, or has not taken the oath of office. State v. Miller, 111 Mo. 542, 20 S.W. 243; Walcott v. Wells, 21 Nev. 47, 24 P. 367, 9 L.R.A. 59, 37 Am.St.Rep. 478; Dredia v. Baache, 60 Neb. 655, 83 N.W. 916; Caldwell v. Barrett, 71 Ark. 310, 74 S.W. 748.

<sup>12</sup> **Control of a state** or organization by large interest groups

<sup>13</sup> **NISI PRIUS.** (Bouvier's Law, 1856) Where courts bearing this name exist in the United States, they are instituted by statutory provision. NISI PRIUS COURT "Nisi prius" is a Latin term (Black's Law Dictionary, Fifth Edition) "Prius" means "first." "Nisi" means "unless." A "nisi prius" procedure is a procedure to which a party FIRST agrees UNLESS he objects. A rule of procedure in courts is that if a party fails to object to something, then it means he agrees to it. A nisi procedure is a procedure to which a person has failed to object A "nisi prius court" is a court which will proceed unless a party objects. The agreement to proceed is obtained from the parties first.

principiis<sup>14</sup>; that is to say “resisting the first encroachments” in order to proceed according to law, understood as the law of the land and therefore a court of record; and the Judge conspires with the offices of the court to resist the court of record, under color of law<sup>15</sup>, that court becomes susceptible to collateral attack<sup>16</sup> from the superior court of record and the judge being found in bad behavior shall be removed from office.

Since the definition of a court<sup>17</sup> [of record] is the person and suit of the sovereign and the judge in a chancery court is synonymous with court<sup>18</sup>. It can only be concluded that the two courts are the People themselves. Therefore the sovereign of a court of record can sue the judge (and officers) of a court not of record directly rather than resort to appeal to an appellate court. And the decision of that court of record may not be appealed by the court not of record, it is binding on all other courts by putting an end to inquiry concerning the fact, by deciding it.

### 130                            **REPUBLICAN FORM OF GOVERNMENT GUARANTEE**

Article IV Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion (against rights); and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

135    Strictly speaking, in our republican forms of government, the absolute sovereignty of the nation is in the people of the nation; (q. v.) and the residuary sovereignty of each state, not granted to any of its public functionaries, is in the people of the state. (q. v.) 2 Dall. 471; and vide, generally, 2 Dall. 433, 455; 3 Dall. 93; 1 Story, Const. §208; 1 Toull. n. 20 Merl. Reper. h. t.

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<sup>14</sup> **OBSTA PRINCIPIIS.** Lat. Withstand begin-nings; resist the first approaches or encroach-ments. Bradley, J., Boyd v. U. S., 116 U.S. 635, 6 Sup.Ct. 535, 29 L.Ed. 746.

<sup>15</sup> **COLOR OF LAW.** [Black's Law 4th] -- The appearance or semblance, without the substance, of legal right. [State v. Brechler, 185 Wis. 599, 202 N.W. 144, 148] Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "color of state law." (Atkins v. Lanning, 415 F. Supp. 186, 188)

<sup>16</sup> The decisions of a superior court may only be challenged in a court of appeal. The decisions of an inferior court are subject to collateral attack. In other words, in a superior court one may sue an inferior court directly, rather than resort to appeal to an appellate court. Decision of a court of record may not be appealed. It is binding on ALL other courts. However, no statutory or constitutional court (whether it be an appellate or supreme court) can second guess the judgment of a court of record. "The judgment of a court of record whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact, by deciding it." [Ex parte Watkins, 3 Pet., at 202-203. cited by SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218, 255 (1973).

<sup>17</sup> **COURT.** [Black's, 4th] The person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be.; An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in the course of law at times and places previously determined by lawful authority. [Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070;

<sup>18</sup> **"JUDGE" AND "COURT"**, are often synonymous or interchangeable. In re Slattery, 310 Mich. 458, 17 N.W.2d 251, 259; Commonwealth v. Shawell, 325 Pa. 497, 191 A. 17, 19, but see holding that a judge is not a court, State ex rel. Mayer v. City of Cincinnati, 60 Ohio App. 119, 19 N.E.2d 902.

## CONCLUSION

145 **A COURT OF LAW** is a superior “court of record”, which proceeds according to the “Common Law”, whereas the People judge both law and facts, has the power to punish, by fine and imprisonment, from which there is no appeal whereas the judge is not a chancellor, but the magistrate designated generally to hold it;

150 **A COURT OF EQUITY** is an inferior “court not of record” which proceeds according to statutes. The decisions of an inferior court of equity are subject to collateral attack from a superior court of record by suing the inferior court directly, rather than resort to appeal to an appellate court. The inferior court are the officers of the court and therefore the suit is upon the officers, who exceeded their jurisdiction and are now personally liable.

**DECISION OF A COURT OF RECORD** may not be appealed. It is binding on ALL other courts. No statutory or constitutional court (whether it be an appellate or supreme court) can second guess the judgment of a court of record.

155 The United States Constitution under Article IV Section 4 and Article VI Clause 2 obligates the Federal government to guarantee a constitutional republican form of government. Therefore all Article III courts and all judges in every state are obligated to obey and enforce the constitution, without question despite anything in the Constitution or laws of any State to the contrary.