

The following are some notes that can be used in court accordingly:

### Here by Special Appearance

**Blacks Law 4<sup>th</sup> edition** - A SPECIAL APPEARANCE is for the purpose of testing the sufficiency of service or the jurisdiction of the court; See State v. Huller<sup>1</sup> Whereas the clerk or prosecutor stated that my plea of “*Not Guilty*” was accepted. I did not plead my papers were clear stating I filed an affidavit by “Special Appearance” to test the sufficiency of the jurisdiction, in that this court lacks “personam jurisdiction.” Whereas, this court is a nisi prius court proceeding with statutes and codes and not the common law.

- I opened a Court of Record in my “Jurisdiction Challenge” that went ignored and unanswered.  
*COURT OF RECORD: A judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it Proceeding according to the course of common law.* - See Jones v. Jones,<sup>2</sup> Ex parte Gladhill,<sup>3</sup> also, Ledwith v. Rosalsky.<sup>4</sup>
- Clerk was to file and instead concealed or removed my affidavit in violation of 18 USC § 2071: That states, “Concealment, removal, or mutilation generally (a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.
- I filed an Affidavit of Default that went ignored and unanswered.
- This court claims “*The People v. Your Name.*” Whereas, the People have nothing to do with this case because this is a “*court of equity*” [traffic court] and not a court of “*Law,*” that proceeds according to the course of common law.
- The Prosecutor’s letter states that this case is “*under Criminal Procedure Law.*” Whereas, in Ex parte Watkins, 3 Pet., at 202-203. cited by SCHNECKLOTH v. BUSTAMONTE<sup>5</sup> the court said, “*Inferior courts*” are those whose jurisdiction is limited and special and whose proceedings are not according to the course of the common law. Criminal courts proceed according to statutory law. Jurisdiction and procedure is defined by statute. Likewise, civil courts and admiralty courts proceed according to statutory law. Any court proceeding according to statutory law is not a court of record (which only proceeds according to common law); it is an inferior court.

The Declaration of Independence being the foundation of all constitutional Law entitled the People to be judged “only” by the Laws of Nature and of Nature's God.

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<sup>1</sup> 23 N.M. 306, 168 P. 528, 534, 1 A.L.R. 170.

<sup>2</sup> 188 Mo.App. 220, 175 S.W. 227, 229;

<sup>3</sup> 8 Metc. Mass., 171, per Shaw, C.J. per Shaw, C.J.

<sup>4</sup> 244 N.Y. 406, 155 N.E. 688, 689

<sup>5</sup> 412 U.S. 218, 255 (1973).

Article VI, Clause 2 states, “*This Constitution... 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.*”

Article III Section 2 states, “*The judicial power shall extend to all cases, in law and equity.*”

Blacks Law 4<sup>th</sup> edition states, “*In law, the term equity refers to a particular set of remedies and associated procedures involved with civil law. In other words legislated laws a/k/a statutes codes and regulations.*”

Blacks Law 4<sup>th</sup> edition states, Civil Law more properly called “municipal” law, to distinguish it from the law of nature - see *Sevier v. Riley*<sup>6</sup>

Blacks Law 4<sup>th</sup> edition states, Equity courts and law courts: The former being such as possess the jurisdiction of a chancellor, applying the rules and principles of chancery law, and follow the procedure in equity; [a/k/a legislated law] the latter, [*meaning law courts*] such as have no equitable powers, but administer justice according to the rules and practice of the common law.

MARBURY v. MADISON<sup>7</sup> stated, “*If the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply. Those then who resist the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.*” The court went on to say, “*It is in these words: 'I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States.'* Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him and cannot be inspected by him. If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.”

## **THERE ARE TWO COURTS**

*One under Legislative statutes -&- One under Common Law*

Blacks Law 4<sup>th</sup> edition states, A Court of Law proceeds according to the course of the common law and governed by its rules and principles, as contrasted with a Court of Equity.

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<sup>6</sup> 189. Cal. 170, 244 P. 323, 325.

<sup>7</sup> 5 U.S. 137 (1803) 5 U.S. 137 (Cranch) 1803

The purpose of legislation is to control by statutes; Municipalities, Government Agencies and its agents, Corporations, and Commercial activities. Whereas the 14th Amendment; Section 1 states, “*No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*”

### **A COURT OF EQUITY IS GOVERNED BY STATUTES.**

**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. See Thomas v. Phillips<sup>8</sup>

**COURT OF CHANCERY**: A court administering equity and proceeding according to the forms and principles of equity.

### **A COURT OF LAW IS GOVERNED BY COMMON LAW.**

**AMENDMENT V OF THE CONSTITUTION OF THE UNITED STATES** provides: “*No person shall---be deprived of life, liberty, or property without due process of law.*”

Brown v. Levese<sup>9</sup> states, “*It has been held that, the state cannot deprive a person of his property without due process of law through a constitutional convention any more than, it can through an act of legislature.*”

Blacks Law 4<sup>th</sup> edition - DUE COURSE OF LAW, this phrase is synonymous with “due process of law” or “law of the land” and means law in its regular course of administration through courts of justice. – See Kansas Pac. Ry. Co. v. Dunmeyer<sup>10</sup>

Blacks Law 4<sup>th</sup> edition - DUE COURSE OF LAW: This phrase is synonymous with “due process of law,” or “the law of the land,” and the general definition thereof is “law in its regular course of administration through courts of justice.” See Direct Plumbing Supply Co. v. City of Dayton<sup>11</sup>

Blacks Law 4<sup>th</sup> edition - AT LAW: This phrase is used to point out that a thing is to be done according to the course of the common law; it is distinguished from a proceeding in equity.

### **POWER TO LEGISLATE**

**U.S. Constitution Article I Section 8, Clause 3**: Gave Congress the power to regulate commerce through legislation.

**U.S. Constitution Article I Section 8, Clause 4**: Gave Congress the power to legislate bankruptcy laws.

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<sup>8</sup> 4 Smedes & M., Miss., 423.

<sup>9</sup> Com'rs, 50 MIS 479

<sup>10</sup> 19 KAN 542.

<sup>11</sup> 138 Ohio St. 540, 38 N.E.2d 70, 72, 137 A.L.R. 1058.

U.S. Constitution Article I Section 8, Clause 6: Gave Congress the power to legislate punishment for counterfeiting.

U.S. Constitution Article I Section 8, Clause 4: Gave Congress the power to legislate rules for government and regulation for the armed forces.

The U.S. Constitution: did not give Congress Power to legislate the behavior of the People, nor could it because Common Law forbids it.

Blacks Law 4<sup>th</sup> edition states, “*All codes, rules, and regulations are for government authorities only, not human/Creators in accordance with God's laws. All codes, rules, and regulations are unconstitutional and lacking due process...*” See *Rodrigues v. Ray Donovan*<sup>12</sup>

Blacks Law 4<sup>th</sup> edition - The common law is the real law, the Supreme Law of the land, the code, rules, regulations, policy and statutes are “not the law.” See *Self v. Rhay*<sup>13</sup>

16 American Jurisprudence 2<sup>nd</sup> edition, Section 114: CONSTITUTIONS MUST BE CONSTRUED TO REFERENCE THE COMMON LAW - SUMMARY PROCEEDINGS ARE NULL AND VOID. As to the construction, with reference to Common Law, an important canon of construction is that constitutions must be construed to reference to the Common Law.” The Common Law, so permitted destruction of the abatement of nuisances by summary proceedings and it was never supposed that a constitutional provision was intended to interfere with this established principle and although there is no common law of the United States in a sense of a national customary law as distinguished from the common law of England, adopted in the several states. In interpreting the Federal Constitution, recourse may still be had to the aid of the Common Law of England. It has been said that without reference to the common law, the language of the Federal Constitution could not be understood.

Simmons vs. United States<sup>14</sup> – “*We find it intolerable that one constitutional right should have to be surrendered in order to assert another.*”

## IN CONCLUSION

I challenged jurisdiction in the form of an Affidavit, which remains unrebutted by the prosecutor whereas,

“*An affidavit uncontested unrebutted unanswered stands as truth... Indeed, no more than affidavits is necessary to make the prima facie case – See United States v. Kis*<sup>15</sup>

“*Allegations in affidavit in support of motion must be considered as true in absence of counter-affidavit.*” See *Group v Finletter*<sup>16</sup>

“*Uncontested allegations in affidavit must be accepted as true.*” *Morris v National Cash Register*<sup>17</sup>

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<sup>12</sup> (U.S. Department of Labor) 769 F. 2d 1344, 1348 (1985).

<sup>13</sup> 61 Wn (2d) 261

<sup>14</sup> 390, U.S. 389(1968)

<sup>15</sup> 658 F.2d 526, 536 (7th Cir. 1981); Cert. Denied, 50 U.S. L. W. 2169; S. Ct. March 22, 1982 1982

<sup>16</sup> 108 F. Supp. 327 Federal case of Group v Finletter, 108 F. Supp. 327

*“Uncontested Affidavit taken as true in Opposition of Summary Judgment.” Melorich Builders v. The SUPERIOR COURT of San Bernardino County*<sup>18</sup>

*“Uncontested Affidavit taken as true in support of Summary Judgment.” Seitzer v. Seitzer*<sup>19</sup>

THIS COURT MUST DISMISS THIS CASE NOT ONLY BECAUSE IT LACKS PERSONAM JURISDICTION BUT ALSO BECAUSE THE COURT HAS NOTHING BEFORE IT IN REBUTTAL TO MY AFFIDAVITS.

If this court refuses to dismiss for lack of Jurisdiction, then I am being denied my “Right of due process” I will hold this court liable for, Deprivation of rights under color of law under 18, USC §241 & Conspiracy against rights under 18, USC §242 and will move to N.Y.S. Supreme Court for cause.

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18, USC §241; - Conspiracy against rights: If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured – They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 USC §242 - Deprivation of rights under color of law: Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

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<sup>17</sup> 44 S.W. 2d 433

<sup>18</sup> (Serbia) 207 Cal.Rptr. 47 (Cal.App.4 Dist. 1984)

<sup>19</sup> 80 Cal. Rptr. 688