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4  
5 This document is <http://www.lawyerdude.netfirms.com/8395.pdf> and <http://www.lawyerdude.netfirms.com/8395.wpd>  
6 All Roberson motions are linked to: <http://www.fu.gq.nu/8395.html>

7 **County Court of El Paso County, Colorado**  
270 South Tejon Street, PO Box 2980, Colorado Springs, Co 80903  
8 Judge Daniel S. Wilson 719- 448-7608  
9 <http://www.courts.state.co.us/teindex.cfm?webdiv=4&type=all>

10 Clerks of court, having unlawfully usurped the  
prosecutorial function that is solely the  
11 province of the elected prosecutor, dba  
under false color of law and corrupt legal  
fiction as "The People of Colorado"

12 Plaintiffs

13 v  
Michael Roberson, one of the actual People of  
Colorado.

14 Defendant

Case Number: 06M4958

2<sup>nd</sup> Substantive Motion for Defendant.  
Document #8395 Version 1.200

**Demand to Quash due to the clerk's  
having usurped the power of the  
prosecutor and for failure to file a  
complaint.**

**Demand for recordation by a  
stenographic court reporter.  
Demand for prompt e-transcript of every  
hearing by email to my address  
shown above.**

17 Date: Thursday 29 March 2007

18 Time: 1:30 pm

Place: Court of Judge Daniel Wilson

19 **Notice of Motion**

20 To the clerk of court who has usurped the role of the prosecutor by filing a ticket in this case thereby  
21 initiating prosecution and bypassing the prosecutorial function: At the venue designated in the caption or at  
22 such other venue as the court shall designate, I will demand that the court dismiss this case. You are not a  
23 prosecutor. You work for the court; the court's job is to be a neutral judge - not a prosecutor. The inquisition  
ended some years ago. You have done the work of the prosecutor and yet you don't do my work. You should  
be neutral; you are not. "Equal Protection of the Law" is the law.

24 My legal authorities are not yet perfected. I plan to upgrade the motion and duly serve and file the  
upgrade.

25 My lawyer notified the prosecutor Dan Lee yesterday so that Dan Lee could preclude witnesses being  
26 called needlessly today.

27 Signed \_\_\_\_\_ Michael Roberson. Wednesday, February 21, 2007

28 Motion #8395. Demand to Quash. By Michael Roberson.

**Contents of this Demand to Quash/ Dismiss:**

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    willfully increases his or her speed or extinguishes his or her lights in an attempt to elude  
    such police officer ..... 8

**A traffic ticket is not a complaint.** ..... 10

**A broken tail light does not erase my privacy rights.** ..... 14

**It is a power, that places the liberty of every man in the hands of every petty officer.”**  
    ..... 14

**Under U.S. Constitution IV, 2, I am entitled to Georgia, Illinois, and California rights**  
    ..... 15

**Fountains of Liberty: Magna Charta, 1948 Universal Declaration of Human rights.**  
    ..... 15

**I am a beneficiary of the rights declared by the California constitution.** ..... 16

**The clerk is acting as prosecutor; that is wrong. Dismissal is the remedy.** ..... 17



1 are missing from the facts of the case. The defendant was driving his pickup truck. The officer noticed a dark  
2 tail light. The officer did a U turn and followed defendant at slow speed. Defendant continued to drive short  
3 distance home. Officer gathered reinforcements and prepared for the usual standoff where he and his fellow  
4 police officers would shoot and kill defendant - as we see on YouTube.

5 Defendant precluded a standoff by voluntarily walking out of his house before the officers had a  
6 chance to shout.

7 The prosecutor filed no complaint.

8 The accusatory instrument is the mere ticket written by a person who is not a lawyer and who is  
9 prejudiced in this matter.

10 Neither an eluding prosecution nor an obstruction prosecution are warranted by the weak facts in this  
11 case. All that we have is a man who drove home and a group of police who met him at his home minutes later  
12 to follow up on a broken tail lamp. This is a fix it ticket.

13 The election to prosecute was apparently made by the court clerk.

14 This will not stand.

#### 15 **Procedural Posture**

16 My appointed lawyer was unable to effect a remedy.

17 I have not yet received discovery.

18 Trial would be premature.

#### 19 **Waiver of Speedy Trial Rights**

20 I hereby waive my rights to a speedy trial in order to permit this motion to be heard.

21 Signed \_\_\_\_\_ Michael Roberson. Wednesday, February 21, 2007.

#### 22 **Clerk has unconstitutionally usurped function of prosecutor; Dismissal is my remedy.**

23 There was no legal basis for this traffic stop/ ticket. Even if there were a basis for the stop, a  
24 prosecutor would be required to make the decision to prosecute - not this clerk. A prosecutor would have an  
25 ethical duty to reject this case. However, the clerk, being uneducated in the law violates my rights when she  
26 usurps the prosecutorial role as she has done here. Furthermore the clerk is biased in this case by loyalty  
27 to her employer. Money from my fine would be added to the fund that pays her. She has thereby caused the  
28 court to be unconstitutionally biased. See for example: *Tumey v Ohio* (1927) 273 U.S. 510. In this  
prohibition era case, the city received \$5 for each conviction. The Tumey case can be see at:  
<http://www.lawyerdude.8k.com/Tumey.html>

#### 29 **Police officer has usurped the clerk's role.**

30 There has been a reciprocal usurpation. Ironically the police officer usurped the clerk's function which  
31 is to summon people to court only after there is a case filed by a duly authorized person. There was no such  
32 complaint/ case when the usurpatious officer issued the faux, spurious summons/ ticket to me appear in court.  
33 My remedy is this motion to Quash.

34 To this date, I have been served neither a valid summons nor a verified complaint. I therefore

4 Motion #8395. Demand to Quash. By Michael Roberson.

1 demand dismissal. I demand that this court recognize that I have neither been properly summoned to court  
2 nor properly prosecuted by an authorized prosecutor. Instead a mere police officer performed the legal nullity  
3 of serving me a substitute for a summons. The officer has no authority to summon me to court; issuance of  
4 a summons is the duty of the clerk. The officer may not ordain himself a clerk even if the legislature so  
deems.

5 The clerk, who would ordinarily issue summonses, now elevates herself to the position of prosecutor  
6 by prosecuting this case without the requisite legal formality of a complaint signed by a complaining party/  
7 witness. This is classic stealthy incessant encroachment. Only a prosecutor may lawfully file a complaint.  
8 The clerk may not ordain herself to the status of prosecutor.

9 Usurpation denies me Due Process. All the state constitutions guarantee me due process.

10 By stealthy encroachment our oppressive governments encroach. Corporations including  
11 governments enjoy eternal life and infinite wealth. They tell the lie over the course of generations. My  
12 children do not know the lie that the government told my parents. This truth about the lie is most obvious  
13 regarding income taxes. They were sold to Americans around 1909 as a tax that would never tax the wages  
14 of the working man. Example 2: In 1903 the federal government usurped the power of our various state  
15 militias by creating the National Guard and seizing control of the militias by co-opting/ incorporating them.

16 Every court wants to be a profit center. They incorrectly claim to be working for the greater good but  
17 they are not. Like all corporations they exist to serve their own; they thus create "the governing class" which  
18 is a parasitic class. Traffic tickets are the bite of these parasites. The city justifies traffic tickets as a means  
19 to raise revenue. In New Orleans the Public Defender is paid from revenue from parking meters.

20 In American the individual is king. All the aforementioned usurpations are destructive of our great  
21 country.

22 So now we have a dynamic tension: the struggle between the individual human and the corporate/  
23 government for hegemony. Today the various governments have sent forth swarms of employees to eat up  
24 all our wealth.

25 This will not stand.

1 **Table of Authorities and Fountains of Liberty cited herein:**

2 **U.S. Constitutional Clauses Cited herein:**

3 Article IV, Section 2.: The citizens of each state shall be entitled to all privileges and immunities of citizens in  
the several states. . . . . [15](#)

4 Commerce Clause/ interstate commerce . . . . . [16](#)

5 Due Process Clause . . . . . [17](#)

6 Equal protection clause of the 14<sup>th</sup> amendment . . . . . [19](#)

7 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;  
8 nor deny to any person within its jurisdiction the equal protection of the laws. - Privilege and Immunities Clause  
of the 14<sup>th</sup> amendment. . . . . [15](#)

9 The Commerce Clause is Article I, Section 8, Clause 3 of the United States Constitution. It empowers the  
United States Congress "To regulate Commerce with foreign Nations, and among the several States, and with  
10 the Indian Tribes." . . . . . [15](#)

11 The "no compact clause" is Article 1, Section 10, paragraph 3. . . . . [19](#)

12 **Opinions of the United States Supreme Court in Support of my Motion:**

13 **Haines v Kerner** (1972) 404 U.S. 519 (1972) [Http://www.lawyerdude.net/firms.com/haines.html](http://www.lawyerdude.net/firms.com/haines.html) Pleadings of Pro  
Se litigants are entitled to some leeway. This ruling is consistent with statutes in nearly all jurisdictions. The  
14 law is not a trap for the unwary. For every wrong there is a remedy. . . . . [19](#)

15 **Tumey v Ohio** (1927) 273 U.S. 510. In this prohibition era case, the city received \$5 for each conviction. The  
Tumey case can be see at: <http://www.lawyerdude.8k.com/Tumey.html>

16 . . . . . [4](#)

17 **List of clauses from Colorado Bill of Rights cited herein**

18 Colorado Constitution: Bill of Rights. . . . . [19](#)

19 Section 7. Security of person and property - searches - seizures - warrants. The people shall be secure in their  
persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search  
20 any place or seize any person or things shall issue without describing the place to be searched, or the person  
or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation reduced  
21 to writing. - Colorado Constitution. Colorado Bill of rights . . . . . [14](#)

22 **Colorado Statutes cited herein:**

23 18-8-103. Resisting arrest. . . . . [8](#)

24 42-2-138. Driving under restraint . . . . . [8](#)

25 42-4-1413. Eluding or attempting to elude a police officer. . . . . [8](#)

26 **The Kansas Constitution. Clauses cited herein:**

27 Kansas Bill of Rights. Entire Kansas bill of rights is appended hereto. . . . . [21](#)

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**Washington Constitution. Clauses cited herein:**

The **unnecessary delay** clause: Justice in all cases shall be administered openly, and **without unnecessary delay**.

..... [23](#)

Washington Constitution. The Washington Bill of Rights is appended to this motion. .... [22](#)

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**Treaties cited herein:**

Treaty. 1948 Universal Declaration of Human Rights“Article 20(2) No one may be compelled to belong to an association.” <http://www.lawyerdude.netfirms.com/8213.html> This treaty, the 1<sup>st</sup> amendment, the 6<sup>th</sup>, and the 14<sup>th</sup> amendments preclude the regulation of the practice of law by non-government lawyers. .... [15](#)

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**Illinois, California, and other Foreign Constitutions rightfully cited herein:**

California constitution: Section 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. [http://www.leginfo.ca.gov/const/article\\_1](http://www.leginfo.ca.gov/const/article_1) <http://www.leginfo.ca.gov/const-toc.html> ..... [16](#)

Illinois constitution. Section 6. Searches, Seizures, Privacy, and Interceptions: The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized. .... [16](#)

Illinois Constitution. Section 1. Inherent and Inalienable Rights: All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed. .... [16](#)

Illinois Constitution: Section 2. Due Process and Equal Protection. No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws. .... [17](#)

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**Table of non-Colorado Statutes cited herein:**

PC 949. The first pleading on the part of the people in a misdemeanor or infraction case is the complaint except as otherwise provided by law. .... [19](#)

Penal Code§ 740 states as follows: Except as otherwise provided by law, all misdemeanors and infractions must be prosecuted by written complaint under oath subscribed by the complainant. .... [19](#)

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**Cases cited herein:**

**People v Dragomir** Feb 14, 2006 <http://www.lawyerdude.netfirms.com/Dragomir.html> ..... [17](#)

**People v Carlucci** 1979 <http://www.lawyerdude.8k.com/Carlucci.htm> <http://www.lawyerdude.netfirms.com/carlucc.html> ..... [17](#)

**Tumey v Ohio** (1927) 273 U.S. 510. In this prohibition era case, the city received \$5 for each conviction. <http://www.lawyerdude.8k.com/Tumey.html> The clerk has usurped the prosecutorial function - for profit. .... [4](#)

1 **Learned Treatises and Speeches cited herein:**

2 Wikipedia. [http://en.wikipedia.org/wiki/James\\_Otis](http://en.wikipedia.org/wiki/James_Otis) . . . . . 14

3 "It is a power, that places the liberty of every man in the hands of every petty officer." - James Otis.  
4 [http://douglassarchives.org/otis\\_a34.htm](http://douglassarchives.org/otis_a34.htm) . . . . . 14

5 **Argument**

6 **You may not initiate prosecution by the clerk’s filing of a ticket.**

7 **The accusing instruments: 3 statutes:**

8 **42-2-138. Driving under restraint - penalty.**

(1) (a) Any person who drives a motor vehicle or off-highway vehicle upon any highway of this state with knowledge that such person's license or privilege to drive, either as a resident or a nonresident, is under restraint for any reason other than conviction of an alcohol-related driving offense pursuant to section 42-4-1301 (1) or (2) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than five days nor more than six months, and, in the discretion of the court, a fine of not less than fifty dollars nor more than five hundred dollars may be imposed. The minimum sentence imposed by this paragraph (a) shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part, or reduce or suspend the fine under this paragraph (a); but, in a case where the defendant is convicted although the defendant established that he or she had to drive the motor vehicle in violation of this paragraph (a) because of an emergency, the mandatory jail sentence or the fine, if any, shall not apply, and the court may impose a sentence of imprisonment in the county jail for a period of not more than six months and a fine of not more than five hundred dollars. Such minimum sentence need not be five consecutive days but may be served during any thirty-day period.

17 **42-4-1413. Eluding or attempting to elude a police officer.**

Any operator of a motor vehicle who the officer has reasonable grounds to believe has violated a state law or municipal ordinance, who has received a visual or audible signal such as a red light or a siren from a police officer driving a marked vehicle showing the same to be an official police, sheriff, or Colorado state patrol car directing the operator to bring the operator's vehicle to a stop, and who **willfully increases his or her speed or extinguishes his or her lights in an attempt to elude such police officer**, or willfully attempts in any other manner to elude the police officer, or does elude such police officer commits a class 2 misdemeanor traffic offense. History Source: L. 94: Entire title amended with relocations, p. 2398, § 1, effective January 1, 1995.

23 **18-8-103. Resisting arrest.**

(1) A person commits resisting arrest if he knowingly prevents or attempts to prevent a peace officer, acting under color of his official authority, from effecting an arrest of the actor or another, by:  
(a) Using or threatening to use physical force or violence against the peace officer or another; or  
(b) Using any other means which creates a substantial risk of causing bodily injury to the peace officer or another.  
(2) It is no defense to a prosecution under this section that the peace officer

1 was attempting to make an arrest which in fact was unlawful, if he was  
2 acting under color of his official authority, and in attempting to make the  
3 arrest he was not resorting to unreasonable or excessive force giving rise  
4 to the right of self-defense. A peace officer acts "under color of his official  
5 authority" when, in the regular course of assigned duties, he is called upon  
6 to make, and does make, a judgment in good faith based upon surrounding  
7 facts and circumstances that an arrest should be made by him.

(3) The term "peace officer" as used in this section and section 18-8-104  
means a peace officer in uniform or, if out of uniform, one who has identified  
himself by exhibiting his credentials as such peace officer to the person  
whose arrest is attempted.

(4) Resisting arrest is a class 2 misdemeanor.

#### History

Source: L. 71: R&RE, p. 454, § 1. C.R.S. 1963: § 40-8-103. L. 72: p. 593,  
§ 69. L. 77: IP(1) amended, p. 965, § 37, effective July 1. L. 81: (1)(b)  
amended, p. 981, § 5, effective May 13.

#### Annotations

##### ANNOTATION

##### Annotations

Am. Jur.2d. See 58 Am. Jur.2d, Obstructing Justice, § 66.

C.J.S. See 67 C.J.S., Obstructing Justice, §§ 12-14, 18-20, 22-25.

Law reviews. For article, "Impeding Unlawful Arrest: A Question of Authority  
and Criminal Liability", see 61 Den. L.J. 655 (1984).

The general assembly is free to prescribe different punishments for conduct  
perceived to result in varying degrees of social consequences, and the  
distinction between this section and § 18-2-203 (1)(f) is not arbitrary or  
inadvertent. Therefore § 18-2-203 (1)(f) is not unconstitutional. *People v.*  
*Wieder*, 693 P.2d 1006 (Colo. App. 1984), *aff'd*, 722 P.2d 396 (Colo. 1986).  
Section allows reasonable force. A citizen in resisting an unlawful arrest  
cannot act with any more force than could the officer in effecting a lawful  
arrest. This section does not broaden the long accepted rule that one may  
not act to protect himself or property, whether it be in self-defense or  
otherwise, with more force than is reasonably necessary. *McDaniel v.*  
*People*, 179 Colo. 153, 499 P.2d 613, *cert. denied*, 409 U.S. 1060, 93 S. Ct.  
558, 34 L. Ed.2d 512 (1972) (decided under former § 40-7-57, C.R.S. 1963).

Use of force prohibited. A person may not use force to resist being placed  
under arrest or in protective custody by a police officer engaged in the  
performance of his duties, regardless of whether the police conduct is  
unlawful. *People v. Hess*, 687 P.2d 443 (Colo. 1984).

Where defendant was charged with both resisting arrest and second degree  
assault, one of the factors in determining whether the defendant is guilty of  
one or both of the charges shall be whether the actions of the defendant,  
which caused injury to the officers, were continuous, stemming from his  
efforts to resist arrest, or whether there was a break between his actions to  
thwart the officers efforts to arrest him and the actions which lead to the  
injury of the officers. *People v. Armstrong*, 720 P.2d 165 (Colo. 1986).

A person using violence against a peace officer to avoid arrest commits the  
crime of resisting arrest up to the point of arrest. However, after the arrest  
is made, a person in custody who uses violence against a peace officer  
commits second degree assault under § 18-3-203. *People v. Stanley*, 56  
P.3d 1241 (Colo. App. 2002).

1 Resisting arrest is distinguishable from second degree assault on a peace  
2 officer, as described in § 18-3-203, and third degree assault, as described  
3 in § 18-3-204, and therefore these sections do not violate equal protection.  
4 This section and § 18-3-204 require that the defendant act knowingly,  
5 whereas § 18-3-203 requires that the defendant act intentionally. Further,  
6 § 18-3-203 requires the defendant to intend to cause bodily harm, while this  
7 section requires only that the defendant use or threaten to use physical  
8 force. *People v. Whatley*, 10 P.3d 668 (Colo. App. 2000).  
9 Self-defense instruction required for case involving unreasonable or  
10 excessive force during an arrest when defendant charged with resisting  
11 arrest. Self-defense instruction is required when evidence has been  
12 presented that officers displayed weapons and were commanded to  
13 discharge them in course of effecting arrest and that their conduct was  
14 unreasonable or excessive under the circumstances. *People v. Fuller*, 781  
15 P.2d 647 (Colo. 1989).  
16 Resisting arrest applies only to arrests made by peace officers acting under  
17 color of official authority and not to an off-duty police officer privately  
18 employed as a security guard for a skating rink. *People In Interest of J.J.C.*,  
19 835 P.2d 553 (Colo. App. 1992), *aff'd*, 854 P.2d 801 (Colo. 1993).  
20 Conviction sustained by evidence. *Feste v. People*, 93 Colo. 206, 25 P.2d  
21 177 (1933) (decided under former C.L. § 6793); *People v. Mason*, 632 P.2d  
22 616 (Colo. App. 1981).  
23 Applied in *People v. Jackson*, 198 Colo. 193, 601 P.2d 622 (1979); *People*  
24 *v. Annan*, 665 P.2d 629 (Colo. App. 1983).

Subdocument #8392

### **A traffic ticket is not a complaint.**

14 When the police officer initiates contact he begins a process. He SHALL/MUST/IS REQUIRED do  
15 certain things. If the police officer does not release the arrested party and elects to issue a NOTICE TO  
16 APPEAR, the officer is required to issue one of 3 copies of a NOTICE TO APPEAR to the accused and then  
17 what does he do with the other 2?

18 See the California vehicle code, for example:

19 40506. The officer shall, as soon as practicable, file a copy of the notice with the magistrate or before  
20 a person authorized by the magistrate or judge to receive a deposit of bail specified therein, and a copy with  
21 the commissioner, chief of police, sheriff or other superior officer of the arresting officer.

22 40300.2. Whenever a person is arrested for a violation of this code, or a violation of any other statute  
23 required to be reported under Section 1803, the written complaint, notice to appear in court, or other notice  
24 of violation, shall indicate whether the vehicle involved in the offense is a commercial motor vehicle, as defined  
25 in subdivision (b) of Section 15210.

[Emphasis added]

26 The Legislature has distinguished between a "written complaint" and a "notice to appear in court", at the  
27 foregoing VEHICLE CODE section. (When you're "stopped", the Legislature calls that an "arrest".)

### **PENAL CODE**

28 740. Except as otherwise provided by law, all misdemeanors and infractions must be prosecuted by  
written complaint under oath subscribed by the complainant. Such complaint may be verified on information  
and belief.

[Emphasis added]

The police officer is REQUIRED to make a "written complaint", if he plans on having his allegations  
prosecuted. The "written complaint" MUST be under OATH, if the police officer plans to have his allegations

1 prosecuted. The police officer is REQUIRED to sign the "written complaint" under penalty of perjury if the  
2 police officer plans on having his allegations prosecuted, OR, according to the Legislature, the requirements  
of PENAL CODE §740 have not been fulfilled and that is a "due process" issue.

3 The police officer puts what he presumed or believed on a NOTICE TO APPEAR, and the Legislature has  
informed us at EVIDENCE CODE §600, a presumption is not EVIDENCE.

4 EVIDENCE CODE  
5 SECTION 600-607

6 600. (a) A presumption is an assumption of fact that the law requires to be made from another fact or  
group of facts found or otherwise established in the action.

7 A presumption is not evidence.  
[Emphasis added]

8 - DEFINITION OF COMPLAINT -  
9

10 Facts Constituting cause of action

11 "Every fact which, if controverted, plaintiff must prove to maintain his action must be stated in the  
complaint."

12 Jerome v. Stebbins (1859), 14 C. 457;  
13 Green v. Palmer (1860), 15 C. 411, 76 Am. Sec. 492;  
14 Johnson v. Santa Clara County (1865), 28 C. 545.

15 "The complaint, on its face, must show that the plaintiff has the better right."  
16 Rogers v. Shannon (1877), 52 C. 99.

17 "Complaint, to be sufficient, must contain a statement of facts which, without the aid of other facts not stated  
shows a complete cause of action."

18 Going v. Didwiddle (1890), 86 C. 633, 25 P. 129.

19 "Pleadings should set forth facts, and not merely the opinions of parties."  
20 Snow v. Halstead (1851), 1 C. 359.

21 "A complaint must contain a statement of facts showing the jurisdiction of the court, ownership of a right  
22 by plaintiff, violation of that right by the defendant, injury resulting to  
23 plaintiff by such violation, justification for equitable relief where that is sought, and a demand for relief."  
24 Pierce v. Wagner, 134 F.2d. 958.

25 "Essential facts on which legal points in controversy depend, should be pleaded clearly and precisely, so  
26 that nothing is left for court to surmise."

27 Gates v. Lane (1872), 44 C. 392.

28 "The test of the materiality of an averment in a pleading is this: Could the averment be stricken from the  
pleading without leaving it insufficient?"

Whitwell v. Thomas (1858), 9 C. 499.

"In pleading, the essential facts on which a determination of the controversy depends should be stated with  
clearness and precision so that nothing is left to surmise."

Bernstein v. Fuller (1950), 98 C.A.2d 441, 220 P.2d 558.

"The "facts" which the court is to find and the "facts" which a pleader is to state lie in the same plane - that  
is, in both connections, "facts" are to be stated according to their legal effect."

1 Hihn v. Peck (1866), 30 C. 280.

2 "A plaintiff must set forth in his complaint the essential facts of his case with reasonable precision and with  
3 sufficient clarity and particularity that defendant may be apprized of nature, source and extent of his cause  
of action."

4 Metzenbaum v. Metzenbaum (1948), 86 C.A.2d 750, 195 P.2d 492.

5 "In general, matters of substance must be alleged in direct terms, and not by way of recital or reference."  
6 Silvers v. Grossman (1920), 183 C. 693, 192 P. 534; Reid v. Kerr (1923), 64 C.A. 117, 220 P. 688.

7 "A fact which constitutes an essential element of a cause of action cannot be left to inference."  
8 Roberts v. Roberts, 81 C.A.2d 871, 185 P.2d 381.

9 "Material facts must be alleged directly and not by way of recital."  
10 Vilardo v. Sacramento County (1942), 54 C.A.2d 413, 129 P.2d 165.

11 "Material allegations must be distinctly stated in complaint."  
12 Goland v. Peter Nolan & Co. (1934), 33 P.2d 688, subsequent opinion 38 P.2d 783, 2 C.2d 96.

13 "Matters of substance must be presented by direct averment and not by way of recital."  
14 Stefani v. Southern Pacific Co. (1932), 119 C.A. 69, 5 P.2d 946.

15 "A pleading which leaves essential facts to inference or argument is bad."  
16 Ahlers. v. Smiley (1909), 11 C.A.343, 104 P. 997.

17 "The forms alone of the several actions have been abolished by the statute. The substantial allegations  
18 of the complaint in a given case must be the same under our practice act as at common law."  
19 Miller v. Van Tassel (1864), 24 C. 459.

20 "A pleading cannot be aided by reason of facts not averred."  
21 San Diego County v. Utt (1916), 173 C. 554, 160 P. 657.

22 "Facts necessary to a cause of action but not alleged must be taken as having no existence."  
23 Frace v. Long Beach City High School Dist. (1943), 137 P.2d 60, 58 C.A.2d 566.

24 "A fact necessary to pleader's cause of action, if not pleaded, must be taken as having no existence."  
25 Feldesman v. McGovern (1941), 44 C.A.2d 566.

26 "When pleading is silent as to material dates, or does not clearly state facts relied on, it must be presumed  
27 that statement thereof would weaken pleader's case."  
28 Whittemore v. Davis (1931), 112 C.A. 702, 297 P. 640.

"Material matters in pleadings must be distinctly stated in ordinary and concise language."  
Brown v. Sweet (1928), 95 C.A. 117, 272 P. 614.

"Facts contained in public records should be alleged in pleading when they constitute necessary elements  
of good cause of action."  
Gray v. White (1935), 5 C.A.2d 463, 43 P.2d 318.

"When facts are available from public records, it is ordinarily improper to allege such facts on mere  
information and belief."

People v. Birch Securities Co. (1948), 196 P.2d 143, 86 C.A.2d 703, cert. denied Birch Securities Co. v.  
People of State of California, 69 S.Ct. 745, 336 U.S. 936, 93 L.Ed. 1095.

- NOTICE -

1 NOTICE. The information given of some act done, or the interpellation by which some act is required to be  
2 done. It also signifies, simply, knowledge; as A had notice that B was a slave. 5 How. S. C. Rep. 216; 7 Penn.  
3 Law Journ. 119.

4 2. Notices should always be in writing; they should state, in precise terms, their object, and be signed  
5 by the proper person, or his authorized agent, be dated, and addressed to the person to be affected by them.

6 3. Notices are actual, as when they are directly given to the party to be affected by them; or constructive,  
7 as when the party by any circumstance whatever, is put upon inquiry, which amounts in judgment of law to  
8 notice, provided the, inquiry becomes a duty. Vide 2 Pow. Mortg. 561 to 662; 2 Stark. Ev. 987; 1 Phil. Ev.  
9 Index, b. t.; 1 Vern. 364, n.; 4 Kent, Com. 172; 16 Vin. Ab. 2; 2 Supp. to Ves. jr. 250; Grah. Pr. Index, h.t.; Chit.  
10 Pl. Index, h.t.; 2 Mason, 531; 14 Pick. 224; 4 N. H. JRep. 397; 14 S. & R. 333; Bouv. Inst. Index, h.t.

11 4. With respect to the necessity for giving notice, says Mr. Chitty, 1 Pr. 496, the rules of law are most  
12 evidently founded on good sense and so as to accord with the intention of the parties. The giving notice in  
13 certain cases obviously is in the nature of a condition precedent to the right to call on the other party for the  
14 performance of his engagement, whether his contract were express or implied. Thus, in the familiar instance  
15 of bills of exchange and promissory notes, the implied contract of an indorser is, that he will pay the bill or  
16 note, provided it be not paid, on presentment at maturity, by the acceptor or maker, (being the party primarily  
17 liable, and provided that he (the indorser) has due notice of the dishonor, and without which he is discharged  
18 from all liability; consequently, it is essential for the holder to be prepared to prove affirmatively that such  
19 notice was given, or some facts dispensing with such notice.

20 5. Whenever the defendant's liability to perform an act depends on defendant is not legally bound to  
21 take notice, the plaintiff must prove that due notice, was in fact given. So in cases of insurances on ships, a  
22 notice

23 of abandonment is frequently necessary to enable the assured plaintiff to proceed as for a total lose when  
24 something remains to be saved, in relation to which, upon notice, the insurers might themselves take their own  
25 measures.

26 6. To avoid doubt or ambiguity in the terms of the notice, it may be advisable to give it in writing, and to  
27 preserve evidence of its delivery, as in the case of notices of the dishonor of a bill.

28 7. The form of the notice may be as subscribed, but it must necessarily vary in its terms according to  
the circumstances of each case. So, in order to entitle a party to insist upon a strict and exact performance  
of a

contract on the fixed day for completing it, and a fortiori to retain a deposit as forfeited, a reasonable notice  
must be given of the intention to insist on a precise performance, or he will be considered as having waived  
such strict right. So if a lessee or a purchaser be sued for the recovery of the estate, and he have a remedy  
over against a third person, upon a covenant for quiet enjoyment, it is expedient (although not absolutely  
necessary) referring to such covenant.

Bouvier's Law Dictionary, 1856

- CONCLUSION -

"A mere conclusion of a pleader cannot be availed of to initiate and invite an issue of fact."  
Hatfield v. Peoples Water Co. (1914), 25 C.A. 711, 145 P. 164.

"One may not by the mere device of an allegation in a pleading create a legal duty that otherwise does not  
exist."

Pascoe v. Southern California Edison Co. (1951), 102 C.A.2d 254, 227 P.2d 555.

"Allegations of legal conclusions cannot be permitted to supply essential allegations of fact."  
Bailes v. Keck (1927), 200 C. 697, 254 P. 573, 51 A.L.R. 930.

"Pleadings should allege facts, and not mere conclusions of law."  
Bailes v. Keck (1927), 200 C. 697, 254 P. 573, 51 A.L.R. 930.

"A pleading must allege facts and not conclusions, and conclusions of law are not admitted by demurrer."  
Vilardo v. Sacramento County (1942), 54 C.A.2d 413, 129 P.2d 165.

1 "Facts, not mere conclusions, should be alleged to establish right to specific performance of contract."  
Foley v. Cowan (1947), 80 C.A.2d 70, 181 P.2d 410.

2 "Allegation of conclusion of law tenders no issue."  
3 California Western Holding Co. v. Merrill (1935), 7 C.A.2d 131, 46 P.2d 175.

4 "Conclusions of law in a pleading are disregarded."  
5 Koehler v. Coronado (1927), 83 C.A. 648, 257 P. 187.

6 --

7 If they can get you asking the wrong questions, they don't have to worry about answers.  
8 Thomas Pynchon

9 If evidence of a fact is clear, positive, uncontradicted and of such nature it cannot rationally be disbelieved,  
10 the court must instruct that fact has been established as a matter of law. -Roberts v. Del Monte Properties  
11 Co., 111 CA2d. 69 (1952).

12 They will do whatever we let them get away with. -Joseph Heller

### 13 **A broken tail light does not erase my privacy rights.**

14 Let's remember where we came from. Today's police/ prison/ highway cop/ traffic court industry  
15 would have us regress to the days of the writs of assistance. The police power is an instrument of oppression  
16 in this country. The oppression is foisted on us by the police/ prison/ traffic court industry. The power to raid  
17 a house was described by James Otis:

18 **"It is a power, that places the liberty of every man in the hands of every  
19 petty officer."** - James Otis. [http://douglassarchives.org/otis\\_a34.htm](http://douglassarchives.org/otis_a34.htm)

20 Occasion: The "Writs of Assistance" were general warrants allowing officials to search for smuggled  
21 material within any suspected premises. James Otis resigned as prosecutor and fought against the writs.  
22 He gave a passionate speech that is memorialized in books read by all law students. These writs would  
23 enable British authorities to enter any colonist's home with no advance notice, no probable cause and no  
24 reason given. In a dramatic turnabout following his resignation, Otis instead represented pro bono the colonial  
25 merchants who were challenging the legality of the writs before the Superior Court, the predecessor of the  
26 Massachusetts Supreme Judicial Court. According to Adams, "Otis was a flame of fire; with a promptitude  
27 of classical allusions, a depth of research, a rapid summary of historical events and dates, a profusion of legal  
28 authorities." James Otis considered himself a loyal British subject. Yet in February 1761, he argued so  
brilliantly against the writs of assistance in a nearly five-hour oration before a packed audience in the Old State  
House that John Adams later claimed: "Every man of a crowded audience appeared to me to go away as I  
did ready to up arms against the writs of assistance. Then and there was the first scene of the first act of the  
opposition to the arbitrary claims of Great Britain. Then and there the child of Independence was born." -  
Wikipedia. [http://en.wikipedia.org/wiki/James\\_Otis](http://en.wikipedia.org/wiki/James_Otis)

Section 7 of the Colorado bill of rights prohibits just the sort of privacy invasion that happened to me.

Section 7. Security of person and property - searches - seizures - warrants.  
The people shall be secure in their persons, papers, homes and effects,  
from unreasonable searches and seizures; and no warrant to search any

1 place or seize any person or things shall issue without describing the place  
2 to be searched, or the person or thing to be seized, as near as may be, nor  
3 without probable cause, supported by oath or affirmation reduced to writing.  
- Colorado Constitution. Colorado Bill of rights.

4 And now today you would have us give up that right simply because some cop see a tail lamp out?  
5 No. This will not stand! The traffic cop uses his badge as a general warrant. A mere broken tail lamp is used  
6 as an excuse to invade my privacy and make inquiry as to my internal passport. Through an unconstitutional  
7 interstate compact the various members of the police/ prison/ traffic court industry keep tabs on us by illegally  
8 exchanging information in a de facto system that amounts to an interstate compact in violation of the "no  
9 compact clause" of the federal constitution. The "no compact clause" is Article 1, Section 10, paragraph 3.  
10 In addition Congress has the authority to regulate interstate commerce. The Commerce Clause is Article I,  
11 Section 8, Clause 3 of the United States Constitution. It empowers the United States Congress "To regulate  
12 Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

13 The law does not deal in trivialities.

14 We must establish a threshold higher threshold for justifying a traffic stop.

15 **Under U.S. Constitution IV, 2, I am entitled to Georgia, Illinois, and California rights.**

16 Under the constitutional concept of "dual federalism" we are all beneficiaries of at least two  
17 constitutions, to wit: state and federal.

18 The federal constitution and the common law invest us with additional rights as follows:

19 All people in all states, including Washington, are entitled to the rights of Californians, except the right  
20 to vote in California state and local elections, which, or course, is reserved to California citizens. That is why  
21 I cite California law herein.

22 U.S. Constitution: Article IV, Section 2.: The citizens of each state shall be  
23 entitled to all privileges and immunities of citizens in the several states.

24 The officer violated the Privileges and Immunities Clause of the 14<sup>th</sup> amendment which states:

25 No state shall make or enforce any law which shall abridge the privileges or  
26 immunities of citizens of the United States; nor shall any state deprive any  
27 person of life, liberty, or property, without due process of law; nor deny to  
28 any person within its jurisdiction the equal protection of the laws. - Privilege  
and Immunities Clause of the 14<sup>th</sup> amendment.

**Fountains of Liberty: Magna Charta, 1948 Universal Declaration of Human rights.**

We struggle to "find" the law. Example: A lawyer need not change his bar license upon entering a sister  
state. Once he has passed his test he has proven himself. Compulsion to join the compulsory bar violates  
the compulsory association clause of the 1948 Universal Declaration of Human rights

"Article 20(2) No one may be compelled to belong to an association." -  
Treaty. 1948 Universal Declaration of Human Rights.

<http://www.lawyerdude.netfirms.com/8213.html>

Likewise I need not re-register my car every 60 days. Such a requirement violates so very many

1 clauses in the various fountains of liberty. Example: To do so imposes an undue burden on **interstate**  
2 **commerce**. Both lawyers and drivers are subjected to ever tightening reigns of state governments.  
3 Governments by stealthy encroachment over the course of generations seek to fatten the corporate  
4 bureaucracies and extract greater percentages of the wealth of the citizenry which they view as their subjects.  
5 In the beginning we sought government to provide law and order - not to enslave and rule us. Consider  
6 the portentous words of "our" Illinois constitution. By terms of the U.S. constitution, we free people of every  
7 state are beneficiaries of the liberating clause of the constitutions of Illinois and California as well as our own.  
8 We have 51 fountains of liberty from which to drink:

9 Illinois Constitution. Section 1. Inherent and Inalienable Rights: All men are  
10 by nature free and independent and have certain inherent and inalienable  
11 rights among which are life, liberty and the pursuit of happiness. To secure  
12 these rights and the protection of property, governments are instituted  
13 among men, deriving their just powers from the consent of the governed. -  
14 Illinois Bill of Rights.

15 There are 50 state constitutions. It is interesting to compare them and investigate their derivation.  
16 Consider the flowery language of the first paragraph of the California Constitution which is constantly under  
17 attack by Republicans shaming Lincoln and attempting to curtail our rights by, for example, limiting our own  
18 search prohibition so that it is no stronger than the 4<sup>th</sup> amendment. Here is that first flowery meaningless  
19 clause:

20 California constitution: Section 1. All people are by nature free and  
21 independent and have inalienable rights. Among these are enjoying and  
22 defending life and liberty, acquiring, possessing, and protecting property,  
23 and pursuing and obtaining safety, happiness, and privacy.  
24 <http://www.leginfo.ca.gov/const-toc.html>

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25 **I am a beneficiary of the rights declared by the California constitution.**

26 I was exercising my California defined Section 1 rights as a free and natural human when the police  
27 officer unconstitutionally violated my rights to enforce his institutional corporate prejudice against drivers. My  
28 remedy is dismissal. Do it.

Our Illinois constitution forbids unwarranted searches.

Illinois constitution. Section 6. Searches, Seizures, Privacy, and  
Interceptions: The people shall have the right to be secure in their persons,  
houses, papers and other possessions against unreasonable searches,  
seizures, invasions of privacy or interceptions of communications by  
eavesdropping devices or other means. No warrant shall issue without  
probable cause, supported by affidavit particularly describing the place to be  
searched and the persons or things to be seized.

1 I have addressed the search issue in a concurrent motion listed at another section in this brief.

2 **The clerk is acting as prosecutor; that is wrong. Dismissal is the remedy.**

3 This argument is based on the **Due Process Clause** of the U.S. constitution.

4 This argument is based on independent state grounds. The **Illinois constitution** makes it sound as though we created the government to serve us, not to govern us:

5 Illinois Constitution: Section 2. Due Process and Equal Protection. No person  
6 shall be deprived of life, liberty or property without due process of law nor be  
7 denied the equal protection of the laws.

8 By stealthy encroachment over the course of generations, all governments and other corporations  
9 encroach upon the personal freedoms of humans. The human lives only 75 years. The father fails to warn  
10 the grandchild of the lies of the corporation. The lie remains unchallenged generations later due to human  
11 ignorance and mortality. The immortality of the corporation gives the government opportunity to encroach as  
12 such a speed as to be imperceptible by a single generation of humans.

13 The summons was originally a document issued by a civil court only after the civil prosecutor had  
14 made a decision to prosecute. As the court corporations became fatter they ordered the litigants: "write our  
15 summonses and bring them to use for signature". Their fellow government minions in the legislature wrote  
16 the corresponding rules.

17 Then the courts saw the money flow and realized that they should promote the traffic ticket game by  
18 processing the tickets without a prosecutor.

19 The court recognized the power it wields in criminal case. If they converted a civil action into a  
20 criminal action they could then change their posture to an inquisitorial posture.

21 This is unconstitutional. The remedy is dismissal. Only a prosecutor can prosecute a criminal  
22 offense. This is not an administrative tribunal. If it were, there would be a hearing officer or administrative  
23 law judge.

24 The prosecution may not be done without any prosecutor. *People v Carlucci* 1979  
25 <http://www.lawyerdude.8k.com/Carlucci.htm> <http://www.lawyerdude.netfirms.com/carlucc.html> *People v Dragomir*  
26 Feb 14, 2006 <http://www.lawyerdude.netfirms.com/Dragomir.html>

27 **Declaration of Attorney Douglas Palaschak regarding Summonses**

28 I, Douglas Palaschak, declare the following under penalty of perjury: I am an Engineering Graduate  
of the University of Illinois, Urbana, where I was an honors student. I marched in "The Marching Illini", the  
world's undisputed Premiere Marching Band. I began my career as a Registered Professional Engineer  
having consulted for the U.S. Navy, Mobil, and Exxon. My expert testimony resolved a personal injury case  
where my calculations proved that a hydraulic accumulator could not contain sufficient oxygen for combustion  
to have overloaded the failed bolts.. This tended to prove that the cause of the explosion was a failed  
hydraulic safety valve.

I conceived and designed subsea machinery for the U.S. Navy. I performed the buckling analysis for

1 the riser tubes and contributed to the design of the giant seafloor template for a quarter mile tall oil rig  
2 presently in service in the North Sea.

3 I have been a licensed lawyer for nearly a quarter century. I publish approximately 1200 legal articles  
4 on the internet. My areas of expertise are:

5 Licenses, Rights, and Privileges, and their use as Instruments of Oppression,  
6 Criminal Defense,  
7 Internet-driven Improvements in the Efficiency of Litigation,  
8 Empowerment of Pro Se Litigants,  
9 Bankruptcy.

10 My most recent book is on the subject of Pre-trial Criminal Litigation of Malum Prohibitum Crimes.  
11 It is available by mail order via the internet.

### 12 **A ticket can never be a summons.**

13 A summons is required for the court to gain jurisdiction. A summons is a notification from the court  
14 addressed to the defendant in a pending case. A ticket is never a summons despite the intentions of the  
15 legislature. When a person write a ticket there is no pending case. There will be no pending case until a  
16 prosecutor has made a decision to prosecute. Then the prosecutor files a complaint. Only then is a summons  
17 possible. There is then a pending case. I would then have the opportunity to settle the case with the  
18 prosecutor. Most traffic courts today permit the clerk to prosecute the case. This practice is unconstitutional.  
19 It is an example of denial of equal protection. I would like the clerk to be working on my side of the case. The  
20 clerk has demonstrated a bias for the prosecution. Also, the clerk is paid by the money earned by the ticket  
21 that she prosecutes.

22 Your sloppy paper forms in this age of computers bespeak the fill-in-the-blank facade of this court.  
23 You are a mockery to justice.

24 No. This will not stand.

25 - Douglas Palaschak Friday, January 5, 2007.

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### 26 **A defendant may appear by motion.**

27 I need not appear in person but may appear by motion. I have appeared as agreed by my signature  
28 on the notice to appear by entering this motion to quash.

The ticket is no kind of summons. To call it a summons is to redefine fundamental terms in the  
middle of the game. This denies me due process. Changing the terms is a common instrument of  
oppression. See the entire list of Modern Day Instruments of Oppression at:

<http://www.lawyerdude.8k.com/5724.html>

### 29 **Permitting Police to Summon me to court denies Equal Protection Under the Law**

30 When I want to sue the police I must jump through the hoops of a summons and complaint and filing  
31 fee. Conversely when he wants to "sue" me he uses his ticket book. Then the clerk prosecutes for him.  
32 Wouldst that my lawsuits against the police were that quick and easy. That difference denies me equal

1 protection under the law. Your process violates the **equal protection clause of the 14<sup>th</sup> amendment**. My  
2 remedy is dismissal. Do it.

3 **The Legislature may not give Police the Power to Summon and may not give Clerks the power to  
4 prosecute.**

5 Penal Code § 740 states as follows:

6 Except as otherwise provided by law, all misdemeanors and infractions must  
7 be prosecuted by written complaint under oath subscribed by the  
8 complainant.

9 PC § 949 states as follows:

10 The first pleading on the part of the people in a misdemeanor or infraction  
11 case is the complaint except as otherwise provided by law. - PC 949

12 All criminal law follows the ancient common law. The statute merely codifies and distills what is  
13 already the law.

14 **You are Equitably Estopped from Presuming a Waiver of Jurisdictional Challenge.**

15 You have no jurisdiction over me. There is no controversy. The police and clerk may not prosecute.

16 **Pleadings of Pro Se Litigants must be given some leeway**

17 Pleadings of Pro Se litigants are entitled to some leeway. *Haines v Kerner* (1972) 404 U.S. 519  
18 (1972) [Http://www.lawyerdude.net/firms.com/haines.html](http://www.lawyerdude.net/firms.com/haines.html) This ruling is consistent with statutes in nearly all  
19 jurisdictions. The law is not a trap for the unwary. For every wrong there is a remedy.

20 **Special Scrutiny and Prosecution for those who know the law denies equal protection.**

21 You may not now subject me (and only me) to prosecution by a prosecutor. To do so would punish  
22 me with special scrutiny for having performed this public service as a Private Attorney General. Though your  
23 purpose be masked as efficiency it is in truth mere corruption and fraud. You must dismiss my case now.

24 Signed \_\_\_\_\_ Michael Roberson. Wednesday, February 21, 2007.

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25 **Appendix: Colorado Constitution: Pertinent Sections of the Bill of Rights.**

26 ARTICLE II Bill of Rights

27 In order to assert our rights, acknowledge our duties, and proclaim the principles upon which our government  
28 is founded, we declare:

Section 1. Vestment of political power. All political power is vested in and derived from the people; all  
government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of  
the whole.

Section 2. People may alter or abolish form of government - proviso. The people of this state have the sole and  
exclusive right of governing themselves, as a free, sovereign and independent state; and to alter and abolish their  
constitution and form of government whenever they may deem it necessary to their safety and happiness, provided, such  
change be not repugnant to the constitution of the United States.

Section 3. Inalienable rights. All persons have certain natural, essential and inalienable rights, among which  
may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting  
property; and of seeking and obtaining their safety and happiness.

Section 4. Religious freedom. The free exercise and enjoyment of religious profession and worship, without  
discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege  
or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be  
construed to dispense with oaths or affirmations, excuse acts of licentiousness or justify practices inconsistent with the

1 good order, peace or safety of the state. No person shall be required to attend or support any ministry or place of  
2 worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious  
denomination or mode of worship.

3 Section 6. Equality of justice. Courts of justice **shall be open to every person, and a speedy remedy afforded  
for every injury to person, property or character; and right and justice should be administered without sale,  
denial or delay.**

4 Section 7. Security of person and property - searches - seizures - warrants. The people shall be secure in their  
5 persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place or  
6 seize any person or things shall issue without describing the place to be searched, or the person or thing to be seized,  
as near as may be, nor without probable cause, supported by oath or affirmation reduced to writing.

7 Section 8. Prosecutions - indictment or information. Until otherwise provided by law, no person shall, for a  
8 felony, be proceeded against criminally otherwise than by indictment, except in cases arising in the land or naval forces,  
or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted  
9 criminally by indictment or information.

10 Section 10. Freedom of speech and press. No law shall be passed impairing the freedom of speech; every  
11 person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that  
liberty; and in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the  
12 direction of the court, shall determine the law and the fact.

13 Section 11. Ex post facto laws. No ex post facto law, nor law impairing the obligation of contracts, or  
14 retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be  
passed by the general assembly.

15 Section 12. No imprisonment for debt. No person shall be imprisoned for debt, unless upon refusal to deliver  
16 up his estate for the benefit of his creditors in such manner as shall be prescribed by law, or in cases of tort or where  
there is a strong presumption of fraud.

17 **Section 16. Criminal prosecutions - rights of defendant.** In criminal prosecutions the accused shall have  
18 the right to appear and defend in person and by counsel; **to demand the nature and cause of the accusation;** to meet  
the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a  
19 speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

20 Section 18. Crimes - evidence against one's self - jeopardy. No person shall be compelled to testify against  
21 himself in a criminal case nor shall any person be twice put in jeopardy for the same offense. If the jury disagree, or if  
the judgment be arrested after the verdict, or if the judgment be reversed for error in law, the accused shall not be  
22 deemed to have been in jeopardy.

23 Section 19. Right to bail - exceptions. (1) All persons shall be bailable by sufficient sureties pending disposition  
of charges except:

24 (a) For capital offenses when proof is evident or presumption is great; or

25 (b) When, after a hearing held within ninety-six hours of arrest and upon reasonable notice, the court finds that  
26 proof is evident or presumption is great as to the crime alleged to have been committed and finds that the public would  
be placed in significant peril if the accused were released on bail and such person is accused in any of the following  
cases:

27 (I) A crime of violence, as may be defined by the general assembly, alleged to have been committed while on  
probation or parole resulting from the conviction of a crime of violence;

28 (II) A crime of violence, as may be defined by the general assembly, alleged to have been committed while on bail  
pending the disposition of a previous crime of violence charge for which probable cause has been found;

(III) A crime of violence, as may be defined by the general assembly, alleged to have been committed after two previous  
felony convictions, or one such previous felony conviction if such conviction was for a crime of violence, upon charges  
separately brought and tried under the laws of this state or under the laws of any other state, the United States, or any  
territory subject to the jurisdiction of the United States which, if committed in this state, would be a felony; or

(2) Except in the case of a capital offense, if a person is denied bail under this section, the trial of the person shall be  
commenced not more than ninety days after the date on which bail is denied. If the trial is not commenced within ninety  
days and the delay is not attributable to the defense, the court shall immediately schedule a bail hearing and shall set  
the amount of the bail for the person.

(2.5) (a) The court may grant bail after a person is convicted, pending sentencing or appeal, only as provided by statute  
as enacted by the general assembly; except that no bail is allowed for persons convicted of:

- 1 (I) Murder;  
2 (II) Any felony sexual assault involving the use of a deadly weapon;  
3 (III) Any felony sexual assault committed against a child who is under fifteen years of age;  
4 (IV) A crime of violence, as defined by statute enacted by the general assembly; or  
5 (V) Any felony during the commission of which the person used a firearm.  
6 (b) The court shall not set bail that is otherwise allowed pursuant to this subsection (2.5) unless the court finds that:  
7 (I) The person is unlikely to flee and does not pose a danger to the safety of any person or the community; and  
8 (II) The appeal is not frivolous or is not pursued for the purpose of delay.  
9 (3) This section shall take effect January 1, 1995, and shall apply to offenses committed on or after said date.

10 **Section 20. Excessive bail, fines or punishment. Excessive bail shall not be required**, nor excessive fines imposed,  
11 nor cruel and unusual punishments inflicted.

12 Section 21. Suspension of habeas corpus. The privilege of the writ of habeas corpus shall never be suspended, unless  
13 when in case of rebellion or invasion, the public safety may require it.

14 Section 23. Trial by jury - grand jury. The right of trial by jury shall remain inviolate in criminal cases; but a jury in civil  
15 cases in all courts, or in criminal cases in courts not of record, may consist of less than twelve persons, as may be  
16 prescribed by law. Hereafter a grand jury shall consist of twelve persons, any nine of whom concurring may find an  
17 indictment; provided, the general assembly may change, regulate or abolish the grand jury system; and provided, further,  
18 the right of any person to serve on any jury shall not be denied or abridged on account of sex, and the general assembly  
19 may provide by law for the exemption from jury service of persons or classes of persons.

20 Section 24. Right to assemble and petition. The people have the right peaceably to assemble for the common good, and  
21 to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance.

22 **Section 25. Due process of law. No person shall be deprived of life, liberty or property, without due process of  
23 law.**

24 Section 28. Rights reserved not disparaged. The enumeration in this constitution of certain rights shall not be construed  
25 to deny, impair or disparage others retained by the people.

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#### 26 **Appendix: Kansas Bill of Rights.**

27 The Kansas Bill of Rights is found at: <http://www.skyways.org/KSL/ref/constitution/rights.html>

28 § 1. Equal rights. All men are possessed of equal and inalienable natural rights, among which are life, liberty,  
and the pursuit of happiness.

§ 2. Political power; privileges. All political power is inherent in the people, and all free governments are  
founded on their authority, and are instituted for their equal protection and benefit. No special privileges or  
immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the  
same body; and this power shall be exercised by no other tribunal or agency.

§ 3. Right of peaceable assembly; petition. The people have the right to assemble, in a peaceable manner,  
to consult for their common good, to instruct their representatives, and to petition the government, or any  
department thereof, for the redress of grievances.

§ 4. Bear arms; armies. The people have the right to bear arms for their defense and security; but standing  
armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict  
subordination to the civil power.

§ 5. Trial by jury. The right of trial by jury shall be inviolate.

§ 6. Slavery prohibited. There shall be no slavery in this state; and no involuntary servitude, except for the  
punishment of crime, whereof the party shall have been duly convicted.

§ 7. Religious liberty. The right to worship God according to the dictates of conscience shall never be infringed;  
nor shall any person be compelled to attend or support any form of worship; nor shall any control of or  
interference with the rights of conscience be permitted, nor any preference be given by law to any religious  
establishment or mode of worship. No religious test or property qualification shall be required for any office  
of public trust, nor for any vote at any elections, nor shall any person be incompetent to testify on account of

1 religious belief.

2 § 8. Habeas corpus. The right to the writ of habeas corpus shall not be suspended, unless the public safety  
requires it in case of invasion or rebellion.

3 § 9. Bail. All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident  
4 or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or  
unusual punishment inflicted.

5 § 10. Trial; defense of accused. In all prosecutions, the accused shall be allowed to appear and defend in  
6 person, or by counsel; to demand the nature and cause of the accusation against him; to meet the witness  
7 face to face, and to have compulsory process to compel the attendance of the witnesses in his behalf, and  
a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been  
committed. No person shall be a witness against himself, or be twice put in jeopardy for the same offense.

8 § 11. Liberty of press and speech; libel. The liberty of the press shall be inviolate; and all persons may freely  
9 speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights; and  
in all civil or criminal actions for libel, the truth may be given in evidence to the jury, and if it shall appear that  
the alleged libelous matter was published for justifiable ends, the accused party shall be acquitted.

10 § 12. No forfeiture of estate for crimes. No conviction within the state shall work a forfeiture of estate.

11 § 13. Treason. Treason shall consist only in levying war against the state, adhering to its enemies, or giving  
12 them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to  
the overt act, or confession in open court.

13 § 14. Soldiers' quarters. No soldier shall, in time of peace, be quartered in any house without the consent of  
14 the occupant, nor in time of war, except as prescribed by law.

15 § 15. Search and seizure. The right of the people to be secure in their persons and property against  
16 unreasonable searches and seizures shall be inviolate; and no warrant shall issue but on probable cause,  
supported by oath or affirmation, particularly describing the place to be searched and the persons or property  
to be seized.

17 § 16. Imprisonment for debt. No person shall be imprisoned for debt, except in cases of fraud.

18 § 17. Property rights of citizens and aliens. No distinction shall ever be made between citizens of the state of  
19 Kansas and the citizens of other states and territories of the United States in reference to the purchase,  
enjoyment or descent of property. The rights of aliens in reference to the purchase, enjoyment or descent of  
20 property may be regulated by law.

21 § 18. Justice without delay. All persons, for injuries suffered in person, reputation or property, shall have  
remedy by due course of law, and justice administered without delay.

22 § 19. Emoluments or privileges prohibited. No hereditary emoluments, honors, or privileges shall ever be  
23 granted or conferred by the state.

24 § 20. Powers retained by people. This enumeration of rights shall not be construed to impair or deny others  
retained by the people; and all powers not herein delegated remain with the people.

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25 **Appendix: Excepts from the Washington Constitution**

26 The Washington constitution can be found at <http://www.courts.wa.gov/education/constitution/index.cfm>  
27 Our Washington constitution reads in part as follows:

Article 1. Declaration of Rights:

1 §1 Political power. All political power is inherent in the people, and governments derive their just  
2 powers from the consent of the governed, and are established to protect and maintain individual  
rights.

3 §2 Supreme law of the land. The Constitution of the United States is the supreme law of the land.

4 §3 Personal rights: [Due Process] No person shall be deprived of life, liberty, or property, without due  
5 process of law.

6 §4 Right of petition and assemblage. The right of petition and of the people peaceably to assemble  
7 for the common good shall never be abridged.

8 §5 Freedom of speech. Every person may freely speak, write and publish on all subjects, being  
9 responsible for the abuse of that right.

10 §1 Oaths. Mode of administering. The mode of administering an oath, or affirmation, shall be such  
11 as may be most consistent with and binding upon the conscience of the person to whom such oath,  
or affirmation, may be administered.

12 §7 Invasion of private affairs of home prohibited. No person shall be disturbed in his private affairs,  
13 or his home invaded, without authority of law.

14 §8 Irrevocable privilege, franchise, or immunity prohibited. No law granting irrevocably any privilege,  
15 franchise or immunity, shall be passed by the legislature.

16 §9 Rights of accused persons. No person shall be compelled in any criminal case to give evidence  
17 against himself, or be twice put in jeopardy for the same offense.

18 §10 Administration of justice. Justice in all cases shall be administered openly, and **without**  
19 **unnecessary delay.**

20 **§12 Special Privileges and immunities prohibited. [And yet traffic police speed with impunity.]**

21 **No law shall be passed granting to any citizen, class of citizens,** or corporation other than  
22 municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens,  
23 or corporations. [Perspective: In California, the state bar staff (but not members) are given immunity  
24 to defame, lie, and cheat.]

25 §13 Habeas Corpus. The privilege of the writ of habeas corpus shall not be suspended, unless in  
26 case of rebellion or invasion the public safety requires it.

27 §14 Excessive bail, fines, and punishments. Excessive bail shall not be required, excessive fines  
28 imposed, nor cruel punishment inflicted.

§15 Convictions, effect of. No conviction shall work corruption of blood, nor forfeiture of estate.

§17 Imprisonment for debt. There shall be no imprisonment for debt, except in cases of absconding  
debtors.

§18 Military power. The military shall be in strict subordination to the civil power. [The feds took over  
the state militia in 1903.]

§19 Freedom of elections. All Elections shall be free and equal, and no power, civil or military, shall  
at any time interfere to prevent the free exercise of the right of suffrage.

§20 Bail when authorized. All persons charged with crime shall be bailable by sufficient sureties,  
except for capital offenses when the proof is evident, or the presumption great.

§21 Trial by jury The right of trial by jury shall remain inviolate, but the legislature may provide for a  
jury of any number less than twelve in **courts not of record** [a court of no record is a court of no  
value], and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving  
of the jury in civil cases where the consent of the parties interested is given thereto.

§22 Rights of the accused.

In criminal prosecutions the accused shall have the right to appear and defend in person, or by  
counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to  
testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process  
to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial  
jury of the county in which the offense is charged to have been committed and the right to appeal in  
all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the  
water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses  
committed on any such railway car, coach, train, boat or other public conveyance, or at any station  
or depot upon such route, shall be in any county through which the said car, coach, train, boat or other  
public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or

1 terminate. In no instance shall any accused person before final judgment be compelled to advance  
2 money or fees to secure the rights herein guaranteed.

3 §22 Original text - Rights of accused persons. - In criminal prosecution, the accused shall have the  
4 right to appear and defend in person, and by counsel, to demand the nature and cause of the  
5 accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses  
6 against him face to face, to have compulsory process to compel the attendance of witnesses in his  
7 own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is  
8 alleged to have been committed, and the right to appeal in all cases; and, in no instance, shall any  
9 accused person before final judgment be compelled to advance money or fees to secure the rights  
10 herein guaranteed.

11 §23 Bill of attainder. Ex post facto. No bill of attainder, ex post facto law, or law impairing the  
12 obligations of contracts shall ever be passed.

13 §24 Right to bear arms. The right of the individual citizen to bear arms in defense of himself, or the  
14 state, shall not be impaired, but nothing in this Section shall be construed as authorizing individuals  
15 or corporations to organize, maintain or employ an armed body of men.

16 §25 Prosecution by information. Offenses heretofore required to be prosecuted by indictment may  
17 be prosecuted by information, or by indictment, as shall be prescribed by law. [The legislature has  
18 usurped our fundamental rights and eliminated this fundamental right.]

19 §26 Grand jury. No grand jury shall be drawn or summoned in any county, except the superior judge  
20 thereof shall so order.

21 §29 Constitution mandatory. The provisions of this Constitution are mandatory, unless by express  
22 words they are declared to be otherwise. [By comparison, traffic statutes are merely  
23 recommendatory.]

24 §30 Rights Reserved [Similar to the federal 9<sup>th</sup> amendment ] The enumeration in this Constitution of  
25 certain rights shall not be construed to deny other rights retained by the people.

26 §32 Fundamental principles. A frequent recurrence to fundamental principles is essential to the  
27 security of individual right and the perpetuity of free government.

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