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The Law – Legal Maximums

Lex non cogit ad impossibilia - the law does not compel the doing of impossibilities. (case cites omitted)

Impotentia excusat legem - the impossibility of doing what is required by the law excuses from the performance. (case cites omitted)

Courts Must Take Judicial Notice of Public Records

No formal introduction of the public records of rules and regulations are required and the courts of the United States are to take judicial notice. This holding is found in the adjudged decision of *Caha v. United States*, 152 U.S. 211, 221, 222 (1894), to wit:

> But we are of opinion that there was no necessity for a formal introduction in evidence of such rules and regulations. They are matters of which courts of the United States take judicial notice.
> . . .
> [T]he rules and regulations prescribed in pursuance of such authority become a mass of that body of public records of which the courts take judicial notice.

On judicial notice, see also *Lilly v. Grand Trunk Western R. Co*., 317 U.S. 481, 488 (1943) and *The United States v. Heschmaker*, 63 U.S. 392, 405 (1859).

The courts are to give public acts legal effect, and this is held in the adjudged decision of *Armstrong v. United States*, 80 U.S. 154, 156 (1871), to wit:

> This was a public act of which all courts of the United States are bound to take notice, and to which all courts are bound to give effect.

Regardless of whether the sovereign is *de jure* or *de facto,* determinations by the executive or legislative branch binds the judges, even if not formally put into evidence, and this is held in the adjudged decision of *Jones v. United States*, 137 U.S. 202, 212, 214 (1890), to wit:

> **Who is the sovereign, *de jure* or *de facto*, of a territory, is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges**, as well **as all other officers,** citizens, and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances. Gelston v. Hoyt, 3 Wheat. 246, 324; U. S. v. Palmer, Id. 610; The Divina Pastora, 4 Wheat. 52; Foster v. Neilson, 2 Pet. 253, 307, 309; Keene v. McDonough, 8 Pet. 308; **84Garcia v. Lee, 12 Pet. 511, 520; Williams v. Insurance Co., 13 Pet. 415; U. S. v. Yorba, 1 Wall. 412, 423; U. S. v. Lynde, 11 Wall. 632, 638.
> * * *
> **All courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer**, or of its recognition or denial of the sovereignty of a foreign power, **as appearing from the public acts of the**

> **legislature and executive, although those acts are not formally put in evidence,** nor in accord with the pleadings. U. S. v. Reynes, 9 How. 127; Kennett v. Chambers, 14 How. 38; Hoyt v. Russell, 117 U. S. 401, 404, 6 Sup. Ct. Rep. 881; Coffee v. Groover, 123 U. S. 1, 8 Sup. Ct. Rep. 1; State v. Dunwell, 3 R. I. 127; State v. Wagner, 61 Me. 178; Taylor v. Barclay, and Emperor of Austria v. Day, above cited; 1 Greenl. Ev. ß 6. **[Emphasis added]**

Courts In Derogation of the Course of the Common Law (Administrative Courts)

Arising under the adjudged decision of *The United States v. Bevans*, 16 U.S. 336, 379 (1818) it is held that the common law was to be used for all terms and phases in the Constitution, and for ascertaining the bounds intended for the jurisdiction of the courts of the United States with three types of courts established, being courts of common law, equity, admiralty, and not any ***administrative court***, to wit:

> And **not only must the common law be resorted to**, **for the interpretation of the technical terms and phrases** of that science, **as used in the constitution**, **but also for ascertaining the bounds intended to be set to the jurisdiction of other courts**. In other words, the framers of the constitution must be supposed to have intended **to establish courts of common law, of equity, and of admiralty**, upon the same general foundations, and with similar powers, as the courts of the same descriptions respectively, **in that system of jurisprudence with which they were all acquainted**. *[Emphasis added]*

In the adjudged decision of *Ex parte Henkes*, 267 F.276, 281 (1919), it has been held that even in courts with a special, limited, inferior jurisdiction (administrative courts) must show on the record all of the essential or vital jurisdictional facts of the administrative courts of its authority to act in a particular case and its jurisdiction, to wit:

> A **court of special, limited, or inferior jurisdiction must by its record show all essential or vital jurisdictional facts of its authority to act in the particular case**, **and in what respect it has jurisdiction**. **This rule also applies to jurisdiction over special statutory proceedings exercised in derogation of, or not according to, the course of the common law**. **So the necessary jurisdictional facts must affirmatively appear by averment and proof to bring the case within the jurisdiction of such courts**,' etc. *[Emphasis added]*

Also see the following cases with the same holdings, *Nafus v. Department of Labor and Industries of Washington*, 251 P. 877, 878 (1927); *Smith v. Department of Labor and Industries*, 95 P.2d 1031, 1033 (1939); *MacVeigh v. Division of Unemployment Compensation et al.*, 142 P.2D 900, 901 (1943); and *Okanogan Wilderness League, Inc. v. Town of Twisp*, 947 P.2d 732, 743 (1997) *dissenting opinion*.

Preemption Doctrine

The preemption doctrine, which has its roots in the Supremacy Clause of the Constitution of the United States in Article VI clause 2 held that a federal interest is so dominant that the federal system will preclude the enforcement of state laws on the same subject and state regulations are nullified when in conflict with federal law and "when compliance with both federal and state regulations is a physical impossibility" and "[F]ederal regulations have no less pre-emptive effect than federal statutes." See *Fidelity Federal Savings & Loan Assoc. v. Cuesta*, 458 U.S. 141, 152, 153, 154 (1982).

As held in the adjudged decision of *Silkwood v. Kerr-McGee Corp.,* 464 U.S. 238, 248 (1984), the qualifications for preemption concerning state regulations and that federal preemption is valid "[W]here the state law stands as an obstacle to the accomplishment of the full purposes and objects of Congress", "[S]uch a conflict occurs either because 'compliance with both federal and state regulations is a physical impossibility'", or "[B]ecause the state law stands 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Temporary and Special Acts are Private Law

A special act is a private statute and an act which operates only upon particular persons or private concerns. See *Unity v. Burrage*, 103 U.S. 447, 454 (1880).

And further in *Unity v. Burrage*, 103 U.S. 447, 454 (1880), to wit:

> **'Statutes incorporating counties, fixing their boundaries, establishing court-houses, canals, turnpikes, railroads, &c., for public uses, all operate upon local subjects. They are not for that reason special or private acts.' In this country** the disposition has been on the whole to enlarge the limits of this class of public acts, and to bring within it all enactments of a general character, or which in any way affect the community at large. **[Emphasis added]**

And as found in the Constitution of the State of Alaska in Article II Section 19, to wit:

> **SECTION 19. LOCAL OR SPECIAL ACTS. The legislature shall pass no local or special act if a general act can be made applicable**. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected. **[Emphasis added]**

Executive Branch is Temporary and Special Act – Private Law

In the act of the legislature, the entire "Executive Branch" was created as a Temporary and Special Act in Chapter 64, Session Laws of Alaska, 1959 (hereafter "64 SLA 1959"), known as the State Organization Act of 1959. See the Temporary and Special Acts publication by the State and as this is a public record the courts must take judicial notice of same and it need not be entered into evidence.

This entire "Executive Branch", being a Temporary and Special Act is "private law", and is not under the supervision of the executive, even though the "Executive Branch" is in the Constitution of the State of Alaska under Article III under "The Executive". This is held in the adjudged decision of the Supreme Court of Alaska in *Boehl v. Sabre Jet Room, Inc.*, 349 P.2d 585, 588 (1960), to wit:

> **The[ir] provision is made for creation by the legislature of regulatory agencies that are not under the supervision of the executive**. [FN15] Such agencies would obviously have the function of exercising authority and control in places where the legislature has decided not to exercise all the authority and control itself. **This would be a delegation of legislative power and the constitution provides for it.**
>
> FN15. Alaska Constitution, Art. III, ß ß 22, 24, 26. **[Emphasis added]**

The particular sections within this ***executive branch*** of the "The Executive" of Article III are sections 22, 24 and 26 in the Constitution of the State of Alaska not under executive supervision are as follows:

> SECTION 22. **EXECUTIVE BRANCH**. All executive and administrative offices, departments, and **agencies of the State government** and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. **Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.**

> SECTION 24. SUPERVISION. Each principal department shall be under the supervision of the governor.
>
> SECTION 26. BOARDS AND COMMISSIONS. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor. **[Emphasis added]**

Now, we are to believe that by some means within Article II § 1 that the legislative power of the State (sic) is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty means that a ***plenary Power*** exists in the legislature of "the State" to completely bypass all courts of law for the people domiciled in the territorially boundaries of Alaska under the guise of ***public rights***? Unbelievable!

Then, pursuant to *Boehl v. Sabre Jet Room, Inc.*, 349 P.2d 585, 590 (1960), the Legislative Council, an interim legislative committee, is charged with the duty of making recommendations to the legislature, and must annually review all agency regulations to determine if the legislative intent is being correctly followed. Of course this is the same Legislative Council in the ©AS 24.20.080 that is participating in and carrying out the programs of the Council of State Governments ("CSG") as they apply to Alaska. Of course the CSG has several programs wherein private enterprises and others with their particular private agenda can and do by and through the CSG get their private desires implemented in Alaska. Again, unbelievable! This is a great example of the "administrative state" wherein the people have no separation of powers, and can be denied access to any court of law, depending on the whims of the legislature and other private parties.

Who is "the State"? Of course it is self-evident that "STATE OF ALASKA" did not come into the Union of the States as "one of the United States of America", but came in as a

"State of the United States of America." And further the "STATE OF ALASKA" did not come into the Union of the States on an "equal footing with the original States", but instead came on an "equal footing with the other States."

The "Force and Effect of Law" - Substantive Regulations

It has been held in the adjudged decision of the Supreme Court of the United States and citing other adjudged decisions of the Supreme Court of the United States that only a substantive regulation has the ***force and effect of law*** and has a specific process accorded to it by the Administrative Procedures Act ("APA") to have "***force and effect of law***" that must be followed explicitly. This is found in the adjudged decision of *Chrysler Corp. v. Brown*, 441 U.S. 281, 295, 296, 301-303 (1979), to wit:

> **It has been established in a variety of contexts that properly promulgated, substantive agency regulations have the "force and effect of law." [FN18] This doctrine is so well established that agency regulations implementing federal statutes have been *296 held to pre-empt state law under the Supremacy Clause**. [FN19] It would therefore take a clear showing of contrary legislative intent before the phrase **"authorized by law"** in ß 1905 could be held to have a narrower ambit than the traditional understanding.
> **FN18.** *E. g., Batterton v. Francis,* 432 U.S. 416, 425 n. 9, 97 S.Ct. 2399, 2405, 53 L.Ed.2d 448 (1977); *Foti v. INS*, 375 U.S. 217, 223, 84 S.Ct. 306, 310, 11 L.Ed.2d 281 (1963); *United States v. Mersky,* 361 U.S. 431, 437-438, 80 S.Ct. 459, 463, 4 L.Ed.2d 423 (1960); *Atchison, T. & S. F. R. Co. v. Scarlett,* 300 U.S. 471, 474, 57 S.Ct. 541, 543, 81 L.Ed. 1375 (1937).
> *** * ***
> **In order for a regulation to have the "force and effect of law," it must have certain substantive characteristics and be the product of certain procedural requisites. The central distinction among agency regulations found in the APA is that between "substantive rules" on the one hand and "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" on the other. [FN30] A "substantive *302 rule" is not defined in the APA, and other authoritative sources essentially offer definitions by negative inference**. [FN31] But in *Morton v. Ruiz,* 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974), **we **1718 noted a characteristic inherent in the concept of a "substantive rule." We described a substantive rule--or a "legislative-type rule,"** *id.,* at 236, 94 S.Ct., at 1074--**as one "affecting individual rights and obligations."** *Id.,* at 232, 94 S.Ct., at 1073. **This characteristic is an important touchstone for distinguishing those rules that may be "binding" or have the "force of law."** *Id.,* at 235, 236, 94 S.Ct., at 1074.
> *** * ***
> That an agency regulation is "**substantive,**" however, **does not by itself give it the "force and effect of law."** The legislative power of the United States is vested in the Congress, and the exercise of quasi-legislative **authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes**. As this Court noted in *Batterton v. Francis,* 432 U.S. 416, 425 n. 9, 97 S.Ct. 2399, 2405 n. 9, 53 L.Ed.2d 448 (1977)
> *** * ***
> **Likewise the promulgation of these regulations must conform with any procedural requirements imposed by Congress**. *Morton v. Ruiz, supra,* 415 U.S. at 232, 94 S.Ct. at 1073. For agency discretion is limited not only by **substantive**, statutory grants of authority, but also by the procedural requirements which "**assure fairness and mature consideration of rules of**

general application." *NLRB v. Wyman-Gordon Co.,* 394 U.S. 759, 764, 89 S.Ct. 1426, 1429, 22 L.Ed.2d 709 (1969). **[Emphasis added]**

Citing adjudged decisions of the Supreme Court of the United States and other sources it was held in *Sea-Land Service, Inc. v. Department of Transp.,* 137 F.3d 640, 645 (D.C. Cir. 1998) that substantive regulations have the ***force and effect of law***, regulations must be followed by citizens subject to legal consequences of law, and federal regulations count as law for Supremacy Clause, to wit:

> The plain meaning of a statute is (at least for starters) the one produced by reading its words to have the meaning they do in most contexts, and in most contexts, "law" includes an administrative command backed by a criminal sanction. See, e.g., *Chrysler Corp. v. Brown,* 441 U.S. 281, 295, 99 S.Ct. 1705, 1714, 60 L.Ed.2d 208 (1979) (**substantive agency regulations have "force and effect of law");** *Singer v. United States,* 323 U.S. 338, 345-46, 65 S.Ct. 282, 286-87, 89 L.Ed. 285 (1945) (**regulations backed by criminal sanctions are law);** *General Motors Corp. v. Abrams,* 897 F.2d 34, 39 (2d Cir.1990) (**regulations and orders have force of law**); Black's Law Dictionary 884 (6th ed.1990) ("**That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law**."); see also, e.g., *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta,* 458 U.S. 141, 153, 102 S.Ct. 3014, 3022, 73 L.Ed.2d 664 (1982) (**federal regulations count as law for Supremacy Clause**). **[Emphasis added]**

Code of Federal Regulations Requirements

Contained in 1 CFR § 5.2, it is self-evident that all documents that have general application and legal effect to be filed for public inspection, to wit:

> **1 CFR § 5.2 Documents required** to be **filed** for **public inspection** and published.
> (a) . . .
> (b) Each document or class of documents required to be published by act of Congress.
> (c) Each document having **general applicability and legal effect**. **[Emphasis added]**

Contained in 1 CFR § 22.2, the following clearly mandates that the authority be contained in parenthesis at the bottom of the text so that a substantive regulation may be identified and validated, to wit:

> 1 CFR 22.2 **Authority citation.**
> The **authority** under which an agency issues a notice shall be **cited in narrative form within text** or in **parentheses** on a **separate line following text**. **[Emphasis added]**

Contained in the CFRs in 1 CFR § 21.40, it is self-evident that the substantive regulation must have the statutory authority attached, to wit:

> **1 CFR § 21.40 General requirements: Authority citations.** Each section in a document subject to codification must include, or be covered by, a complete citation of the authority under which the section is issued, including--
> (a) **General or specific authority delegated by statute; and**

(b) Executive delegations, if any, necessary to link the **statutory authority to the issuing agency. [Emphasis added]**

Contained in the CFRs, the agency (being the IRS) is clearly responsible for the correctness of its substantive regulations as printed in 1 CFR § 21.41, to wit:

1 CFR 21.41 Agency responsibility.
(a) Each issuing agency is responsible for the accuracy and integrity of the citations of authority in the documents it issues.
(b) Each issuing agency shall formally amend the citations of authority in its codified material to reflect any changes therein. [Emphasis added]

NonSubstantive Regulations Used by Agency are Void

Agency actions by the use of nonsubstantive regulations are void or agencies failure to comply with rulemaking requirements of APA (Alaska) is fatal, and this is held in the adjudged decision of *State of Ohio DHS v. U.S. DHHS*, 862 F.2d 1228, 1237 (1988), to wit:

In the case before us, the **agency's failure to comply with the rulemaking requirements of the Administrative Procedure Act is fatal** to the validity of the maintenance amount ceiling rule. As Judge Manos observed in *Standard Oil,* 453 F.Supp. at 243,
"**agency action taken in disregard of statutory rulemaking procedures is void.** See e.g. *Morton v. Ruiz,* 415 U.S. 199, 94 S.Ct. 1055, 37 L.Ed.2d 270 (1974); *Consumers Union of United States, Inc. v. Sawhill,* 393 F.Supp. 639 (D.D.C.), aff'd per curiam, 523 F.2d 1404 (TECA 1975); *Joseph v. United States Civil Service Comm'n,* 18 U.S.App.D.C. 281, 294-95, 554 F.2d 1140, 1153-54 (1977); *Rodway v. United States Dept. of Agriculture,* 168 U.S.App.D.C. 387, 395, 514 F.2d 809, 817 (1975); *United States v. Finley Coal Co.,* 493 F.2d 285, 291 (6th Cir.1974). As the Temporary Emergency Court of Appeals stated in *California v. Simon,* 504 F.2d 430, 439 (TECA, 1974) **'substantial compliance with rulemaking requirements is essential to the validity of administrative rules.' "**
See also *Pickus v. United States Bd. of Parole,* 507 F.2d 1107, 1114 (D.C.Cir.1974) (**rules not adopted in accordance with Administrative Procedure Act rulemaking requirements were invalid**). **[Emphasis added]**

Alaska Requires Substantive Regulations (Legislative Regulations)

As held in the adjudged decision in *Kelly v. Zamarello*, 486 P.2d 906, 908, 909 (Alaska - 1971), regulations must have a public hearing, be based on the **clear authority** from the legislature by a grant of legislative power (statutes) and when the administrative agency is acting in a quasi-legislative capacity, the Supreme Court of the United States will not substitute it's judgment as to the content of the rule or regulation. This distinction between "legislative rule", which is a substantive regulation having the force and effect of law, differs from an

"interpretative rule", and this holding is specifically held in the adjudged decision of the Supreme Court of the United States in *Chrysler Corp. v. Brown*, 441 U.S. 281, 295, 296, 301-303 (1979). Therefore, the state agencies must promulgate substantive regulations and only such substantive regulations have the "***force and effect of law***."

In the "Drafting Manual For Administrative Regulations" ("DMFAR") 15th Edition of June 2002 (a public record) of the Department of Law, State of Alaska, was prepared to comply with ©AS 44.62.050 (Foreword) and supply said style and form under ©AS 44.62.040.

Under ©AS 44.62.040(b), ***all state agencies*** must cite the ***general statutory authority*** under which a regulation is adopted as well as the ***citation of the specific statutory section*** being ***implemented, interpreted***, or ***made clear*** with exceptions.

No part of ©AS.42.62.040(b), will apply if the regulation is not first noticed under ©AS 44.62.200, as stated under the requirement of a public notice, to wit: "do[es] no apply to the adoption, amendment, or repeal of a regulation unless the adoption, amendment, or repeal is first noticed under AS 44.62.200 ***on or after September 3, 1995."***

The ©Alaska Statute of ©AS 44.62.040 is included because of its importance, to wit:

> (a) Subject to (c) of this section, **every state agency that by statute possesses regulation-making authority** shall submit to the lieutenant governor for filing a certified original and one duplicate copy of every regulation or order of repeal adopted by it, **except one** that
>
> (1) **establishes or fixes rates, prices, or tariffs**;
>
> (2) **relates to the use of public works, including streets and highways**, under the jurisdiction of a state agency if the effect of the order is indicated to the public by means of signs or signals; or
>
> (3) **is directed to a specifically named person or to a group of persons and does not apply generally throughout the state**.
>
> (b) **Citation of the general statutory authority under which a regulation is adopted**, **as well as citation of specific statutory sections being implemented, interpreted, or made clear, must follow the text of each regulation submitted under** (a) of this section.
>
> (c) Before submitting the regulations and orders of repeal to the lieutenant governor under (a) of this section, **every state agency that by statute possesses regulation making authority, except boards and commissions, the office of victims' rights, and the office of the ombudsman**, shall

> submit to the governor for review a copy of every regulation or order of repeal adopted by the agency, except regulations and orders of repeal identified in (a)(1) -- (2) of this section. The governor may review the regulations and orders of repeal received under this subsection. The governor may return the regulations and orders of repeal to the adopting agency before they are submitted to the lieutenant governor for filing under (a) of this section (1) if they are inconsistent with the faithful execution of the laws, or (2) to enable the adopting agency to respond to specific issues raised by the Administrative Regulation Review Committee. The governor may not delegate the governor's review authority under this subsection to a person other than the lieutenant governor. **[Emphasis added]**

Also in the DMFAR it states "Regulations are rules adopted by agencies in the executive branch of government." This is the same ***executive branch*** in the Temporary and Special Acts (private law) of 64 SLA 1959 and Article III Section 22. It is clearly established that the regulation will have the "***force and effect***" of law if the substance of the regulation is valid, and if the state agencies follow the Administrative Procedures Act in the Alaska Statutes (©AS 44.62 *et seq.*) which is used in the DMFAR, to wit:

> If the proper procedure is followed in adopting a regulation, and the substance of the regulation is valid, **it will have the "force and effect" of law. To adopt a regulation, an agency must follow the APA** as well as any additional statutory requirements set by the legislature that apply to that agency's particular program. **[Emphasis added]**

Further in the DMFAR it includes the definition of the *term* ***"regulation"*** under ©AS 44.62.640(a)(3) clearly states that if ***anything affects the public or its rights*** it must be adopted under the APA as a regulation and that any ***agency action taken in the absence of necessary regulations will be invalid***. The sections of the DMFAR as referenced on pages 3 and 4 are included due to the extreme importance proffered by the Department of Law under the Temporary and Special Acts (a private law exercised by a public body) of Chapter 64, Session Law of Alaska, 1959 ("64 SLA 1959") of the ***executive branch*** and the public's rights concerning ***substantive*** regulations, to wit:

WHEN ARE REGULATIONS NECESSARY?

> In AS 44.62.640, the APA broadly defines "regulation" to include many provisions that a st**ate agency would wish to enforce**.
>
> AS 44.62.640(a)(3) states:

> (3)"**regulation" means every rule, regulation**, **order,** or standard of general application or the amendment, supplement, or revision of a rule, regulation, order, or standard adopted by a **state agency to implement**, interpret, or **make specific the law enforced or administered by it**, or to govern its procedure, except one that relates only to the internal management of a state agency; "regulation" does not include a form prescribed by a state agency or instructions relating to the use of the form, but this provision is not a limitation upon a requirement that a regulation be adopted under this chapter when one is needed to implement the law under which the form is issued; "**regulation**" includes "**manuals," "policies," "instructions," "guides to enforcement," "interpretative bulletins," "interpretations," and the like, that have the effect of rules, orders, regulations, or standards of general application**, and this and similar phraseology **may not be used to avoid or circumvent this chapter**; **whether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public**;
>
> To decide whether a provision is a regulation, an agency must consider "whether it affects the public or is used by the agency in dealing with the public." **Anything that affects the public or affects its rights must be adopted under the APA as a regulation**. **If an agency is in doubt, the agency should err on the side of adopting regulations under the APA**. Publication of an agency standard on the Internet does not fulfill the requirements of the APA for the agency to enforce the standard as a regulation.
>
> In the APA's definition of "**regulation," an exception** is provided for a provision that "relates only to the internal management of a state agency." AS 44.62.640(a)(3). An example of such a provision is a "how-to-do-it" training or procedures manual for a state public assistance worker that explains which forms to use, how many copies of forms to complete, and techniques of interviewing. That type of manual does not affect the public within the meaning of the APA and the contents need not be adopted as a regulation in order to be used by the agency.
>
> **Agency action taken in the absence of necessary regulations will be invalid**. If a **state agency's interpretation of an existing regulation establishes a new general standard, the new general standard must be adopted as a regulation in accordance with the APA**. Each agency should consult its attorney in the Department of Law as to whether it is necessary for a provision or requirement to be adopted as a regulation. **[Emphasis added]**

These requirements included under this heading of "Alaska Requires Substantive Regulations (Legislative Regulations)" of all state agencies (with the regulation exceptions noted in ©AS 44.62.040) are all public records that *all courts* (*de facto* or *de jure*) must take judicial notice, and are facts, evidentiary facts and conclusive evidence of the ultimate facts used in any legal conclusion *that all states agencies* (with exceptions noted) must follow the APA (Alaska), must have the *authority* of the general and *specific statute* cited in the regulation, *must be noticed to the public for a comment period,* and *if it affects the public and it's rights* the regulation will have the *force and effect of law* only after specific requirements are met, and *agency action taken in the absence of such necessary regulations will be invalid* See *Chrysler Corp. v. Brown*, 441

U.S. 281, 295, 296, 301-303 (1979) and *Kelly v. Zamarello*, 486 P.2d 906, 908, 909 (Alaska - 1971).

Accusations and Remedy under the APA of Alaska

Under ©AS 44.62.360 clearly states that whether a ***right, authority, license, or privilege*** should be ***revoked, suspended, limited, or conditioned*** initiated by the accuser must be written in concise so that the respondent can understand and prepare a defense, the ***specific statute and regulation*** that the respondent is to have violated not in the language of the statue and regulation, and it must be ***verified*** unless by a public officer (they do no exist in Alaska) or by an employee of an agency. This is an important copyrighted Alaska Statute; therefore, ©AS 44.62.360 is included, to wit:

> **Sec. 44.62.360** Accusation.
>
> A hearing to determine whether a **right, authority, license, or privilege** should be **revoked, suspended, limited, or conditioned** is initiated by filing an accusation. The accusation must
>
> (1) be a **written statement of charges** setting out **in ordinary and concise language** the acts or omissions with which the respondent is charged, **so that the respondent is able to prepare a defense**;
>
> (2) **specify the statute and regulation** that the respondent is alleged to have violated, but may not consist merely of charges phrased in the language of the statute and regulation; and
>
> (3) **be verified**, unless made by a **public officer** acting in an official capacity or by an **employee of the agency** on **whose behalf the proceeding** is to be held; the **verification may be on information and belief**. **[Emphasis added]**

In a hearing to determine whether a ***right, authority, license, or privilege*** should be ***granted, issued, or renewed*** is initiated by a written statement specifying the ***particular statute and regulation*** the respondent must show compliance, the issues that have come before the agency that would justify a denial, and it must be verified unless by public officer or employee of the agency. This is an important copyrighted Alaska Statute; therefore, ©AS 44.62.370 is included, to wit:

Sec. 44.62.370 Statement of issues

(a) A hearing to determine whether a **right, authority, license, or privilege** should be **granted, issued, or renewed** is initiated by filing a statement of issues. The statement of issues is a written statement specifying

(1) **the statute and regulation** with which the respondent must show compliance by producing proof at the hearing; and

(2) particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought.

(b) The statement of issues shall be **verified** unless made by a public officer acting in an official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

(c) The statement of issues, together with the form for notice of defense and other information described in AS 44.62.380, **shall be delivered to the respondent or sent by certified mail to** the latest address on file with the agency, except that if a hearing has already been requested by the respondent,

(1) AS 44.62.380 and 44.62.390 do not apply; and

(2) the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in AS 44.62.420. **[Emphasis added]**

POINT SUSPENSION/REVOCATION NOTICE Letter

A ***unsigned*** letter from "**DMV"** from the "Anchorage Driver Licensing" in Anchorage, AK dated **9/22/2004** with the heading of **"POINT SUSPENSIONL/REVOCATION NOTICE** ("DMV Letter") addressed to "WINTERROWD, RALPH K" was received in my private Post Office Box in Knik.

What or Who is DMV?

The first object was to determine who or what is the **DMV**, and if it has been established by the Legislature of the State (sic). In checking both the ©Alaska Statutes ("AS") and the Alaska Administrative Code ("AAC"), it has no lawful or legal existence. As **DMV** is purportedly the "Division of Motor Vehicles", it will be identified herein as ("DMV').

Who is "WINTERROWD, RALPH K?

As I have two Christian names and one family name with"2nd" attached and according to Oxfords Unabridged Dictionary my Christian names and my Family name are proper nouns and all proper nouns only have the first letter capitalized. My true name is "Ralph Kermit Winterrowd 2nd", and not **WINTERROWD, RALPH K** with no period behind the **K.**

As these administrative state agencies consider Ralph Kermit Winterrowd 2nd a "taxpayer" and use this type of identification of all capitals and the military style of names (last name, first name and letter[no period – i.e. not an initial], the definition of "**taxpayer**" used in the regulations has application as used in the Multistate Tax Act in Alaska Administrative Code 15 AAC 19.900, to wit:

> **(4) "taxpayer" means any natural person,** corporation, partnership, firm, association, or governmental unit or agency **acting as a business entity in this state.** [emphasis added]

This definition is the exact definition used in the Internal Revenue Code. See the Alaska Statutes on Multistate Tax Compact ©AS 43.19 *et seq.*, and the Alaska Income Tax Act ©AS 43.20 *et seq.*

Ralph Kermit Winterrowd 2nd might be classified as a natural person depending on the exact meaning of the *term*, but Ralph Kermit Winterrowd 2nd has no business license and is not acting as a ***business entity*** within the territorial boundaries of Alaska.

Only Statutes Included in DMV Letter – no Regulations of Accuser

The only statutes included the in the DMV Letter were "AS 28.05.121 – 28.05.141" and no regulations were included. No Notice of any type has been received from DMV prior to the DMV Letter by Ralph Kermit Winterrowd 2nd, and of course the DMV letter does no comply with ©AS 44.62.360, i.e., no regulation(s), can't understand, and no signature.

Under ©AS 44.62.360 clearly states that whether a ***right, authority, license, or privilege*** should be ***revoked, suspended, limited, or conditioned*** initiated by the accuser must be written in

concise so that the respondent can understand and prepare a defense, the ***specific statute and regulation*** that the respondent is to have violated not in the language of the statue and regulation, and it must be ***verified*** unless by a public officer (they do no exist in Alaska) or by an employee of an agency.

Is a "Driver License" Required under ©AS 28.15.011? There is no Regulation!

Under the APA (Alaska) in the statute © AS 28.15.011 under the Title of "**Drivers must be licensed"**, to be valid under the APA 44.62 *et seq.*; and in particular ©AS 44.62.040 (Submitting Regulations), ©AS 44.62.360 (Accusation), and ©AS 44.62.370 (Statement of Issues) there must be ***regulation*****,** i.e. ***substantive regulation*** to have the ***force and effect of law***.

Under ©AS 44.62.040(b), ***all state agencies*** must cite the ***general statutory authority*** under which a regulation is adopted as well as the ***citation of the specific statutory section*** being ***implemented, interpreted***, or ***made clear*** with exceptions.

Upon an intensive search of the AAC's and word searching in WestLaw, a company that provides public records and documents under contract on the Internet, ***there is no regulation of any type***, be it ***a substantive regulation, interpretative, or administrative for ©AS 28.15.011!***

This is an estoppel to DMV, the STATE OF ALASKA, all law enforcement agencies, and all state agencies (sic) of my "private rights" including, but not limited to the right to travel, right of due process, right of Assistance of Counsel, right to own property, and the right to life, liberty and the pursuate of happiness versus the "private rights" of the Administrative State. *Lex non cogit ad impossibilia and impotentia excusat legem.* See also *Chrysler Corp. v. Brown*, 441 U.S. 281, 295, 296, 301-303 (1979), *Sea-Land Service, Inc. v. Department of Transp.,* 137 F.3d 640, 645 (D.C. Cir. 1998), *State of Ohio DHS v. U.S. DHHS*, 862 F.2d 1228, 1237 (1988), and *Kelly v. Zamarello*, 486 P.2d 906, 908, 909 (Alaska - 1971).

Who are the "Police Officers" in the State Agencies in the AAC Regulations?

Under 13 AAC 40.010, we find that a ***police officer*** is authorized to only issue a citation for violations of ***traffic regulations*****,** to wit:

ALASKA ADMINISTRATIVE CODE
TITLE 13. PUBLIC SAFETY
PART 1. DIVISION OF ALASKA STATE TROOPERS
CHAPTER 40. GENERAL PROVISIONS
Current through Register 170 (July 2004)

(36) "**police officer" means** a person authorized to direct or regulate traffic or to make arrest or **issue a citation for violations of traffic regulations;**

And under the APA (Alaska) if the ***ordinance*** is in fact a ***substantive regulation***, then the particular copyrighted Alaska Statute must be identified.

Citations on DMV Letter are NOT Regulations – Therefore Void!

Under the DMV Letter, is lists three citation numbers, to wit:

1. A1389591 of 6/17/2004

2. A1380225 of 2/24/2004

3. A1371054 of 1/3/2004

Police Officer Richard J. Dykstdra II, did purportedly issue Citation A1389591 on or about June 17, 2004 for AMC 9.26.030(c)-Z6 for greater than 20+ mph.

Under AMC 9.26.030 we find the following, to wit:

9.26.030 Alteration of maximum limits.
A. When as a result of a comprehensive speed study the traffic engineer determines that the maximum speed permitted under this chapter is greater or less than is reasonable and prudent under the conditions existing upon a public street or part thereof, the traffic engineer may declare a reasonable and safe maximum speed limit on it which:
1. Increases the limit, but not to more than 55 miles per hour or 90 kilometers per hour; or
2. Decreases the limit, but not to less than 20 miles per hour or 30 kilometers per hour.
B. A limit altered as authorized in this section is effective when an appropriate sign giving notice thereof is erected. The maximum speed limit may be declared effective at all times or at the times indicated upon the sign; and a different limit may be established for different times of day, different types of vehicles, varying weather conditions or other factors bearing on safe speed, which limits are effective when posted upon an appropriate sign.
C. It is unlawful for a person to **drive a motor vehicle** in excess of the speed limits established by signs lawfully erected **by the traffic engineer** or **by the State of Alaska**.

(CAC 9.26.030; AO No. 78-72; AO No. 78-146; AO No. 2003-73, § 5, 4-22-03) **[Emphasis added]**

According to the Charter of Anchorage, a municipal corporation, a possibility exists that said ordinance might be considered a ***regulation*** under the APA (Alaska) because of the following, to wit:

Section 10.02. Actions requiring an ordinance.

In addition to other actions which require an ordinance, the assembly shall use ordinances to:
(1) Adopt or amend the administrative code;
(2) Levy taxes;
(3) Authorize borrowing of money;
(4) Grant, renew or extend a franchise;
(5) Regulate the rate charged by a public utility;
(6) Provide for a fine or other penalty **or establish a rule or regulation for the violation of which a fine or other penalty is imposed;**
(7) Adopt or amend zoning or similar land use control measures;
(8) Convey or lease, or authorize the conveyance or lease, of any interest in lands of the municipality. An ordinance conveying an interest in real property dedicated to public park or recreational purposes is valid only upon approval by a majority of those voting on the question at a regular or special election. The assembly shall publish notice of the election, including a description of the property by proper place name and legal description, and the terms and conditions of the conveyance. **[Emphasis added]**

But under the Anchorage Municipal Ordinance ("AMC") the headings have no effect of the sections and Title 9 of the AMC's can be cited as the "Traffic Code", to wit:

9.02.010 Short title.
This **title may be known** and **cited as the Traffic Code**.

9.02.020 **Effect of headings**.
Chapter and **section headings** contained in **this title shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any chapter or section** of this title.
(CAC 9.02.020; AO No. 78-72)

Under the Traffic Code (Title 9) ***only*** has application to ***drivers*** of all ***vehicles*** owned or operated by the ***United States***, ***the state***, or any ***borough, town, district*** or any other ***political subdivision of the state***, to wit:

9.08.060 Applicability of traffic regulations to public employees.
The provisions of this title shall apply to the **drivers of all vehicles owned or operated by the United States, the state or any borough, town, district or any other political subdivision of the state**, subject to the specific exemptions as are set forth in this title or in the state Vehicle Code.
(CAC 9.08.060; AO No. 78-72)

Under the APA (Alaska) there must be a ***statute and regulation*.** So if the ordinances are in fact ***regulations*,** then each of these ***ordinances*** must have a specific AS identified or regulation if not.

In the AMC's we find a State Reference Table, and in this we find no specific AS authority for 9.26.030. There is a generic catchall cross reference of AS 28.01.010 for all of the Traffic Code (Title 9) and 38 other references to AS 28 *et seq.* for the Traffic Code ***ordinances***. There is no AS for 9.08.060 or 9.26.030 that can be determined from the State Reference Table in the AMC's

In the AS in under ©AS 28.01.010 it states Title AS 28 and the regulations adopted under AS 28 "[A]re applicable within all municipalities of the state." And further under ©AS 28.01.010 it states that "A municipality may not incorporate into a publication of ***traffic ordinances*** a provision of this title or the regulations adopted under this title ***without specifically identifying the provision or regulation as a state statute or regulation***.

In checking 9.26.030 of A1389591 to see if there is a specific state statute or regulation identified, none exists. In checking if 9.08.060 has a specific state statute or regulation identified, none exists.

It is self-evident that the Traffic Code 9.08.060 is only for the ***drivers*** of all ***vehicles*** owned or operated by the ***United States***, ***the state***, or any ***borough, town, district*** or any other ***political subdivision of the state*** and no state statute authorizing a ***substantive regulation*** can exist, as the publics rights can not exist against my ***private rights***. If 9.08.060 is not true, then all of the ***Traffic Code (Title 9) is Void, so therefore it is admitted that 9.08.060 is true!***

There exists the possibility that ©AS 28.10.181 is the statute under which 9.08.060 exists if in fact it is a ***regulation***. There is only one AAC for ©AS 28.10.181, and it is in 13 AAC

02.340 and has to do with handicapped license plates or permits. This is entirely consistent, as all government owned vehicles must be registered and that only the Traffic Code would have application to government employees.

It is not admitted that ***ordinances*** are in fact ***regulations***, as this has to be specifically defined and determined by the true judiciary arising under a constitution in which the private rights are secured and the State has no rights except those granted under a limited delegation of Power from the people.

Regulations for ©AS 12.25 *et seq.* on Arrest and Citations

Under ©AS 12.25 *et seq.* there are no ***regulations*** to authorize any arrest with or without warrant. There are no ***regulations*** to authorize the issuing of citations, the making of the form for citations, or the disposition of citations. This is entirely consistent in that the ***police officers*** are in reality only professionals at making ***citizen's arrest*** (Wasilla's Regulations and Procedures) in which all liability rests with the person issuing the violations (©AS 11.81.900 - troopers), infractions (©AS 28.04.050), and in misdemeanor's crimes, the ***police officer is the private prosecutor***.

There are regulations on Department of Corrections only under ©AS 12.25 *et seq.* 22 AAC 05.545 is totally unconstitutional as only an "attorney" or an "agent employed by an attorney" can access a prisoner. A private party, a man/woman wanting to provide assistance, or a Counsellor-at-law arising under the 6th Amendment of the Bill of Rights is estopped from assisting, providing some form of assistance of counsel, or even providing papers and documents for signing.

Also in Alaska there are no "Attorneys and Counsellors-at-law" as the Board of Governors has no authority to certify anyone to do anything since 1976.

Criminal Rules (Regulations) have the "Force of Effect of Law" and take Precedence over the Criminal Procedure in the Alaska Statutes in Title 12

In this ***Administrative State*** the ***Alaska Rules of Court on "Criminal Rules"(APA regulations) have the "force and effect of law" and takes precedence over the Code of Criminal Procedure that is purportedly enacted into Code by the Legislature of the State!*** See *Price v. State*, 647 P.2d 611 (Alaska Ct. Åpp. 1982); Applied in *Hansel v. State*, 604 P.2d 222 (Alaska 1979); Quoted in *Speas v. State*, 511 P.2d 130 (Alaska 1973); and cited in *Constantine v. State*, 739 P.2d 188 (Alaska Ct. App. 1987).

This has the meaning that ***all of the legislative acts in ©AS 12 et seq. on Criminal Procedure*** (sic) are subordinate to the ***Criminal Rules that have the "force and effect of law", i.e. regulations under the APA (Alaska) definition of "regulation" under*** AS 44.62.640(a)(3) states in part, to wit:

> (3)"**regulation" means every rule, regulation**, **order**, or standard of general application or the amendment, supplement, or revision of a **rule, regulation, order**, or standard adopted by a **state agency to implement**, interpret, or **make specific the law enforced or administered by it** . . . **[Emphasis added]**

As the Alaska Rules of Court in both the Civil and Criminal are ***rules*****,** i.e. ***regulations under the APA (Alaska).*** This ***is conclusive evidence that all of the courts open today in Alaska are nothing but APA (Alaska) Administrative Courts under the final control of the Alaska Bar Association members ("ABAM"), as all of the administrative judges are all bar members. These ABAM do by Supreme Court Order ("SCO") i.e. a "regulation" under the APA, create or change the "Criminal Rules" by SCO that have the "force and effect of law." Of course the Legislature of the State does also change Civil Rules (regulations) or Criminal Rules (regulations) by Temporary and Special Acts (private law) too numerous to list, but they are all public records!***

Are the Criminal Rules (SCO's) given Public Notice

The Criminal Rules ***(regulations that have the force and effect of law)*** are not published for public comment, ***but are edicts from the Alaska Bar members, i.e. SCO's,*** made a public record in the Alaska Rules of Court for the administrative courts in the administrative state .

Assistance of Counsel is a Criminal Rule (Regulation) by SCO ONLY!

The ***legislative jurisdiction*** of the Assistance of Counsel secured in the Sixth Amendment of the Constitution of the United States and in the Alaska Compiled Laws Annotated ("ACLA") of 1949 in Title 66 *et seq.* is now ***a rule (regulation) of court in criminal rule 5 by SCO with only a minor amendment by the legislature by temporary and special act of 86 SLA 1998. An "attorney" only, not Assistance of Counsel (Counsellor-at-law), is allowed access to a prisoner in ©AS 12.25.150 with the APA(Alaska) regulations in 22 AAC 05.015, 22 AAC 05.130, 22 AAC 05.545, and 22 AAC 05.595 and bail is in ©AS 12.30.010 with no AAC's (regulations). One must remember that the Criminal Rules (regulations) having the "force and effect of law" take precedence over the AS Criminal Code of Procedure in Title 12.***

Court or Employee of a Court is a "criminal justice agency" and is an "agency"!

In ©AS 12.62.900(1), "***agency"*** means a ***criminal justice agency***. Then in ©AS 12.62.900(11) a "***criminal justice agency"*** **(A)** means ***a court with criminal jurisdiction or an employee of that court; . . .*** ©AS 12.62.900(1) has no regulation, but ©12.62.900(11) does.

To comply with APA on these definitions and many more damning definitions, this is in 13 AAC 85.900 completing the loop of the ***statute and regulation***. Parts of these definitions of ***regulations*** are used 4 AAC 62.210 (qualifications and responsibilities of individuals having contact with children in a child care facility); 4 AAC 65.327 (Child care in the child's own home); 7 AAC 50.210 (Qualifications and responsibilities of persons having regular contact with

children in a facility); 7 AAC 56.210 (Qualifications and responsibilities of individuals having regular contact with children and clients in an agency); 12 AAC 44.990 (Nursing – definitions); 13 AAC 68.905 (Information – definitions); and 13 AAC 85.900 (Public Safety part 6 Alaska Police Standards Council Chapter 85. Minimum Standards for Police, Probation, Parole, Correctional, and Municipal Correctional Officers Article 3. General Provisions 13 AAC 85.900).

"Criminal Justice Activity" (Regulation) is Investigation, Prosecution, and Adjudication

Criminal justice activity in © AS 12.62.900 is defined to mean, to wit:

> (10) "**criminal justice activity"** means
> (A) **investigation**, identification, **apprehension**, **detention**, pretrial or post-trial release, **prosecution**, **adjudication**, or correctional supervision or rehabilitation of a person accused or convicted of a crime;
> (B) collection, storage, transmission, and release of criminal justice information; or
> (C) the **employment of personnel engaged in activities** described in (A) or (B) of this paragraph;
> *[Emphasis added]*

All of the police ***investigations, apprehension and detention***; the ***courts detention, prosecution and adjudication***; and other personnel are part of the APA (Alaska) the ***regulations***. To comply with the APA of ©44.62 *et seq.* for ***both a statute and regulation***, this is in the AAC's in regulation 13 AAC 68.905(14). Unbelievable!

Criminal Rule (Regulation) 16 Protects the Administrative State

The ***Alaska Rules of Court in the Criminal Rules (regulations) is the protection scheme by the Alaska Bar Members implemented by SCO*** is the following, to wit:

> **(a) Scope of Discovery.** In order to provide adequate information for informed pleas, expedite trial, minimize surprise, afford opportunity for effective cross-examination, and **meet the requirements of due process, discovery prior to trial should be as full and free as possible consistent with protection of persons, effective law enforcement, and the adversary system.** *[Emphasis added]*

Protecting the ***persons*** includes the "STATE OF ALASKA", as the courts have determined same. See Notes to Decisions under ©AS 01.10.060, i.e. *Mustafoski v. State*, 867 P.2d 824 (Alaska Ct. App. 1994) and many other cases.

Protecting the "***effective law enforcement"*** means all of the police and troopers with their associated agencies.

Protecting the ***adversary system*** includes all of the ***courts, judges, magistrates, prosecutors, clerks, and attorneys.***

This means that there is no ***Trial by Jury*** available today in the territorial boundaries of Alaska. This also means that ***inculpatory and exculpatory evidence*** that should be presented to a jury of my peers can and will be withheld ***to protect the persons, effective law enforcement, and the adversary system***. This also is unconstitutional.

As held in the adjudged decision of the Supreme Court of the United States in *Strickler v. Greene*, 527 U.S. 263, 280, 281 (1999), to wit:

> In *Brady* this Court held "**that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or [***33] bad faith of the prosecution**." *Brady v. Maryland, 373 U.S. at 87.* **We have since held that the duty to disclose such evidence is applicable even though there has been no request by the accused**, *United States v. Agurs, 427 U.S. 97, 107, 49 L. Ed. 2d 342, 96 S. Ct. 2392 (1976),* **and that the duty encompasses impeachment evidence as well as exculpatory evidence**, *United States v. Bagley, 473 U.S. 667, 676, 87 L. Ed. 2d 481, 105 S. Ct. 3375 (1985).* Such evidence is material "**if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different**." *Id. at 682;* see also *Kyles v. Whitley, 514 U.S. 419, 433-434, 131 L. Ed. 2d 490, 115 S. Ct. 1555 (1995).* Moreover, the rule encompasses evidence "**known only to police [*281] investigators and not to the prosecutor."** *Id. at 438.* In order to comply with *Brady*, therefore, "**the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police**." *Kyles, 514 U.S. at 437***.** *[Emphasis added]*

What is Treason and Levying War?

In the adjudged decisions of the Supreme Court of the United States in *Ex Parte Bollman*, 8 U.S. 75, 126, 127, 128 (1807) the requirements for ***levying war and treason*** were held to be the following, to wit:

> **As there is no crime which can more excite and agitate the passions of men than treason, no charge demands more from the tribunal before which it is made a deliberate and temperate inquiry. Whether this inquiry be directed to the fact or to the law, none can be more solemn, none more important to the citizen or to the government; none can more affect the safety of both.**
>
> To prevent the possibility of those calamities which result from the extension of treason to offences of minor ***126** importance, that great fundamental law which defines and limits the various departments of our government has given a rule on the subject both to the legislature and the courts of America, which neither can be permitted to transcend.
>
> **'Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort**.'
>
> To constitute that specific crime for which the prisoners now before the court have been committed, war must be actually levied against the United States. **However flagitious may be the crime of conspiring to subvert by force the government of our country, such conspiracy is not treason**. To **conspire to levy war**, and **actually to levy war**, the distinct offences. **The first must be brought into operation by the assemblage of men for a purpose treasonable in itself, or the fact of levying war cannot have been committed.** So far has this principle been carried, that, in a case reported by Ventris, and mentioned in some modern treatises on criminal law, it has been determined that the actual enlistment of men to serve against the government does not amount to levying war. It is true that in that case the soldiers enlisted were to serve without the realm, but they were enlisted within it, and if the enlistment for a treasonable purpose could amount to levying war, then war had been actually levied.
>
> It is not the intention of the court to say that no individual can be guilty of this crime who has not appeared in arms against his county. On the contrary, if war be actually levied, that is**, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors**. **But there must be an actual assembling of men for the treasonable purpose, to constitute a levying of war.**
>
> **Crimes so atrocious as those which have for their object the subversion by violence of those laws and those *127 institutions which have been ordained in order to secure the peace and happiness of society, are not to escape punishment because they have not ripened into treason.** The wisdom of the legislature is competent to provide for the case; and the framers of our constitution, who not only defined and limited the crime, but with jealous circumspection attempted to protect their limitation by providing that no person should be convicted of it, unless on the testimony of two witnesses to the same overt act, or on confession in open court, must have conceived it more safe that punishment in such cases should be ordained by general laws, formed upon deliberation, under the influence of no resentments, and without knowing on whom they were to operate, than that it should be inflicted under the influence of those passions which the occasion seldom fails to excite, and which a flexible definition of the crime, or a construction which would render it flexible, might bring into operation. It is therefore more safe as well as

more consonant to the principles of our constitution, that the crime of treason should not be extended by construction to doubtful cases; and that crimes not clearly within the constitutional definition, should receive such punishment as the legislature in its wisdom may provide.

To complete the crime of levying war against the United States, there must be an actual assemblage of men for the purpose of executing a treasonable design. In the case now before the court, a design to overturn the government of the United States in New-Orleans byforce, would have been unquestionably a design which, if carried into execution, would have been treason, and the assemblage of a body of men for the purpose of carrying it into execution would amount to levying of war against the United States; but no conspiracy for this object, no enlisting of men to effect it, would be an actual levying of war.

In conformity with the principles now laid down, have been the decisions heretofore made by the judges of the United States.***128**

The opinions given by Judge Paterson and Judge Iredell, in cases before them, imply an actual assembling of men, though they rather designed to remark on the purpose to which the force was to be applied than on the nature of the force itself. Their opinions, however, contemplate the actual employment of force.

Judge Chase, in the trial of Fries, was more explicit.

He stated the opinion of the court to be, **'that if a body of people conspire and meditate an insurrection to resist or oppose the execution of any statute of the United States by force, they are only guilty of a high misdemeanor; but if they proceed to carry such intention into execution by force, that they are guilty of the treason of levying war; and the *quantum* of the force employed, neither lessens nor increases the crime: whether by one hundred, or one thousand persons, is wholly immaterial.' '**The court are of opinion,' continued Judge Chase, on that occasion, **'that a combination or conspiracy to levy war against the United States is not treason, unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used in pursuance of such design to levy war; but it is altogether immaterial whether the force used is sufficient to effectuate the object; any force connected with the intention will constitute the crime of levying war.'** *[Emphasis added]*

To ***levy war*** there must be the following, to wit:

1. An assemblage of men for the purpose of treasonable design in of resisting or opposing the execution of any statute or constitutional secured right of the United States by overturning the government of the United States; and,

2. It is carried into execution by force; then they are guilty of treason of levying war; and,

3. The quantum of the force employed neither lessens nor increases the crime as long as there is an assemblage of men; and,

4. It is immaterial whether the force used is sufficient to effectuate the object and any force connected with the intention will constitute the crime of levying war.

Do the Actions of the Police Officers and other Constitute Levying War and Treason

In each of the citations issued listed on the DMV Letter, there were more than one police officer under arms, so the requirement of ***an assemblage of men is met, not to mention that these police officers assemble at their headquarters for the implementation and instruction of the APD version of the Use of Force Continuum used by the Alaska State Troopers, known as Response Resistance from what I have been able to determine.***

The use of force of in each of the citations issued on the DMV letter is also met, as the Alaska State Troopers "Use of Force Continuum" clearly establishes that force means "[R]estraint for the purpose of gaining control of a person" in 107.020(1).

In 107.020(C)(4), just the presence of the officer is "force" and it is escalated until the objective of the gaining control is achieved by the officer up to and included <u>deadly force</u>, to wit:

> should keep in mind that the proper officer response **can be thought of as a continuum** that **includes several stages (from lowest to highest): officer presence, verbal persuasion, directions, and commands; "soft" empty hand control and OC spray; OC projectiles; "hard" empty hand control, electronic weapons and batons; and deadly force**. The appropriate amount of force to be used must be based upon the combination of many factors, such as the subject's age, size, sex, ability to escalate his use of force, skill level, and background; the officer's age, size, sex, training, immediate physical condition (injuries, exhaustion); and the surrounding physical and social environment.

The police officers achieve the use of deadly force by statements in gaining control of a person by statements such as, ***I am in fear of my life or similar statements. See 107.020 and in particular (D), to wit:***

> **D.** ***Additional requirement for use of deadly force.*** The Department, recognizing the integrity of human life, authorizes officers to use deadly force against another person only when, in addition to **complying with the general policies regarding use of force**, the officer has no other reasonable and practical alternative, and reasonably believes deadly force is necessary
> 1. **to save his or her own life or the life of another**;

2. **to prevent serious physical injury** [Ref. AS 11.81.900 (51)] **to the officer or another**; or
3. because there is probable cause to believe the person has committed a felony using deadly force against another, and **will immediately endanger life**. *[Emphasis added]*

I have attempted to obtain the copy of what I believe is called the ***response resistance*** used the APD that must be similar to the ***Use of Force Continuum*** used by the Alaska State Troopers. I e-mailed a letter to Denis LeBlanc on October 1, 2004. A Lt. Paul Honeman (Badge # 816) has promised many times to supply what I had requested in the Denis LeBlanc Letter, but has stalled for almost one month and now he will not even return my calls. I have attached a true copy of said letter to Denis LeBlanc ("Denis LeBlanc Letter"), being **Attachment 1,** to evidence my good faith intention to understand the police, their citations and who they really are, and the extremely bad faith of Denis LeBlanc and Lt. Paul Honeman.

Attempts to Obtain copies of the Original Citations, If they do Exist.

I have made several good faith efforts to obtain certified of the *original citations*. Lt Paul Honeman did on state firmly on September 30th, 2004 (video taped) at the APD headquarters that the original citations were in the Traffic Division in the Old Court House on third avenue.

I then proceeded with Carry Shortell and Tina Walker

Creating Rights to Bypass the Courts of Law

Congress is under no obligation to provide a remedy in the courts of the United States when it creates rights against the United States, and this is held in the adjudged decision of *United States v. Babcock*, 250 U.S. 328, 331 (1919), to wit:

> [1][2] These general rules are well settled: (1) That the United States, **when it creates rights in individuals against itself, is under no obligation to provide a remedy through the courts**. United States ex rel. Dunlap v. Black, 128 U. S. 40, 9 Sup. Ct. 12, 32 L. Ed. 354; Ex parte Atocha, 17 Wall. 439, 21 L. Ed. 696; Gordon v. United States, 7 Wall. 188, 195, 19 L. Ed. 35; De Groot v. United States, 5 Wall. 419, 431, 433, 18 L. Ed. 700; Comegys v. Vasse, 1 Pet. 193, 212, 7 L. Ed. 108. (2) That where a statute creates a right and provides a special remedy, that remedy is exclusive. Wilder Manufacturing Co. v. Corn Products Co., 236 U. S. 165, 174, 175, 35 Sup. Ct. 398, 59 L. Ed. 520, Ann. Cas. 1916A, 118; Arnson v. Murphy, 109 U. S. 238, 3 Sup. Ct. 184, 27

> L. Ed. 920; Barnet v. National Bank, 98 U. S. 555, 558, 25 L. Ed. 212; Farmers' & Mechanics' National Bank v. Dearing, 91 U. S. 29, 35, 23 L. Ed. 196. Still the fact that the right and the remedy are thus intertwined might not, if the provision stood alone, require us to hold that the remedy expressly given excludes a right of review by the Court of Claims, where the decision of the special tribunal involved no disputed question of fact and the denial of compensation was rested wholly upon the construction of the act. See Medbury v. United States, 173 U. S. 492, 198, 19 Sup. Ct. 503, 43 L. Ed. 779; Parish v. MacVeagh, 214 U. S. 124, 29 Sup. Ct. 556, 53 L. Ed. 936; McLean v. United States, 226 U. S. 374, 33 Sup. Ct. 122, 57 L. Ed. 260; United States v. Laughlin (No. 200), 249 U. S. 440, 39 Sup. Ct. 340, 63 L. Ed. 696, decided April 14, 1919. But here Congress has provided:
> 'That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered.'
>
> These words express clearly the intention to confer upon the Treasury Department exclusive jurisdiction and to make its decision final. The case of United States v. Harmon, 147 U. S. 268, 13 Sup. Ct. 327, 37 L. Ed. 164, strongly relied upon by claimants, has no application. Compare D. M. Ferry & Co. v. United States, 85 Fed. 550, 557, 29 C. C. A. 345. **[Emphasis added]**

The adjudged decisions of the Supreme Court of the United States in *United States v. Babcock*, 250 U.S. 328, 331 (1919) must be examined to determine the particular issues that Congress can bypass the courts of the United States, otherwise it is clearly self-evident that the "Separation of Powers", the Constitutional Republic, and the judicial Power of the United States arising in Article III of the Constitution of the United States under the authority of the United States in Law and Equity would be nonexistent, thereby abrogation in total of the Constitution of the United States where the people of the United States have granted a limited delegation of Power to Congress.

In the adjudged decision of the Supreme Court of the United States in *United States ex rel. Dunlap v. Black,* 128 U. S. 40 (1888), this was a case of Oscar Dunlap, **a veteran**, attempting to have a mandamus issued against Mr. Black, a commissioner of pensions to increase his pension. The Secretary of the Interior was the appellate tribunal exercising discretion, and the Secretary had rendered a decision to change and increase the pension of Dunlap. As Black refused, and as the Secretary had no means to issue a mandamus, it was proper to resort to a judicial tribunal to compel Black to comply with the Secretary's judgment.

But in issues where the Congress has plenary power concerning the military, access to the courts of the United States can be denied.

In *Ex parte Atocha*, 84 U.S. 439 (1873) Alexander J. Atocha, a naturalized citizen of the United States, presented a claim against the government of Mexico for losses sustained by reason of his expulsion from that country in 1845. As this involved the **treaty** of Guadalupe Hidalgo, and under the **treaty's stipulations** claims are not brought within the cognizance of the Supreme Court of the United States, and when jurisdiction over such claims is conferred by special act, the authority of the Court of Claims to hear and determine them, and of the Supreme Court of the United States to review its action, is limited and controlled by the provisions of that act. Therefore, in issues of **treaty stipulations**, the jurisdiction of the Supreme Court of the United States can be limited.

In the adjudged decision of the Supreme Court of the United States in *Gordon v. United States*, 74 U.S. 188 (1868), the legal representatives of George Fisher, deceased, importuned Congress for **war reparations** in the year of 1813 for property taken or destroyed by the troops of the United States and many years thereafter. Congress passed several special acts for Fisher's legal representative until a resolution June 1st, 1860 creating a special tribunal which was repealed in 1861. As this was within **war reparations** under the plenary power of Congress, Congress could deny or limit the access to courts of the United States by repealing said resolution.

In the adjudged decision of the Supreme Court of the United States in *De Groot v. United States*, 72 U.S. 419, De Groot had a contract with the United States to supply several million bricks, but some delay or difficulty was encountered in delivery. This was a private contract, and according to the terms contained therein, De Groot surrendered all property to the United

States and received a settlement. Being dissatisfied with the award, De Groot petitioned Congress and a joint resolution authorized the Secretary of War to settle the claim. The Secretary proceeded to settle the claim, but Congress being dissatisfied with the award, repealed the special act and by act of Congress directed the claim to the Court of Claims. The Supreme Court of the United States upheld the Secretary's award, but the remedy was totally under the control of Congress as to whether any court access would be allowed in issues where the United States **contracts with a private person**.

In the adjudged decision of *Comegys and Pettit v. Vasse*, 26 U.S. 193, a complicated case involving bankrupty, a treaty, and vessels captured of which Vasse was the underwriter on the vessels. All of these issues are in the plenary power of Congress, being **uniform bankruptcy laws, treaties, and war reparations**. Therefore, Congress can deny or limit access to the courts of the United States on how claims in these particular subjects can be adjudicated.

Now to use the 1040 Form for the federal taxes, there is a place for deductions in the Schedule A – Itemized Deductions on line 6. But on the 1040 Form itself, line 7 is for "wages."

In the Code of Federal Regulations (hereafter "CFR') the following are the substantive regulations pertaining to *wages* under 26 U.S.C. § 3401 as required on the IRS 1040 Form starting with the substantive regulation of 26 CFR 1.1441-1 under the statutory authority of 26 USC § 1441(c)4) & § 3401(a)(6) and other substantive regulations using 26 U.S.C. § 3401 statutory authority as found in Treas Reg T 26, Ch I, Subch A. Pt. 1, to wit:

1. 26 CFR 1.1441-2 [**Nonresident Aliens and Foreign Corp.]** – 26 USC § 1441(c)4) & § 3401(a)(6); and,
2. **26 CFR 1.1441-3 [Nonresident Aliens and Foreign Corp.] –** 26 USC § 1441(c)4), § 3401(a)(6) &, § 7701(l); and,
3. **26 CFR 1.1441-4 [Nonresident Aliens and Foreign Corp.] –** 26 USC § 1441(c)4) & § 3401(a)(6); and,
4. **26 CFR 1.1441-5 [Nonresident Aliens and Foreign Corp.] –** 26 USC § 1441(c)4), § 3401(a)(6), 7701(b)(11); and,
5. **26 CFR 1.1441-6 [Nonresident Aliens and Foreign Corp.] –** 26 USC § 1441(c)4), & § 3401(a)(6); and,

6. **26 CFR 1.1441-7 [Nonresident Aliens and Foreign Corp. – Withholding Agent Defined - IMPORTANT] –** 26 USC § 1441(c)4), § 3401(a)(6) & 7701(l); and,
7. **26 CFR 1.1461-1 [Nonresident Aliens and Foreign Corp.] –** 26 USC § 1441(c)4), & § 3401(a)(6); and,
8. **26 CFR 1.1461-2 [Nonresident Aliens and Foreign Corp.] –** 26 USC § 1441(c)4), § 3401(a)(6), & 7701(l); and,
9. **26 CFR 1.1462-1 [Nonresident Aliens and Foreign Corp.] –** 26 USC § 1441(c)4), § 3401(a)(6), & 7701(l).

In Treas Reg T 26, Ch I, Subch C. Pt. 31, we find one more substantive regulation under § 3401, being 26 CFR 31.3401(a)(6)-1 [Collection of Income at the Source – Nonresident Aliens Individuals -IMPORTANT] – 26 USC § 1441(c)4), & § 3401(a)(6).

There are two more substantive regulations, with the first one in 26 CFR 301.7605 [Discovery of Liability & Enforcement of Title Examination and Inspection – still nonresident aliens and foreign corporations though] – 26 USC § 1441(c)4), § 3401(a)(6) and 7701(l) and the second one in 26 CFR 301.7701-16 [Definition of Withholding Agent – See 1.1441-7(a)] – 26 USC § 1441(c)4), § 3401(a)(6) and 7701(l).

It is clearly self-evident that to have application of *wages* pursuant to 26 U.S.C. § 3401, I would have to be nonresident Alien, or a foreign corporation. I am neither a nonresident Alien or acting in any capacity as a foreign corporation.

Law of the Land

As held in the adjudged decision of the Supreme Court of the United States in *Galpin v. Page*, 85 U.S. 350, 368, 369 (1873), to wit:

> It is a rule as old as the law, and never more to be respected than now, **that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and *369 has been afforded an opportunity to be heard**. Judgment without such citation and opportunity wants all the attributes of a judicial determination; **it is judicial usurpation and oppression, and never can be upheld where justice is justly administered. [Emphasis added]**

Beverly W. Cutler Admits to Being an Administrative Judge

As evidenced by the admission of Beverly W. Cutler (hereafter "Cutler") being only an administrative judge on "CIV-210 PALMER – SUP(9/96)(st.3) JUDICIAL ASSIGNMENT

ORDER and Cutler has no Civil Commission, and has no Oath of Office as a public Officer of the State of Alaska. An administrative act of Cutler is not a judicial act.

In the adjudged decision of the Supreme Court of the United States in *Upshur County v. Rich*, 135 U.S. 467, 473 (1890) that acts by administrative officers, be they in a body called a court or other judicial tribunal is not a true judicial Act and can not be reviewed in an appellate court possessing judicial Powers only.

Should Cutler proceed absent any means to effect the judicial Power of a true Court of Law, then an Injunction in the District Court of the United States would be the only remedy available, which will be pursued. See *Upshur County v. Rich*, 135 U.S. 467, 473 *et seq.* (1890).