SUPREME COURT OF CALIFORNIA

In re PETER J. MANCUS, Petitioner, on Habeas Corpus	Case No. Shasta County Superior Court Case No. 02 CR AM 4250

PETITION FOR WRIT OF HABEAS CORPUS
AND
MEMORANDUM OF POINTS AND AUTHORITIES

Trial Judge:
Hon. William D. Gallagher, Judge
Superior Court of California, County of Shasta

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In Propria Persona

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SUPREME COURT OF CALIFORNIA

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PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE PRESIDING JUSTICE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner Peter J. Mancus, in pro per, petitions the Court for a writ of habeas corpus and by this verified petition states as follows.

I. SUMMARY

A. Facts

This Court held in People v. Hyde (1974) 12 Cal.3d 158, 169, fn 6:

> . . . airport screening procedures must be as limited in intrusiveness as is consistent with their justification, and an individual may avoid submitting to a search altogether by electing not to board the airplane. [Emphasis added.]

This petition turns, in part, on this excerpt from Hyde.

Petitioner[1] was at the Redding Municipal Airport on May 4, 2002 as an air show patron, not as an airline passenger. Petitioner did not manifest conduct consistent with boarding an airliner. He never bought an airline ticket. He never entered an airline passenger terminal. He never loitered near an airline passenger terminal. He never approached an airliner.

[1] Petitioner is a California licensed attorney and a constitutionalist who does not suffer anyone who violates his rights.

When Petitioner was outside an airline passenger terminal, outside an airport perimeter fence, outside an air operations area, 2,000 feet from the nearest passenger terminal and the nearest airliner(s), which were in a sterile, guarded area, and while he was on a public sidewalk, acting lawfully, the Redding Police Department [RPD] enforced its warrantless, unwritten search policy, without a scintilla of reasonable suspicion, against him, as a condition-for-admission to an air show held at the Redding Municipal Airport. On May 4, 2002, however, there was no well recognized, warrantless, no probable cause required, exception to the Fourth Amendment applicable to air show patrons.

The RPD detained, seized, and searched Petitioner based on this foundation: They claimed their unwritten, warrantless search policy for air show patrons was a lawful extension of Hyde's exception for airline passengers. The RPD's claim is non-meritorious. The RPD violated this Court's Hyde precedent, plus about a dozen more.

Before 9/11, the RPD, at the request of the Redding Exchange Club [REC,] which sponsored this air show as a fundraiser, pursuant to its unwritten search policy, searched air show patron's "large" containers to keep out banned food and beverages to maximize air show's concessionaires' sales and profits. The RPD knew that the REC would donate money from this fundraiser to the RPD. The REC, in effect, paid the RPD to violate the Fourth Amendment rights of air show patrons to promote the REC's economic interests.

The events of 9/11 gave the RPD a fig leaf public safety rationale to justify what they did before 9/11 and wanted to keep doing: Search for

banned food and beverages in the guise of promoting public safety under the *administrative search* label. That label makes it too easy to circumvent the Fourth Amendment.

In People v. Mancus, the police, the prosecutor, the law and motion judge, the trial judge, and lower level appellate judges, have repeatedly been dishonest in dealing with the above quoted Hyde limitation: A person who elects not to board an airliner can avoid an administrative search. Since Petitioner elected not to board an airliner he was not subject to an administrative search, but the RPD forced its search policy onto him, anyway.[2]

The prosecution dishonestly argued in People v. Mancus, with the trial court's approval, and the appellate judges' approval, that Hyde's exception for airline passengers can be applied to a new class of persons– *air show patrons*, who are on a public sidewalk, outside an airport's fence, outside a passenger terminal, and 2,000 feet from the nearest passenger terminal or airliners, which are in a guarded, sterile area.

In People v. Mancus, the RPD unlawfully attempted to unilaterally

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[2] Serious problems need to be fixed, not whitewashed. Petitioner knows of no way other than presenting an analysis faithful to the facts and the law. He retains hope because he retains faith in this honorable Court. He agrees with O.S. Marden who said, "There is no medicine like hope, no incentive so great, and no tonic so powerful as expectation of something tomorrow." This petition is long because government agents' violations of the law in People v. Mancus created many meritorious issues, this petition involves the Fourth Amendment, which makes it fact intensive, the burden is on Petitioner to prove the conviction is constitutionally infirmed, and Petitioner did his best to be thorough to help this honorable Court keep *hope* alive by reversing the conviction and by requiring errant officers, prosecutors and judges to return to integrity so citizens can retain faith in the system and all government employees.

carve out of the Fourth Amendment another exception to the Fourth Amendment. When Petitioner peacefully objected, he was unlawfully arrested and persecuted.

Petitioner did not commit a crime. Instead, he peacefully asserted his rights, stood on his rights, and refused to be cowered. An RPD officer perceived Petitioner's verbal challenge to his authority as a "contempt of cop." This officer made an unlawful Penal Code § 148(a)(1) arrest of Petitioner as a cover charge for what was really a "bad attitude" arrest.

To make matters worse, the lower appellate courts upheld the RPD's unconstitutional expansion of Hyde, retroactively, suddenly, and unexpectedly, contrary to published, binding, public law. The lower appellate court's retroactive upholding of this expansion of Hyde shrank Petitioner's Fourth Amendment rights and violated Petitioner's right to Due Process and the right to be free of an ex post facto law. These judges appear to have been co-opted by the police, as in they appear to believe they must always "Back the badge., " no matter what, to stem the avalanche of crime or to not rile the police and the prosecutor so they can appear to be "tough on crime."

Petitioner, on May 4, 2002, as an air show patron, bought an admission ticket for the REC's "Wings of Freedom"air show at the Redding Municipal Airport. After buying that ticket, Petitioner, encountered two law enforcement officers: First, Shasta County Reserve Volunteer Deputy Sheriff Herb Williams [a school bus driver] and second, Redding Police Department Officer Scott Mayberry.

While on a public sidewalk 2,000 feet from the nearest airline passenger terminal and airliners, and while still outside the airport's fence, Deputy Sheriff Herb Williams asked Petitioner for a consent search of his

bags. When Petitioner told Williams he declined the "request" Williams told Petitioner his refusal automatically triggered probable cause to detain Petitioner and to search his bags.

Petitioner asserted his Fourth Amendment rights, never withdrew his assertion, and peacefully stood on his rights. School bus driver Reserve Deputy Sheriff Williams testified he was trained that a consent search request refusal automatically triggers probable cause to detain and to search! The trial judge and the lower level appellate judges approved *that* "legal" nonsense! There was, however, no applicable exception to the warrant requirement or the probable cause requirement for the search policy enforced against Petitioner who believed he had a civic duty and a professional duty pursuant to Bus. & Prob. Code § 6068(a) to support *constitutionalism* for the benefit of himself, others, community, and the nation, by peacefully standing on his rights.

Petitioner peacefully walked away from Williams, straight toward the air show's entry gate. Redding Police Officer Scott Mayberry, based solely on Williams' call for back-up to detain Petitioner, stopped Petitioner before Petitioner passed through the airport's outermost perimeter fence. Officer Mayberry told Petitioner that Petitioner had to submit to a search as a condition for entry into the air show. Petitioner asked Mayberry to cite him constitutionally legitimate authority to support that statement. Mayberry failed to do so. Mayberry told Petitioner that Mayberry was Petitioner's "boss" because he was a "cop" and those are Mayberry's "rules."

Petitioner told Mayberry he was not Petitioner's "boss." Instead, he was a public servant, who had a public master–U.S. citizens, Petitioner was a U.S. citizen, Petitioner was one of Mayberry's bosses, and, unless

Mayberry cited him to well recognized constitutionally legitimate authority to support this submit-to-search-condition-for-entry, Petitioner would stand on his Fourth Amendment rights. When Petitioner verbally challenged Mayberry's authority, Mayberry's nostrils flared, his chest heaved, and he repeatedly slammed a fist hard into an opposing palm.

Petitioner never manifested clearly proscribed core criminal conduct, never touched Mayberry or anything connected to Mayberry, and never tried to touch Mayberry. Nevertheless, Mayberry unconstitutionally seized Petitioner and made a violent, unconstitutional arrest for a non-meritorious Penal Code § 148(a)(1) offense.

Everything Officer Mayberry did against Petitioner was based on the foundation of the RPD's unconstitutional search policy. Consequently, Mayberry made an unlawful arrest. The conviction must be reversed.

Imagine a 6'5" 240 pound Mayberry seizing you without any constitutionally legitimate reason for so doing, spinning you around, forcing you to the pavement–hard, causing a chipped tooth and severe pain in your knees, injuring you, slapping handcuffs on you–hard [crushing skin, muscle, nerves, and blood vessels against bone,] pulling you up by the handcuff's chains, causing excruciating pain in your shoulder joints, pushing you from behind–hard, treating you like a peon, and, after he searched you and your camera bags and found nothing illegal, he refuses to apologize, he refuses to loosen the cuffs, and he refuses to cite and release you. Instead of returning to reason and obeying the law, he has you incarcerated for an alleged violation of Penal Code § 148(a)(1), which radically alters your life, indefinitely. And, to make matters worse, imagine he did this because you dared to peacefully exercise a right which, in the process, bruised his ego.

To get a better appreciation of what Williams and Mayberry visited upon Petitioner, do this–literally: Have someone handcuff your wrists behind you, crushing your flesh against your bones, and read this entire petition while so handcuffed.

A search of Petitioner's person and camera bags revealed nothing illegal or dangerous. Officer Scott Mayberry, however, never returned to reason or lawfulness.

Petitioner endured those flesh crushing handcuffs for two hours. No officer manifested the decency to loosen them.

Williams and Mayberry reasoned from and to the RPD's unconstitutional police edict, and their illegal training. Petitioner reasoned from and to the United States Constitution–correctly.

Mayberry testified he was trained to escalate to force when he cannot secure compliance with his directive(s). That training presumes an officer is always correct and a citizen is always wrong. That training is dangerous. It is also a nullification of legal limits on Mayberry's lawful powers.

Williams and Mayberry were trained to violated citizens' rights. All lower level judges nodded approvingly.

Deputy District Attorney Christie Mulligan, the assigned prosecutor, and the trial judge, the Hon. William Gallagher, are trained legal professionals who played a major role in People v. Mancus. Ms. Mulligan and Judge Gallagher manifested behavior that is best described as *Elitism*, *Statism*, and *Utilitarianism*, but not *Constitutionalism*. In People v. Mancus, Ms. Mulligan and Judge Gallagher waged war against the United States Constitution and Petitioner's rights. People v. Mancus is a constitutional train wreck. It is a damning indictment against Government,

certain Government Actors, the criminal justice system, the appellate process, and the judiciary.[3] The Shasta County law enforcement community is a clubby[4], incestuous[5] group of outlaws. The appellate process was an Assembly Line of Injustice.

The Government Actors named in this petition will not allow citizens to peacefully stand on their rights. Instead, they criminalize what is constitutionally authorized. As such, they perverted the law, construed it oppressively, and twisted it to their advantage, much as the Taliban distort the Koran. They function as American Talibans, namely, Government Actors who oppress under color of law. These Government Actors have abused their powers, they have chilled the peaceful exercise of rights, they have trivialized constitutionalism, and they enforce the law and abuse their powers in favor of themselves. They have placed themselves above and against the Constitution, citizens, and citizens' rights. Instead of functioning as public servants, these Government Actors, from beginning to end, functioned as bullies and public serpents. They have tweaked the real

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[3] The officers involved, the prosecutor, the trial judge, and the lower level appellate judges have inflicted irreparable harm on the criminal justice system and the judiciary. Petitioner is only the messenger. He gives a damn–enough to call it like it is.

[4] *Clubby* means like a club, a fraternity, buddies, elitists, or insiders with an "Us" versus "Them" attitude. Too many members of this club think *justice* means "just us," which means, to them, they are the chosen ones, the "good guys," and they can skirt the law because they are the law, or at least the enforcers, and that makes them untouchables and better than everyone else . . . or so they claim.

[5] *Incestuous* means too closely connected with inadequate oversight control manifested by officers, prosecutors, and judges; too many in each group provide plausible cover for the other, unprofessionally, in a manner that is dangerous, hypocritical, and causes irreparable harm to each group, to citizens' confidence in each group, and in the criminal justice system.

law beyond recognition, making it arbitrary, oppressive, and useless to anyone but themselves. They enforce in Shasta County, in their bailiwick, an unconstitutional regime. As a pragmatic matter, they have unlawfully seceded from the Union. They have morphed Government into a criminal enterprise. They steal liberty and extort money, under color of law.

People v. Mancus is a manifestation of a dangerous inversion. The Bill of Rights is no longer a Bulwark of Liberty. The law no longer provides certainty. The law no longer protects citizens from Government Actors who usurp power.

There are "Three R's" that Government Actors in this case violated: Respect, Responsibility, and Reason. Government Actors did not, and do not, respect the Constitutional Rule of Law, citizens' rights, or human dignity. Government Actors have manifested irresponsible behavior and refuse to admit their mistakes. Government Actors have also refused to be reasonable or to return to reason. For example, Petitioner has cited Hyde's limitations to all of the specified judges, to no avail. When lower level California judges refuse to obey the California Supreme Court and the United States Supreme Court, something is seriously wrong. Without reason, there is no Respect and no Responsibility. Instead, there is just naked, unfettered, arbitrary, power.

The Shasta County criminal justice system is a dysfunctional, despicable, disgrace. It is dangerous. It is out of control.

When Government Actors refuse to obey the law–including its own rules–it is over. A Government that refuses to play by the rules, to listen, to obey the rules, to obey the Constitution's commands, to take citizens' rights seriously, is a manifestation of the denial of due process.

Citizens nowadays can get more respect in a donut shop than they

can from a cop on the street, a prosecutor in court, a trial judge, or an appellate judge.

B. Key Questions

It is imperative that you do your duty–and do it well. This petition puts key questions to this Court:

1) What is the constitutionally legitimate authority, if any, for the search policy that was enforced against Petitioner on May 4, 2002?

2) Will this Court enforce its precedents?

3) Will this Court manifest the courage to tell Government Actors what it has told them before: Officers cannot circumvent the Fourth Amendment, officers must take citizens' rights seriously, the standards for a lawful arrest must not be lowered, officers must obey the law, and it is unconscionable for law enforcement superiors to train their officers to violate citizens' rights?

4) Is Penal Code § 148(a)(1) so vague and overlybroad so as to violate the Substantive Due Process guaranteed by the California and United States Constitutions?

5) Is "when no other punishment is prescribed" an element of Penal Code § 148(a)(1) which must be pleaded in the complaint and submitted to the jury?

6) Was Penal Code § 148(a)(1) unconstitutionally applied against Petitioner?

7) Is it a violation of Due Process and the Fourth Amendment for uniformed police officers to coerce a warrantless search of opaque containers possessed by air show patrons at a local airport air show, on public walkways, 2,000 feet from an air terminal and guarded airliners, as an administrative search based on an unwritten policy unilaterally

determined by a police department?

8) Does a police officer perform a lawful duty, within the meaning of Penal Code § 148(a)(1), when he conducts a warrantless detention and search, without probable cause, for the benefit of a private organization that is conducting an air show at a public airport?

9) When an arresting officer admits that an arrestee satisfied all of Penal Code §853.6(i)'s criteria for a non-custodial "cite and release" arrest, but the officer has the person incarcerated, does the officer's failure to cite and release the arrestee void the arrest *ab initio*?

10) Is it prosecutorial misconduct when the prosecutor repeatedly used against the defendant, before the jury, the fact that the defendant peacefully refused to waive his rights, and the defendant filed a government tort claim notice against the local police?

11) Is the United States a constitutionally limited democratic republic with certain rights guaranteed for all, including the right of the individual, by Petition, to hold Government accountable per the Constitutional Rule of Law?

12) Is the United States an unfettered democracy where only a majority has the right to hold Government accountable?

13) Is the United States an unfettered democracy where a majority can strip an individual of rights, with the Judiciary's blessings?

14) Are individual Citizens and their rights expendable?

15) Who guards the guards? The Judiciary? Or armed Citizens, who will, if necessary, enforce the Constitutional Rule of Law?

16) Do this State's appellate rules violate the First Amendment's Right to Petition for Redress of a Grievance?

17) Do this State's laws regarding qualified and absolute

immunity for Government Actors violate the First Amendment's Right to Petition?

18) Does the First Amendment's right to Petition involve a corollary affirmative duty on the part of Government Actors to promptly respond to the petition, on its merits?

19) What rights exists if there is no peaceful, legal remedy available to enforce one's rights without having to resort to lethal force?

20) Are rights only a matter of Government's grace?

These questions are worthy of this Court's attention.[6]

C. Petitioner's Commentary

Petitioner has taken steps to have this petition posted on the Internet as "a citizen tutorial."[7]

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[6] Administrative searches are an important issue and problem for law enforcement and citizens. There is a need for more precise rules regarding such searches. Lower level judges inexplicably allowed the police to unilaterally and unexpectedly expand for the first time the administrative search exception for ticketed, pre-boarding airline passengers and apply it to a new factual setting and to another class of persons–air show patrons. Petitioner was arrested and convicted under Penal Code § 148(a)(1) for a mere "furtive" act, despite this Court's repeated admonishments that furtive acts do not warrant a seizure or an arrest, and a Court of Appeal holding that § 148(a)(1) arrests must be limited to clearly proscribed core criminal conduct. Lower appellate judges have changed the rules and expanded criminal liability in violation of due process and the ban against ex post facto laws. This Court needs to intervene to secure uniformity of decision because the rulings of the trial court and the lower appellate judges conflict with the controlling authority cited herein that supports Petitioner.

[7] The Internet versions of this petition will include a page at the end for those who support it to sign it via the Internet. This Court's decision, regardless of what it is, will also be posted immediately afterwards, as part of the "citizen tutorial." The American public needs to be educated about what happened in People v. Mancus, certain Government Actors deserve to have their unconstitutional shenanigans exposed to public scrutiny, and

Government Actors have to follow the Rulebook, the Constitution. Government Actors, and Citizens, should adopt this motto: ENFORCE THE CONSTITUTION FIRST. If Government Actors persist with refusing to do that, more citizens will not obey. If Government Actors want to get snarly, even more citizens will still not obey. Government Actors obey the Constitution to retain their legitimacy or they forfeit their legitimacy.To date, no Government Actor has cited any constitutionally legitimate authority that persuasively supports the Redding Police Department's unwritten search policy that was enforced against Petitioner. Instead, Government Actors have skirted the issue, made ad hominem attacks, and shuffled laws like a card shark shuffles cards.

Government Actors have stolen Petitioner's liberty. They are thieves. Petitioner respectfully urges this Court to restore to Petitioner what was stolen from him. Petitioner is entitled to that restoration. Every Government Actor materially involved in this case, so far, has manifested *deliberate indifference* to Petitioner's rights and the limits on their powers. This Court is duty bound to remedy these wrongs.

Petitioner's efforts to have his stolen liberty returned to him have been answered only by repeated injury. This situation is intolerable.

It is Petitioner's understanding that there is a grand building located at 914 Capitol Mall in Sacramento, California, that this Court frequently sits in this building, and that the east wall of the lobby of this building contains this inscription, "This abode of peace shall stand as long as there are those willing to die in its defense." If judges want citizens to die for them, they must function as Guardians of Liberty.

Petitioner wants citizens to benefit from his legal research, his reasoning,

Petitioner believes this Court will function as Guardians of Liberty.

II.
INTRODUCTION

1. Petitioner, Peter J. Mancus, is a licensed California attorney, State Bar No. 52606, who is restrained of his liberty pursuant to a conviction for an alleged violation of Penal Code § 148(a)(1), resisting, obstructing, and delaying an officer in the lawful performance of the officer's duties.

2. Petitioner was convicted on April 24, 2003 following a jury trial before the Hon. William Gallagher, Judge, Superior Court of California, County of Shasta. The Shasta County Superior Court Case No. is CRM 02-4250.

3. Petitioner is factually innocent of the crime of which he stands convicted.

4. The conviction is a miscarriage of justice. There were errors of constitutional magnitude that led to a trial that was so fundamentally unfair that absent these errors no reasonable judge or jury would have convicted Petitioner.

5. The sentencing court is the Superior Court of California, County of Shasta, 1500 Court Street, Redding, California 96001.

6. The date of conviction and sentence were both April 24, 2003. The sentence is: Serve a ten-day jail sentence in the Shasta County jail, with credit for one day served, three years conditional, revocable release into the community, pay a $270.00 fine plus a restitution fine [$570.00 total,] and a probation condition that Petitioner violate no law. (RT 875-878.)

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and he wants them to know how this Court adjudicated this petition.

7. Petitioner timely filed a notice of appeal, timely pursued his appellate remedies, and has exhausted his appellate remedies.

8. On February 1, 2005 the Hon. William Gallagher vacated a stay of execution of sentence, over Petitioner's objection. Petitioner is now in the constructive custody of the Shasta County Sheriff, Jim Pope. Petitioner must begin to serve his sentence no latter than March 3, 2005.

9. Petitioner was represented at trial by Elizabeth Elwood, Attorney at Law, State Bar No. 125218, 1300 Salmon Creek Road, Redding, California 96003. Ms. Elwood is also known as "Liz Ponce."

10. The last plea Petitioner entered, via Ms. Elwood, was "Not guilty," at arraignment.

11. Petitioner suffers from illegal constraints and an unconstitutional conviction in violation of clearly established federal law and State of California law.

12. The Redding Police Department, pursuant to its unwritten search policy, unconstitutionally extended an administrative search exception to the Fourth Amendment and applied that exception for the first time, without adequate notice and without prior judicial approval, to a new class of persons in a new factual setting, contrary to clearly established federal law and California law. This unconstitutional search policy violated Petitioner's rights to Due Process of Law, Equal Protection of the Laws, protection against Ex Post Facto Laws, and protection against Unreasonable Search and Seizure, per Article I, Section 9, Clause 3 and Amendments I, IV, V, XIII, and XIV of the United States Constitution and Article I, Sections 1, 2, 3, 4, 6, 7, 9, 13, and 24 of the California Constitution.

13. Petitioner suffers from illegal constraints and an

unconstitutional conviction also because Penal Code § 148(a)(1) is unconstitutionally vague and overlybroad, violates Petitioner's rights to Due Process and Notice per Amendment XIV of the United States Constitution, and the arresting officer, Redding Police Department Officer Scott Mayberry, enforced an unconstitutional, unwritten search policy against Petitioner and made an unlawful arrest pursuant to that search policy when Petitioner did not commit clearly proscribed core criminal conduct, or any crime, in further violation of Petitioner's rights to Due Process and Notice per Amendments I, IV, V, Petitioner's rights to Due Process and Notice per Amendments I, IV, V, XIII, and XIV of the United States Constitution.

14. Petitioner suffers from illegal constraints and an unconstitutional conviction also because Shasta County Deputy District Attorney Christie Mulligan and the trial court unconstitutionally interfered with, and denied Petitioner, his right to the effective assistance of counsel per the Sixth Amendment to the United States Constitution and Article I, Section 15 of the California Constitution and his due process rights to a fair trial per Amendments V, VI, and XIV of the United States Constitution and Article I, Sections 15, 16, and 24 of the California Constitution.

15. To exacerbate matters, Petitioner's defense attorney, Elizabeth Elwood, prejudicially failed to render Petitioner sustained effective assistance of counsel and was materially untruthful with him and disloyal to him, in violation of Petitioner's right to same per the Sixth Amendment of the United States Constitution and Article I, Section 15 of the California Constitution.

III.
PARTIES

16. Petitioner, Peter J. Mancus, is a person restrained of his liberty now in the custody of the Shasta County Sheriff.

17. Respondent is Sheriff Jim Pope of Shasta County, California.

IV.
STATEMENT OF FACTS

A. Summary of Material Information Petitioner Told His Attorney Early in the Case.

18. Petitioner, from 1972 to date, is an active, licensed member of the State Bar of California and an ex-Deputy District Attorney.

19. Petitioner, as required by different governments, has taken oaths to uphold, support, and defend, the U.S. Constitution against all enemies, foreign and domestic. He has never been relieved of those oaths.

20. Petitioner is a *constitutionalist*: He advocates adhering to the Constitution's commands, supporting Government when it functions constitutionally, and helping it to function constitutionally when it does not.

21. Petitioner, as a licensed member of the State Bar, has a law-imposed duty to uphold, support, and defend, the U.S. Constitution, per Bus. & Prof. Code § 6068(a).

22. Petitioner construes Bus. & Prof. Code § 6068(a) to mean it imposes on him an on-going duty, regardless of Petitioner's activity, to support the United States Constitution against all enemies, foreign and domestic. This is because A) this statute does not expressly limit this duty as to time, place, or activity, and B) when any law, rule, or policy conflicts with the United States Constitution, it is his duty to resolve the conflict in favor of what the United States Constitution commands, per Article VI, Section 2 of the United States Constitution.

23. Petitioner, before May 4th, 2002 found on the Internet the

Redding Exchange Club's advertisement pertaining to its air show at the Redding Municipal Airport in Redding, California, to be held on May 4th and May 5th, 2002. This advertisement stated there was a $12.00 admission charge. It did not state that submission-to-a- search was a condition for admission. Petitioner construed this to mean the air show sponsors invited the public to attend the air show, and, if a person paid them $12.00, a person could enter that part of the airport set aside for the air show.

24. Petitioner, up until May 4th, 2002, had a non-existent criminal record, and he had never been arrested.

25. On May 4, 2002, martial law had not been declared, California had not seceded from the union, and the State of California, its political subdivisions, and all sworn law enforcement officers were subject to the United States Constitution's commands.

26. Petitioner on May 4th, 2002 drove alone from Sebastopol, California to the Redding Municipal Airport in Redding, California to photograph this air show.

27. Petitioner arrived at this airport at approximately 9:35 a.m. on May 4th, 2002. It was already warm. He parked several hundred yards south of this airport's only passenger terminal.

28. On May 4, 2002, Petitioner was in his mid-fifties, 5' 9" tall, weighed approximately 220 pounds, and was in control of his faculties.

29. After parking his car, Petitioner walked with his camera gear to the air show's entry gate, which was about 2,000 feet north of this airport's only airline passenger terminal.

30. Petitioner was dressed as follows: A) On his head, he had a light tan, wide brim hat with cloth material which protected his neck and ears from the sun; B) He had on top of his hat ear muffs to protect his

hearing, when needed; C) He wore sun glasses to protect his eyes; D) He wore a long sleeve shirt; E) He wore blue jeans with a belt and one fanny pack filled with 35 mm film and one empty small cloth bag film organizer; and F) He wore sturdy shoes and socks. His clothes were clean, neat, odor free, and practical for his purposes: Photographing airplanes under the sun.

31. Petitioner carried the following. In his right hand, he pulled a closed, opaque, wheeled, camera case. That case was the only one with wheels. Inside that case he had camera equipment. He put on top of that case a big, heavy, 600 mm lens, with a camera body, inside an opaque, closed, soft, case. Petitioner, with his right hand, held on to the straps of this 600 mm case on top of his wheeled case while gripping the handle to the wheeled case. Petitioner, in his left hand, held by a strap around his wrist, a hard, opaque, closed, lens case for a heavy, 300 mm lens which dangled down.

32. Petitioner was clean with a short hair cut and no facial hair.

33. Petitioner could not move fast because his camera gear was heavy, asymmetrical, and awkward to move.

34. Petitioner paid about $23,000.00 for this camera gear.

35. As Petitioner walked toward the air show's entry gate, he stayed outside the airport's fence, he moved at a modest pace, toward north of the passenger terminal, and he stopped frequently to adjust his load.

36. Petitioner had no intention of becoming an airplane passenger at that airport.

37. Petitioner walked past the airport's passenger terminal, did not enter this terminal, and did not loiter around it.

38. Petitioner did not have and did not buy a ticket to fly in a commercial airliner.

39. Petitioner knew at that time and place that the California Supreme Court and federal courts had ruled that the administrative search exception to the Fourth Amendment for ticketed, pre-boarding, airline passengers shall not be extended to others.

40. As Petitioner walked, pulling and carrying his camera gear, his right ankle increasingly hurt. He wanted to get to his destination and sit down.

41. As Petitioner walked toward the air show's entry gate, he looked for and did not see any sign relevant to him.

42. Petitioner had a reasonable expectation of privacy regarding his closed, opaque, camera bags and fanny packs.

43. Petitioner was, at all times, in a public place opened to the public where he had a right to be; he never entered a secure, airport operations area.

44. Petitioner at all times acted lawfully.

45. Buildings and mature shrubbery created a line of sight obstruction between the air show's ticket sale area and Petitioner's location while he walked north toward that area.

46. As Petitioner approached the ticket sales tent he saw, about ten yards before that tent, one sign that appeared to be identical to the one he saw two years earlier in the same location at this air show. This sign was of modest size, it rested on pavement, and it said, "No Ice Chests Allowed," or something to that effect, and nothing more. This sign did not cite any public law, code, statute, ordinance, or regulation.

47. This sign was the only sign Petitioner saw on May 4th, 2002 that said anything about what could be brought onto the air show's grounds.

48. Petitioner bought an admission ticket, and he put his wallet in his front left shirt pocket to frustrate pick-pockets.

49. Before, and when, Petitioner bought his admission ticket, he was never told that submission-to-a-consent-search was a condition for admission. [Note: The air show's admission ticket did not state that submission-to-a-consent-search was a condition for admission.]

50. Petitioner put his admission ticket in his mouth and held onto it with his teeth, with most of it visible. He did this because his arms were tired, he did not want to have to let go of his camera gear or lift his hand to a ticket taker, and he wanted to make it easy for a ticket taker to tear off what the taker needed. Petitioner was holding things he owned, worked hard to buy, and these items did not bounce on asphalt.

51. The air show's ticket sales tent was approximately 15 yards from the air show's entry gate.

52. As Petitioner bought his admission ticket, he looked to see what was relevant to him. He did not see any marked law enforcement vehicle, flashing lights, another sign, or anyone searching air show patrons. Petitioner saw: A) A man in an unfamiliar uniform standing about ten yards from the ticket sales tent ; B) Near the air show's entry gate a man wearing a dark blue police type uniform, who was the only one he saw in such a uniform; C) Air show patrons walking through the air show's entry gate, all of whom entered without being searched. The flow of air show patrons average about 1-2 persons every 10 to 15 seconds, from singles to modest sized groups; D) About 35% of these patrons carried back packs, wore fanny packs, carried small to modest size camera bags, lawn chairs, and/or various size containers; E) These patrons walked by the two men in uniform without being stopped or searched.

53. Petitioner construed his admission ticket as written authorization for entry into that part of the airport set aside for the air show.

54. The man in the unfamiliar uniform gestured for Petitioner to come toward him. Petitioner complied and stopped at a reasonable distance from him. Petitioner later learned that this person was Herb Williams. Petitioner could not tell if Mr. Williams was a California Department of Forestry member, a deputy sheriff, or what. Mr. Williams did not have a visible side arm or a metallic badge. Petitioner did not see, or appreciate, on Mr. William's clothing anything that identified him as a law enforcement officer. Petitioner had never before encountered a law enforcement officer in uniform without a side arm or metallic badge.

55. In the memorialization that follows, "Herb Williams" is referred to as "HM," and Petitioner is referred to as "PM." What follows is an accurate memorialization of what Herb Williams and Petitioner said to each other. The use of quotation marks means an exact quotation to the best of Petitioner's recollection. The absence of such marks indicates that that part is an accurate paraphrase. This memorialization also has Petitioner's observations and contemporaneous thoughts inside brackets, e.g., [ ].

56. Petitioner and Herb Williams were outside the airport's perimeter fence, approximately 10 yards from the air show's only entry gate for air show patrons.

HW: Please open your bags. I have to see what is inside them.

PM: "Is that an order or a request?"

HW: It is a request.

PM: In that case, I refuse [or decline your request.]

HW: You refuse? You must comply.

PM: Do you have probable cause to suspect that a crime is being

committed, I am committing a crime, or I am connected to the commission of a crime?

HW: "No."

PM: Good. Now that we have that established, do you have anything more than a hunch that leads you to think I am connected to the commission of a crime?

HW: "No."

PM: Good. Are you suspicious that I am committing a crime?

HW: "No."

PM: Good. Do you have a hunch that I am committing a crime?

HW: "No."

PM: So, Officer, are you just curious as to what is in my bags?

HW: It is a combination of curiosity and concern for safety.

PM: "Has martial law been declared?" I have been out of touch with the media for awhile. Has martial law been declared?

HW: "No."

PM: Good. "Has California seceded from the Union?" [Said with a smile.]

HW: [Smiling back–drawn out smile.] "No."

PM: Well, then, Officer, in light of your answers to my questions do you agree with me that you do not have any legitimate constitutional authority to detain me further? That I am free to go?

HW: "Yes." [Said somewhat sheepishly, with a bigger smile.]

PM: Good. [Said with a smile.] Given your answers to my questions, you have been well trained. [Said with an even bigger smile.] And given those answers, I will not open these

bags. I will not let you look inside these bags. I am pressing on to see the air show.

HW: I cannot let you do that.

PM: Why?

HW: "Boss' orders."

PM: Are you now telling me that you gestured me over here based on your boss' orders to you?

HW: "Yes."

PM: Do you know what your boss bases his or her orders to you on?

HW: "No."

PM: Do you know what your boss' authority is–what authority he or she is relying on for the orders that were issued to you?

HW: "No."

PM: Do you know what the 'Nuremberg Principle' is?

HW: "No."

PM: Ever heard of that Principle?

HW: Maybe. Sounds like something I've heard before.

PM: Do you know what the 'Nuremberg Principle' means? How it came about?

HW: "No."

PM: It came about at the end of World War II after the Allies defeated the Germans. It involves more than one principle. Where relevant to you, it means this: you cannot hide behind a "boss' order" that is illegal. Following an illegal order is not a valid defense to your wrongdoing against me and the U.S. Constitution. Do you understand?

HW: "Yes."

PM: Good. In that case, unless you communicate to me a constitutionally valid reason why I must submit to your request of me–one that I recognize and understand, I am pressing on. One last chance: What is your best reason, your best basis for your assertion of authority over me, that I must open these bags for you or that I must let you open these bags?

HW: My boss' orders. I've got to follow my boss' orders.

PM: Do you know what the basis is for your boss' orders?

HW: No.

PM: Look, Officer. You seem like a nice guy, an intelligent guy. But what you are telling me is not good enough. "I am not the enemy. I am sick and tired of being treated like the enemy." And you are a sworn officer of the law. Your job includes your duty to uphold and to support the U.S. Constitution and my rights to privacy as to the contents of these bags.

HW: [Big smile on his face.] I know you're not 'the enemy.' I know were you're coming from, man. But I still have to follow my boss' orders.

PM: The President has said over and over, go about your business. Act like Americans. Do not stay in your homes. Do not be afraid. Go out side. Circulate in public. Travel. Spend money. Don't let the Taliban destroy our way of life or interrupt our routine. Well, I am doing what the President encouraged us to do. I am going about my business, living my life. I am acting like an American citizen. I am enjoying "the Blessings of

Liberty"–or at least trying to. I am not here to be a passenger on an airliner. I am here only to photograph airplanes. I am not going to let anyone–including you--coerce me into surrendering my rights; otherwise, the Taliban win. I do not want the Taliban to win. And I do not want any home grown American Taliban[8] telling me I have got to surrender my rights. I will not surrender my rights in the name of promoting security. I will not let fear defeat freedom. You have admitted you have no constitutionally legitimate basis to detain me any further. Last chance, do you have anything new to offer me as a basis for your asserted authority over me? If so, what?

HW: My boss' orders. I just can't let you go without seeing what is inside your bags.

PM: Wrong. Look, I am not waiving my Fourth Amendment rights to privacy. As a matter of principle, I am claiming those rights. I am not going to yield on that point. As a sworn peace officer, you, like me, have a duty to uphold, support, and defend, the U.S. Constitution. I am doing that. You should do that, too. Here is a compromise: You can follow me in and you can see what is inside those bags when I open those bags. When that happens, you can see what is inside. And you will have peace of mind. I am not yielding unless you give me a better reason than you have. Your boss' orders do not trump

[8] The essence of *Talibanism* is taking an idea, a doctrine, a book, or a case, such as the Koran, the Bible, the United States Constitution, or Hyde, and distorting it to an extreme in an oppressive, self-serving manner.

the U.S. Constitution. His orders to you do not cancel out my rights under that Constitution. Do you understand?

HW: If you do not open those bags or let me open them I will have to call for back up.

PM: Look, you are welcomed to follow me into the air show and keep me under observation. Just be patient. Just honor my Fourth Amendment rights. These bags will be opened by me when I want to open them. You can then see what is inside them. Is that compromise acceptable to you?

HW: No. I cannot let you enter without seeing inside your bags.

PM: Is that your final response on this? Do you have any additional basis for your alleged authority over me other than your boss' orders?

HW: "No."

PM: Officer, in that case, you do what you have to do. I will do what I have to do. And that includes stand up for the U.S. Constitution and the Constitutional Rule of Law. You are abusing your position. You do not have any legitimate, constitutional authority over me to compel me to submit to your unconstitutional requests of me. As a matter of principle and self-respect, I am not waiving the Fourth Amendment. Have a nice day. [Petitioner walked straight to the air show's entry gate.]

57. Petitioner refused a consent search for these reasons: A) He wanted to make a point by insisting that anyone in uniform obey the Constitution's commands and honor Petitioner's rights; B) He knew that when he is an airline passenger it is common for airport security

"searchers" to insist on taking every piece of equipment out, to handle it, and to take caps off, etc., which is time consuming, some of these people touch and dirty expensive, clean, lens glass, and Petitioner did not want to risk a stranger handling his equipment over pavement; C) Petitioner's right ankle hurt, he wanted to get off his feet, and he wanted to stay on his schedule to get to a favorite vantage point; and D) He wanted to do his civic and professional duty--defend the Fourth Amendment against usurpation.

58. At all times, Herb Williams and Petitioner spoke in a normal conversational tone. There was never a sneer by either. Neither raised their voices. Each smiled at the other. Neither physically touched the other or tried to do so.

59. Petitioner did not know of any exception to the Fourth Amendment that allowed a government agent to demand, over objection, a search of an air show patron's closed containers in the absence of probable cause, a warrant, or an adequate substitute for a warrant when the air show patron is outside of, and far from, an airline passenger terminal or an airliner and manifested no intent to get close to an airliner.

60. Petitioner did his best to walk Herb Williams through a traditional Fourth Amendment analysis. Williams seemed to have some familiarity with the concepts Petitioner asked him about; however, he insisted that he had to follow his boss' orders without citing authority that supported his boss' orders.

61. Petitioner, when dealing with Herb Williams, silently reasoned to himself as follows: A) I do not know who this man is or who he works for, if anyone. I do not recognize his uniform. I see no metallic law enforcement badge. I see no visible side arm. I have never known of an

officer in uniform without a metallic badge and a visible side arm; B) I know this airport has a California Division of Forestry "air attack" base. This man's uniform looks like it could be a CDF uniform; C) After giving this man multiple opportunities to cite me to constitutionally legitimate authority that supports his request of me to open my camera bags as a condition for me to enter the air show, he failed to do so; D) I know of no applicable, well recognized, exception to the Fourth Amendment, per these facts; E) I did not ask him if he had a warrant because I knew the odds of him having one were nil; F) He admitted to me he did not have probable cause and he did not have reasonable suspicion; G) Since he does not have a warrant, cannot have a warrant, he admitted to me he does not have probable cause and he does not have reasonable suspicion, martial law has not been declared and California has not seceded from the Union, he either does not know what he is doing, he is bluffing, he is trying to intimidate me, or he is misguided, mislead, or overzealous; H) Perhaps there is an applicable exception to the Fourth Amendment that requires me to let him search my camera bags, but I do not know of any, I doubt there is one, and he has not told me about one. If there was one, he probably would not have asked me for a consent search, he would have cited me to controlling legal authority, and I would probably recognize that authority–if it exists; I) I took an oath to support the Constitution, not to obey his unnamed boss' orders that I experience to be unconstitutional; J) I have no legal duty to suffer this man's imposition. He cannot logically and constitutionally admit what he admitted and demand that I consent to a search as a condition for entering the air show; K) I really want to photograph the airplanes. I do not want to get into trouble. But, I have a duty to support the Constitutional Rule of Law. I also want to support the Constitutional Rule of Law. I can

do that by peacefully asserting my rights and refusing to lay down on them for the benefit of myself and others. My duty to support the Constitutional Rule of Law outweighs my desire to photograph airplanes. There is no shortcut to personal integrity. I cannot expect clients and laypersons to stand up for their rights and the Constitutional Rule of Law if I now lay down on my rights and fail to do my civic and professional duty; L) I also do not want to reward this nation's domestic and foreign enemies by laying down on my rights. This is how a free fall toward tyranny gets started and accelerates: People panic after an incident, governments usurp powers and violate the Constitution's commands, too many blindly obey, and not enough stand up for the Constitutional Rule of Law; M) I am not going to let this guy and his boss make a mockery of what I have been taught and believe and know, of my life, and my dad's faithful service in the Armed Forces of the United States. I am not going to let down this nation's vets. They fought, bleed, and died for my freedoms. I am well advised to exercise my rights or risk losing them; N) I know this guy does not have anything legitimate over me because I have done nothing illegal, he could have seen me for only a few minutes, everything he saw about me is 100% legal, and he has not said anything that suggests he has mistaken me for somebody else; and O) Since I have this duty and I have to live with my moral code, I will peacefully stand up for the Constitutional Rule of Law for the benefit of myself, for others, and for the nation, damn the consequences.

62. Petitioner, with that mind set, walked away from Herb Williams, leaving him in peace, without touching him, threatening him, or trying to touch him. Petitioner heard Herb Williams call for back up.

63. Petitioner proceeded to walk directly toward the air show's

entry gate, at a normal pace, holding onto his camera gear as previously described, with his admission ticket in his left hand. When Petitioner got approximately 10-15 feet immediately before the air show's entry gate, he entered a temporary aisle created by moveable PCV like plastic poles with yellow nylon rope on top of these poles. There were approximately 4 of these temporary aisles created by these poles and rope. The width of these aisles was approximately 3.0 to 4.0 feet wide. Petitioner was inside such an aisle when he stopped in front of Redding Police Officer Scott Mayberry who stood in front of him, facing Petitioner. At that time, Officer Mayberry and Petitioner were outside of the air show's entry gate and outside the airport's fence.

64. Petitioner did not *flee* from Herb Williams. Petitioner simply acted as a peaceful, law-abiding, U.S. citizen, air show patron, who refused to waive his rights and who walked away from a consensual encounter or an unlawful detention, which he had a right to do. He also knew he was walking straight toward a person who appeared to be a big, armed, police officer, which Petitioner knowing did because he knew had not committed a crime, he knew his rights, he knew he was on U.S. soil, and he knew martial law had not been declared.

65. Petitioner reasoned that in the United States he is suppose to be protected by the Bill of Rights, the Fourteenth Amendment, Due Process of Law, the Equal Protection of the Law, sworn law enforcement personnel are suppose to be well trained and honest, and judges are suppose to function as Guardians of Liberty.

66. Petitioner at that time also believed: A) The Constitution is the Supreme Law; B) Any law, rule, or order that conflicts with it is null and void; C) He does not have to obey an unconstitutional order or

directive from a sworn law enforcement officer; D) He was on the correct side of the Supreme Law; E) The secret of Happiness is Freedom and the secret of Freedom is Courage; F) He had nothing illegal to hide; G) He did not want trouble, but he would not lay down on a vital right; and H) He did not want to encourage those who function unconstitutionally to usurp more power and contract Liberty.

67. As Petitioner walked toward the air show's entry gate, Redding Police Officer Scott Mayberry put out his hand in a "Stop!" gesture and said, "Stop! You just blew pass that officer."

68. Petitioner walked straight from Herb Williams to Officer Mayberry in approximately 10-15 seconds.

69. Petitioner knew that it was impossible for Officer Mayberry to have seen Petitioner do anything that would logically cause him to have reasonable suspicion that Petitioner was connected to criminal activity.

70. Petitioner also knew that there was nothing truthful that the first person [Herb Williams] could tell this second person [Officer Mayberry] that would add anything legitimate to this second person's probable cause calculus to detain, search, seize, and/or arrest Petitioner.

71. Officer Mayberry is about 6' 5" tall, about 240 pounds, has a flat abdomen and broad shoulders, appears to be muscular, and in his thirties. He was much bigger, younger, and stronger than Petitioner.

72. Petitioner saw that Officer Mayberry was armed.

73. In the memorialization that follows, Officer Scott Mayberry is referred to as "SM," and Petitioner is referred to as "PM." What follows is an accurate statement of what Officer Mayberry said to Petitioner and what Petitioner said to him in response, in the order that this exchange occurred. Quotation marks signify an exact quotation to the best of Petitioner's

recollection. The lack of such marks indicates that that part is an accurate paraphrase. This memorialization also has Petitioner's observations or thoughts inside brackets, [ ].

SM: "Stop! You just blew past that officer."

PM: "No, I did not. He told me to stop, and I stopped. You've got a problem?"

SM: "Open your bags!"

PM: "Is that a request or an order?

SM: That is an "order."

PM: Do you have probable cause?

SM: "No."

PM: Officer, short of probable cause but more than a mere hunch, do you have anything in between that makes you think that a crime is being committed or that I am somehow connected to the commission of a crime?

SM: "No."

PM: Are you suspicious that I am committing a crime?

SM: "No."

PM: Do you have a hunch that I am committing a crime?

SM: "No."

PM: Are you just curious as to what is in my bags?

SM: Open your bags! [Said forcefully.]

PM: "Has martial law been declared?"

SM: "No."

PM: "Has California seceded from the Union?"

SM: "No."

PM: Well, then, Officer, given your answers to my questions do

you agree with me that you do not have legitimate constitutional authority to order me to open these bags? To detain me any further? That I am free to go?

SM: "No."

PM: No? Given your admissions in response to my questions, why is your answer "No."? Upon what basis do you rely to assert your alleged authority over me?

SM: "Because I am your boss!" [When Officer Mayberry said this, he hit his chest, in a Tarzan-like, chest pounding movement.] [Petitioner was stunned by this response. That was one of the worse things Mayberry could have said to Petitioner. Up until this point, Officer Mayberry had periodically flashed smiles at Petitioner, while seeming to chew gum. But his smiles were never friendly. They started out like the smiles of a predator or a badge heavy officer. They then intensified to the smile of a predator preparing to strike. Simultaneously, Officer Mayberry initially swung his hands back and forth in front of himself, bringing a fist into an open palm, by his belt buckle. In the beginning, these movements were non-threatening; however, the more Petitioner verbally resisted his directive to open the bags, the harder Mayberry slammed his fist into his opposing palm.]

PM: "My 'boss.'? What makes you think you are my 'boss.'?"

SM: "Because I am a cop!" [Said forcefully, with an arrogant, prideful tone, dripping with contempt, apparently for Petitioner, hitting his chest again, harder, in Tarzan-like fashion.]

74. At that moment, Petitioner did not like what appeared to be Mayberry's contempt for the U.S. Constitution, for the Constitutional Rule of Law, and for citizens' Constitutional rights.

75. At that moment, Petitioner told Officer Mayberry what follows [conversation between Mayberry and Petitioner resumes.]

PM: Officer, anyone can go out and buy a dark blue uniform, a badge, a gun, and a cop like belt and holster rig. Your uniform does not prove to me you are a real, bonafide cop. But, assuming you really are a cop, that does not make you my "boss." If you really are a cop, that makes you "a public servant." And do you know why you are called "a public servant"? You are called "a public servant" because all "public servants" in this nation have "a public master." And do you know who is your "public master" in this country? Your "public master" in this country is the "U.S. citizenry." And, guess what, Officer? I am one of those: I am a U.S. citizen. And that makes me one of your "masters." And that makes me one of your bosses. You are not my boss, not in this country. In this country, I am one of your bosses." [Petitioner said this forcefully, with voice intonations to emphasize key words. As Petitioner said this, Officer Mayberry did not interrupt him. As Petitioner started this response to Officer Mayberry, Petitioner studied Mayberry's face for a reaction. Mayberry's predator smile disappeared. He scowled. His nostrils flared. His chest heaved.]

76. After Petitioner told Officer Mayberry what is declared above, there was an icy pause. Neither said anything for an uncomfortable

period. Petitioner is not certain who spoke next, but he believes he spoke next, as indicated below. [Conversation resumes.]

PM: Now that we have established that you are not my "boss," do you have any other authority that you assert over me? If so, what is it?

SM: "My rules!" [Said forcefully, hitting his chest with his fist, in Tarzan-like fashion.]

PM: Your "rules"? What do you mean, your "rules"? [Mayberry's response tended to confirm Petitioner's suspicions about him: Mayberry harbored a contempt for the U.S. Constitution, the Constitutional Rule of Law, and the rights of U.S. citizens, or, in the alternative, he was undertrained and/or mislead and did not understand these rules properly.]

SM: "My rules!" [Said forcefully, hitting his chest again, Tarzan-like.]

PM: Your "rules"? Again, what do you mean, your "rules"?

SM: "My rules!" [Said forcefully, again hitting his chest with his fist, Tarzan-like.]

PM: Your "rules"? Officer, again, what precisely do you mean by your "rules"? [Petitioner loathed where this exchanged seemed to be headed. He began to experience Mayberry as a human grenade with a pulled pin. Petitioner tried to reason with Mayberry so Mayberry would put the "pin" back into his apparently bruised psyche.]

SM: "My rules!" [Said forcefully, hitting his chest, like Tarzan.]

PM: Officer, yes, I know, your "rules"? But what do you mean, your "rules"?

SM: "My rules!" [Ditto the Tarzan chest pounding gesture.]

PM: Officer, come on now. Please! You are going around in circles–adding nothing new. What do you mean by your "rules"? What is the basis for your "rules"?

SM: "My rules!" [Ditto Tarzan.]

PM: But what is the basis for your "rules"? What do you mean, your "rules"? Give me some authority that I can recognize and understand as being constitutionally legitimate for your "rules."

SM: "My rules!" [More Tarzan.]

PM: Are you telling me that the basis for your "rules" is your "rules" and nothing more?

SM: "My rules!" [Still more Tarzan.]

PM: I am sorry Officer, but your "rules," without more, is not informative. Without elaboration, I do not know what they are. "They are a bit too arbitrary and too cryptic." Exactly what are your rules?

SM: Open your bags! [Said forcefully.]

PM: Given your answers to my questions, no. I claim my Fourth Amendment rights of privacy as to those bags. Your rules do not trump the U.S. Constitution. Your rules do not negate my rights under that Constitution. What is your constitutionally legitimate authority over me? If you want me to waive my Fourth Amendment rights, please tell me what is your authority over me that trumps those rights? Do you have any such authority? If so, what is it?

SM: Step back. Go over there. [He pointed with his hand to some

place behind Petitioner. He was nicer at that point]

PM: Why? [Petitioner's right ankle was hurting. He did not want to go back. He did not want to drag this out. He wanted to sit down, and he wanted to go forward, not back.]

SM: Open these bags, or let me open them, or you do not get in.

PM: I bought an admission ticket. I have it right here. The air show promoters' advertisement of this air show on the Internet did not say anything about air show patrons having to submit to a search. Given your answers to my questions, you do not have any legitimate constitutional basis that I understand to support your assertion of your authority over me. You admit that you have no PC. You admit you have nothing short of PC. I know you do not have any objective, particularized basis to reasonably suspect that I am about to commit a crime or that I am connected to the commission of a crime. You have admitted all of that to me. We are not under martial law. And California has not seceded from the Union. I do not have to waive any right. I will not waive any right. You, as a cop, have a duty to honor my assertion of my rights. I will not let you intimidate me into surrendering my rights. Now, do you have any other basis to support your claim of authority over me? If so, disclose it now. I want to hear it.

SM: Step back. [He pointed again to somewhere behind Petitioner.]

PM: Officer, you have admitted that you do not have any legitimate constitutional authority over me. Your "rules" are too cryptic, too arbitrary, and not even disclosed to me. You

are wrong. But here is a compromise that I make to you: Let me pass through the gate. You are welcome to follow me and keep me under your surveillance. You have a gun. You can see what is in these bags when I open them up when I am damn good and ready to open them up. Is that compromise agreeable to you?

SM: No! Go over there! [Again, pointing to some place behind Petitioner.]

PM: [Right ankle hurting more.] But officer, what is your authority over me–your *constitutionally legitimate* authority. You want me to go somewhere I do not want to go. I am real close to making an important decision. I want to make the right decision. I do not want any trouble with you. But I also will not waive my rights, and I will not let you intimidate me. For the last time, please tell me what is all of the *constitutional* authority you rely upon to make me go where you want me to go? To make me open these bags when I do not want to–not under these circumstances? Do that, and I will cooperate with you. Fail to do that and I will stand on my rights.

SM: "My rules!" [Without the Tarzan gesture.]

PM: Well, Officer, again, I am sorry. But your "rules," without more, is "a bit too arbitrary for me." You are still going around in circles. I do not recognize, nor do I accept, that your "rules" support your "rules."

SM: Go over there! [Again, pointing to some place behind Petitioner.]

77. Officer Mayberry never asked Petitioner for his name, driver's license, anything with photo identification, for Petitioner's citizenship, for Petitioner's purpose for going to the air show, and/or what was in Petitioner's camera bags.

78. Officer Mayberry and Petitioner did not use any profanity.

79. Petitioner's right hand was always in plain view, down low, holding onto the handle to his wheeled camera case and the straps to the padded case. Petitioner's left hand was always in plain view, down low, holding onto his 300 mm lens case and admission ticket.

80. Petitioner did not raise either hand; he kept them in plain view, down low, holding onto his camera gear.

81. Petitioner did not move in any direction.

82. Petitioner feared that Officer Mayberry resented Petitioner's verbal challenge to his assertion of his authority and that Mayberry would abuse his powers and deny Petitioner one of the things he prized most–his liberty.

83. Petitioner was afraid Mayberry was on the verge of making a "contempt of cop/bad attitude" arrest.

84. Petitioner made a sustained effort to avoid physical contact with Officer Mayberry or anything connected to him, he never attempted to touch Officer Mayberry or anything connected to him, and he never did.

85. Petitioner never entered the air show's gate, and he was never in or on an airport operational area.

86. Petitioner felt trapped in three ways: First, physically; second, pseudo legally; and third, sense of duty.

Petitioner felt trapped physically because he was standing in an aisle approximately 3.0 to 4.0 feet wide with heavy, bulky, expensive camera

gear. The aisle was like a chute. He was somewhat like a "human cattle" in a chute. He could not go left or right because of the barriers. He could not go back because of air show patrons behind him. He could not go forward because Officer Mayberrry stood in front. The physical objects that made the temporary aisle that Mayberry and Petitioner were in forced the two of them to be physically close to each other.

Petitioner felt trapped pseudo legally because Officer Mayberry looked like a real officer, but his repeated failure to cite Petitioner to any well recognized, constitutionally legitimate authority to support his demand that Petitioner allow him to search his camera bags made Petitioner suspicious that Mayberry was possibly a costume re-enactor that is sometimes found at air show's or he was a real officer who was poorly trained, mislead, overzealous or he acted out of animosity due to Petitioner's verbal challenge to his asserted authority. Petitioner felt trapped by Officer Mayberry's assertion of his apparent authority, which is different from his lawful authority.

Petitioner also felt trapped by his feelings of being torn by his desire to stay out of trouble so he could photograph airplanes versus his duty and desire to support constitutionalism.

Petitioner, while talking to Officer Mayberry, was trying to figure out a way to get "un-trapped" on all three axis while doing his duty and retaining his rights, unviolated.

87. Eventually, Petitioner and Officer Mayberry seemed to be at an impasse: The only authority Officer Mayberry cited Petitioner to was Mayberry's "rules," which were not published, binding, public law, authority that Petitioner recognized.

88. Officer Mayberry never told Petitioner anything to this effect:

Sir, if you do not do as I am asking/ordering you to do I will make what is known as "a cite and release" arrest of you for refusing to obey my requests/orders/instructions of you. If you sign the cite and release form, you will have to appear in court and explain your story to the judge but you will not be taken to jail. Do you still refuse to obey me?

89. Since Mayberry had pointed to an area behind Petitioner where he had asked Petitioner to go and since Petitioner wanted to go forward without touching Officer Mayberry, Petitioner turned his head to his right, without being aware that he moved any other part of his body. Petitioner turned his head to his right to look at where Mayberry pointed to see how far away it was, to see who was behind him, and to see how he could move and clear a path without disturbing the temporary plastic poles.

90. When Petitioner turned his head to his right he broke eye contact with Officer Mayberry, and he still had his hands in plain view, down low, holding his camera gear. Petitioner knew the odds of him going back were less than five percent because he is not easily intimidated, he is serious about constitutionalism, and he knew he was lawful.

91. Petitioner never reached for a weapon, never manifested a fist, never manifested physical anger, and never did anything that could reasonably be construed as an assault or as a preparation to assault. Petitioner knew that if he did any of those things he would not get to photograph the air show and his liberty would be terminated.

92. Immediately after Petitioner turned his head to his right and broke eye contact with Officer Mayberry he felt something pulling on his left forearm. He did not know who was pulling on his arm.

93. Petitioner, instinctively, pulled his left arm down and back toward him and turned around to see who had pulled on his left arm. He

thought that perhaps a photographer friend had pulled on his arm. He did not suspect it was Mayberry who had pulled his arm because he believed if Mayberry was a well trained officer such an officer would not seize Petitioner because such a seizure would be unconstitutional. Petitioner also believed that if Mayberry was a costume character such a person would have no purpose for seizing Petitioner.

94. When Petitioner turned around he saw only Officer Mayberry immediately before him.

95. Petitioner assumed Officer Mayberry seized his left forearm.

96. Petitioner stepped back a little and raised his left arm to eye level. When Petitioner raised his left arm up he was still holding onto his 300 mm camera case by a strap around his left wrist. That case hung down. Petitioner held his left arm up parallel to the pavement outstretched, pointed his left hand at Officer Mayberry and told him [paraphrased,] "No! Leave me alone! You have no right! Leave me alone!"

97. When Petitioner told Mayberry this, he was petrified that Mayberry had begun to make a "contempt of cop" arrest.

98. Petitioner did not physically advance on Officer Mayberry, and had no intent on doing so. Petitioner never attempted to touch Officer Mayberry, or anything connected to him, and never did touch him.

99. Officer Mayberry immediately advanced toward Petitioner, grabbed Petitioner's outstretched left arm, spun Petitioner around, and easily and quickly forced Petitioner to the pavement. Petitioner did not fall or lose his balance. Mayberry forced him to the pavement.

100. Petitioner continued to hold onto his camera gear with his right hand, and his 300 mm lens in his left hand.

101. When Petitioner was forced to the pavement, he hit the paved

surface hard with his knees, which jolted his jaws. He immediately felt something small and hard in his mouth which he spit out. A few days later Petitioner realized that he had a chipped tooth which he believes was chipped when Officer Mayberry forced him against the pavement.

102. When Petitioner was forced to the pavement on his knees, his upper torso was held up by a nylon rope and poles that were erected to make aisles for air show patrons to walk through.

103. As Petitioner was on his knees, he immediately felt heavy pressure applied to his back and neck. It seemed that hands were pushing hard against him and his back.

104. The only thing between Petitioner's knees and the hard surface was one layer of blue jeans. Petitioner's knees hurt severely.

105. Petitioner was afraid that the weight applied on his back would cause an injury.

106. Petitioner did not kick at anyone. He was on his knees involuntarily, pressed against the pavement.

107. Petitioner screamed out [paraphrased]: Stop! You are hurting me! Leave me alone! Stop. You are hurting me!

108. Petitioner saw an out of focus swirl and heard someone tell Petitioner to give up. Petitioner thought that advice was absurd. Petitioner had not done anything unlawful and was not resisting. His body was involuntarily reacting to the pain in his knees and people were pushing against Petitioner, making Petitioner's upper body move involuntarily.

109. Petitioner did the following: A) He tried to remain motionless. He did not want to give Mayberry a pretext for smashing a billy club against Petitioner's head, face, and/or kidneys; B) He yelled out [paraphrased]: Stop! You are hurting me! Leave me alone!; C) He waited to

hear instructions or comments; and D) He took inventory of his body.

110. Petitioner felt someone handcuffing him; he did not resist.

111. Petitioner was handcuffed at approximately 10:10 A.M. on May 4, 2002. He knew this because he had been looking at his watch to stay on his schedule to get to his favorite photo vantage point.

112. Petitioner's wrists and shoulders immediately began to hurt.

113. After being handcuffed, no one told Petitioner to get up, tried to help Petitioner up, or offered assistance.

114. Petitioner felt himself being pulled up like dead weight. He could tell that someone pulled up on the chain that connected the two handcuffs on his wrists. Petitioner immediately felt extreme pain in his shoulder joints.

115. Petitioner pulled his wrists down to stop the shoulder joint pain and to prevent injury to those joints. Pain in Petitioner's shoulder joints immediately dropped but the pain in his wrists immediately surged. Petitioner screamed out something to this effect, "Stop! Stop! You are hurting me! Damn it, stop! Let me alone! I will get up on my own accord." Petitioner never heard anyone other than himself tell whomever was pulling him up by the handcuffs' chain to stop.

116. When Petitioner yelled out what he disclosed above, whomever pulled on the handcuffs' chain, stopped.

117. Someone said, "If we let go, will you be nice?" Simultaneously, someone squeezed Petitioner's upper left arm, causing an intense burning sensation.

118. Petitioner, thinking the question was absurd because he was not causing the problem, said [paraphrased,] "Yes! "Let me get up on my own power!"

119. Petitioner slowly stood up, without flailing and/or kicking. Petitioner immediately felt a severe burning sensation in his upper left arm because an officer kept squeezing Petitioner's upper left arm.

120. Petitioner looked down at his left front shirt pocket, for his wallet. It was not there. Petitioner asked the officers who were holding him [paraphrased,] "Where is my wallet? I need my wallet! Find my wallet!"

121. One or two officers frisked Petitioner thoroughly–including a hand exploration of Petitioner's crotch.

122. Someone repeatedly pushed Petitioner forward from behind, hard, like Petitioner was a peon. Petitioner turned around. The pusher was Officer Mayberry.

123. Petitioner, at that moment, was disgusted with how sworn peace officers who are suppose to protect and to serve still do not get it: They, too, have to obey the law. Petitioner loathed being treated as a peon.

124. Petitioner asked Mayberry what was the charge. Mayberry said, "148."

125. Petitioner heard Mayberry tell others he was taking Petitioner to an area to which he pointed.

126. Petitioner heard an officer yell out: There's nothing in here but camera stuff and film. The officers seemed disappointed.

127. Petitioner was then submitted to another thorough pat down search and frisk–including his crotch.

128. Petitioner's wrists increasingly hurt severely, and his hands went numb.

129. Petitioner heard that arrangements had been made for a patrol unit to transport him to the jail.

130. While waiting for a patrol unit, Petitioner, during the next

approximate 60 minutes at the airport, urged several officers, including Officer Mayberry, to please loosen the handcuffs to relieve the pain. No one loosened the cuffs. Officer Mayberry told Petitioner to shut up.

131. Petitioner again demanded to know where was his wallet. Mayberry again told Petitioner to shut up.

132. Petitioner demanded to speak to a police supervisor–a sergeant or higher, or a deputy district attorney, immediately. Mayberry told Petitioner no one wanted to talk to him, and Petitioner was going to jail–they were waiting for a patrol unit to transport Petitioner.

133. Petitioner told Officer Mayberry [paraphrased,] "You had no right. You had no right. I did nothing wrong. You are making this worse. You had no right. Back down now." Mayberry told Petitioner to shut up.

134. Mayberry said, in reference to himself [paraphrased,] "This is my country. If you do not like my country, leave! Those are my rules! Play by my rules or else! My rules! My country! Play by my rules or leave."

135. Petitioner thought about his own relatives who had served in this nation's armed forces, faithfully, and asked himself, "For what? For this type of abuse?" Petitioner knew Mayberry could not produce a deed to the United States.

136. Petitioner's wrists ached. His hands were numb. His shoulders hurt. Petitioner pleaded for someone to loosen the handcuffs. An officer told Petitioner if he treated them with respect, Petitioner would be treated better. Petitioner told him Petitioner had done nothing wrong, they were dispensing "street justice under color of law,"and if they want respect they have to earn it–they cannot oppressively squeeze it out of people.

137. Petitioner repeated his demand for his wallet. Mayberry told Petitioner he would get his wallet at the proper time. Petitioner asked him

when would that be. Mayberry did not respond.

138. Petitioner told Officer Mayberry for the first time that Petitioner was a licensed member of the State Bar, an ex-Deputy District Attorney, and if Mayberry did not promptly mitigate what he had done he would be sued.

139. Mayberry said he was not worried about being sued, he had been sued before, he had won, and he was untouchable. He told Petitioner again this was his country, and if Petitioner did not play by his rules Petitioner had to leave his country–that was one of his rules.

140. Immediately after Petitioner told Mayberry Petitioner was an attorney he saw an officer produce Petitioner's wallet and search it.

141. When this officer got done searching Petitioner's wallet, officers huddled briefly. They seemed subdued.

142. Petitioner told Mayberry: You now know you found nothing of an illegal or contraband nature; you now know I am an attorney; and you have the means of doing a criminal records check on me; do that and you will find my criminal record is clean. Will you now back down? When will you stop this farce? Will you cite and release me?

143. Mayberry told Petitioner, "Shut up. You're going to jail."

144. Petitioner told Mayberry, "Why don't you go self-fornicate?"[9]

145. Petitioner again demanded that Mayberry give Petitioner his wallet. Mayberry refused.

146. Petitioner asked Mayberry a few times to cite and release him Mayberry refused. Petitioner knew he satisfied the requirements for a cite

and release.

147. When a Redding PD patrol unit appeared, Petitioner was subjected to another thorough pat down search, including his crotch. Petitioner asked the officers to please loosen the handcuffs. No one did.

148. Petitioner arrived at the Shasta County jail at approximately 11:50 a.m. on May 4, 2002. Petitioner knew this because there was a clock in the room at the jail. [Note: A videotape of the jail's processing of Petitioner, released to Petitioner's attorney, shows that that videotape has a built in date and time counter and the tape started at approximately 11:50 a.m. on May 4, 2002.]

149. At the jail, Petitioner asked the Redding police officer who took him to the jail to please loosen the handcuffs. He looked at them but did not make an adjustment.

150. The first and only officer who loosened the cuffs was Shasta County Sheriff Correctional Officer Tim Renault. Officer Renault loosened them at approximately 12:15 P.M. on May 4, 2002, and he removed them at about 12:25 P.M. on May 4, 2002. These cuffs were on Petitioner, tight, from about 10:10 a.m. to about 12:15 p.m.

151. Officer Renault treated Petitioner humanely. He was the epitome of professionalism.

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[9] Petitioner did not use the crude expression. Petitioner said this because he had had it with Mayberry.

152. Petitioner asked the jail supervisor if he would cite and release Petitioner. The supervisor said no because of "the nature of the charge," which he said was Penal Code § 148.

153. Petitioner was able to make bail on May 4, 2002 with the help of an attorney friend.

154. When Petitioner was released from the jail, Officer Renault told him Mayberry had Petitioner's wallet and its contents, except for Petitioner's California driver's license, booked into evidence at the Redding PD, with Petitioner's camera gear.

155. A bail bond lady drove Petitioner to the airport so Petitioner could get his car. Petitioner drove to the Redding Police Department to retrieve his wallet and camera gear. A Sgt. Tom Sears told Petitioner: A) Mayberry could have handled the incident with Petitioner better; B) Mayberry's booking of Petitioner's wallet into evidence violated RPD procedure; C) Petitioner, as an attorney, could have handled the incident with Mayberry better; and D) If he called the right people he could get Petitioner's property released to Petitioner immediately, but he would not make those calls. Petitioner urged Sgt. Sears to cooperate, but he refused. Sgt. Sears refused even after Petitioner explained to him he needed his wallet to have the means to pay for gas and lodging, and it would be a hardship to have to come back for his camera gear, wallet and its contents on the next Monday. Sgt. Sears still refused to cooperate.

156. Petitioner left the Redding Police Department's headquarters without his wallet, cash, credit cards, health insurance card, State Bar Card, and $23,000.00 in camera gear that he owned. Petitioner did not know how he would get home without money or credit for gas for the car. He was disgusted with three out of three government actors–Williams, Mayberry,

and Sears. He looked back at the RPD headquarters and asked himself: What will it take to restore the Constitutional Rule of Law? To correct this injustice? To make these officers obey the law?

B. Accusatory Pleading and Arraignment

157. The only charge filed against Petitioner was one count of Penal Code § 148(a)(1). The accusatory pleading did not include "when no other punishment is prescribed".

158. The accusatory pleading was never amended to include a charge of *assault*, *attempted assault*, or *trespass* or to add "when no other punishment is prescribed".

159. Ms. Elwood plead "Not Guilty" at arraignment on Petitioner's behalf.

C. Officer Scott Mayberry's Arrest Report and What Petitioner Told His Attorney About It.

160. Petitioner instructed his attorney to use this critique as a resource tool to investigate the case and to prepare a defense.

Excerpt No. 1 From Officer Mayberry's Report

> During our briefing, prior to our assignments, we were told that people were not allowed to bring in ice chests or other large items. If these items were brought in, they were subject to be searched.

Petitioner's Commentary: Who told Mayberry this? What is that person's constitutionally legitimate authority to so instruct Mayberry? Was this search policy reduced to writing? What was the criteria for "large"?

What Mayberry was told is inconsistent. Items can either be brought in or they cannot be brought in. Any grant of unfettered power from one of Mayberry's bosses to Mayberry is a defacto nullification of the U.S. Constitution; therefore, if Mayberry went to the airport thinking he had legitimate constitutional authority to bar and/or search "other large items"

merely because someone told him that, even if that someone was a superior in his chain of command, that superior, if any, and he, are wrong.

Mayberry was enforcing an unconstitutional policy; therefore, he was not acting lawfully; therefore, he did not make a lawful arrest of Petitioner because one element of a Penal Code § 148(a)(1) offense is the officer has to be acting lawfully in the lawful discharge of his lawful duties.

Excerpt No. 2 From Officer Mayberry's Report

> I was told if they refused to have their items searched, then they were not allowed into the secured airport area.

Petitioner's Commentary: No superior of Mayberry's had legitimate constitutional authority to issue such an unconstitutional order. Mayberry had no duty to obey such an order. Mayberry, as a sworn officer of the law, had a duty to refuse to execute an unconstitutional order. What is Mayberry's definition of "the secured airport area"?

Excerpt No. 3 From Officer Mayberry's Report

> Prior to this, I recalled in my assignment as a Redding Police Investigator, that we had received a suspicious phone call. Investigator Allen LONG was investigating the possibility of a subject out of the Los Angeles area who was asking several questions, such as if this was a military air show or a civilian air show. I was aware that Investigator Allan LONG was working with terrorist specialists throughout California to identify this individual. I knew he was even writing a search warrant for telephone records.

Petitioner's Commentary: Apparently, the above passage is a major part of what Mayberry relied upon for his alleged *probable cause* for what he did to Petitioner. His probable cause is non-meritorious. Nothing in the above passage establishes constitutionally legitimate probable cause. There is nothing illegal or suspicious about asking if an air show is military or civilian, even post-9/11. The vast majority of air shows want a high

attendance rate–so they advertise types of airplanes, performers, flying schedule, etc. Air show promoters and military installations routinely disclose such information. The Redding Exchange Club disclosed this information on the Internet.

To compound matters, there is nothing in this passage that hints of a crime being planned or committed. There is nothing in this passage that links Petitioner to this "subject out of the Los Angeles area" who was asking innocuous questions. The air show's promoters published the answers in the media. The "Los Angeles area" has 10 to 15 million souls. Mayberry's information about this subject was not linked to Petitioner. To compound matters further, Mayberry discloses nothing about the age of this information from Investigator Allen LONG. Stale information is worthless.

This excerpt is so lame it seems phoney. Do discovery to force the prosecution to identify who Inspector Long allegedly work with to try to track down this "caller."

Excerpt No. 4 From Officer Mayberry's Report

> Approximately 1250 hours, I relieved Officer Marc OLIVA at the main entrance of the gate. As I was standing just prior to the entrance, I heard W/WILLIAMS yelling at me. As I directed my attention westward, I noted there was a male individual walking toward the main gate area. . . . .

Petitioner's Commentary: Mayberry is off on his chronology by about three hours. Petitioner first made contact with him around 10:00 A.M. "1250 hours" is nearly 1:00 P.M. By 1:00 P.M., Petitioner had already been at the jail for about one hour! By 1:00 P.M., three hours of flying would be done, which is about 50% of the air show. Petitioner would not drive from Sebastopol to Redding and pay $12.00 to see only 50% of an air show.

The Shasta County Jail's records on Petitioner will show that jail personnel began processing Petitioner in the late morning or early afternoon, well before 1250. Since Mayberry is wrong about time by as much as three hours, he is not an assuredly reliable historian. Furthermore, the police report discovery disclosed by the D.A. contained a "CLETS/ NCIC RESPONSE" regarding Petitioner. This document states, "5/04/02 12:10:21." This indicates that someone in law enforcement had made a computerized inquiry regarding Petitioner 50 minutes before Mayberry says the incident occurred.

Excerpt No. 5 From Officer Mayberry's Report

> He [Mancus] had two or three different items handing [sic] from his belt. One item was a large leather type case. He also had a fanny pack. I observed him to have a netting type shield over the top of his head that ran down his neck. He also had a set of ear muffs on the top of his head. As I looked at the individual's right hand I noticed that he was bringing in two medium sized suitcases. The suitcases had handles and had wheels on them.

Petitioner's Commentary: Mayberry's description of what Petitioner was wearing is correct. However, only one of Petitioner's camera bags had wheels, and Petitioner did not have a large leather type case hanging from his belt. Nothing in this description ties Petitioner to the planning of a crime, the commission of a crime, the "subject" from "the Los Angeles area," and none of these items are illegal. These items are 100% consistent with coming to an air show well prepared.

Excerpt No. 6 From Officer Mayberry's Report

> According to WILLIAMS, MANCUS refused any search of his property and continued walking past him and towards the main gate.

Petitioner's Commentary: Mayberry admitted that Williams

promptly told him what happened between he and Petitioner. Since Williams did not have constitutionally legitimate probable cause to detain Petitioner Williams' telling Mayberry what happened between Williams and Petitioner did not add anything to Mayberry's probable cause calculus.

Excerpt No. 7 From Officer Mayberry's Report

> Once I told MANCUS he was not able to enter the grounds with these items, he asked me if I had "Probable Cause" to stop him. I told him I did, and that these items could not be brought in.

Petitioner's Commentary: Mayberry acknowledge that Petitioner asked him if he had "probable cause." Contrary to his report, he told Petitioner he did not. Mayberrry left out of his report the rest of his conversation with Petitioner, even though the law states Mayberry has a law-imposed duty to include exculpatory information.

Mayberry did not explain how he had probable cause. He should have anchored himself by memorializing in his report what was his PC.

When Mayberry claims that he told Petitioner "these items could not be brought in," he contradicts himself. At the top of the same page of his report, where he wrote that he told Petitioner "these items could not be brought in," he also wrote, ". . . we were told that people were not allowed to bring in ice chests or other large items. If these items were brought in, they were subject to be searched." This suggests that "large items" could be brought in. There is no definition or criteria for "large."

Excerpt No. 8 From Officer Mayberry's Report

> I asked MANCUS at least two to three times to step back out of the gate area and to the side.

Petitioner's Commentary: Mayberry used the verb "asked," not "ordered." His asking Petitioner to step back was a request. Petitioner had no duty to honor his request. Mayberry asked Petitioner to step back after

he admitted he had no probable cause and not even a mere hunch that Petitioner was connected to a crime.

Excerpt No. 9 From Officer Mayberry's Report

> At this point MANCUS started asking me if I was the "Constitution." I told him that I could be if he would like me to be.

Petitioner's Commentary: Petitioner did not ask Mayberry if he was "the 'Constitution.'" Mayberry is a human being. The Constitution is a document. Petitioner knows the difference.

Excerpt No. 10 From Officer Mayberry's Report

> I tried to reason with MANCUS, telling him that these items were not allowed in and he continued to verbally debate with me, asking me if I had grounds to stop him.

Petitioner's Commentary: The sole extent of Mayberry's attempt "to reason" with Petitioner was to tell Petitioner that he was Petitioner's "boss" because he was "a cop" and his "rules" were authority for his "rules." Mayberry memorialized Petitioner offered him only verbal resistance.

Excerpt No. 11 From Officer Mayberry's Report

> It appeared to me MANCUS was becoming very verbally agitated with me, as I would not move from his way. At this point, MANCUS made a movement as if he was going to try to get past me, or push me out of the way. When he did this, I grabbed onto his left wrist and brought it behind his back into a wrist lock. I felt MANCUS' left arm beginning to struggle and his left elbow began to come towards my face. At that point I grabbed onto MANCUS' elbow area with my right arm, forcing him over two guard rails and onto the ground.

Petitioner's Commentary: It is not a crime to be "verbally agitated" with an officer. Petitioner did offer verbal resistance, making it clear Mayberry was not Petitioner's "boss." That is protected First Amendment conduct. It is not a crime to try to move past an officer who

abuses his authority. Mayberry's interpretation is not what Petitioner did or intended to do. Mayberry's "as if" characterization signifies Mayberry acknowledged that whatever he thought Petitioner was doing it was so incomplete he did not know what Petitioner was doing or intended.

Mayberry admits that he initiated violence and that he made the initial contact.

For Petitioner to try to push Mayberry out of the way with his right hand, Petitioner would have had to let go of an expensive, fragile, 600 mm lense with an expensive, fragile camera attached to it, both of which would have fallen onto the pavement from a distance of about three feet. For Petitioner to try to push Mayberry out of the way with his left hand, Petitioner would have had to let go of an expensive 300 mm lens, which would have fallen onto the pavement or raise that hand while holding onto the heavy lens. Petitioner owned this gear. It was in containers to protect it. Petitioner would not willingly let go of this equipment knowing it would drop onto pavement. Petitioner also knew that pushing Mayberry would trigger an arrest, a lost of liberty, the lack of an opportunity to enjoy the air show, and severe ramifications. Petitioner also knew he could not win a physical contest with Mayberry, he could not outrun Mayberry, and Mayberry was armed. No reasonably constituted, ethical, professional, officer would believe what Mayberry claimed he believed. No reasonably constituted, well trained, ethical, honest, sworn law enforcement officer could reasonably think that Petitioner would shift from engaging him in questions about the Constitution and suddenly initiate physical violence.

Mayberry's report is a "cover" for his unlawful "contempt of cop" arrest in the guise of a Penal Code § 148(a)(1) arrest. Mayberry "manufactured" false evidence against Petitioner.

Petitioner had no intention of physically resisting Mayberry. Petitioner's resistence was strictly logical and verbal.

From Petitioner's point of view, three *contempts* were going on simultaneously: First, Mayberry did not like what he probably believed was Petitioner's "Contempt of Cop;" second, Petitioner did not like what he perceived as Mayberry's "Contempt of Constitution" and "Contempt of Citizens' rights."

Excerpt No. 12 From Officer Mayberry's Report

Mayberry's report contains a pre-printed section regarding Penal Code § 853.6(i). Mayberry did not check any of the nine reasons stated that would have made Petitioner not entitled to a cite and release treatment. Hence, he agreed Petitioner was entitled to a cite and release treatment.

Petitioner's Commentary: Mayberry violated § 853.(6)(i) and exceeded his lawful powers of arrest.

D. Petitioner's Instructions to His Attorney.

161. Petitioner instructed his attorney to do the following: A) Research Penal Code § 853.6(i) to determine how the courts have construed this section; B) Try to get the prosecutor to dismiss with prejudice; and C) Absent that, prepare for trial in earnest, investigate thoroughly all legal issues and facts, and hire a private investigator to interview persons named in Mayberry's report, because Petitioner would not plead to anything and would not agree to a diversionary or no contest deal.

E. Shasta County Sheriff Correctional Officer Tim Renault.

162. Before the trial, Ms. Elwood told Petitioner that Shasta County Sheriff Correctional Officer Tim Renault had been seriously injured by an inmate in the Shasta County Jail. Since Officer Renault treated Petitioner well at the jail, Petitioner wrote him a letter and sent it to him

care of the Shasta County Sheriff. Officer Renault's father then called Petitioner and told him when he read Petitioner's letter to his son he could not get pass page two without crying, he appreciated Petitioner taking the time to write the letter, his son was doing better, and his son told him he remembered Petitioner because when he loosened the handcuffs on Petitioner at the jail Petitioner's hands were purple and Petitioner cooperated with him. When this man said this, Petitioner urged him to please share his telephone number and address with him so Petitioner could have him subpoenaed. He declined to do so.

163. Petitioner instructed Ms. Elwood to make a herculean effort toconfirm if Officer Renault would testify in court that he remembered Petitioner's hands being purple and, if he did not, to please disclose his father's name and address to determine if his father would confirm what his son told him.

F. Petitioner's Instructions to His Attorney That She Did Not Execute.

164. Ms. Elwood did not execute Petitioner's following instructions to her.

A. Secure the following information via formal discovery: 1) A copy of the Redding Police Department's policies for use of force, use of handcuffs, and making searches; 2) Find out who made the sign(s) for this air show, when, how many, size, content; 3) Find out who erected the sign(s), when, and where; 4) Find out how and when these signs were paid for and by whom; 5) Make a herculean effort to locate Officer Renault's father and ask him to testify that his son told him that when he saw Petitioner at the jail, Petitioner's hands were purple.

B. Do an extensive formal motion challenging the

constitutionality of Penal Code § 148(a)(1) on the grounds of vagueness and overbreadth.

C. When she did a motion to suppress, to not assume that the assigned judge was well versed in Fourth Amendment jurisprudence and to include in that motion basic concepts.

D. File a motion for a change of venue to another county because Petitioner had served a Government Tort Claim notice and feared an adverse reaction from the prosecutor, trial judge, and jury.

E. Prepare for trial in earnest.

F. Prepare a custom list of voir dire questions that ask intelligent open ended questions to probe the jurors' true attitudes and to disclose her questions to him, timely, for his constructive feedback.

G. Spend adequate time with him to: a) Review her examination questions of him and of other witnesses so that there would be no missteps and she would have the benefit of his input and vice versa, and b) Review about 400 screens of a computer visual presentation of relevant law and how a well trained officer should act that he had prepared and wanted her to use in the trial.[10]

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[10] Petitioner told his attorney she could use these materials as a prop during her cross-examination of Herb Williams and Officer Mayberry, she could walk them through each topic with exact quotations from landmark cases, and, during the process, she could put Williams and Mayberry on the horns of a dilemma, e.g., they did not know the law and violated Petitioner's rights out of ignorance or, they knew the law, and violated Petitioner's rights intentionally. As a major byproduct, she would educate the jury and demonstrate that Petitioner did know what he was talking about and there was credible legal evidence that supported Petitioner's defenses. [Petitioner still has these materials. Due to prohibitive reproduction costs and proprietary work product, Petitioner prefers not to disclose these as exhibits. They are available to show to a discovery referee

H. Prepare a formal, well prepared motion requesting the judge to take judicial notice of relevant case law, constitutional provisions, and major, relevant historical facts.

I. Carefully review about 190 proposed special jury instructions that Petitioner prepared, gave her, and told her to submit the best of same to the court.

J. Have a court reporter report the Motion to Suppress hearing.

K. Study the case law that Petitioner found and told her about that held that the administrative search exception for airline passengers shall not be applied to others.[11]

L. Petitioner is informed and believes and based thereon alleges that except for Ms. Elwood filing with the trial court the Renewed Motion For Mandatory Judicial Notice that Petitioner wrote and gave to her, Ms. Elwood never did anything more to bring to the trial court's attention Hyde's limitation on administrative searches or the other case law that holds that the administrative search exception for airline passengers shall not be expanded.

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or this Court.]

[11] Petitioner told Ms. Elwood about this case law on the telephone and in person. He also gave it to her in two hard copy formats: First, as proposed jury instructions and second, as part of his Renewed Motion For Mandatory Judicial Notice, which Petitioner wrote, even though it has Ms. Elwood's name on it. Pages 2-6 of this motion discuss why the prosecution's administrative search rationale fails. Page three of this motion cites People v. Hyde, supra, 12 Cal.3d at 166-168, and other cases that support Hyde's limitation on the administrative search exception for airline passengers.

G. Demurrer.

165. Petitioner's attorney, at his urging, filed a demurrer (CT 7) to seek clarification of the charge, which was denied.

H. *Pitchess* Motion.

166. Petitioner's attorney filed a Pitchess motion regarding disclosure of complaints against Officer Mayberry. That motion was denied on the grounds that the "good cause" statement was deficient.

167. Petitioner's attorney promised him she would re-do the motion and improve the "good cause" statement. It is Petitioner's understanding and belief that she did not re-do the *Pitchess* motion.

I. Motion to Suppress.

168. Petitioner's attorney filed a motion to suppress (CT 63).

169. Before Petitioner's Motion to Suppress hearing, the prosecutor did not disclose to Petitioner's attorney what the prosecutor disclosed the first time during trial, namely, Redding Police Department Inspector Allan Long had determined, before this air show started, the identity of "the suspicious caller" Mayberry referenced in his report, he determined that this person rolled his R's; he determined this person was not a threat; he closed this case shortly before this air show started; and he reported all of this to his department before this air show.

170. Petitioner does not roll his R's.

171. The motion to suppress was submitted on written briefs without an evidentiary hearing. (RT 30-31.)

172. The prosecutor argued in her opposition brief that the law and motion judge had no power to grant the motion to suppress because there was nothing illegal to suppress, the search was a lawful administrative search, and the lawfulness of the officer's conduct is an issue for the jury to

decide, not for the law and motion judge to decide.

173. The law and motion judge opined that while she did not want to indicate that she had prejudged the matter, the prosecutor's position seemed to be persuasive, and she would conduct a hearing with live testimony if counsel insisted, but she would prefer that the matter be submitted because the issues appeared to be one of law only.

174. Petitioner's counsel told him the Law and Motion judge, the Hon. Monica Marlow, was the best one on the local bench, in whom she had the most confidence for granting the motion, which would terminate the case in Petitioner's favor. Petitioner's attorney strongly recommended that Petitioner authorize her to submit the matter for a ruling. Petitioner told his attorney he strongly preferred an evidentiary hearing because he wanted her to cross-examine the officers and anchor them as to their justification for the detention, arrest, search, and incarceration. His attorney, however, stressed she believed an evidentiary hearing was unnecessary because the police did not have a search warrant, they did not have probable cause, the search policy was unwritten, there was no known exception to the warrant and/or probable cause requirement that was applicable to air show patrons, and Judge Marlow had the courage to rule in Petitioner's favor. Based on that advice, Petitioner reluctantly agreed to submit the motion.

175. Judge Marlow denied the motion to suppress without making a single finding and without explaining the basis for the denial.

176. Petitioner's attorney told him afterwards she was surprised, disgusted, sorry, and would do her absolute best to win the trial.

J. The Trial.

1. Petitioner's Proposed Special Jury Instructions.

177. Petitioner's attorney submitted approximately ten special

proposed jury instructions that she prepared based on materials Petitioner gave her; however, she did not submit any from the approximate 190 that Petitioner later prepared, gave her, and ordered her to submit.

178. Mid-trial, Petitioner's attorney told him she would submit approximately 25-35 of the approximate 190 special jury instructions that Petitioner prepared. Petitioner ordered her to do so.

179. Petitioner learned months after the verdict, from the clerk's office and from Ms. Elwood, that Ms. Elwood did not submit any of these additional special instructions that she was ordered to submit and that she promised him she would submit.

180. There was no legitimate tactical or trial strategy reason for Ms. Elwood to not submit any of these additional special instructions.

181. Ms. Elwood's failure to submit these instructions was a manifestation of a material ineffective assistance of counsel.

2. Defense Counsel's Pre-Trial Preparation.

182. Ms. Elwood spent inadequate time preparing for trial.

3. Motions in Limine.

183. Ms. Elwood told the trial court that Penal Code § 148(a)(1) is overbroad and vague because it does not require an articulation of the exact conduct that violates the section, and, since it does not require the prosecution to be specific, it makes defending against such a charge unduly burdensome and prejudicial to the accused. Consequently, it is unconstitutional. (RT 12.) She also filed a motion in limine seeking a ruling that Penal Code § 148(a)(1) was unconstitutional, without benefit of authority. The trial court denied that motion, allowing defense counsel to reserve it. (RT 13.)

184. Ms. Elwood asked the judge to take judicial notice of

certain case law, constitutional provisions, and major historical facts. (RT 32.) She argued that: A) Petitioner, as an experienced attorney, knew that the officers were not acting in the lawful scope of their duties when they asked him for a consent search and he knew he was acting lawfully, within his rights, when he refused to cooperate with them (RT 33); B) Petitioner was not mistaken. Instead, he was correct, and it was the officers who acted unlawfully (RT 34); C) Petitioner has a right to testify about what was in his mind and what his intent was and to explain to the jury the justification for his conduct, and he needs to have the judge take judicial notice of the specified case law and constitutional provisions so he can prove that he acted lawfully and the officers acted unlawfully (RT 34).

185. The trial court, in response, said: A) Petitioner did not have the benefit of the court's understanding of these cases; B) That is Petitioner's understanding, not the court's; C) He was not going to let Petitioner "bootstrap this by my [the judge] telling the jury all of these things are true." (RT 35.)

186. Deputy District Attorney Christie Mulligan objected and said the case law is "opinion" and she did not know how the court could take judicial notice of an opinion. (RT 36.)

187. The trial court declined to take judicial notice of anything requested because defense counsel had not told him what about the cases was individually relevant. (RT 36.) The trial court said, "Obviously, all of what we do falls under the umbrella of Constitutional authority, but we don't refer back to it anymore than we refer back to the Magna Carta as a fundamental document of democratic society, not in trying jury trials. We've refined the process more than that." (RT 36.) The trial court refused to take judicial notice of any case decision, constitutional provision or

major historical fact requested to be noticed. (RT 37.)

188. Defense counsel's motion to prevent the prosecutor from examining Petitioner about his Government Tort Claim Notice and from commenting to the jury about same was denied. (RT 26-27).

189. Deputy District Attorney Christie Mulligan told the trial court Petitioner, after he was arrested, yelled for spectators to take pictures and he said, "I'll give you half." and that shows Petitioner's motive. (RT 28.) Defense counsel said she had received no discovery to that effect. (RT 28.) Ms. Mulligan opined that that information is in the arresting officer's report (RT 28.) Defense counsel said that that information is not in the report [which is true,] and it was not disclosed in discovery [which is true.] (RT 29.)

190. Petitioner's attorney asked the judge to bar the prosecutor from introducing any evidence about the suspicious, alleged, "terrorist" who called the airport and asked about what type of planes would fly at the air show unless the prosecutor could link Petitioner to that caller. Even though the prosecutor admitted she was unable to link Petitioner to that caller, the judge denied that motion. (RT 24-25.)

4. Prosecutor's Representations to Trial Court.

191. The prosecutor told the judge outside the jury's presence that the rationale for what the officers did regarding Petitioner was more of an administrative search than a traditional probable cause search or a hybrid of the two. (RT 16.)

192. Defense counsel objected to the case proceeding based on the prosecution's administrative search basis because: A) the proper foundation justifying such a search had not been laid or met; B) discovery of a written policy surrounding this administrative search procedure was requested and

no written policy is in existence; C) the absence of a written search policy poses new problems; D) the arresting officer's report is so vague the defense has no notice regarding what is the prosecution's theory; E) she requested information regarding an alleged suspicious caller and was told there was none; F) it appears that the arresting officer included information in his report to bootstrap his detention and arrest of Petitioner. (RT 17-18.)

193. The trial court said he would not permit a revisiting of the Penal Code § 1538.9 motion. (RT 20.)

194. The trial court said that per the court's file it was unclear on what basis Judge Monica Marlow had denied the motion to suppress, and he could not tell if she denied it on a procedural or a substantive ground. (RT 428-429.)

5. Voir Dire.

195. Petitioner's attorney's voir dire of the jury was pedestrian and contrary to what he had instructed her to do. A jury was promptly picked.

6. Redding Police Inspector Allen Long's Testimony.

196. Redding Police Inspector Allen Long, called by the prosecution, testified that: 1) He was a Redding Police Department "major crimes investigator" who investigated a report of a suspicious person with a Middle East dialect who rolled "the R" who had called an employee of the airport and had asked suspicious questions about the upcoming May, 2002 air show; 2) Before this air show, he determined the identity of this suspicious caller and determined that this person "was no threat."; 3) This person was not Petitioner; 4) He closed his investigation of this suspicious caller "fairly close" before the May 4, 2002 air show; and 5) Before this air show he "probably did share" in a briefing with the Redding Police Department that he closed that case. (RT 84-93)

7. A Synthesis of Testimony From Multiple Witnesses.

197. On May 4, 2002, Petitioner, a member of the State Bar, arrived and approached the entrance to an air show at the Redding Municipal Airport put on by The Redding Exchange Club (REC). The distance from the airline passenger terminal and scheduled commercial airliners "sterile area"[where airliners are guarded] to the air show's entry gate, where the underlying incident and arrest took place, was around 2,000 feet. (RT 415-416.) The show is an event to raise money for the community, which includes making donations to the Redding Police Department (RPD). The air show is the REC's biggest fundraiser. (RT 406; 494.)

198. Nothing printed on the tickets nor advance media publicity stated submission-to-search was a condition of entry. (RT 499, 502-503.)

199. Signs around the entrance stated that no ice chests were allowed and other items were subject to a search. (RT 498-499.)

200. The REC left formulation and enforcement of a search policy for this air show up to the RPD and the National Guard. (RT 495- 498.)

201. The REC did not search air show patrons. (RT 498.)

202. The RPD search policy for this air show included a ban on ice chests, which pre-dated 1991. This ban was based on air show concessionaires wanting to protect their sales by forcing air show patrons to buy food and drink from them inside the fence. (RT 414-415.)[12]

203. The search policy was unwritten. (RT 90; RT 132; RT 136; RT 266; RT 268; RT 412; RT 415; RT 497.) and was based on "common

[12] This created a conflict of interest for the police. They were asked to enforce a private show operator's policy which, through the operator's donations to the police department, benefitted the police.

sense" which gave searching officers unbridled discretion, which they applied differently. (RT 132; RT 414-415.) The search policy was based on a container's size, which was defined as *large* without further definition. (RT 137; RT 352; RT 414.) Under this unwritten policy, larger bags and coolers were to be checked for alcoholic beverages or bottles. (RT 352, 360)

204. Sworn peace officers and air show volunteers did not agree on what constituted the search policy, who did the searching, and whether or not unsearched bags were to be admitted. (RT 325-326; RT 328; RT 330; RT 336.) If a person refused a search they were allowed to leave. (RT 360.) The basic search policy was to ask air show patrons for a consent search before they entered the air show premises. (RT 352.) Women's pursues were not searched (RT 132.) A magnetometer was not used. (RT 151; RT 415).

205. As petitioner approached the air show's gate, he wore a hat with a bill and a rear flap to block the sun, pulled two rolling suitcases–later determined to contain only camera equipment–and had a fanny pack and two or three other items hanging from his belt. (RT 194-195, 232.)

8. Herb Williams' Testimony.

206. Petitioner first encountered Shasta County Reserve Deputy Sheriff Herb Williams. Williams testified that Petitioner acted like everyone else (RT 153), the only thing about Petitioner that caught his attention was petitioner' bags (RT 153) and his hat (RT 134), and he asked Petitioner to consent to a search of his bags, telling him that this was a request, not an order. (RT 393-394.) Petitioner refused, and asked Williams if he had reasonable suspicion or probable cause to search him, if martial law had been declared or if California had seceded from the union.

(RT 394-395.) Williams answered in the negative. Petitioner, believing that the consensual encounter was terminated and Williams had no legitimate grounds to detain him or to search his bags, continued to walk toward the air show's entry gate. (RT 395, 398-399, 402.) Before Petitioner left, he suggested to Williams that he follow Petitioner into the air show and observe him while he opened his bags (RT 111, 234, 399).

207. Williams did not follow that suggestion. Williams called to Redding Police Officer Scott Mayberry, who was closer to the entrance gate, to detain Petitioner solely because Petitioner refused a consent search (RT 154-155). Williams testified that he was trained by his law enforcement superior that a person's refusal of a consent search at an airport automatically gave him probable cause to detain and search and that he should "press" anyone who refuses a consent search. (RT 111, 117, 137-138, 153-154.)

9. Trial Court Removed a Juror Who Had Issues With Herb Williams' Credibility.

208. After Deputy Williams testified, Judge Gallagher removed a juror who told him outside the jury's presence that after seeing Deputy Williams testify he recognized him as being a member of his church, he had a low opinion of Williams' credibility because Williams was forced to step down as choir director due to Williams' marital infidelity, etc., and he would find it difficult to believe Herb Williams. (RT 225-228.)

209. Petitioner instructed his attorney to hire a private investigator to investigate what this removed juror said about Herb Williams to determine if anything material could be introduced about Mr. Williams' credibility or lack thereof. She rebuffed that instruction.

10. Arresting Officer Scott Mayberry's Testimony.

210. Mayberry stopped petitioner from entering the show based solely on Williams' alert that petitioner was seeking to enter the air show with un-searched bags. (RT 194, 275.)

211. Mayberry told petitioner to stop. Petitioner stopped. Petitioner asked him if he had reasonable suspicion or probable cause, or if, by martial law or California's secession, the Fourth Amendment was no longer operative, and he invited Mayberry to accompany him inside and observe his opening of the bags. (RT 197-198, 233-234, 276, 507-508.) Petitioner asked Mayberry whether, given his negative responses, he had any constitutional authority to search the bags; Mayberry agreed that he did not, but still would not allow petitioner to enter the gate with unsearched bags. (RT 508-509.)

212. Mayberry admitted that "he [petitioner] was making it clear that I [Mayberry] didn't have a constitutional right in his opinion to open his bags or subject [sic?] to let me search his bags or anybody at that point to search his bags." (RT 280.)

213. Mayberry asked petitioner to step back to discuss the situation and petitioner refused. (RT 197, 235, 279.) Mayberry admitted he might have touched petitioner, but if he did, petitioner did not respond (RT 186.) Petitioner told Mayberry he did not want to cause problems, and would submit to the search if Mayberry could give him a constitutionally legitimate reason to do so. (RT 510, 569-570.)

214. Petitioner and Mayberry were face-to-face, about 18-30 inches apart, standing in an open position, with petitioner holding onto his

possessions (RT 236-237, 244, 284, 286).[13]

215. Mayberry and petitioner faced each other inside a narrow lane, approximately 3.5 to 4.0 feet wide. (RT 273) Thus, petitioner was in a constricted area. Mayberry admitted this lane was large enough to allow enough room for "[m]aybe one and a half" people to walk abreast through it, depending on their size. (RT 274)

216. After Mayberry asked petitioner to step back, petitioner shifted to what Mayberry called a "bladed" position, which he construed as a fighting stance (RT 236, 238-239).

217. Although Mayberry testified that petitioner was free to terminate the conversation and walk away (RT 295), that is not what happened. Instead, Mayberry saw petitioner take a half-step to his right, which Mayberry said he interpreted as if petitioner were going to push past him, push him out of the way, or assault him (RT 241, 246). Petitioner testified that he began to move only because Mayberry asked him to step out of the area to discuss the situation (RT 235), pointed and asked Petitioner to go back (RT 513). Petitioner shifted his balance and began to move in response to Mayberry's request.

218. Mayberry, without warning, grabbed petitioner' wrist and elbow (RT 299, 291). Petitioner pulled his arm away and down (RT 293), instinctively (RT 639), which Mayberry described as an "as if" move. A brief struggle ensued, and Mayberry took petitioner to the ground and handcuffed him. (RT 246, 248, 251.)

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[13] Petitioner is 5'10" tall and weighs about 200 pounds, while Mayberry is about 6'5" tall and weighs about 240 pounds. (RT 305).

219. Mayberry never claimed petitioner touched him.. Mayberry testified:

> [Petitioner] moved towards me like he was going to either push past me, push me out of the way, assault me. I'm not sure what was going to happen at that point. . . I reacted . . . by grabbing onto his left wrist . . . there was no other contact made until I grabbed onto him . . . [Petitioner's] body moves forward like he's going to come around my side. I just sort of side-stepped a little bit, grabbed onto his wrist, and grabbed onto his elbow as he made that movement forward. . . . When I grabbed onto him, he made that movement as he was pushing past me, he was going to assault me, ... I laid my hand on him to find out what his next step was, what his next move was. . . . He made a movement forward towards me to get past me to push me. I don't know. He made a movement towards me. I reacted by grabbing onto his wrist so I could find out what was going to happen next. . . . I would say I wasn't aggressive toward him at all. . . . I'm not sure what he was thinking at that point. I don't know. [Emphases added.] (RT 241; 288-291)

220. Mayberry also testified that A) when he grabbed Petitioner he was not sure if petitioner had committed a crime (RT 291), B) he did not know if petitioner was actually going to try to push him or go around him because he [Mayberry] reacted before anything else occurred (RT 295), C) immediately before he seized petitioner, petitioner was free to terminate the contact because he was not under arrest and could have walked back (RT 295), petitioner was not under arrest the moment he grabbed him (RT 295-296), D) "furtive gesture" means to him "movements . . . that could be suspicious to alert an officer's safety issues. He's making some

type of movement that would concern you." (RT 305), E) he considered petitioner's attempt to go around him to be a furtive gesture (RT 306), and F) Mayberry justified the arrest solely on the basis of petitioner's "as if" arm movement–which occurred after Mayberry grabbed petitioner's wrist. (RT 292, 295.)

11. The Two Civilian Witnesses Called by the Prosecution Did Not See Petitioner Assault Officer Mayberry.

221. Neither of the two civilian prosecution witnesses saw the "as if" arm movement Mayberry claimed petitioner made. (RT 319-321, 340-342, 346.) One such witness testified he saw petitioner try to turn away from Officer Mayberry and go back, away from the airport when Mayberry grabbed petitioner. (RT 340-342, 346.) Neither of these civilian prosecution witnesses saw petitioner raise a limb against Mayberry.

12. Search of Petitioner's Camera Bags Revealed Nothing Illegal or Dangerous.

222. A search incident to the arrest of petitioner and his bags yielded nothing threatening or illegal (RT 141, 254-255, 296-297.); rather, they contained camera equipment (RT 258, 309.)

13. Officer Mayberry's Refusal to Cite and Release.

223. Rather than cite and release petitioner pursuant to Penal Code § 853.6(i), which petitioner requested, Mayberry had petitioner incarcerated even though Mayberry testified that petitioner satisfied all of § 853.6(i)'s requirements for a mandatory, non-custodial, cite and release arrest. (RT 298, 301, 535-538.)

14. Prosecution Rests Case-in-Chief.

224. When Deputy District Attorney Christie Mulligan rested the Peoples' case-in-chief, she did so without offering evidence to prove what follows: A) Petitioner had entered an airline passenger terminal, had manifested conduct to board an airliner, or got closer than 2,000 feet to an airliner; B) The Redding Police Department's search policy was in writing and articulated adequate objective criteria that restricted government searchers' unfettered discretion as to who to search, when, where, and how; C) Deputy Williams or Officer Mayberry had a search warrant, an arrest warrant, or anything that was an adequate substitute for a warrant; D) The search policy for this air show had been judicially pre-approved; E) On May 4, 2002 there was a well established "air show patron administrative search exception" to the Fourth Amendment; F) The search policy for this air show had been publicized in advance; G) There was a massive show of law enforcement presence and authority at the main gate to this air show; H) A photograph of any sign at the air show, taken during the air show, which stated that admission was subject to a search;[14] I) Controlling legal authority that the Redding Exchange Club's sign(s) trumped the Fourth Amendment; J) Controlling legal authority that Officer Mayberry acted within his lawful powers when he detained Petitioner and

[14] Since Officer Mayberry knew Petitioner put him on notice that he would be sued, since the search policy relied heavily upon these alleged signs, and since the police had cameras, one would think that an officer would have taken photographs of these signs during the air show. The prosecution, however, did not introduce any such photograph(s).

made Petitioner's entry into this air show with Petitioner's camera bags subject to Petitioner submitting to a search of same by law enforcement; K) Petitioner entered the main gate to this air show before being stopped and arrested by Officer Mayberry; L) Petitioner did anything illegal or criminal before Officer Mayberry grabbed Petitioner's left arm or that Petitioner manifested clearly proscribed core criminal conduct; M) Petitioner possessed anything illegal or dangerous; N) Officer Mayberry Constitutionally could grab Petitioner's left arm under these circumstances before Petitioner did anything illegal; O) Petitioner used illegal or excessive force when Petitioner reacted to Officer Mayberry grabbing Petitioner's left arm; P) Mayberry secured a search warrant for Petitioner's camera bags before searching same; and Q) Mayberry did not have to comply with Penal Code § 853.6(i) and cite and release Petitioner.

15. Petitioner's Police Misconduct Expert.

225. Robert Wasserman testified in part that: A) He has 40 years of experience as a California police officer and a police chief; B) He is a Police Misconduct Consultant who normally testifies for, and advises, police departments, an ex-member of the California Commission on Peace Officers Standards and Training, and he is a City of Fremont Councilmember; C) This case was the first time he had any dealings with Petitioner, and he agreed to serve as an expert for Petitioner because he thought Petitioner was correct in this dispute; D) The terms of hire with Petitioner was $225.00 per hour, regardless of the outcome of the case; E) In his best professional opinion, Officer Mayberry's arrest of Petitioner was unlawful

because: 1) Petitioner, before the arrest, had done nothing illegal; 2) It is not a crime to assert a Constitutional right, to refuse to submit to a search, to ask an officer questions, to be very verbally agitated with an officer; 3) Officer Mayberry's reliance on Petitioner's alleged *furtive gesture(s)* is misplaced; 4) Before Officer Mayberry could grab Petitioner's arm based on an alleged *furtive gesture* Officer Mayberry had to wait until Petitioner made a substantial move toward a weapon, some kind of a move that was clearly indicative of going for a weapon or something threatening to Officer Mayberry, and there is nothing in Officer Mayberry's report to indicate that Petitioner did that; 5) Officer Mayberry did not have to wait until he was shot, stabbed, or hit before defending himself but he also could not lawfully preempt the situation and take aggressive action against Petitioner before Petitioner did anything that was a substantial, clear, physical indication that Petitioner had become a meaningful physical threat to him or someone else, and there was nothing to indicate that Petitioner had done that per Officer Mayberry's report, and Petitioner told him that Petitioner just stood before Officer Mayberry with both of Petitioner's hands, down low by Petitioner's side, in plain view, holding onto Petitioner's camera gear; F) Officer Mayberry made a "contempt of cop" or "attitude arrest" because Petitioner dared to challenge Officer Mayberry's assertion of his authority as "boss" over Petitioner and Officer Mayberry did not like that verbal challenge to his authority; and G) If he were Officer Mayberry's supervisor he would not permit Officer Mayberry's report to be forwarded to the District Attorney for review to file any criminal charge. (RT 444-461.)

16. Prosecutor's Cross-Examination of Petitioner.

226 The prosecutor, during her cross-examination of Petitioner, and during her final argument, made numerous prejudicial remarks about petitioner's refusal to waive his rights and his audacity to file a Government Tort Claim Notice. (RT 860-861.)

17. Trial Court's Denial of Petitioner's Renewed Motion for Mandatory Judicial Notice and Request for Removal of Restrictions on the Scope of Petitioner's Testimony.

227. Petitioner's attorney told him the trial judge at side bar had told her he would not permit Petitioner to testify about his knowledge of the law or use his laptop's power point presentation that contained extensive exact quotes from relevant cases that supported Petitioner's position.

228. Petitioner instructed his attorney to get that side bar discussion, and all others, on the record. That was never done.

229. Petitioner told his attorney to prepare another motion asking the judge to reconsider and to take judicial notice of relevant case law, including approximately a half dozen cases that Petitioner knew about that held that the administrative search exception for airline passengers must be limited to that category of persons and not extended or applied to others.

230. During a break in the trial for a few days Petitioner determined his attorney was not going to prepare that motion so he prepared one, titled "DEFENDANT'S RENEWED MOTION FOR THE COURT TO TAKE MANDATORY JUDICIAL NOTICE PURSUANT TO EVIDENCE CODE SECTION 451." He gave it to

his attorney, and firmly instructed her to file with the court, which she did.

231. The trial court agreed to take judicial notice of only one thing: The U.S. Constitution is the Supreme Law. (RT 626-627.)

18. April 23, 2004 Conference Regarding Jury Instructions.

232. The trial court opined it was his opinion that: A) Officer Mayberrry violated Penal Code § 853.6(i) relative to Petitioner on My 4, 2002; B) Officer Mayberry's violation of § 853.6(i) did not invalidate Officer Mayberry's arrest of Petitioner; and C) Petitioner had the right to sue Officer Mayberry for his failure to "cite and release" Petitioner since Petitioner was entitled to be "cited and release" per § 853.6(i)'s express terms and Officer Mayberry's testimony that none of the reasons for not "citing and releasing" Petitioner applied.

233. During the discussion regarding jury instructions, Petitioner's attorney told Petitioner to go to the law library in the court's basement to research Penal Code § 853.6(i). Petitioner was shocked that she had already not done that.

234. Petitioner left for about 45-60 minutes. When he returned he did not know which instructions had been approved, which had been rejected, and if his attorney had really submitted any of the best of the approximate 190 special proposed instructions he gave to her and ordered her to submit to the court, which she promised him she would do.

235. The trial court, while discussing jury instructions with

the attorneys outside the jury's presence, acknowledged his awareness of People v. Hyde, supra, 12 Cal.3d 158. He then discussed a Hyde headnote about the use of administrative searches as part of a general regulatory scheme without probable cause. (RT 748.) Ms. Elwood said, "There needs to be a little bit more than that.," and the trial court said, "Like I said, it wasn't complete, but it's a place for you to at least start in even deciding whether or not you need an instruction on that." (RT 749.)

236. Petitioner was already ahead of both counsel and the trial court: He had prepared numerous instructions, including detailed ones based on Hyde, had given them to his attorney, and was confident that she would submit them or had already submitted some of them and would submit more, based on his firm instructions to her and her promise to him that she would.

237. Petitioner knew that a special proposed instruction he gave to Ms. Elwood had the "little bit more than that" that she referenced already in it..

238. Part of that "little bit more" is from People v. Hyde, supra, 12 Cal.3d at 169, fn 6:

> . . . airport screening procedures must be as limited in intrusiveness as is consistent with their justification, and an individual may avoid submitting to a search altogether by electing not to board the airplane. [Emphasis added.]

239. This "little bit more" from Hyde, and a lot more from many more cases that undercut Respondent's case, inexplicably, were never submitted to the court and was never given to the jury.

240. The trial court delegated the task of working on jury instructions to Deputy District Attorney Christie Mulligan and to defense counsel Elizabeth Elwood and complimented them for their "wonderful progress working together" to perfect the instructions. (RT 749)

241. The trial court, during the discussion of jury instructions outside the jury's presence, opined that the search policy Officer Mayberry enforced against Petitioner was "the foundation upon which the other things that are done develops.," and "it's administrative in the sense that it's a public safety concern." (RT 750.) The trial court ruled that the search policy enforced was "essentially an administrative search." (RT 752.) In context, the trial court approved a prosecution proposed special jury instruction to the effect that the officers on May 4, 2002 were conducting an "administrative search" of *air show patrons* at the airport. In context, the trial court, contrary to People v. Hyde, supra, 12 Cal.3d at 169, fn 6, allowed the prosecution to argue to the jury two alternative theories for conviction: administrative search or traditional *probable cause* or both.

242. Before the end of the attorney-court's discussion about jury instructions, Ms. Elwood said, "I'm going to have to talk to my client about the state of the instructions." (RT 754.)[15]

19. April 24, 2004 Conference Regarding Jury Instructions.

243. In another jury instruction conference outside the

[15] Ms. Elwood never submitted a single instruction based on the quoted excerpt from Hyde that limited the administrative search exception.

jury's presence, the trial court said, "These were not airport searches as such. They were administrative searches but not classically airport searches."[16] (RT 756.)

244. Deputy District Attorney Christie Mulligan then said, "I agree it's not your classic airport search at a boarding terminal, but I think the same logic applies to this case. Even though it's not necessarily at the boarding terminal, it was on the airport grounds, and it was the same concerns that you would have at a terminal . . . ."[17] (RT 756.)

245. Ms. Mulligan added, "The reason this whole thing started was because Mr. Mancus did not want his bags searched. That fell under administrative searches.," and Petitioner's own attorney said, "Right." [18] (RT 759.)

246. Petitioner's attorney, when given one final chance to submit additional instructions, told the trial court she did not object to the instructions to be given and she had no additional instructions to submit.[19] (RT 765.)

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[16] The Hon. William Gallagher can characterize the RPD's search policy however he wants to, but, on May 4, 2002, there was not, and there is not, a well recognized exception to the Fourth Amendment applicable to air show patrons. The RPD carved out its own unconstitutional exception.

[17] Here, Deputy District Attorney Christie Mulligan virtually admitted the RPD violated Hyde and other precedents.

[18] Ms. Mulligan and Ms. Elwood were wrong. Petitioner's objection fell under the Fourth Amendment, not "administrative searches." Ms. Mulligan had the burden to prove there was an applicable exception to the requirement for a warrant or traditional probable cause.

[19] Ms. Elwood said that knowing she promised Petitioner she would submit more instructions, she did not do so, and she deceived Petitioner. If she had told Petitioner the truth Petitioner would have tried to fire her on

20. Trial Court's April 24, 2004 Ruling on Renewed Request For Judicial Notice.

247. Ms. Elwood asked the trial court to clarify his ruling regarding Petitioner's renewed motion for judicial notice. (RT 765.) The trial court said he would not take judicial notice of any case law opinions because she had not set out in the case itself what it is that he should take judicial notice of it, it was untimely, and the motion denied Ms. Mulligan an opportunity to respond. (RT 766.) The trial court asked Ms. Elwood if there was anything in specific she wanted him to notice. (RT 766.) Ms. Elwood said, "Not at this time." (RT 766.) [20]

21. Judge's Initial Instructions to the Jury.

248. The trial court instructed the jury before final argument, in part, as follows.

1. The searches conducted at this airport were "administrative searches" which "may be valid under the Fourth Amendment even if not supported by a showing of probable cause directed to a particular place or person" and "an administrative screening must be measured against the constitutional mandate of reasonableness. The test for determining reasonableness is by balancing the need to search against the invasion which the search entails." (RT 783)

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the spot, represented himself, re-opened the issue of jury instructions, and submitted to the judge many more instructions.

[20] Petitioner gave Ms. Elwood, before the trial started, a special proposed jury instruction for almost every case cited in Petitioner's original and renewed motion for judicial notice. Ms. Elwood, therefore, only had to submit those proposed instructions together with the motions for renewed notice, and ask the trial court to take judicial notice of the what was stated

2. The trial judge, over defense objection, also instructed the jury that Mayberry's failure to comply with Penal Code §853.6(i) did not invalidate his arrest of petitioner. (RT 736-737, 778).

22. Prosecutor's Initial Final Argument.

249. Deputy District Attorney Christie Mulligan told the jury what follows in her opening final argument.

1. She had to prove Petitioner willfully resisted, delayed, or obstructed Officer Mayberry who was engaged in the performance of his duties and Petitioner knew or reasonably should have known that Officer Mayberry was a peace officer and was engaged in the performance of his duties. (RT 790-791.)
2. "Willfully" means the intent with which an act is done or omitted, a purpose or willingness to commit or to make the omission in question. It does not require any intent to violate the law. (RT 791.)
3. Petitioner was determined to get into the air show without his bags searched. (RT 791-792.)
4. Petitioner had four options: A) Cooperate and consent to a search, B) Take his bags back to his car and come back and enter the gate without them, C) Leave the area, or D) Persist to get into the air show without his bags searched even

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in the proposed jury instructions. This, however, she never did.

though he was told repeatedly he could not do that.[21] (RT 792.)

5. Petitioner made a movement as if he was going to shove or push Officer Mayberry out of the way to get into the air show.[22] (RT 792.)

6. At that point Mayberry seized Petitioner and Petitioner swung his arm up toward Mayberry's face, tried to jerk away, and struggled with Mayberry. (RT 792-793.)

7. He tried to kick Officer Mayberry.[23] (RT 793.)

8. Herb Williams had to hold down Petitioner's legs to keep him from kicking Mayberry. (RT 793.)

9. Petitioner admitted all of these things himself.[24] (RT 793.)

10. Petitioner admitted these things to you.[25] (RT 794.)

11. That's the first element–Petitioner admitted to willingly pulling away, he intended to pull his arm away. He intended to put his arm up by Mayberry's face. (RT 794-795.)

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[21] This argument is misleading. It is factually and legally incorrect. Petitioner had an additional option: He could elect to peacefully stand on his Fourth Amendment rights, which he did.

[22] That is Mayberry's subjective interpretation. Mayberry and Petitioner were in a 3.0 to 4.0 wide aisle. This enforced closeness was beyond Petitioner's control. It is not a crime to make a movement near an officer, especially when physical barriers force a person to be close to an officer.

[23] Officer Mayberry did not claim Petitioner tried to kick him. (RT 251.)

[24] Petitioner did not admit this.

[25] Again, false.

12. The second element is at the time Mayberry was engaged in the performance of his duties.[26] (RT 795.)

13. "[T]he legitimacy of this search is not at issue. That's not something that you have to decide. The judge already read you a jury instruction about administrative searches. . . . You have a regulatory scheme with an administrative purpose. . . . the officers had a very high interest in the protection of patrons of the air show and other citizens. So in those situations they are allowed to look for weapons, explosives, things of that nature, because the governmental interest in looking for those things and protecting other people outweighs the intrusion to the person being searched. . . . So you don't have to worry about deciding . . . was it okay that they search under these circumstances? It was. We know that."[27] (RT 795.)

14. "I have to prove to you that it was a lawful detention or arrest and that excessive force was not the situation here." (RT 797.)

15. "[I]n this case a detention occurred when Officer Mayberry put his hands on the defendant. It didn't occur before then. Before then he was free to leave . . . If you don't like it, you can take your bags back to your car, put them in your car,

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[26] Respondent's legal representatives have still failed to prove either of their two theories for conviction are constitutionally valid: A) Administrative search or B) Probable cause.

[27] Deputy District Attorney Christie Mulligan was disingenuous.

come back and watch the air show, or you can leave altogether. So he was free to leave and he was told he could leave until the point that Officer Mayberry put his hands on him. Then he wasn't free to leave anymore. He was being detained."[28] (RT 798.) [Emphasis added.]

16. The airport manager told you he had security concerns because of this suspicious phone call about the air show which heightened security concerns. (RT 799.)

17. The exchange club's president told you they decided to enhance security and "the rule was consent to a search or

[28] This is pseudo legal doublespeak nonsense. Since Mayberry admitted Petitioner was free to leave, Mayberry should not have seized Petitioner. So, what "justified" Mayberry's seizure of Petitioner? Answer: Mayberry testified, "I laid my hand on him to find out what his next step was, what his next move was. . . . He made a movement forward towards me to get past me to push me. I don't know. He made a movement towards me. I reacted by grabbing onto his wrist so I could find out what was going to happen next." [Emphasis added.] (RT 289.) Mayberry seized solely on the strength of his self-serving subjective interpretation of Petitioner's incomplete act. Mayberry is not clairvoyant. Based on his admitted "I don't know" he grabbed Petitioner to find out what was going to happen next. By seizing Petitioner, Mayberry made it impossible to "find out what was going to happen next". His seizure was a material intervention that altered everything. If Petitioner was free to leave, Mayberry should not have made an unlawful "pre-crime" seizure based on his subjective interpretation of an incomplete act. To cover this up, Deputy District Attorney Christie Mulligan made an unprofessional, razzle-dazzle, nonsense pitch to a constitutionally illiterate jury. This is a manifestation of the clubby, incestuous relationship between officer and prosecutor. Sadly, all lower level judges approved this nonsense.

leave, period. It's that simple."[29] (RT 800.)

18. "[T]he defendant is an attorney and he told us that he spent several hours preparing his testimony. . . . he tailored his testimony to sort of counter each of" the elements the prosecution has to prove. . . . he tailors his defense."[30] (RT 801-802.)

19. Officer Mayberry noticed Petitioner was wearing a hat that "no one else was wearing a hat like that . . . it was a weird-looking hat. He had the dark glasses. . . . ear muffs . . . he's carrying all this luggage."[31] (RT 803.)

20. Williams tells Mayberry, "He won't let me search his stuff." (RT 803.)

21. "If you're innocent, why do you need to spend hours preparing your testimony? But he's done that."[32] (RT 803.)

22. Petitioner when dealing with Mayberry was thinking to himself, "I'm above the law."[33] (RT 804.)

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[29] It is not "that simple." Only a *statist* could make such an argument. In this nation, we have a Fourth and a First Amendment. They are part of "the rules." A local club and a local police department must comply with those rules when the police are used to enforce a local club's rules.

[30] This is an improper attack on Petitioner's Sixth Amendment right to the effective assistance of counsel and an inflaming of the juror's against Petitioner because of his status as an attorney.

[31] Mayberry's "duty" did not include enforcement of a "dress code."

[32] This is an attack against Petitioner's Sixth Amendment right to the effective assistance of counsel.

[33] There is no evidence in the record to support this assertion–or that Petitioner is "below the law."

23. Mayberry "tried the verbal judo" with Petitioner and when that did not work "As soon as the defendant makes that movement, that justifies a higher use of force. . . . As soon as he made that movement, it justifies a higher use of force. It's in accordance with Officer Mayberry's training and experience."[34] (RT 804.)

24. "So at that point he puts his hands on him. Was that lawful? . . . Yes." It was lawful because the officer had reasonable suspicion.[35] He had reasonable suspicion because "just the circumstances. It's after 9-11. He knows there's been a terrorist threat towards the Redding Air Show.[36] He sees this guy and he's dressed a little bit unusual.[37] He's carrying all these bags.[38] He blows right by Herb Williams who is in uniform. He is not letting anyone look in those bags. Why? Isn't that weird? If you have nothing to hide, why is it your

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[34] This is more of Mulligan's pseudo legal nonsense, contrary to authority that is discussed later herein.

[35] Ms. Mulligan played loose with the facts–again. Her own witness, the arresting officer, Scott Mayberry, testified he seized Petitioner not because he had "reasonable suspicion," but because he wanted to see what Petitioner was going to do next. (RT 289.) Hence, Ms. Mulligan engaged in another instance of razzle dazzle, to try to justify Officer Mayberry's unconstitutional seizure of Petitioner.

[36] False. Inspector Long reported to Mayberry's department, before the air show, that that "threat" case was closed as being non-meritorious.

[37] Being so dressed is not a crime. Mayberry is not "the fashion police."

[38] Possessing bags does not create reasonable suspicion or probable cause.

mission in life to just go past these people as quick as you can and get into the air show making very clear that they are not looking in your bags?[39] That in and of itself justifies Officer Mayberrry putting his hands on him to temporarily detain him.[40] It's not an arrest. It's a temporary detention."[41] (RT 805.)

25. "Officer Mayberrry would have been the worst police officer in the world had he not done that. . . . I know the state of the world today. I know there's been a terrorist threat to this air show, but this guy is being a real jerk[42] and he's threatening to sue me. I don't want the headache. I don't want the paperwork. I don't want to deal with a lawsuit. Go ahead. I'm going to entertain what you perceive to be your constitutional interest to the exclusion of everybody else's. He didn't do

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[39] Ms. Mulligan punished Petitioner before the jury for daring to peacefully exercise his Fourth Amendment rights. Such an argument is egregious.

[40] False. There is no legal authority to support this argument. This is another example of Ms. Mulligan's pseudo legal doublespeak nonsense. She was again misleading and inflaming the jury.

[41] The law requires an officer to articulate specific, individualized, particularized reasons to support "reasonable suspicion" and "probable cause." It is insufficient to assert a broad brush ""just the circumstances. It's after 9-11." What is "weird" is Deputy District Attorney Christie Mulligan using these nonmeritorious reasons to urge a jury to deny another citizen liberty under color of law. Per Williams, Mayberry, and Mulligan, citizens have a strange quality of freedom: It disappears upon assertion and the assertion of same is grounds for a seizure. That rationale turns the Fourth Amendment on its head.

[42] Mulligan, lacking facts and law, stooped to name calling–"jerk."

that. He shouldn't have done that. We should never ask him to do that.[43] So that's one reason why he was completely justified putting his hands on the defendant."[44] (RT 806.)

26. "Secondly, the rule was you bags get searched or you don't come in. It's a private facility. . . . That's trespassing. That's a crime."[45] (RT 806.)

27. Yet another reason, this motion that the defendant makes to get past him, to push him out of the way or making it very clear that if he wasn't pushing him out of the way, he was going into the air show. . . . assaulting a police officer, you can't do that. You can't put your hands on a police officer when you disagree with what they are telling you and push them out of the way or bump them out of the way. That's a crime."[46] (RT 806.)

28. "[O]nce the defendant is detained when Officer Mayberry puts his hands on him, he flings his elbow up as if he is going

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[43] This is dangerous constitutional heresy: Citizens should never ask sworn peace officers to take citizens' rights seriously!

[44] Reformulated, per Deputy District Attorney Christie Mulligan, citizens who stand on their rights are "acting like jerks" who deserve to be seized by an officer!

[45] This argument is misleading simplicity at its worse. It ignores the Fourth Amendment. It also ignores what Penal Code § 602, which deals with *trespassing*, requires before Petitioner could be guilty of *trespassing*. Ms. Mulligan never came close to proving Petitioner committed a trespass yet she strongly implied that he had committed an act of trespassing.

[46] There is no evidence in the record that Petitioner touched Mayberry.

to hit Officer Mayberry in the face[47]. . . . When you swing your arm up in an officer's face and then proceed to struggle, that's a 148. . . . That's a crime."[48] (RT 807.)

29. " . . . it doesn't matter what he [Petitioner] thought. Mistake of the law or ignorance of the law is not an excuse." (RT 808.)

30. "Officer Mayberry agrees that you don't put your hands on someone unless it's a last resort. He absolutely agrees and that's absolutely what he did."[49] (RT 812)

31. Petitioner paid his police misconduct expert, Bob Wasserman, "$325 an hour to come in here and tell you exactly what the defendant wanted him to say."[50] (RT 813.)

32. Mayberry had "several options. He chose the one that would hurt the defendant the less. Put him on his stomach on the ground, control the situation. That's what happened. That's a

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[47] That is only Mayberry's and Mulligan's subjective interpretation of what Petitioner did and intended to do. Petitioner raised his left arm and pointed his left hand in indignation at Mayberry with the intent of rebuking Mayberry and further asserting his rights, peacefully, which he had a right to do.

[48] This, too, is overly simplistic and misleading.

[49] No. Officer Mayberry could have obeyed the real Constitutional Rule of Law. He could have obeyed Penal Code § 853.6(i). He could have obeyed what the California Supreme Court said about *furtive acts* and taking probable cause to arrest, seriously.

[50] Mr. Wasserman said he charged $225.00 per hour, not $325.00 per hour. There is no evidence in the record that Mr. Wasserman, a retired California police chief, was, and is, a courthouse whore.

reasonable use of force."[51] (RT 814.)

33. "The defendant was threatening to sue him from the very beginning. I will have your badge. I will see you in court. Cut your losses. He is saying on the jail tape you are just digging yourself a deeper hole."[52] (RT 816.)

34. "The defendant is actually being harmful and he's suing people now as a result of his wild imagination. . . . he's making these accusations and now he's actually suing people."[53] (RT 817.)

35. "[W]e know from the jury instructions that was up there it doesn't matter if he thought the officer was acting unlawfully. That doesn't matter. . . It doesn't matter what the defendant thought." (RT 818.)

36. "[I]t happened some time around 1:00 o'clock on Saturday at the air show."[54] (RT 819.)

37. The defendant "wants an exception to the rule. . . The point is

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[51] Wrong. Mayberry had other options: Take Petitioner's rights seriously; follow Petitioner in and observe Petitioner open his bags and see their contents then; tell Petitioner he had to wait for him to try to secure a search warrant; and/or make a Penal Code § 853.6(i) cite and release.

[52] What Mulligan attributed to Petitioner is misleading. Even if correct, all of it is 100% protected, classic, First Amendment communication.

[53] False. There is no evidence in the record that Petitioner has "a wild imagination" or that he had actually sued anyone arising from these events.

[54] Even after Mulligan knows that the jail's clock on the jail's booking videotape and the clock on the jail's booking videotape itself contradict Mayberry and all of the prosecution's eyewitnesses, she persisted

that you have got a person who is not going to follow the rules." [55] (RT 820.)

38. "The defendant, basically he's an attorney and he thinks that he's above the law. That's the bottom line. He thinks that he's better than everyone else. . . . He's smarting than Officer Mayberry. He's smarting than Deputy Williams. Smarter than me. Smarter than his attorney. He just thinks because he's an attorney he can act that way." (RT 821.)

39. "If we're all accountable for our actions, if we all have to take responsibility for the things we do, why should it be any different for him?"[56] (RT 821.)

40. "Everything about this case was reasonable except for the way the defendant acted. And you can't use the constitution as a shield to hide behind when it's convenient for you. He is screaming his constitutional rights when really he just wanted his twisted interests to take precedence over the interest of everyone else."[57] (RT 821-822.)

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with telling the jury a material lie.

[55] Petitioner did not want "an exception to the rule." He wanted public servants to obey the Constitution as construed by the courts and to take his rights seriously. The ones who are not "following the rules" are Williams, Mayberry, Mulligan, Judge Gallagher, and lower appellate judges.

[56] One primary purpose of this petition is to determine if the California Supreme Court–or someone with oversight authority--is willing to hold Williams, Mayberry, and Mulligan accountable for what they did under color of law, to make them take "responsibility" for what they did.

[57] Per the legal discussion that follows in this petition, there was nothing "reasonable" about this search policy or what was done to enforce

41. "Now you have everything you need to come to a verdict in this case. You have the facts. You have the law. And most importantly, you have your common sense. So using all three of those things I will ask you to return a verdict of guilty because the defendant is not above the law."[58] (RT 822.)

23. Prosecutor's Closing Final Argument.

250. Deputy District Attorney Christie Mulligan told the jury what follows in her closing final argument.

1. "The bottom line is the defendant's thoughts on whether or not . . . the officer's conduct was lawful doesn't matter." (RT 851.)
2. "The courts have accepted that administrative searches are a well settled exception to the search warrant requirement, and that's the case here. The law that the judge read to you, this was an administrative search. Administrative searches are lawful. . . . the lawfulness of the search policy in this case is irrelevant. It's not a jury issue. It's not something you need to be concerned with. The courts have already decided that it was okay." [59] (RT 852.)
3. "He [Petitioner] chose to take the law into his own hands

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it. Also, it is not a crime to scream constitutional rights, and, if public servants took such rights seriously, no one would have to scream them. As Justice Kennard said in People v. Neal (2003) 31 Cal.4th 63, 89, "A right that is not honored when invoked is no right at all."

[58]As will be demonstrated later herein, the jurors did not have anywhere near the law they needed to resolve this case.

[59] This is the *second* time Deputy District Attorney Christie Mulligan mislead the jury on a major "fighting issue" in this case, an issue that was

because he thinks he's above the law." (RT 853.)

4. ". . . he [Petitioner] looks strange, but that's not enough. Maybe you're right. Maybe that's not enough. It's everything together." (RT 855.)

5. "I'm [Christie Mulligan] here to find the truth, ..." [60] (RT 856.)

6. "I'm [Christie Mulligan] just doing my job."[61] (RT 860.)

7. "The things he [Petitioner] said weren't reasonable. Why did he say that? I will tell you why he said it. He said it to protect his civil suit, all of it . . . because if he didn't say these crazy things here, his civil attorney would say . . . why didn't you say that at your criminal trial? . . . Handcuffs too tight. Pain and suffering, cha-cing. They searched my crotch area. They really paid extra attention to my crotch area. They humiliated me. Humiliation, cha-ching. They took my property. . . . I was deprived of my property. Inconvenience, cha-ching. . . . Damage to property, cha-ching. That's why he did it." [62] (RT 861.)

8. "Now the constitution. I will just talk about the constitution,

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the foundation for everything Mayberry did in the name of "duty."

[60] As will be demonstrated later herein, when Ms. Mulligan is asked to explain what she did and did not do in this case to defend herself against a charge of prosecutorial misconduct, she will have to argue for her own incompetence or her own stupidity or both, or, in the alternative, admit she intentionally violated her duties and Petitioner's rights.

[61] Ditto footnote No. 60.

[62] When Ms. Mulligan said, "cha-ching," she raised and arm and pulled it down, as if she worked a slot machine, when she was really "working" the jury to inflame them against Petitioner.

and, you know, it's something that's being done to again arouse this pride and this passion and this pity for the defendant with you, how the constitution is the supreme law of the land. Well, that's fine, but the constitution was intended to be a flexible document." (RT 862.)

9. "There were exceptions–there are exceptions to the constitution search warrant requirement, Fourth Amendment, that weren't in place when the constitution was made. That shows it's ever changing. Today these administrative searches are okay. They weren't in the constitution when it was first drafted. Maybe if they were then boots would have been searched when you went into Ford Theater and Lincoln wouldn't have been shot." [63] (RT 863.)

10. ". . . you will never know the cost of your freedom. Who better knows the cost of your freedom than police officers who are willing to die every day to protect it? So all this talk about don't roll over on your rights, don't roll over on the constitution, it's something that's being said to arise some sort of pride and some sort of prejudice in you, and we know based on the jury instructions that the judge already read you that that's not acceptable." (RT 864.)

K. Sentencing

251. Deputy District Attorney Christie Mulligan told the trial court, "I would acknowledge that this isn't the most egregious

[63] This is the *third* time Ms. Mulligan mislead the jury on the key fighting issue in the case: The constitutionality of the Redding Police Department's unwritten search policy.

conduct that I think has ever been seen in a 148 charge. . . . I would ask for ten days of jail . . .” (RT 873.)

252. Defense counsel said, “This case was a fine only case when we started. . . . my client exercises his right to a jury trial and now all of a sudden it blossoms into a ten-day jail case. I mean, drunk drivers don’t get that kind of time on a first offense.” (RT 874.)

253. The trial court, before pronouncing sentence, told Petitioner what follows.

A) “It was just mystifying that you would go to that air show and under the guise of trying to protect your constituitional rights instigate a confrontation with a police officer in a crowd of people trying to enter a public event and endanger not only yourself but endanger the police officer and those that came to assist that officer . . . .” (RT 875.)

B) “Your choice as a means of vindicating your constitutional rights was absolutely wrong in my estimation. It was not the act of a good citizen. It wasn’t the act of a reasoned attorney, an experienced attorney in your position, and it was staggering, as a matter of fact, the lack of insight you demonstrated in doing what you did.” (RT 876.)

C) “. . . if you thought your rights had been violated, it would have been absolutely appropriate for you to make note of that, to seek the redress of your grievances by filing suit in a court of law. But in acting the way that you did in trying to push past the officer into that air show just to gratify your own arrogance and your own sense that you were right and you were smarter than everyone else,

as I said, you endangered yourself, you endangered the officers that had to deal with you, and you endangered the spectators . . . ." (RT 876.)

D) " . . . the officer in my estimation was absolutely justified in dealing with you the way he did which was a very reasoned reaction to your overreactions, and you left him with absolutely no choice but to deal with you in the fashion that he did. It was professional, it was restrained, and it was justified." (RT 876-877.)

E) The fact that you're an attorney entitles you to no greater consideration for this act of civil disobedience if that's how you choose to view it . . . As a matter of fact, it in my mind aggravates your situation. It doesn't minimize it. If you thought you were right, there was another way to prove it, and you should have known that." (RT 877.)

F) "I think Miss Mulligan . . . has recommended a sentence that is within a range of fair outcomes for you, but frankly I was thinking of more. . . . She's not embroiled in it. She didn't do anything but her job in prosecuting this case, and I respect the fact that she hasn't come in asking for something that isn't justified." (RT 877.)

L. Trial Court's Revocation of the Stay of Sentence.

254. The Hon. William Gallagher revoked the stay of execution of sentence on February 1, 2005.[64]

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[64] Petitioner urged Judge Gallagher to continue the stay to give this Court, and the federal courts if necessary, time to adjudicate this petition. Petitioner brought a draft of same with him to show to Judge Gallagher. A

255. If Judge Gallagher did not know about this Hyde limitation on administrative searches before February 1, 2005, he knew about it when Petitioner told him about it. Judge Gallagher, however, appeared to be deliberately indifferent to Petitioner's rights and to the Redding Police Department's violation of Hyde.

256. What does it take to get judicial officers to obey the Constitutional Rule of Law? To function as Guardians of Liberty? To remedy what appears to be the intentional violation of constitutional norms?

V.
EXHAUSTION OF STATE APPELLATE REMEDIES

257. Petitioner timely appealed the conviction to the Appellate Division of the Superior Court in and for Shasta County.

258. That Appellate Division affirmed the conviction on November 15, 2004. That Appellate Division's case number for this case is 02CRAM4250.

259. Petitioner raised the following issues before that Appellate Division: A) Whether the arresting officer's detention of

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Deputy Attorney General told Judge Gallagher that his office was not opposed to a continuance of the stay. Petitioner also read to Judge Gallagher an excerpt from People v. Hyde, supra, 12 Cal.3d at 169, fn 6, to justify a continuance of the stay on the grounds that there had been an unconstitutional extension of a search policy contrary to Hyde which resulted in a miscarriage of justice. Judge Gallagher said he would not get into the merits of the case, he was not bound by the Attorney General's recommendation, Petitioner had exhausted his appellate remedies, and he believed the chances of Petitioner prevailing on the Great Writ were nil. Hence, he revoked the stay.

Petitioner was valid as enforcement of an administrative search or any other theory or was based on probable cause; B) The police unconstitutionally enforced an unwritten search policy that gave them unfettered discretion; C) Petitioner was improperly convicted under § Penal Code § 148(a)(1) because the officers were not in the lawful performance of their duties, the jury was improperly instructed and the jury never made a finding on one element; D) Penal Code § 148(a)(1) is unconstitutionally vague and overlybroad; E) The general verdict is unconstitutional because it is based on an invalid theory for conviction; F) The trial court erred in refusing defense instructions and removed key issues from the jury; and G) The court erred in denying Petitioner's Pitchess motion.

260. Petitioner represented himself before that Appellate Division.

261. After the Appellate Division affirmed the conviction Petitioner timely filed with the Appellate Division a Motion to Reconsider and also timely filed with the Third Appellate District a Petition to Transfer.

262. The Third Appellate District denied the petition to transfer on January 6, 2005. The Third Appellate District's case number is C048577.

263. Petitioner has not previously sought any review in the California Supreme Court regarding this case.

264. This petition does make claims regarding the conviction, sentence, and commitment that were not made previously on appeal because the Appellate Division twice refused to grant a page limit extension, and it was impossible to raise all

meritorious issues in a 15 page opening brief and a 15 page reply brief.

265. Except as stated herein, Petitioner has not filed any other petitions, applications, or motions with respect to this conviction.

266. Petitioner does not have any petition, appeal, or other matter pending in any other court regarding this case.

267. This petition could not have lawfully been made to a lower court because the Appellate Division twice refused a page length extension, the Third Appellate District denied Petitioner's petition for transfer, the Appellate Division and the Third Appellate District have made it clear that they will not grant Petitioner relief, the Appellate Division and the Third Appellate District have already inexplicably affirmed egregious unconstitutional behavior, and, due to reasons of judicial economy and the importance and complexity of the constitutional issues raised herein, it is best that this Court adjudicate this petition.

VI.
GROUNDS FOR RELIEF

1. The Search Policy Officer Scott Mayberry Enforced Violated a California Supreme Court Precedent.

Respondent's position that the Redding Police Department's search policy for air show patrons was a lawful expansion of People v. Hyde, supra, 12 Cal.3d 158 is non-meritorious. It fails to come to terms with these facts: A) In Hyde, the FAA had issued an administrative regulation that authorized a warrantless search of

ticketed, pre-boarding *passengers* of commercial airliners,[65] B) Hyde held that that exception was limited to such passengers, and C) Petitioner was an *air show patron* 2,000 feet from the nearest passenger terminal and airliner, he was outside the airport's fence, he was outside a passenger terminal, and he was in a public walkway. This passage from Hyde, supra, 12 Cal.3d at 169, fn 6, cuts a link in the prosecution's theory:

> . . . airport screening procedures must be as limited in intrusiveness as is consistent with their justification, and an individual may avoid submitting to a search altogether by electing not to board the airplane. [Emphasis added.]

Since the jury was never told of this limitation the prosecution and the trial court materially mislead the jury.

The trial court, the Hon. William Gallagher, when refusing to take judicial notice of broad constitutional provisions tendered by Petitioner, opined there was no need to do that because the process of adjudication had been "refined."(RT 36.) The quoted excerpt from Hyde is a refinement that the trial court should have told the jury about. This "refinement" exposed the RPD's search policy for what it is: A violation of an applicable California Supreme Court precedent and an unconstitutional police edict.

Petitioner cited Hyde to Judge Gallagher on page three of his Renewed Motion for Mandatory Judicial Notice, the prosecution cited Hyde to him (RT 748-749; 756), and he had a duty to read Hyde carefully before he instructed the jury based on an instruction prepared by the prosecution lifted from Hyde, out of context.

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[65] People v. Hyde, supra, 12 Cal.3d at 162, fn 1.

There is no official act without an unbroken logical chain of authority. The prosecution's "chain," however, is broken, in more places than one. Hyde is the first of several California Supreme Court precedents that Officer Scott Mayberry violated.

Since Petitioner did not manifest conduct consistent with boarding an airliner, per Hyde, he was not subject to an administrative search. Officer Scott Mayberry had no "duty" to enforce this policy against Petitioner.

Petitioner conformed his behavior to what Hyde declared. Hyde is a limitation on the police. Petitioner reasonably relied on case precedent from this state's highest appellate court, which is public law. The police, and the prosecution, relied on the police's unwritten search policy, which is not public law. Since the Redding Police Department did not tailor its search policy to conform to Hyde's expressed limitations, the police operated as "outlaws," literally outside the law. Nevertheless, Respondent continues to defend against Petitioner's efforts to obtain post-conviction relief.

Since the entire foundation of everything Officer Scott Mayberry did was based on him enforcing an unconstitutional police edict, Mayberry did not discharge a lawful duty when he detained, seized, and arrested Petitioner, Petitioner is factually and legally innocent, and the conviction must be reversed.

2. The Redding Police Illegally Searched Air Show Patrons for Banned Food for the Benefit of a Private Third Party.

The California Supreme Court declared in Hyde, supra, 12 Cal.3d at 167-169:

> Pre-boarding inspections [of ticketed airline passengers and their carry-on baggage] must be confined to minimally

> intrusive techniques designed solely to disclose the presence of weapons or explosives. . . . ¶ The result is a form of ongoing emergency rendering it impracticable . . . for airline officials to seek a search warrant for individual passengers. . . . ¶ officials had the right to screen all boarding passengers. . . [Emphases added.]

In People v. Mancus, sworn officers and the airport manager testified that for years before 9/11 the original purpose of this search policy was to search for banned food and beverages, and, after 9/11, the purpose was to search for banned food and beverages plus weapons and explosives. Petitioner did not invent the prosecution's witnesses' testimony. It is a matter of record.

9/11 gave the police a rationale to try to justify their real purpose: Search for banned food and beverages in the guise of public safety to help a private third party that donated money to the local police. The RPD took money from one group of citizens who paid them, in effect, to violate the Fourth Amendment rights of other citizens. The police, however, had a duty to take those rights seriously, to know the law, and to enforce the law evenhandedly, consistent with binding public law.[66] The police arrested anyone who peacefully challenged their policy. The police searching air show patrons for food and beverages is a second, independent ground for how the police violated Hyde.

3. Federal Precedents Support Hyde.

The Ninth Circuit, in United States v. Davis (9th Cir. 1973) 482 F.2d 893, 910-913, took the same position as Hyde, and the Ninth Circuit reaffirmed its holding in Davis in United States v. Pulido-Baquerizo (9th

[66] Law enforcement officers cannot escape liability for their wrongdoing "by asserting ignorance of the substance of the governing law." Gabbert v. Conn (9th Cir. 1997) 131 F.3d 793, 806.

Cir. 1986) 800 F.2d 899, 901. The Ninth Circuit said in Pulido-Baquerizo:

> . . . we hold that those passengers placing luggage on an x-ray machine's conveyor belt for airplane travel at a secured boarding area impliedly consent to a . . . inspection . . . . [Emphases added.]

Since Petitioner was not in a "secured boarding area" and manifested no intent to travel on an airplane he was not subject to a search.

The Ninth Circuit reaffirmed these holdings in United States v. $124,570 U.S. Currency (9th Cir. 1989) 873 F.2d 1240.[67]

The Court in $124,570 U.S. Currency, at pages 1243, 1247, declared:

> Judge Browning's thoughtful and narrowly crafted opinion in *Davis* made it clear, however, that we were not placing our imprimatur on all airport searches, so long as they could colorably be classified as serving a security purpose. Quite the contrary. . . .[Emphasis added.]

Deputy District Attorney Christie Mulligan, however, told the trial court and the jury the Redding Police Department's search policy was a legal expansion of the administrative search exception for airline passengers. But, Hyde in 1974 and $124,570.00 U.S. Currency in 1989, held such an expansion is illegal.

The Ninth Circuit further limited the administrative search rationale in Alexander v. City and County of San Francisco (9th Cir. 1994) 29 F.3d 1355, 1361:

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[67] Court declared unconstitutional an arrangement whereby airline security reported to law enforcement passengers carrying in excess of $10,000.00 cash in exchange for a reward; even though this arrangement involved airline passengers, it was deemed to be an unconstitutional expansion of the administrative search exception of airline passengers.

> These cases make it very clear that an administrative search may not be converted into an instrument which serves the very different needs of law enforcement officials. If it could, then all of the protections traditionally afforded against intrusions by the police would evaporate. . . . [Emphasis added.]

The Redding Police Department's and Respondent's rationale gut the Fourth Amendment despite a line of California Supreme Court and federal Ninth Circuit case decisions that undermine the foundation for everything the RPD, Officer Scott Mayberry, and Respondent did.[68]

4. Exceptions to the Warrant Requirement Must Be Narrowly Construed Against Law Enforcement.

"[T]he most basic constitutional rule in this area of law is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment–subject only to a few specially established and well-delineated exceptions,'." Coolidge v. New Hampshire (1971) 403 U.S. 443, 454-55; United States v. Chadwick (1977) 433 U.S. 1. Such exceptions are "jealously and carefully drawn." Katz v. United States (1967) 389 U.S. 347, 357. Exceptions to the warrant requirement must be narrowly construed against law enforcement. Arkansas v. Sanders (1979) 442 U.S. 753, 759-760; People v. Gale (1973) 9 Cal.3d 788, 795. "A search or seizure is ordinarily unreasonable in the absence of [at least some] individualized suspicion of wrongdoing." City of Indianapolis v. Edmond

[68] Petitioner knew of these Ninth Circuit holdings, but the trial court would not let him tell this to the jury, and the trial court and Deputy District Attorney Christie Mulligan did not disclose this to the jury. The police, Ms. Mulligan, and the trial court are charged with knowing this law.

(2000) 531 U.S. 32, 37.[69]

5. The Redding Police Department Unconstitutionally Expanded the Administrative Search Exception to the Fourth Amendment.

Fourth Amendment rights to be free from all restraint or interference by others exists unless clear and unquestionable legal authority justifies invasion of same. Terry v. Ohio (1968) 392 U.S. 1, 9. On May 4, 2002 there was no such legal authority to support the RPD's edict.

Ms. Mulligan's admission that the RPD's edict is an extension of Hyde (RT 756) is tantamount to an admission that there was no clear and unquestionable legal authority to support it. If there was such authority there would be no need to "extend" it.

A search or seizure that does not fall within any exception to the warrant requirement is unreasonable and unconstitutional. People v. Williams (1999) 20 Cal.4th 119,129; Mincey v. Arizona (1978) 437 U.S. 385, 390. When an officer makes an arrest or search without a warrant the prosecution has the burden to prove that the officer's conduct was constitutionally permissible. Badillo v. Superior Court (1956) 46 Cal.2d 269, 272. Mulligan, however, did not sustain that burden. A warrantless search is reasonable only when it falls within one of the clearly defined exceptions to the warrant requirement. Florida v. Jimeno (1991) 500 U.S. 248, 250. The RPD's search policy, however, did not fall within any such exception.

Precedent does not establish or condone application of an

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[69] The jury was never instructed about these precedents, and the trial court refused to let Petitioner discuss them. Deputy District Attorney Christie Mulligan kept the jury misinformed and misdirected. If Ms. Mulligan was sincere when she told the jury she was "just doing her job" it is amazing how much about her job she did not know.

amorphous "reasonableness" test to determine the constitutionality of a warrantless search. Florida v. Jimeno, supra, 500 U.S. at 250-251. But, the Hon. William Gallagher gave the jury an equivocal, broad, amorphous "reasonableness" test "administrative search" instruction, without any limitation, contrary to Hyde and contrary to Florida v. Jimeno.[70]

The Fourth's Warrant Clause requirement applies to administrative inspections. Marshall v. Barlow's Inc. (1978) 436 U.S. 307, 323.

6. Lower Courts Approved an Unconstitutional Expansion of an Exception to the Fourth Amendment Retroactively, in Contravention of Petitioner's Rights.

The courts' retroactive approval of the police's expansion of this exception to the Fourth is an unforeseeable, unexpected, sudden, and unconstitutional expansion of criminal liability, contrary to higher legal authority, in violation of Petitioner's rights to Due Process of Law and the ban against ex post facto laws. People v. Sakarias (2000) 22 Cal.4th 596, 622; People v. Morante (1999) 20 Cal.4th 403, 431.

7. The Lower Courts Waged War Against the Supreme Law.

What is the viability of the First Amendment's Right to Petition, via an appeal or otherwise, to hold Government and Government Actors to

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[70] Contrary to this authority, the trial judge and the lower level appellate judges approved what the RPD and Officer Scott Mayberry did. Hence, there is merit to the charge that the police, the prosecutor, the trial judge, and the lower level appellate judges have manifested a clubby, incestuous relationship and their skirting of Hyde is dishonest. Competent attorneys have characterized the Shasta County's Appellate Division's decision affirming the conviction as a result oriented decision consistent with legal fraud. When competent attorney's react that way the Judiciary has a problem. The first steps required to fix this problem are to acknowledge it, to understand it, to expose it, and to ask you, respectfully, to please fix it, and to encourage all members of this "law enforcement club" to return to honesty and integrity.

Constitutional restraint? What can the People do when it appears that Government Actors, including judges, violate the law–intentionally or negligently? If the People cannot hold Government Actors to obey the United States Constitution, is it still the Supreme Law, strong enough to bind Government, or, have the People lost the ability to peacefully hold Government Actors accountable to the Constitutional Rule of Law?

The Supreme Law of the land must be as binding on Government when Government, and its agents, do not like it as it is on citizens whether they like it or not. The Constitution contains its own terms for amendment. Police edicts and judicial fiat are not among them.[71]

There are Four Boxes of Freedom–only four: Soap Box, Jury Box, Ballot Box, and Cartridge Box. They are best used in that order. Hopefully, the Cartridge Box will never have to be used, but, there are only three boxes before the Cartridge Box. When the first three fail to preserve or to restore constitutionalism, the only options left are the yoke or revolt. No one in their right mind wants to have to resort to the Cartridge Box. No one who values liberty will submit to the yoke or tolerate arbitrary, pseudo legal nonsense.[72]

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[71] See John E. Wolfgram's "How The Judiciary Stole The Right To Petition," 31 U. West L.A. L. Rev. (Summer 2000.) Petitioner urges this Court to read what Mr. Wolfgram wrote.

[72] As governments' agents continue to abuse citizens with the Judiciary's approval, governments' agents create more converts receptive to the idea of going for broke to restore the Constitutional Rule of Law. A growing pile of unredressed grievances fuel anger and alienation. Increasingly, more citizens approach zero intolerance for a judiciary that spreads a virulent form of an unconstitutional bubonic plague: The police can do just about anything they want in the name of public necessity or expediency, and, when their victims attempt to enforce their rights in court, their lawsuits or defenses crash into a wall of clubby, incestuous police-

The Judiciary has irresponsibly allowed the Executive, via the police and the prosecution, to function as outlaws, contrary to constitutional norms. Algernon Sidney's words increasingly have meaning to growing numbers who have been abused by Government Actors: "This hand, enemy to tyrants, By the sword seeks calm peacefulness with liberty."[73]

8. The Fourth Amendment Protects People Who Walk Through an Airport.

Since the Fourth Amendment protects a "constitutional right of personal security," it "protects people, not places," and this includes people who walk through an airport. U.S. v. Mendenhall (1980) 446 U.S. 544, 550. Since the Fourth protects "people who walk through an airport" it protected Petitioner who was outside an airport terminal and fence.

9. The Redding Police Department's Unwritten Search Policy Unconstitutionally Contracted Petitioner's Rights.

Thirty years before this air show, the United States Supreme Court

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prosecutorial-judicial relationships and "Just Us" members who hide behind immunities and cover for each other.

[73] The following is indicative of the alienation and the need for this Court to strongly condemn–again--police practices that violate the United States Constitution's commands: Unintended Consequences by John Ross, Enemies Foreign and Domestic: A Novel About the Cost of Freedom in the Age of Terror by Matthew Bracken, Don't Shoot the Bastards (Yet): 101 More Ways to Salvage Freedom by Claire Wolfe, 101 Things to Do 'Til the Revolution: Ideas and Resources for Self-Liberation, Monkey Wrenching and Preparedness by Claire Wolfe, Boston on Guns & Courage: Proven Tools for Chronic Problems by Boston T. Party, To Break a Tyrant's Chains: Neo-Guerrilla Techniques for Combat by Duncan Long, David's Tool Kit: A Citizen's Guide to Taking Out Big Brother's Heavy Weapons by Ragnar Benson, Dial 911 and Die: The Shocking Truth About the Police Protection Myth by Richard W. Stevens, The State vs. The People: The Rise of the American Police State by Claire Wolfe and Aaron Zelman, The Mitzvah: For Those Who Love Freedom and For Those Who Should by Aaron Zelman and L. Neil Smith, and Hope: How Would You Feel if You

declared in United States v. United States District Court (1972) 407 U.S. 297, 317 that the police and prosecutors must not invade citizens' Fourth Amendment rights without prior judicial approval:

> . . . those charged with this investigative and prosecutorial duty should not be the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks. . . . The Fourth Amendment contemplates a prior judicial judgment, not the risk that executive discretion will be reasonably exercised. This judicial role accords with our basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of Government.

Forty-two years before this air show three United States Supreme Court justices, dissenting, articulated, persuasively, with restrained derision, why they loathed police who bypass prior judicial approval.

> How much more convenient it is for the police to find a way around those specific requirements of the Fourth Amendment! What a hindrance it is to work laboriously through constitutional procedures! How much easier to go to another official in the same department! . . . No more showing of probable cause to a magistrate! No more limitations on what may be searched and when! . . if we are to preserve our system of checks and balances and keep the police from being all-powerful, these judicial controls should be meticulously respected. When we read them out of the Bill of Rights by allowing short cuts . . ., police and administrative officials . . . acquire powers incompatible with the Bill of Rights. Abel, Alias Mark, Alias Collins, Alias Goldfus v. United States (1960) 362 U.S. 217, 246-247. [Justices Douglas, Brennan, and Black dissenting.]

The Redding Police Department, however, took an unconstitutional "short cut" with their ill conceived, *unwritten*, edict. This edict was, and is, flawed: A) there is no recorded memorialization of it that can put anyone

on objective notice of its existence and terms, B) it cannot be checked or verified to confirm what it is, that it existed, who formed it, who approved it, who is responsible for it, what its terms, scope, criteria, and limits are, and what its purpose is, C) supervisors cannot uniformly teach the policy or determine if searching officials complied with it, D) no one can know for sure if government searchers without a warrant are acting pursuant to a public duty as opposed to a private duty or an individual frolic; hence they cannot know if government searchers without a warrant act legally and if resistance to the "policy" is lawful, E) government searchers and supervisors are free to change it at will without risk of being contradicted by a written memorandum of it, and F) those who search pursuant to an unwritten policy retain the power to make after-the-fact changes to it to cope with anyone who challenges their enforcement of it to try to make a justification for it defensible.

Since this edict was unwritten, the prosecution was free to offer any after-the-fact rationale and false testimony it was willing to put up to justify it. The police, and the prosecution, knew, that since there is no written memorialization of this edict, they cannot be contradicted. How convenient!

10. Prosecutors Cannot Circumvent the Fourth Amendment.

"Compliance with the fundamental guarantees of the Fourth Amendment is not a game to be won by inventive counsel, but a practical, day-to-day responsibility of law enforcement personnel." People v. Superior Court (1972) 7 Cal.3d 186, 198. Deputy District Attorney Christie Mulligan, however, tried to expand the Hyde exception.

11. The Redding Police Department's Edict Gave Officers Unfettered Discretion.

An unwritten search policy which leaves the decision to search to the unfettered discretion of the searching official without objective, rational, specific, criteria, so that the person conducting the search is free to apply his or her own individualized criteria, is unconstitutional. Brown v. Texas (1979) 443 U.S. 47, 51-52; People v. Banks (1993) 6 Cal.4th 926, 936; Ingersoll v. Palmer (1987) 43 Cal.3d 1321, 1342.[74]

12. The Redding Police Department's Edict Violated Three Component's of the Fourth Amendment.

The Fourth Amendment protects the right to privacy, the right to possession of one's property, and the right to proceed with one's itinerary with one's property and privacy, intact, against meaningful interference. Soldal v. Cook County (1992) 506 U.S. 56, 63-66; U.S. v. Jacobsen (1984) 466 U.S. 109, 124. The *search* part of the Fourth guarantees the right of privacy against unreasonable search. The *seizure* part guarantees one's right against unreasonable, coerced, dispossession of one's property by any unwarranted interference by government's agents. Such unreasonable, coerced, dispossession includes a physical seizure by government's agents or government's agents telling a person they must dispossess themselves of the property to keep it from being searched.

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[74] The RPD's search policy, however, was unwritten (RT 90, 132, 136, 266, 268, 412, 415, 497), and it lacked objective criteria that took away the searching official's unfettered discretion. (RT 132, 414-415.) The jury, however, was never instructed as to this limitation on Officer Mayberry's lawful powers. Thus, it is increasingly too difficult to entertain that Deputy District Attorney Christie Mulligan was so unlearned and sincere when she told the jury that the courts approved the RPD's search policy, the jury did not have to determine if it was legal, and she was just "searching for the truth" and "doing her job."

A state may not impose conditions which require the relinquishment of constitutional rights. Frost & Frost Trucking Co. v. Railroad Commission of California (1926) 271 U.S. 583, 594-599. It is inconceivable that guaranties embedded in the Constitution of the United States may be manipulated out of existence. Id. No citizen has to surrender one right to exercise another. United States v. Davis, supra, 482 F.2d at 912. The Redding Police Department's edict coerced citizens to make a choice they are not legally required to make: Surrender privacy to retain possession or agree to dispossession to retain privacy.

13. A Warrant Was Required Because the Police Admitted They Searched For Food and Beverages.

When the focus of a search includes searching for anything not directly related to weapons that might threaten airline security, a warrant is required. U.S. v. Jacobsen, supra, 466 U.S. at 118-22.

14. The Redding Police Department's Edict Did Not Promote Airline Security, Was Unreasonable, and Violated Petitioner's Rights.

It is difficult to conceive how Petitioner, when 2,000 feet from a passenger terminal and guarded airliners, who manifested no intent to board an airliner or to approach one, who acted like everyone else on a public sidewalk, in the absence of individualized probable cause, posed a direct threat to airline security.

15. Administrative Searches of Persons on a Public Walkway Are Unconstitutional.

Individuals "are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalks." Delaware v. Prouse (1979) 440 U.S. 648, 662-63. Every person has a "right" and a significant interest to enjoy the use of public streets, building and places "without unwarranted interference or harassment by agents of the law." In re Tony

C. (1978) 21 Cal.3d 888, 893; People v. Aldridge (1984) 35 Cal.3d 473, 479. Administrative searches are justified as warrantless searches when they are made against commercial establishments in "closely regulated" industries. New York v. Burger (1987) 482 U.S. 692, 699-703. The search in this case has no resemblance to such valid administrative searches or any well recognized exception. If the police can apply the administrative search exception to people on a public walkway in the absence of probable cause, they can expand it anywhere. In that case, the police are at liberty to write themselves the functional equivalent of the dreaded *general warrant,* with the blessings of the courts. In that case, the Fourth Amendment is gutted.[75]

What Marshall, Holmes, Brandeis, Cardozo, Black, Douglas, Jackson, Harlan, and Brennan, etc., wrote about how the *general warrant*, more than the stamp act, drove the colonials to rebel, is relevant.[76]

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[75] James Otis condemned civil authority's use of general warrants because they placed "the liberty of every man in the hands of every petty officer." The Founding and Framing Generations hated such warrants because they allowed government's agents to search wherever their suspicions fell, which was totally subversive of the people's liberty. Marcus Et Al. v. Search Warrant (1961) 367 U.S. 717, 728-729.

[76] "'Vivid in the memory of the newly independent Americans were those general warrants known as writs of assistance under which the officers of the Crown had so bedeviled the colonists. The hated writs of assistance had given customs officials blanket authority to search where they pleased for goods imported in violation of British tax laws. They were denounced by James Otis as 'the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an English law book,' because they placed 'the liberty of every man in the hands of every petty officer.' . . . the evil the Amendment was designed to prevent was broader than the abuse of a general warrant. Unreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the first clause of the Amendment." Payton v. New York (1980) 445 U.S. 573, 585.

16. The "Public Safety" Rationale is a Fig Leaf.

When public safety is not genuinely in jeopardy the Fourth Amendment precludes warrantless searches. Chandler v. Miller, supra, 520 U.S. at 323. The absence of a history of disturbance(s) and/or injury(ies) caused by a certain type of physical item reduces the legitimacy of a search based on *public necessity* to discover and to confiscate such an item. Collier v. Miller (1976) 414 F. Supp. 1357, 1362.[77]

17. Terrorism Was an Invalid Excuse for The Redding Police Department's Edict.

The RPD and Ms. Mulligan have two additional problems: First, since martial law had not been declared**,** the United States was still subject to the Constitutional Rule of Law and second, their rationale is contrary to U.S. history and additional United States Supreme Court decisions. A quick detour to U.S. history underscores how the prosecution's "9/11-public safety rationale" is nonmeritorious. For example, an English army invaded the United States and Washington, D.C. in 1812 and burned the White House. Yet, even then, martial law was not declared, and citizens were not disarmed. In fact, the United States government owes its continued existence to armed citizens who rallied in New Orleans under Andrew Jackson to defeat the English army. That English invasion was not allowed to be an excuse to gut the Bill of Rights. Just as the Bill of Rights did not go down when the White House burned in 1812 the Bill of Rights did not

[77] The record is devoid of any credible evidence that on May 4, 2002 public safety at this air show was in jeopardy. If it was, it is unimaginable that the airport's manager would have allowed the air show to take place, that the REC would have held the event, that the police presence at the air show's entry gate was minimal, that Herb Williams would be allowed to search while unarmed, and that many air show patrons attended the event. There is a gap between reality and the prosecution's rhetoric.

go down with the Twin Towers in 2001, as least not while this nation is populated with sufficient numbers of armed constitutionalists.

When the nation is stressed, the need to adhere to the Constitution's commands increases.

> The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; . . . . Ex parte Milligan (1866) 71 U.S. 2, 120-121. [Emphasis added.]

Petitioner on May 4, 2002 at the Redding Municipal airport was suppose to be able to enjoy the "the shield" of the United States Constitution. The Redding Police Department, Officer Scott Mayberry, Deputy District Attorney Christie Mulligan, the Hon. William Gallagher, and the jury, however, stole that legal entitlement from Petitioner.

> The concept that the Bill of Rights and other constitutional protections against arbitrary government are inoperative when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine and if allowed to flourish would destroy the benefit of a written Constitution and undermine the basis of our government. . . . .¶ The attitude appears to be that a slight encroachment on the Bill of Rights and other safeguards in the Constitution need cause little concern. . . . Slight encroachments create new boundaries from which legions of power can seek new territory to capture. 'It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of

> person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Reid v. Covert (1957) 354 U.S. 1, 39-40. [Emphasis added.]

The RPD, the Shasta County District Attorney, and the Hon. William Gallagher never had constitutionally legitimate authority to promote the public welfare by sacrificing Petitioner's liberty per their opinions.

> The constitutional rights of [citizens] are not to be sacrificed. . . . important as is the preservation of public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the federal Constitution. . . . Law and order are not here to be preserved by depriving [citizens] of their constitutional rights. . . . ¶ The controlling legal principles are plain. The command of the Fourteenth Amendment is that no 'State' shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position . . . denies or takes away the equal protection of the laws, violates the constitutional inhibition; . . . Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protections of the laws . . . or whatever the guise in which it is taken. . . . In short, the constitutional rights of [citizens] can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes . . . . Cooper v. Aaron (1958) 358 U.S. 1, 17-18. [Emphasis added.]

The United States Supreme Court further declared in Cooper v. Aaron, supra, 358 U.S. at 1819:

> Article VI of the Constitution makes the Constitution the 'supreme Law of the Land.' . . . 'the fundamental and paramount law of the nation,' . . . ¶ No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. [Emphasis added.]

Concerns about crime, drugs, airport security, and terrorists, do not relieve judges and jurors from their duty to obey the Constitution.

> . . . the most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment--subject only to a few specifically established and well delineated exceptions.' The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption that the exigencies of the situation made that course imperative.' (T)he burden is on those seeking the exemption to show the need for it.' In times of unrest, whether caused by crime or racial conflict or fear of internal subversion, this basic law and the values that it represents may appear unrealistic or 'extravagant' to some. But the values were those of the authors of our fundamental constitutional concepts. . . . If times have changed, . . . the changes have made the values served by the Fourth Amendment more, not less, important. Coolidge v. New Hampshire, supra, 403 U.S. at 455. [Emphasis added.]

The Eleventh Circuit 's reasoning in a post-9/11 case, Bourgeois v. Peters (11th Cir. 2004) 387 F.3d 1303, 1311-1316, is compelling:

> While the threat of terrorism is omnipresent, we cannot use it as the basis for restricting the scope of the Fourth Amendment's protections in any large gathering of people. In the absence of some reason to believe that international terrorists would target or infiltrate this protest, there is no basis for using September 11 as an excuse for searching the protestors. . . . ¶ The text of the Fourth Amendment contains no exception for large gatherings of people. It cannot be argued that the Framers simply failed to foresee the possibility of large protests of this character. . . . The City's request for the broad authority to conduct mass, suspicionless, warrantless searches is simply bereft of any support . . . ¶ The City's position would effectively eviscerate the Fourth Amendment. . . . the Fourth Amendment embodies a value judgment by the Framers that prevents us from gradually

> trading ever-increasing amounts of freedom and privacy for additional security. It establishes searches based on evidence–rather than potentially effective, broad, prophylactic dragnets–as constitutional norms. . . . We cannot simply suspend or restrict civil liberties until the War on Terror is over, because the War on Terror is unlikely ever to be truly over. September 11, 2001, already a day of immeasurable tragedy, cannot be the day liberty perished in this country. . . . ¶ we decline to take it upon ourselves to craft another exception to the Fourth Amendment's general requirement of individualized suspicion. . . . ¶ We therefore find that the mass, warrantless, suspicionless search policy violated the Fourth Amendment. [Emphasis added.]

The Redding Police Department, however, took it upon itself "to craft another exception to the Fourth Amendment's general requirement of individualized suspicion."

Closer to "home," the Ninth Circuit, in another post-9/11 decision, Graves v. City of Coeur D'Alene (9th Cir. 2003) 339 F.3d 838, 842-847, held that "public necessity" in a large, volatile, dangerous, public gathering that threatens public security cannot substitute for individualized suspicion, and public necessity does not trump the Fourth Amendment's probable cause requirement. In Graves, an officer on security duty at a dangerously hostile, large, Aryan Nation parade, arrested an agitated parade protester with a closed backpack that had cylindrical bulges, who refused a consent search, because the officer thought the containers might be explosives, and he knew of a report of recently stolen explosives, nearby. The Court held that an officer, even when confronted with an undeniably incendiary situation, involving large numbers of impassioned violent protestors and supporters, cannot rely too heavily on the context of a hostile and volatile situation, even if it creates intense anxiety to safeguard the public. In such a

situation, an officer still needs individualized suspicion to make a lawful detention, seizure, and arrest. Even though in Graves the officer saw a person with a heavy, opaque, backpack, with cylindrical bulges, and this person was agitated and refused a consent search, the officer did not have sufficient individualized suspicion that that person carried an explosive device.

As in Graves, Mayberry had only mere suspicion–if even that--that Petitioner was connected to criminal conduct, and Mayberry acted without a warrant and without written search criteria that constrained his discretion.

There are those in law enforcement who, if they had their way, would turn the United States into a dense pack of "Checkpoint Charlies," as if the United States was East Germany during the Cold War. To the extent judges and citizens tolerate the mind set that triggered this Redding Police Department search policy, it is conceivable that this scenario will be in everyone's future: When you travel by land, you will be forced to endure up to one or more "Checkpoint Charlies" every 5-10 miles or so.

18. Mere Signage Does Not Trump the Fourth Amendment.

Civil authority cannot condition public access to a public forum or event on submission to a search and then claim those subjected to searches consented. Gaioni v. Folmar (1978) 460 F. Supp. 10, 14-15, fn 14. The fact that a public event is difficult to police does not authorize the police to engage in illegal enforcement measures such as wholesale, warrantless searches of patrons who attempt to enter a public forum to attend a public event. Id., 15.

The record is also devoid of evidence that the Redding Exchange Club's signage satisfied the Penal Code's requirements for same. A private group's *private law* signage that fails to comply with the Penal Code's

requirements is not vested with the strength of *public law* because sworn officers enforce the *private signage*. Even if this club's signage did comply with the Penal Code's requirements for same, the Fourth Amendment's protections were triggered in Petitioner's favor because law enforcement officers did the searching. Terry v. Ohio, supra, 393 U.S. at 16.

When private organizations or police departments enforce their own ad hoc search policies without prior approval from an elected or appointed law making body, the state will be subject to an unmanageable hodgepodge of inconsistent search policies that gut the Fourth Amendment.

Penal Code §148(a)(1) does not put anyone on notice that part of an officer's official "duty" is to enforce a private organization's *private law* signage without complying with *public law* requirements for such signage.

19. The Fourth Amendment Generally Requires a Warrant.

An enduring Fourth Amendment principle is: Except in carefully defined cases, a search of private property without proper consent is unreasonable unless it has been authorized by a valid search warrant. Camara v. Municipal Court (1967) 387 U.S. 523, 528-529.

20. A Warrant is Necessary as Assurance That the Search is Legal.

When a search is done without a warrant, it lacks the traditional safeguards that arise from the issuance of a warrant by a detached judge. Camara v. Municipal Court, supra, 387 U.S. at 539. An essential purpose of a warrant is to protect privacy interests by assuring citizens subject to search or seizure that such intrusions are legal. Skinner v. Railway Labor Executives Ass'n (1989) 489 U.S. 602, 621-622. The Fourth Amendment's warrant clause is not dead language nor an inconvenience that the police may skip. United States v. United States District Court (1972) 407 U.S. 297, 315; People v. Miller (1972) 7 Cal.3d 219, 224. The strongly preferred

norm under a proper application of the Fourth Amendment is strict adherence to a "warrant-based-on-probable cause" requirement premised on a tripartite weighing of three factors: *public necessity*, *efficacy of the search*, and *degree of the intrusion*. Schnecklolth v. Bustamonte (1973) 412 U.S. 218. "When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman . . . ." Johnson v. United States (1948) 333 U.S. 10, 13-14.

21. There Must be an Adequate Substitute for a Warrant.

Before a warrantless administrative search may be constitutional, there must be an adequate substitute for the lack of a warrant. New York v. Burger, supra, 482 U.S. at 703.

22. A Warrantless Seizure of Property is *Per Se* Illegal.

A seizure of property is *per se* unreasonable unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized. United States v. Place (1983) 462 U.S. 696, 701.

23. Police Inconvenience is Commonly an Insufficient Reason to Bypass the Warrant Requirement.

Police inconvenience does not justify ignoring the warrant requirement. Johnson v. United States (1948) 333 U.S. 10, 15.

24. The Redding Police Department's Edict Violated Petitioner's Right to Equal Protection and Due Process.

The edict in question made undefined "large" containers, exclusive of women's purses, subject to search. People with "large" containers were stripped of their Fourth Amendment rights while people with "small" containers, including purses of any size, were allowed to enter the air show with unsearched containers. This policy was a denial of Due Process and Equal Protection. It was also a form of gender discrimination.

25. The Redding Police Department's Edict Was a Ruse.

The Redding Police Department's edict permitted people with "small" containers and purses of any size to enter the air show, unsearched. Handguns, ammunition, grenades, dynamite, and bio-chemical agents could be brought in in "small" containers or purses–unsearched. Consequently, as an anti-terrorist policy, the RPD's edict was a farce. As an anti-banned food/beverages policy, it was also a farce. Food and beverages can be brought in in "small" containers and purses. This edict, therefore, was a ruse to bypass the Fourth Amendment and to search for evidence of ordinary crime in the guise of being an anti-terrorist/public safety administrative search policy. It was an unconstitutional license for anyone with a uniform to rummage at will through the belongings of anyone they targeted. The Redding Police Department's edict did not solve any problem. Instead, it re-arranged the problems, made them worse, and created newer, bigger, more serious ones.

26 . Size Alone is an Invalid Search Criterion.

Patrons of a public event do not have to submit to a search when the sole criterion to be applied is the size of a container in their possession. Collier v. Miller (S.D. Tex. 1976) 414 F. Supp. 1357, 1367.

27. Wholesale Searches of Public Forum Patrons Are Unconstitutional.

Wholesale searches of patrons attempting to enter a public forum are impermissible. United States v. Davis, supra, 482 F.2d at 906; Collier v. Miller, supra, 414 F. Supp. at 1367.

28. Petitioner's Bags Were Protected by the Fourth Amendment.

A person possesses a high expectation of privacy interest in the contents of opaque personal luggage that is protected by the Fourth Amendment. Bond v. United States (2000) 529 U.S. 334, 336.

29. Petitioner's Bags Did Not Support Reasonable Suspicion.

When a container is a common one with a legitimate purpose, its presence is insufficient to establish probable cause to search. Henry v. United States (1959) 361 U.S. 98, 104; People v. Limon (1993) 17 Cal.App.4th 524, 537.

30. The Right to be Free From Warrantless Search Absent An Applicable Exception to the Fourth Amendment Was Clearly Established as of 1991.

See California v. Acevedo (1991) 500 U.S. 565, 569.

31. The Right to be Free From Arrest Without Probable Cause Was Clearly Established as of 1989.

See Kennedy v. Los Angeles Police Dept. (9th Cir. 1989) 901 F.2d 702, 706.

32. Government Agents Must Respect Citizens' Rights.

"The Fourth Amendment requires government to respect the right of the people to be secure in their persons against unreasonable searches and seizures." Chandler v. Miller (1997) 520 U.S. 305, 308**.**

33. Judges Should Condemn Police Conduct That Violates Citizens' Rights.

"[C]ourts still retain their traditional responsibility to guard against police conduct which is over-bearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires. When such conduct is identified, it must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials." Terry v. Ohio (1968) 393 U.S. 1, fn 15. [Emphasis added.]

34. A Person Has a Right to Privacy Protected by the Fourth Amendment When in an Airport and on a Public Street.

"Whether arrested in a hotel lobby, an airport, a railroad terminal, or on a public street, . . . the owner has the right to expect that the contents of

his luggage will not, without his consent, be exposed on demand of the police . . . .'" California v. Acevedo, supra, 500 U.S. at 590.

35. Fourth Amendment Rights Are Sacred.

"'No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.'" Terry v. Ohio, supra, 393 U.S. at 8-9.

36. Fourth Amendment Rights Are First Class Rights.

"Fourth Amendment rights are not a mere second-class right but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government." United States v. Khounsavanh (1st Cir. 1997) 113 F.3d 279, 285**.**

37. Fourth Amendment Rights Are Basic to a Free Society.

"The security of one's privacy against arbitrary intrusion by the police–which is at the core of the Fourth Amendment–is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause." Wolf v. Colorado (1949) 338 U.S. 25, 27-28.

38. A Judge Must Normally Pre-Approve A Police Search.

"It is a first principle of Fourth Amendment jurisprudence that the police may not conduct a search unless they first convince a neutral magistrate that there is probable cause to do so." A citizen will enjoy the Fourth Amendment's protections only if the police comply with the rules.

New York v. Belton (1981) 453 U.S. 454, 457-458.

39. The Police Cannot Circumvent the Fourth Amendment.

The protection of fundamental constitutional rights should not depend upon unconstrained administrative discretion because when "a stop is not based on objective criteria, the risk of arbitrary and abusive police practices exceeds tolerable limits." Brown v. Texas (1979) 443 U.S. 47, 52. "[O]pen-ended' or 'general' warrants are constitutionally prohibited." Ybarra v. Illinois (1979) 444 U.S. 85, 92. "[A]dministrative warrant [cannot be] employed as an instrument of criminal law enforcement to circumvent . . . legal restrictions . . . ." Abel, Alias Mark, Alias Collins, Alias Goldfus v. United States (1960) 362 U.S. 217, 230.

40. The Police Cannot Circumvent the Fourth Amendment by Lightly Claiming "Public Necessity".

Public necessity should not be lightly invoked "as a conclusionary justification for . . . search procedures." Stroeber v. Commission Veteran's Auditorium (1977) 453 F. Supp. 926, 933.

41. The Police Must Obey the Fourth Amendment.

"Over and over again this Court has emphasized that the mandate of the Amendment requires adherence to judicial processes. . . . Officers instead of obeying this mandate have too often, as shown by the numerous cases in this Court, taken matters into their own hands and invaded the security of the people against unreasonable search and seizure." United States v. Jeffers (1951) 342 U.S. 48, 51. "The preliminary stages of a criminal prosecution must be pursued in strict obedience to the safeguards and restrictions of the Constitution and laws of the United States." Abel, Alias Mark, Alias Collins, Alias Goldfus v. United States, supra, 362 U.S. at 226.

42. Officer Scott Mayberry Detained Petitioner Unconstitutionally.

The burden lies with Respondent to justify a warrantless detention. People v. Bower (1979) 24 Cal.3d 638, 644; People v. Aldridge, supra 35 Cal.3d at 479. Stripped of his nonmeritorious reliance upon his department's unconstitutional search policy, Officer Mayberrry had no legitimate reason to detain Petitioner. Other than Mayberry's frank embellishment, there is no evidence in the record that Petitioner had bypassed a gate (RT 194; 197; 232; 301) or a *deputy*. Williams was a school bus driver[78] in real life and a reserve sheriff *volunteer*. (RT 93-94.) Many air show patrons "bypassed" Williams to enter the air show (RT 97,) and Mayberry did not detain, seize, or arrest them.

43. Petitioner Had a Right to Walk Away.

A person has a right to avoid an indiscriminate investigative detention. People v. Souza (1994) 9 Cal.4th 224, 234; Carey v. Nevada Gaming Control Board (9th Cir. 2002) 279 F.3d 873, 880. Mayberry admitted he heard Williams tell him Petitioner would not submit to a search. (RT 193-194; 276.) Hence, Mayberry *knew* what transpired between Williams and Petitioner.

Mayberry's personal knowledge of Petitioner was limited to seeing Petitioner walk toward him. (RT 193-194.) Petitioner did nothing illegal during the 10-15 seconds it took for him to walk from Williams to Mayberry. Petitioner stopped when Mayberry told him to stop. Petitioner peacefully talked to Mayberry about rights and asked questions about

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[78] If anyone dislikes Petitioner's tone, they should ponder this: Assume you have a law degree and are a trained legal professional with a command of Fourth Amendment jurisprudence, and, a school bus driver [Williams] with enough "knowledge" to be dangerous, initiates a criminal detention, seizure, and arrest because he was trained to believe that a

Mayberry's authority. (RT 194.) When Mayberry stopped Petitioner, Mayberry was not sure if he was suspicious of Petitioner. (RT 196.) Yet, after Petitioner immediately asked him if he had probable cause to stop Petitioner (RT 233), he told Petitioner, "Yes, sir." (RT 197.) Mayberry is poorly trained or he lied under oath. Mayberry admitted he stopped Petitioner solely because Williams said Petitioner refused a consent search (RT 233), and "he had no idea what was inside" Petitioner's bags. (RT 255.) It has never been the law that not knowing the contents of a closed, opaque container is probable cause to detain or to search.

This analysis leaves Mayberry with the "whole suspicious circumstance" and "he did not know," when, in fact, he knew all there was to know. Mayberry's 1 Circumstance + 1 Suspicion + 2 Falsehoods + 3 I-Don't-Knows + 1 I-Was-Unawares equals 0% constitutionally legitimate *reasonable suspicion* or *probable cause* to detain Petitioner.

Mayberry could not use Petitioner's agitation, refusal of a consent search, possession of closed containers, being in a public place, or mere suspicion against Petitioner as part of his probable cause calculus. Graves v. City of Coeur D'Alene, supra, 339 F.3d at 842-847.

44. Petitioner Had No Duty to Obey Williams' or Mayberry's Unconstitutional Commands or Harassment.

No citizen can be punished for failing to obey the command of an officer if that command violates the U.S. Constitution. United States v. Drayton (2002) 122 S.Ct. 2105, 2113; Wright v. Georgia (1963) 373 U.S. 284, 291-292; People v. Aldridge, supra, 35 Cal.3d at 479. Deputy District Attorney Christie Mulligan, however, was still "just searching for the truth" and "doing her job."

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refusal of a consent search triggers probable cause to detain and to search.

45. Disagreement Over an Edict Cannot Create Probable Cause.

A disagreement about an edict is a civil matter which cannot give rise to *probable cause*. Allen v. City of Portland (9th Circ. 1995) 73 F.3d 232, 237.

46. Petitioner is Immune for Peacefully Doing His Duty.

Attorneys have a duty to support the United States and California Constitutions. Morrow v. Superior Court (1994) 30 Cal.App.4th 1252, 1261; Bus. & Prof. Code section 6068(a). Petitioner correctly reasoned from and to the United States Constitution while the officers, and the prosecutor, reasoned from and to an unconstitutional police edict. Bus. & Prof. Code § 6068(a) will not permit an ethical attorney to be an enabler in the further destruction of the Constitutional Rule of Law. That law requires an attorney to peacefully object and stand on one's rights. Petitioner cooperated with the officers until they violated his rights.

Governments, including judges, demanded Petitioner take that oath as a condition for admission to the State Bar, for employment, and for admission to practice. Other governments, however, have punished Petitioner for taking his oath seriously. Damn the inconsistency.

47. Petitioner Did Not Have a Duty to Surrender a Right.

A citizen has no duty to surrender his rights on the word of an officer, nor can a citizen be expected to determine if the absence of a warrant for a search is excused. Gasho v. United States (9th Cir. 1994) 39 F.3d 1420, 1432. Petitioner had a right–and a duty--to refuse a consent search and to walk away. Florida v. Bostick (1991) 501 U.S. 429, 431, 437.

The Fourth Amendment is designed *to prevent*, not redress, unlawful police action. Steagald v. United States (1981) 451 U.S. 204, 217. "A right that is not honored when invoked is no right at all." People v. Neal, supra,

31 Cal.4th at 89. [Justice Kennard concurring.]

48. Officer Scott Mayberry Seized Petitioner Unconstitutionally.

Before a peace officer can place a hand on a person he must have constitutionally adequate reasonable grounds. Sibron v. New York (1968) 392 U.S. 40, 64. Mayberry seized simply to find out what Petitioner's next move was going to be. (RT 289.)

49. Officer Scott Mayberry Did Not Have Probable Cause to Arrest.

A warrantless arrest requires *higher* probable cause. People v. Madden (1970) 2 Cal.3d 1017, 1023. Officer Mayberry had *less*. The California Supreme Court has rebuked officers who seize based on furtive or insignificant acts. People v. Bower, supra, 24 Cal.3d at 647; People v. Superior Court (1970) 3 Cal.3d 807, 827-828; People v. Curtis (1969) 70 Cal.2d 347, 356.

This Court is respectfully implored to use this petition as a teaching device for the benefit of all by re-emphasizing what this Court declared in 1979 in People v. Bower, supra, 24 Cal.3d at 647:

> This court has discussed the problems inherent in attempting to infer criminal activity from allegedly "furtive" behavior. "The difficulty is that from the viewpoint of the observer, an innocent gesture can often be mistaken for a guilty movement. He must not only perceive the gesture accurately, he must also interpret it in accordance with the actor's true intent. But if words are not infrequently ambiguous, gestures are even more so. Many are wholly nonspecific, and can be assigned a meaning only in their [particular] context. Yet the observer may view that context quite otherwise from the actor: not only is his vantage point different, he may even have approached the scene with a preconceived notion--consciously or subconsciously - of what gestures he expected to see and what he expected them to mean. The potential for misunderstanding in such a situation is obvious. [Emphasis added.]

This excerpt from Bower is so applicable one could think it was written for People v. Mancus. Mayberry did not observe Petitioner's gesture accurately, and he did not interpret it in accordance with Petitioner's intent. Mayberry saw everything through an officer's warped eyes and processed everything through a warped mind set. Mayberry approached the scene with his warped baggage, e.g., Petitioner's standing with one foot in front of another was an "aggressive" bladed position. He "saw," and "interpreted," what he expected to see. Objectively, when a person stands with one leg in front of another, that is all it is, and it is normally done to shift balance to ease a load or to get ready to move, innocuously. Since Mayberry "saw" "aggression" when Petitioner stood with one leg in front of the other he was warped to "see" "an attempted assault" when Petitioner raised an arm to lift camera equipment or to point at him and to tell him: No! Leave me alone!

Another example of this Court's wisdom is excerpted below from People v. Superior Court (1970) 3 Cal.3d 897, 827-828:

> . . . suggests that police reliance on so-called "furtive movements" has on occasion been little short of a subterfuge, and that in order to conduct a search on the basis of mere suspicion or intuition, guilty significance has been claimed for gestures or surrounding circumstances that were equally or more likely to be wholly innocent. . . . The solution, as it has always been, is simply to insist upon good-faith compliance with the Constitution: the police officer should remember there is no substitute for patient and thorough investigation, and should avoid drawing a hasty or pre-conceived conclusion that the movements he observes are prompted by guilty motives; the trial court ruling on the issue of probable cause should make an independent and dispassionate judgment on the basis of common sense and in the light of all the circumstances presented as of the time of the event; and the appellate court, while giving due deference

> to the trier of fact's determination of the weight and credibility of the testimony, and affirming the ruling if there is substantial evidence to support it, should keep firmly in mind the high purpose of the Fourth Amendment and remain ever vigilant to forestall any encroachment on its fundamental guarantees. [Emphasis added.]

Petitioner on May 4, 2002 insisted upon good faith compliance with the Constitution. Williams, Mayberry, Mulligan, Judge Gallagher and lower appellate judges treated that as a *crime*.

The following excerpt from People v. Curtis, supra, 70 Cal.2d at 359 also illustrates uncannily well the tragic down side of Officer Scott Mayberry's quick-to-seize-and-arrest-mind set:

> The stop and frisk is a "serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly." (Citation omitted.) An arrest is of greater consequence and must be more narrowly circumscribed lest an innocent error be inflated into a major disturbance. [Emphasis added.]

Evidence that a person did not commit a crime is relevant to whether officers had *probable cause* to arrest. When facts are considered individually or collectively and they still remain perfectly consistent with innocent behavior, they cannot possibly give rise to any inference supporting a reasonable suspicion of criminal activity. Florida v. Royer (1983) 460 U.S. 491, 512; Haupt v. Dillard (9th Circ. 1994) 17 F.3d 285, 290, fn 5.

Officer Mayberry did not give sufficient weight to factors indicative of Petitioner's innocence: He did not see Petitioner commit clearly proscribed core criminal conduct, Petitioner peacefully stood on his rights, Petitioner's hands were in plain view, Petitioner had not passed through the

air show's entry gate, they were in a 3.0 to 4.0 feet wide temporary isle, he asked Petitioner to move, and most people who stand in a bladed position do not commit an assault, etc.

50. Officer Scott Mayberry Manufactured "Probable Cause."

A police officer cannot be permitted to create probable cause to detain, arrest, or search based on bootstrap reasoning. Gallik v. Superior Court (1971) 5 Cal.3d 855, 862. Probable cause for a valid warrantless arrest is a serious limitation on an officer's lawful powers of arrest. Agar v. Superior Court (1971) 21 Cal.App.3d 24, 28.

Mayberry, however, admitted he arrested Petitioner based on only a furtive movement (RT 305-306.) The law, however, requires more than a furtive movement as probable cause to search or to arrest. People v. Superior Court, supra, 3 Cal.3d at 818. A furtive movement is significant only when there are additional facts known to the officer that reasonably gives it a guilty connotation. People v. McGaughran (1979) 25 Cal.3d 577, 590. Mayberry's only prior information about Petitioner was from Williams: Petitioner refused a consent search, which cannot be bootstrapped into being suspicious.

Petitioner had a right to lift, carry, and pull his camera bags and to point a hand at Mayberry and tell him, "No!" Respondent has made such lawful activity an "attempted assault" on an officer. Constitutional provisions for the security of person and property, however, should be liberally construed. Counselman v. Hitchcock (1892) 142 U.S. 547, 565.

51. Petitioner Is Entitled to a Reversal Because Officer Mayberry Exceeded His Lawful Powers of Arrest.

Penal Code § 834 defines an *arrest* as a "taking a person into custody, in a case and in the manner authorized by law . . . ." [Emphasis added.] Sections 835 and 836 state an officer may lawfully use only

reasonable force to make an arrest or to overcome resistance. Section 853.6(i) states that when a person meets the criteria set forth therein they are entitled to a non-custodial cite and release arrest. In such an instance, an officer fills out and issues a citation, never uses force, and does not have the arrestee incarcerated.

Mayberry, however, testified that he was trained to adhere to a "use of force continuum" (RT 179-185,) and, per his training, if he is unable to get a person to comply he is trained to always escalate to force. This training is contrary to the limits placed on his arrest powers by Penal Code §§ 834, 835, 836, and 853.6(i) and citizens' rights. Any citizen who peacefully stands on his rights will always be on the receiving end of Mayberry's unlawful violence.

Since Mayberry admitted that Petitioner satisfied the criteria for a cite and release arrest (RT 298,) Mayberry's only lawful power–at best--was to issue Petitioner a cite and release citation. Mayberry either did not know what was his real "duty" or he did and he violated it.

52. Petitioner Is Entitled to a Reversal Because The Trial Court Took Away From the Jury the Issue of the Lawfulness of Mayberry's Arrest of Petitioner.

The trial court, outside the jury's presence, after having heard Mayberry's and Petitioner's testimony, opined that Mayberry violated Penal Code § 853.6(i), and he suggested to the prosecutor how she should cope with that problem (RT 744.) The trial court instructed the jury that Mayberry's violation of § 853.6(1) did not invalidate an otherwise valid arrest. (RT 777-778.) The trial court improperly took this issue from the jury and resolved it for the prosecution.

53. Officer Mayberry Violated Petitioner's Right to a "Cite and Release."

A legislature creates a "liberty interest" subject to due process protection when it mandates a certain outcome when a person satisfies specified criteria. Kentucky Department of Corrections v. Thompson (1989) 490 U.S. 454, 459. Penal Code § 853.6(i)'s "shall's" created a "liberty interest" in Petitioner's favor.

In U.S. v. Mota (9th Cir. 1993) 982 F.2d 1384, police officers arrested men in Santa Ana, California for the infraction of operating a business without a license. The defendants were taken into physical custody. During a booking search, counterfeit bills were found in their possession. Their motion to suppress was denied. They plead guilty and appealed. The Ninth Circuit held: 1) It had to determine the reasonableness of the arrest in reference to California state law that governed the arrest, which included, in part, California Penal Code § 853.5 [the "cite and release" statute for infractions;] 2) Penal Code § 853.5 did not allow officers to take the defendants into custody for an infraction; 3) A custodial arrest for an infraction is unreasonable and unlawful; and 4) Because the custodial arrest was invalid, the evidence of the counterfeit bills was suppressed.

The Court in Mota, at pages 1388-1389, said:

> California Penal Code § 836 . . . enables a peace officer to 'without a warrant, arrest a person . . . whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence.' The scope of the arrest is restricted, however, by California Penal Code § 853.5 . . . , which provides that: ¶ "In all cases . . . in which a person is arrested for an infraction, a peace officer shall only require the arrestee to present his driver's license or other satisfactory evidence of his identity for examination and to

> sign a written promise to appear. Only if the arrestee refuses to present such identification or, refuses to sign such a written promise may the arrestee be taken into custody." ¶ Thus, under California law, the arresting officers were without legal authority to take appellants into custody for the infraction of operating without a valid business license . . . . ¶ Given the state's expression of disinterest in allowing warrantless arrests for mere infractions, we conclude that a custodial arrest for such an infraction is unreasonable, and thus unlawful, under the Fourth Amendment. . . . [Emphasis added.]

Mota at page 1389 also cited People v. Williams (1992) 3 Cal.App.4th 1100 as supporting authority. Williams, at page 1105, states, "Only if the arrestee refuses to present written identification or to sign the written promise to appear may he be taken into custody**.** (Pen. Code, § 853.5, 853.6, subd. (a).) [Emphasis added.] Consequently, Penal Code § 853.6 imposes limits on an officer's powers of arrest for a misdemeanor.

Officer Mayberry unlawfully refused to obey California Penal Code § 853.6(a)(i).

The Legislature meant what it said in § 853.6(i).[79] This section uses multiple "shall's," which are commands. It cannot be presumed that the Legislature was kidding when it commanded "shall."

If Officer Mayberry had obeyed § 853.6(i) and treated Petitioner on a cite and release basis, as required by § 853.6(i), there would have been no physical contact between he and Petitioner.[80]

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[79] "May" is ordinarily construed as permissive, and "shall" is ordinarily construed as mandatory, especially when both terms are used in the same statute. Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 443.

[80] Officer Mayberry could have obeyed § 853.6(i) by telling Petitioner something to this effect: "You and I disagree about the search policy and your assertion of your Fourth Amendment rights. Now, you

54. Officer Mayberry Unlawfully Used Excessive Force.

Excessive force used by a police officer at the time of the arrest is not within the performance of an officer's lawful duty. People v. Olguin (1981) 119 Cal.App.3d 39, 45-46. It is a public offense for a peace officer to use unreasonable force in effecting an arrest. People v. White (1980) 101 Cal.App.3d 161, 167. When there is no need for force the use of any force is constitutionally unreasonable. P.B. v. Koch (9th Cir. 1996) 96 F.3d 1298, 1303-04. Officer Mayberry unlawfully seized Petitioner when there was no need for force.

55. Officer Scott Mayberry Unlawfully Searched Petitioner's Camera Bags and Unlawfully Refused to Return Same.

Once a police search of personal luggage dispels suspicion arising from the luggage, the police must return the luggage and its contents to the person promptly; otherwise, the police violate the Fourth Amendment. United States v. Place, supra, 462 U.S. at 711. Officer Mayberry and Sgt. Sears, however, refused to promptly return to Petitioner his camera bags and wallet after nothing illegal or dangerous was found.

56. Reserve Deputy Sheriff Herb Williams Was Wrongfully Trained to Violate Citizens' Fourth Amendment Rights.

Refusal of consent to a search does not convert suspicion of crime into probable cause to detain, to search, or to arrest. People v. Bower (1979) 24 Cal.3d 638, 649; People v. Wetzel (1974) 11 Cal.3d 104; Graves v. City of Coeur D'Alene, supra, 339 F.3d 828; Gasho v. United States, supra, 39 F.3d at 1438; Wilborn v. Escalderon (9th Cir. 1986) 789 F.2d 1328; U.S. v. Prescott (9th Cir. 1978) 581 F.2d 1343, 1351. Reserve Deputy Sheriff Herb Williams, however, testified as follows:

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either obey my directive to you or I will make a cite and release arrest you for violating Penal Code § 148(a)(1). Now, will you obey me or not?"

A) When he pressed Petitioner for a search, Petitioner told him, "You are offending my Fourth Amendment right, and therefore I am not going to let you look inside my bags . . . . You are not allowed to search my bags." (RT 111, 117);

B) Williams response to Petitioner was, ". . . now you have given me articulable suspicion that he's about to commit a crime or has committed a crime, and now I have probable cause to ask him to open the bags to search his bags." (RT 111.);

C) When asked, "So it's your testimony that his failure to cooperate with you was what gave you the suspicion to go ahead and press him further?," he answered, "Correct." (RT 137.);

D) When asked, "So because he chose not to consent to the search, you were going to go ahead and wanted to go ahead and search him anyway?," he again answered, "Correct." (RT 137-138.);

E) When asked, "You testified that when you asked Mr. Mancus to let you look in his bags and he refused, that in your mind gave you the reasonable suspicion that you needed to go further. Was that–were you trained that way?," he answered, "Yes." (RT 153.);

F) When asked, "Who trained you when a person refuses to consent to search that gives you the reasonable suspicion to investigate further?," he answered, "That was Officer Dave Mundy. Actually, he's a sergeant." (RT 154.)

It is unconscionable for police superiors to train subordinates to violate citizens' rights. People v. Neal, supra, 31Cal.4th at 90 [Baxter, J., concurring.] [Second degree murder conviction reversed because officer who was trained to violate suspect's Fifth Amendment rights did so.]

Justice Baxter, in People v. Neal, supra, 31Cal.4th at 90-91,

explained why it is egregious for a police superior to train a subordinate to violate the law:

> . . . it is unconscionable for police departments or supervisors to give contrary instruction or encouragement to the officers under their jurisdiction. Law enforcement agencies have the responsibility to educate and train officers carefully to avoid improper tactics . . . .Officers must be made aware that they have an absolute obligation to play by the rules . . . , and that their deliberate failure to do so will be severely disciplined. . . . In a free society, we place the police in a position of unique power, but only on condition that they will do their best to uphold the law, and to enforce it nobly and fairly. Their ability to function effectively depends upon their credibility in that role. The community must trust that they do not operate by deliberately violating the very standards they are sworn to observe. When the police dishonor proper procedures, community respect for the police, and for the law itself, is undermined. . . . our community should never be subjected to cynical efforts by police agencies, or the supervisors they employ, to exploit perceived legal loopholes by encouraging deliberately improper interrogation tactics. Such practices tarnish the badge most officers respect and honor. [Emphasis added.]

Deputy District Attorney Christie Mulligan, the sovereign's legal representative, put Herb Williams on the witness stand, pointed to him with pride, and said to the jury: A) Here is the legitimate probable cause that Officer Mayberry had to detain and to seize "the jerk," Peter J. Mancus; B) Herb Williams had probable cause because this jerk refused a consent search; C) Herb was trained that a consent search refusal triggers probable cause; and D) I know. I'm just searching for the truth and doing my job.[81]

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[81] Williams' training made Fourth Amendment rights illusory in Shasta County: Assert them and they disappear; refuse to cower--go to jail.

STILL WORSE: Petitioner's defense attorney, Ms. Elwood, by her silence, manifested ineffective assistance of counsel. She failed to object to William's "unconscionable" training. The police "have an absolute obligation to play by the rules" and "it is unconscionable" for law enforcement departments to train officers otherwise. But, not so in Shasta County.

EVEN WORSE: Who did the Hon. William Gallagher and Deputy District Attorney Christie Mulligan criticize? Williams? No. Mayberry? No. Petitioner? Yes. Judge Gallagher declared what Petitioner did was not the act of a good citizen, and Ms. Mulligan described Petitioner as the "jerk."[82]

A constitutionally illiterate jury was never told that Williams'

The trial court, by its silence, condoned this. WORSE: Appellate judges condoned this. STILL WORSE: Petitioner wrote to Shasta County Sheriff Jim Pope, Redding Police Chief Leonard Moty, Shasta County District Attorney Gerald Benito, and Judge Gallagher and complained about how school bus driver Reserve Deputy Sheriff Herb Williams initiated a legal train wreck with Christie Mulligan as the train's engineer. These Government Actors ignored Petitioner's complaint, stiff armed him, and ratified what Williams, Mayberry, and Mulligan did.

[82] This is a manifestation of how participants in this clubby, incestuous relationship manifest bizarre statements in support of one another and their perversions of the law in violation of citizens' rights. Prosecutor Mulligan was so desperate for a conviction she put Williams on the stand to testify to such tripe to dress up Mayberry's lack of real probable cause. Apparently, the police and the prosecution in Shasta County know they can parade their nonsense in a Shasta County courtroom and get away with it because they know that bench would nod approvingly. Imagine how James Madison would have reacted if he refused Herb Williams' request for a consent search of his saddle bags, and Williams told *him* his refusal gave Williams probable cause to search. The change from 1789 to 2002 is a measure of how far this nation has slid toward a police state.

training was "unconscionable," it added nothing to Mayberry's probable cause calculus, and the police have "an absolute obligation to play by the rules." Instead, the jury was told, that Mulligan was "just doing her job," when, in truth, she was peddling unconstitutional heresy.

57. Officer Scott Mayberry Was Wrongfully Trained to Violate Penal Code § 853.6(i).

Officer Scott Mayberry testified that A) Everything he did regarding Petitioner was 100% consistent with his police training; B) He was trained to adhere to a "use of force continuum;"and C) He was trained to always escalate to higher levels of force if he is unable to secure compliance by "verbal judo." (RT 179-185) In context, Officer Mayberry admitted he was trained to violate Penal Code § 853.6(i).

58. Officer Scott Mayberry's Training is Unconstitutional.

Mayberry's training is flawed, dangerous, and unconstitutional: It assumes that an officer is always right and a citizen is always wrong, it requires an officer to escalate to higher degrees of force, which risks injury or worse to the officer, the citizen, and others, and it violates the Legislature's commands and citizens' Due Process rights to have an officer take seriously the "Liberty interest" created by Penal Code § 853.6(i).

When a peaceful citizen who stands on his rights encounters an officer trained to violate Penal Code § 853.6(i), the officer will use force to make an inherently unlawful arrest.

Petitioner urges this Court to use its resolution of this petition to admonish the police anew about the limits on their lawful powers, as per its holding in People v. Wetzel, supra, 11 Cal.3d at 109:

> Defendant's entire course of conduct was directed to refusal of consent, and nothing more. Although she had positioned herself in the open doorway, it appeared to be the only position she could assume while conversing with the officers.

> Had she complied with the officer's requests and stood back from the doorway this in itself would have, under the circumstances, constituted the very consent which she was not required to give. (Citation omitted.) We conclude accordingly, and as a matter of law, that defendant's total conduct cannot be characterized other than a refusal to consent to a request to enter her apartment. Such conduct cannot constitute grounds for a lawful arrest or subsequent search and seizure. [Emphasis added.]

Similarly, as Wetzel stood peacefully in her doorway, Petitioner stood peacefully inside the narrow temporary isle, trapped, near Mayberry, and, had Petitioner done what Mayberry told him to do, he would have done what he did not have to do. When Petitioner moved to lift his camera gear and pointed his left arm at Mayberry, etc., he did lawful acts, consistent with a "refusal of consent and, nothing more."

59. Officer Scott Mayberrry Unlawfully Enforced an Unconstitutional Edict.

The lawfulness of an officer's conduct is an essential element of Penal Code § 148(a)(1). People v. Curtis, supra, 70 Cal.2d at 354-356. "If the officer was not performing his or her duties at the time of the arrest, the arrest is unlawful and the arrestee cannot be convicted under Penal Code section 148, subdivision (a)." Susag v. City of Lake Forest (2002) 94 Cal.App.4th 1401, 1409. The trial court and the prosecutor admitted that the Redding Police Department's unwritten search policy was the foundation for everything Officer Mayberry did. (RT 749-750; 756). Yet, the prosecution never proved what is required for this search policy to be lawful: Clear and unquestionable legal authority for it.[83]

[83] A police department's rule, without benefit of binding public law,

60. Petitioner Is Entitled to a Reversal Because He Did Not Commit a Crime.

To avoid an overbreadth challenge, Penal Code § 148(a)(1) is narrowly construed to be limited to "core criminal conduct" "that is clearly proscribed". In re Andre P. (1991) 226 Cal.App.3d 1164, 1176-1177. As defined, Petitioner did not commit a *crime* or a violation of Penal Code § 148(a)(1). A *crime* is an act committed or omitted in violation of a law forbidding or commanding it. Pen.Code § 15; People v. Brady (1987) 190 Cal.App.3d 124, 133.

61. The Police and the Lower Courts Unconstitutionally Reduced the Legal Standard For Arrest.

A furtive gesture is insufficient probable cause to seize, arrest, or search. People v. Superior Court, supra, 3 Cal.3d at 818. A furtive gesture can be deemed suspicious only when there are additional facts known to the officer that reasonably give it a guilty connotation. People v. McGaughran, supra, 25 Cal.3d at 590. Officer Mayberry lacked such facts.

62. Deputy District Attorney Christie Mulligan Memorialized Evidence That Petitioner is Innocent.

After Ms. Mulligan heard Officer Mayberry's testimony and Petitioner's, *she* acknowledged material doubt about what Petitioner did and intended to do. Ms. Mulligan told the jury in her final argument:

> Yet another reason, this motion that the defendant makes to get past him, to push him out of the way **or making it very clear that *if he wasn't pushing him out of the way*, he was going into the air show**. Officer Mayberry showed us **that motion**. (RT 806) [Emphasis added.]

That argument is consistent with Petitioner's testimony that Petitioner made an effort to avoid touching Mayberrry. (RT 514-518; RT 648-649.) Ms.

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is an unconstitutional police edict. *Law* is what is authorized. *Regime* is what is unconstitutionally enforced. Mayberry enforced an edict.

Mulligan understood this, yet Mayberry and Mulligan railed against Petitioner for allegedly having committed an uncharged attempted assault.

63. The Prosecution Prosecuted Petitioner For the Wrong Offense.

To the extent that the prosecution proved Petitioner committed an *attempted assault* or a *trespass* [which Petitioner denies,] the prosecution proved too much and prosecuted Petitioner for the wrong offense. Penal Code § 148(a)(1) is limited to conduct for which "no other punishment is prescribed." There was such punishment for an assault and for a trespass.

64. Petitioner Is Entitled to a Reversal Because Petitioner Did Not "Commit" a Misdemeanor in Mayberry's Presence.

The history of the use and frequent abuse of the power to arrest cautions that a relaxation of the fundamental requirement of *probable cause* would leave law-abiding citizens at the mercy of officers' whim and caprice. Wong Sun v. U.S. (1963) 371 U.S. 471, 489. Peace officers, prosecutors, and judges must take seriously the limits that the Legislature imposes against an officer's lawful powers of arrest. Agar v. Superior Court of Los Angeles County, supra, 21 Cal.App.3rd at 29. A peace officer may arrest without an arrest warrant when he has probable cause *to believe* that the person arrested has "committed" a misdemeanor in his presence, but a greater showing of probable cause is required to justify an arrest without a warrant. People v. Madden, supra, 2 Cal.3d at 1023. Since Mayberry made a warrantless arrest, he needed *more* probable cause but he had *less*.[84]

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[84] Mayberry did not charge Petitioner with an *assault* or an *attempted assault* or a *trespass*. Under oath, he described Petitioner's "as if" arm movement as *furtive movement* and as an *attempted assault*. Mayberry's inconsistent terms mean Petitioner' conduct was not "clearly proscribed" "core criminal conduct." Mayberry's "as if" means Petitioner's conduct was too incomplete or ambiguous for him to know what it was or what was intended. Mayberry initiated violence. It is unlikely that a

65. Crediting Officer Scott Mayberry Everything He Attributed to Petitioner, Mayberry's Arrest of Petitioner Was Unlawful.

It is not a crime to walk straight toward an officer, stop, refuse a consent search request, peacefully assert a right, peacefully refuse to waive a right, peacefully assert a verbal challenge to the officer's assertion of authority, not be quick to surrender a right, peacefully stand on one's right, be verbally agitated, to stand with one leg in front of the other, to move, to lift camera gear, to make an incomplete, ambiguous movement in close proximity to an officer, and to point an arm at an officer in indignation and say, "No! You have no right! Leave me alone!"

Petitioner, in the absence of a warrant, had a right to presume Officer Mayberry's nonauthority, to refuse to waive his rights, and to peacefully challenge Mayberry to prove his authority. There is no law that imposes upon Petitioner the duty to presume an officer has *lawful authority* that overrides a citizen's *lawful right.*

66. Government Actors Have Pragmatically Seceded From the Union.

Rights declared by the Unites States Constitution cannot be infringed to try to prevent others from violating the law. Schlesinger v. Wisconsin (1926) 270 U.S. 230, 239. *That*, however, is what the Redding Police Department did.[85]

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reasonably constituted officer would believe that a person who peacefully asserted rights would suddenly assault a bigger, younger, stronger, armed, officer.

[85] Rights are superior to this supposed necessity. Schlesinger v. Wisconsin, supra, 270 U.S. at 239. The Constitution commands that society, government, and citizens must take risks and must avoid absolute regimentation to try to cope with fear. Tinker v. Des Moines Independent Community School District (1969) 393 U.S. 503, 508. Constitutional Law is not a matter of majority vote. Lucas v. Forty-Fourth General Assembly of

This nation's core constitutional principles are: A) Government is a limited government with enumerated, limited powers; B) The nonauthority of a Government Actor is presumed; C) A Government Actor must prove his authority; D) Until a Government Actor proves his authority a citizen has a legal right to stand on his rights, peacefully, with immunity; E) The United States is not a *pure democracy*–one man, one vote; the outcome of a majority vote is always outcome determinative.; F) The United States is also not founded upon *utilitarianism*--virtue exists in promoting the greater happiness [or the greater good] for the greater number; G) The United States is a constitutionally limited democratic republic with certain rights guaranteed for all, all of the time, absent martial law; H) The primary purpose of government, which justifies the existence of government, is to secure these rights for the individual; I) As such, a majority and a minority can co-exist under a *Constitutional* Rule of Law with many built-in anti-majoritarian safeguards to guard against the wild, passionate, swings of an otherwise unchecked majority [the tyranny of the majority–aka, mob rule, where the majority is the tyrant.]; and J) No citizen's rights are expendable.[86]

Colorado (1964) 377 U.S. 713, 737; Westbrook v. Mihaly (1970) 2 Cal. 3d 765, 796. "In a court of law no argument based on expediency can ever justify a lawless invasion of a right." Wirin v. Horrall (1948) 85 Cal.App. 2d 497, 506.

[86] Even duly elected public law legislation cannot override the United States Constitution, amend it, or defeat a right guaranteed by it. Counselman v. Hitchcock (1892) 142 U.S. 547, 582. Since *legislation* cannot do *that*, the will of some in positions of local power in Redding, California cannot do *that*. Government, even when providing by legislation for the protection of the public health, morals, and safety, is still subject to the paramount authority of the United States Constitution, and it may not violate rights secured or guaranteed by that instrument. Mugler v. Kansas

For all practical purposes, the police and prosecution in Redding, as evidenced by this case, seceded from the United States. Everything they did was contrary to federal law and California law.

67. Petitioner Had a Constitutional Right to Use Reasonable Force to Preserve His Bodily Integrity and Liberty.

A person may use reasonable force against an officer who uses excessive force to make an arrest. The California Supreme Court said in People v. Curtis, supra, 70 Cal.2d at 358:

> Liberty can be restored through legal processes, but life and limb cannot be repaired in a courtroom. Therefore any rationale, pragmatic or constitutional, for outlawing resistance to unlawful arrests and resolving the dispute over legality in the courts has no determinative application to the right to resist excessive force. . . . Under Penal Code sections 835 and 835a, an officer may lawfully use only *reasonable* force to make an arrest or to overcome resistance. . . To summarize, then, . . .it is now the law of California that a person may not use force to resist any arrest, lawful or unlawful, except that he may use reasonable force to defend life and limb against excessive force; . . . . [Emphasis added.]

In Curtis, an officer who investigated a report of a prowler detained a suspect based on a vague description. After the officer told the defendant he was under arrest a *violent struggle* ensued, and the defendant was convicted of battery on an officer. The defendant contended on appeal the arrest was unlawful due to a lack of probable cause and that his resistance was justified. The California Supreme Court *reversed* the conviction, holding that a defendant may use reasonable force against an officer's excessive force.

In People v. Mancus, there was no violent struggle. Instead, Mayberry, without lawful justification and without warning, grabbed

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(1887) 123 U.S. 623, 663.

Petitioner. Petitioner instinctively pulled his arm down and away, turned around, saw Mayberry, stepped back, raised his left hand, pointed at Mayberry, told Mayberry he had no right, Mayberry seized Petitioner again, easily forced Petitioner to the ground, and immediately handcuffed Petitioner. There was no *violent struggle*. Petitioner never used force *against* Mayberry.

One needs to keep in mind the difference in size, strength, and age between Officer Scott Mayberry and Petitioner and the fact that Petitioner, before being seized, had offered Mayberry only verbal resistance to a perceived unconstitutional assertion of authority.

The simple truth is this: 1) It was Officer Mayberry who initiated the physical encounter when Petitioner broke eye contact with him (RT 518-519,) and 2) Every California citizen has a right to enjoy, defend, and preserve his bodily integrity, liberty, and privacy. Cal. Const., art. I, §1; United States v. Span (9th Cir. 1992) 970 F.2d 573, 580.

68. Officer Scott Mayberry Unlawfully Used Excessive Force Against Petitioner When He Handcuffed Petitioner Too Tightly and Refused to Adjust the Cuffs.

Handcuffing too tightly and refusing to loosen cuffs is an unconstitutional use of excessive force. Palmer v. Sanderson (9th Cir.1993) 9 F.3d 1433, 1436. Mayberry admitted he handcuffed Petitioner tightly, and he never loosened the cuffs. (RT 292-293; 315; 317-318.) Prosecutor Mulligan never called a witness who testified that anyone loosened the cuffs.

69. A Verbal Protestation of an Officer's Assertion of Authority Does not "Interfere" With an Officer in Term of Penal Code § 148(a)(1).

A person who protests a police officer's assertion of authority by merely verbally protesting on substantial constitutional grounds, without

threatening force, does not interfere with the officer in the performance of the officer's duties. District of Columbia v. Little (1950) 339 U.S. 1, 5-6; People v. Wetzel, supra, 11 Cal.3d 104.

70. "When No Other Punishment Is Prescribed" is a Penal Code § 148(a)(1) Element.

Penal Code § 148(a)(1) states its elements:

> Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician . . . in the discharge or attempt to discharge any duty of his or her office or employment, **when no other punishment is prescribed**, shall be punished by a fine not exceeding one thousand dollars ($1,000) or imprisonment in a county jail not to exceed one year, or both that fine and imprisonment. [Emphasis added.]

Since the Legislature made "when no other punishment is prescribed" a limiting element for a §148(a)(1) violation, that language is an element of §148(a)(1). If §148(a)(1) is not sufficient authority for what are its elements, it is unconstitutionally vague.

71. Respondent Unconstitutionally Eliminated Qualifying Language in Penal Code § 148(a)(1).

Qualifying language in a statute cannot be ignored. People v. Redmond (1966) 246 Cal.App.2d 852, 861; United States v. Braverman (1963) 373 U.S. 405, 408. A judge should not treat a term in a criminal statute as surplusage or as not being an element of the crime stated. Bailey v. United States (1995) 516 U.S. 137, 145; Ratzlaf v. United States (1994) 510 U.S. 135, 140-141. Respondent, however, never plead, nor proved, that there was no other punishment prescribed for what Mayberry said Petitioner did.

72. Petitioner is Entitled to Every Reasonable Doubt as to the True Construction of Penal Code § 148(a)(1).

"In penal cases this court has consistently held that the construction

most favorable to the defendant is entitled to every reasonable doubt in favor of his innocence, whether it be doubt concerning the facts or the meaning of the statute." People v. Curtis, supra, 70 Cal.2d at 352. [Emphasis added.] Since the Legislature included "when no other punishment is prescribed" as a limiting factor, that language is an element of the crime defined, not surplusage.

73. An Element of Penal Code § 148(a)(1) Was Unconstitutionally Eliminated.

By refusing to hold that "when no other punishment is prescribed" is an element of Penal Code §148(a)(1), the lower courts have violated the Doctrine of Separation of Powers. Mugler v. Kansas, supra, 123 U.S. at 662. Courts, however, do not have legitimate power to declare that a statute must mean something different from its language. Willis v. California (1994) 22 Cal.App.4th 287, 293.

74. Petitioner Was Unconstitutionally Denied Notice and Due Process Because an Element of Penal Code § 148(a)(1) Was Not Properly Plead.

Penal Code § 148(a)(1)'s "when no other punishment is prescribed" is a "catch-all" element. This element has significance or it renders this statute unlawfully vague or overbroad or both. The Legislature alone has the power to declare what are the elements of a crime. The Legislature included in § 148(a)(1) "when no other punishment is prescribed". Courts and prosecutors have no authority to take clauses out of a criminal statute. In re Brown (1973) 9 Cal.3d 612, 624; Penal Code § 6. This limiting language is a vital part of the statute and the crime defined.

75. The Conviction Must be Reversed Because the Jury Never Made a Finding on Penal Code § 148(a)(1)'s "When No Other Punishment is Prescribed" Element.

A conviction based upon a record devoid of any evidence of a

crucial element of the offense charged is constitutionally infirm. Fiore v. White (2001) 531 U.S. 225, 229; United States v. Gaudin (1995) 515 U.S. 506, 510; Estelle v. McGuire (1991) 502 U.S. 62, 70; Jackson v. Virginia (1979) 443 U.S. 307, 314. The jury never made a finding on this missing element: "When no other punishment is prescribed." The trial court did not submit that element to the jury, took it away from the jury and resolved it in favor of the prosecution. A habeas corpus court may consider a defendant's allegation that he was deprived of his fundamental right to require the prosecution to prove beyond a reasonable doubt every element of the offense charged. In re Winship (1970) 397 U.S. 358, 361-364; In re Robert Nathan Foss (1974) 10 Cal.3d 910, 931.

76. Penal Code § 148(a)(1) Is Unconstitutionally Vague.

> Most codes do not distinguish between acts against the government and acts against the oppression of the government. The later are virtues; yet have furnished more victims to the executioner than the former.
>
> –Thomas Jefferson, quoted from Thomas Jefferson In His Own Words, ed. M. Harrison and S. Gilbert, p. 416, ISBN 0-7607-0232-2

All of the problems in this case arise from § 148(a)(1)'s vagueness, plus the arrogance of the officers and the prosecution, the incestuous clubby relationship among the officers and the prosecution, and the lack of adequate training and supervision.

A habeas corpus petitioner may challenge his confinement when he has been convicted pursuant to a statute he deems to be unconstitutional. Preiser v. Rodriguez (1973) 411 U.S. 475, 486. *Vagueness* is a basis for challenging the constitutionality of a law. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc. (1982) 455 US 489, 498.

A criminal statute must contain language of sufficient certainty to provide notice of what is prohibited and what may be done without violating its provisions. Grayned v City of Rockford (1972) 408 US 104, 108-09. Vague laws offend important values and impermissibly delegate basic policy to policemen, judges, and juries for resolution on an ad hoc, subjective basis with the attendant damages of arbitrary and discriminatory application. Village of Hoffman Estates v Flipside, supra, 455 US at 498. Legislation may run afoul of the Due Process Clause because it fails to give adequate guidance to those who would be law-abiding or to guide courts in trying those who are accused. Smith v Goguen (1974) 415 US 566; Papachristou v City of Jacksonville (1972) 405 US 156.

Penal Code § 148(a)(1) is invalid under these tests. This section is used by officers to punish conduct or speech they deem offensive which they claim delays or obstructs them, whether or not they are engaged in a lawful duty, and this section fails to define its terms or to declare adequate qualifiers to overcome these deficiencies.

Citizens have to be free to communicate with officers about what may or may not be police business because the citizen might not know what is appropriate police business or what is the officer's duty. Citizens must be legally free to "delay," as reasonably necessary, to communicate with officers, under all circumstances where it appears, from the citizen's point of view, it is necessary to communicate with them.

Communication necessarily requires "delay" to communicate. A citizen's objection to a perceived violation of a right, passing on information about a crime, or information to save an officer's life, cannot be criminalized. But, § 148(a)(1) fails to differentiate among the citizen's purpose or intent or the materiality of the delay.

This statute grants officers near unfettered discretion to charge well meaning, peaceful, citizens with the crime of resisting, obstructing or delaying an officer based on meager grounds. To make matters worse, this statute makes the citizen's intent meaningless and unavailable as a defense because § 148(a)(1) is only a "general intent" offense.

The Due Process Clause requires a state legislature to set reasonably clear guidelines for law enforcement officials and triers of fact to prevent arbitrary and discriminatory enforcement. Smith v. Goguen, supra, 415 U.S. at 573. It is too dangerous for the legislature to be permitted to set a large, vague, statutory net to snare all possible offenders and leave it to courts to determine who should be set free. Id. Due Process requires that all be informed as to what the State commands and what it forbids to prevent policemen, prosecutors, judges, and juries from enforcing their own predilections under color of law. Id., 574-575. A State legislature may not abdicate its duty to set the standards for the criminal law with sufficient specificity and entrust law-making to the moment-to-moment judgment of the policeman on the beat. Id.

Penal Code § 148(a)(1)'s lack of definitions allows for multiple interpretations of its standards, causing confusion and uneven enforcement. Penal Code § 148(a)(1) does not define its key terms: "willfully," "resists," "delays," "obstructs," "discharge," or "duty." It does not set forth any objective criteria.

This statute is a legal ink blot test or a legal sticky fly paper trap. *Resist* can mean "to withstand," "to strive against," "to oppose," "to refrain from" or "to abstain." *Delay* can mean "to postpone," "to impede," and "an instance of being delayed." *Obstruct* can mean "to block with an obstacle," "to hinder, "to interrupt," "to delay," "to be in the way of." Per these collegiate level Webster definitions, Penal Code § 148(a)(1) sweeps in and

criminalizes, without qualification or distinction, conduct and acts of omission that satisfy these definitions in the disjunctive. On its face, one can violate this section by peacefully communicating to an officer the assertion of a vital right, by interfering with an officer's path or movement, regardless of one's intent, even if done unknowingly or by accident.

To make matters worse, the unqualified use of the inherently vague word *willfully* makes that element vague. Human beings are complex. There is a wide range of volitional intent and purpose. Each point of intent can be difficult to determine. *Willfully* can mean "deliberate," "voluntary," "intentional," "correctly well intended," "mistakenly well intended," "knowingly intentionally wrong," "unknowingly intentionally wrong," "unreasonably stubborn or headstrong," and "perversely obstinate."

"Willfully" is a word of many meanings which differentiates between deliberate and unwitting conduct, but, in the criminal law, it typically refers to a knowing, intentional, or voluntary act with a "bad purpose" state of mind, without justifiable excuse, without ground for believing the act done is lawful. Bryan v. United States (1998) 524 U.S. 184, 191-192. Despite the range of *willful*, the Legislature has defined *willfully* to be mean a *general intent* crime that does not require any *specific intent* to violate the law. That definition violates the presumption of innocence.

Does *willfully* mean only a general intent is required to do *the act*? Or does it mean to *intend* to do *the act* that "resists," "delays" or "obstructs" an officer in the "discharge" of a "duty"? If there is a specific intent component to Penal Code § 148(a)(1)'s *general intent*, what is the nature of that component?

If § 148(a)(1)'s *willfully* means only *general intent to do any act that*

resists, delays, or obstructs an officer in the discharge of a lawful duty, unqualified, this statute is the bane of liberty. As so construed, this statute is a *strict liability statute*, namely, if a person does any act, regardless of their intent, no matter how beneficial or otherwise constitutionally protected, that arguably "resists," "delays" or "obstructs" an officer in the "discharge" of a "duty," the person violates § 148(a)(1). If that is how § 148(a)(1) shall be construed, it functions as a legal great white shark. No citizen is safe in the water with that legal monstrosity.

If *willfully* means only a general intent to do *the act* that "resists," "delays", or "obstructs" an officer, how can a citizen have notice of what the law declares to be a crime when an officer is at liberty to unpredictably tell a citizen that the citizen's well intentioned *act* "resisted," "delayed" or "obstructed" the officer in the "discharge" of a "duty"? If this is what this statue means, it gives an officer too much discretion to unpredictably declare any citizen's innocuous, well intentioned conduct, a violation of this statute. In that event, it allows an officer to terminate a citizen's liberty based on the officer's interpretation of ink blot facts.

Penal Code § 148(a)(1) also fails to address the *materiality* of the "resists, delay, or obstruct," the reasons for it, the ultimate effect on an officer's ability to "discharge" a "duty," and the importance of the "duty." This section does not differentiate between the extremes of "duty," from "Lowest Priority" to "Highest Priority Emergency Duty," between a legitimate "Public Duty" and a "Private Security Guard Duty." Absent such qualification citizens do not know if an officer is engaged in a substantial duty, a public duty, a private duty, or that "time is of the essence." This not knowing, this not being put on sufficient notice, is a major part of the Due Process Problem: Citizens should not have to guess as to the meaning of a

statute. Connally v General Constr. Co. (1926) 269 US 385, 39; People v Howard (1969) 70 Cal 2d 618, 624.

Lacking specificity, this statute grants officers discretion to manufacture a violation of this statute under the slightest pretext, which an officer can manipulate as a cover charge for a "contempt of cop/bad attitude arrest." Prudent citizens, therefore, are forced to do two things: First, yield vital rights upon the demand of an officer and second, steer a wide course to avoid a problem.

Penal Code § 148(a)(1) delegates basic policy matters to policemen, prosecutors, judges, and juries for resolution on an ad hoc and subjective basis, in an arbitrary and discriminatory matter, regardless of constitutional guarantees. In a constitutionally limited democratic republic with certain guaranteed rights for all, citizens have to be free to communicate with officers, including matters officers may not deem appropriate or pleasant. This communication process is bound to entail misunderstandings. Nevertheless, it is imperative that citizens must be able to "resist, delay, or obstruct," as reasonably necessary, to communicate with officers on the street, under all circumstances, where, from the citizens' point of view, it is necessary, even if this communication requires some kind of "delay." An officer's point of view is not the only legitimate one.

Sworn law enforcement officers are the sovereign's agent on the street–armed with a badge, a firearm, and the powers of arrest. It is imperative that officers have a statute with sufficiently clear mandatory directives to guide them and tell them when they can and cannot constitutionally terminate a citizen's liberty for resisting, obstructing, or delaying them in their lawful duties.

The Legislature has left the difficult task of defining this crime with

specificity to policemen and jurors who are ill-equipped to do so. Penal Code § 148(a)(1) is so vague it vests in officers the power to create or to manufacture a crime by simply paying undue attention to something, by being offended by innocent conduct or conduct protected by the Bill of Rights, based on the officer's personal reaction to the act(s) and subjective belief as to what is appropriate. To make matters worse, an officer's personal reactions and subjective beliefs are not a matter of public record that a citizen can look up in advance. This shortcoming of this statute underscores the fundamental Due Process problem noted by the United States Supreme Court in Connally v. General Constr. Co., supra, 269 U.S. at 391:

> [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

Common sense dictates that the real evil this statute targets is the intentional, wrongful, material, resisting, delaying, or obstructing of an officer's performance of an important duty, especially a high priority emergency duty, when no other punishment is prescribed for what the wrongdoer does. But, the bad draftsmanship of this statute allows officers, prosecutors, judges, and juries to construe this statute in a twisted, self-serving, arbitrary, capricious, abusive, oppressive, matter, which will yield dissimilar results from similar facts. This truth encourages arbitrary, selective, discriminatory, unconstitutional, law enforcement that alienates citizens from officers. *That* undermines the integrity of the criminal justice system.

A law that makes the exercise of a right a crime based on an unascertainable standard violates the due process standard of vagueness and

is unconstitutional. Erznozik v. Jacksonville (1975) 422 U.S. 205, 216-217; Lewis v. New Orleans (1974) 415 U.S. 130, 134; Coates v. City of Cincinnati (1971) 402 U.S. 611.

This statute is unconstitutional because it is repugnant to the guarantee of liberty contained in the Fourteenth Amendment. Stromberg v. California (1931) 282 U.S. 359; Cox v. Louisiana (1965) 379 U.S. 559, 574. When a law is so indefinite that it encourages arbitrary and erratic arrests and convictions, it is void for vagueness. Colautti v. Franklin (1979) 439 U.S. 379.

Penal Code § 148(a)(1) is so badly drafted that an officer has the power to charge a person with a violation of § 148(a)(1) who flags him down to tell him he is a fool, to warn him of an ambush or a washed out bridge ahead, or to report a crime. A person who did those things did them "willfully," and the person's intent, as Deputy District Attorney Christie Mulligan told the jury in her final argument, is "irrelevant–it doesn't matter." A statute that makes a person's act criminal, regardless of intent, is an insufferable, unconstitutional, obscenity.

Section 148(a)(1)'s undefined, generic, vague, terms are interrelated. The constitutional parts of this statute, if any, cannot be successfully, or easily, severed from the unconstitutional and/or vague parts. When a court cannot reasonably undertake to eliminate a statute's invalid provisions or operation by severance or construction, it is void in its entirety. Fort v. Civil Service Com. (1964) 61 Cal.2d 331, 339.

Williams' and Mayberry's inability to communicate well with Petitioner, consistent with the Constitution's commands, does not mean Petitioner committed a crime. Williams, Mayberry, and Respondent suffer from a not-so-hidden premise, namely, it is okay for them to function under

the "Umbrella of Utilitarianism" [sacrificing Petitioner's rights for the alleged greater good] and not the "Umbrella of Constitutionalism" [taking seriously everyone's rights and obeying the Constitution's commands.] If the Supreme Law still means anything worthwhile, policemen do not have the right to resort to force when communication is called for, they are frustrated, or they make their failure to comprehend their shortcomings someone else's crime.

It might be said that § 148(a)(1)(1) is unconstitutionally vague, "only in the absence of common sense," because, where the requisite certainty is not apparent on the face of a statute, the deficiency may be satisfied by "common understanding and practices" or "from any demonstrably established technical or common law meaning of the language in question." People v. Barksdale (1972) 8 Cal 3d 320, 327. But, "the absence of common sense," as manifested by Williams, Mayberry, and Mulligan, best describes People v. Mancus.

Common sense does not save § 148(a)(1). As this case illustrates, the Redding Police Department, the Shasta County Sheriff, the Shasta County District Attorney, and the judges who have ruled in this case think §148(a)(1) can, and should be, applied against an accused regardless of the accused's intent, even when the officer's function as private security for a third party and enforce an unconstitutional search policy as binding public law. Hence, the vagueness which appears on its face, is not mitigated by common sense or understanding.

It is not a sufficient answer to say that these problems can be eliminated by construction. In re Andre P. , supra, 226 Cal.App.3d at 1176-1177, held that to avoid an overbreadth challenge, Penal Code § 148(a)(1) is narrowly construed to be limited strictly to "core criminal conduct" "that

is clearly proscribed". Notwithstanding that precedent, Deputy District Attorney Christie Mulligan secured a conviction by arguing that Petitioner's "as if" arm movement was an uncharged attempted assault and Petitioner's refusal of a consent search violated this section.

This reality allows the police and prosecutors to systematically convict peaceful, well intentioned citizens of the "crime" of attempting to communicate with a police officer–which is a First Amendment right.

To make matters worse, "when no other punishment is prescribed" is a vital, limiting, statutory element of § 148(a)(1), but that element is routinely ignored by officers, prosecutors, and judges. Hence, §148(a)(1) is so vague it misleads legal professionals. In the alternative, legal professionals know that "when no other punishment is prescribed" is an element of §148(a)(1), and they ignore it because doing so makes it easier to convict people.

Williams and Mayberry initiated a delay of Petitioner. Petitioner did not delay them. He only responded to them, asserting a right. Both officers admit Petitioner raised a Fourth Amendment objection and did not withdraw that objection.

Penal Code § 148(a)(1) allows officers to arbitrarily enforce against anyone those who officers want to target, such as a class of citizens known as *constitutionalists* who verbally challenge a perceived abuse of authority, and who commit, from the perspective of an officer, what is arguably the worse non-codified offense: *a contempt of cop*. It is not co-incidental that Officer Mayberry defied the law further and refused to treat Petitioner as a *cite and release* arrest and used against Petitioner the more punitive custodial arrest.

WORSE: The California Supreme Court has discredited the *furtive*

gesture rationale because it loathes officers who manufacture self-serving grounds to do an end run around the Fourth.

AND WORSE: Mayberry had no warrant.

AND WORSE: The search policy Mayberry attempted to enforce was an unconstitutional police edict.

AND WORSE STILL: §148(a)(1) makes no room for citizens who manifest a beneficial, civic minded, purpose. The "act" Petitioner intended to commit was that of a constitutionally sensitive, informed, civic minded, citizen who refused to be another enabler in the further destruction of the Constitutional Rule of Law. To complicate matters more, in other contexts, an accused's good faith, reasonable belief that he was not committing a crime *is* a legitimate defense. People v. Lopez (1986) 188 Cal.App.3d 592, 597. [Examples cited: statutory rape and bigamy.]

Penal Code § 26 creates an affirmative defense by allowing a defendant to show that there was no criminal intent. People v. Lopez, supra, 188 Cal.App.3d at 599. It is fundamental that a person is not criminally responsible unless criminal intent accompanies the wrongful act. Morissette v. United States (1952) 342 U.S. 246, 251; People v. Vogel (1956) 46 Cal.2d 798, 801. But, Deputy District Attorney Christie Mulligan, with the benefit of a jury instruction given by the trial court, argued to the jury that Petitioner's intent and beliefs were irrelevant. This authority, coupled with Ms. Mulligan's summation, triggers an observation that undermines the conviction: The prosecutor and trial court opined on the record that Petitioner believed the search policy was unlawful, yet each declared Petitioner's intent was irrelevant.

A vague law that allows government to convict a person for peacefully supporting the United States Constitution will motivate citizens

to be unduly docile or to rebel.

77. Petitioner Could Not Have Had General Intent to Violate Penal Code § 148(a)(1) Because the Redding Police Department's Edict Was Not Public Law Binding on Him.

Intent cannot exist without knowledge. Direct Sales Co., Inc. V. Untited States (1943) 319 U.S. 703, 711. Question: Can a police department violate existing precedent, invent its own unwritten edict, and enforce it against the public as binding public law for the first time? Answer: Yes, . . . but not constitutionally. Question: Is a person who asks, "Is what you are doing constitutionally legitimate, officer?**"** guilty of violating Penal Code § 148(a)(1)? Answer: Constitutionally, no.

It is not constitutionally legitimate to construe Penal Code § 148(a)(1) this way: A) Everyone is strictly liable for knowing that an officer is in the lawful performance of a lawful duty–even when the officer is not, and B) Any person who questions the legitimacy of what an officer is doing violates § 148(a)(1). To construe this section otherwise burdens citizens with an absurd result: A) An officer on duty can talk to a buddy endlessly, and his buddy is not charged with a § 148(a)(1) violation, but if someone who is not the officer's buddy asks him about the legitimacy of what he is doing he is subject to arrest for delaying the officer, even when the proffered *legitimacy* for what the officer is doing is a new, unwritten, police edict that deviates from controlling public law, and B) to avoid arrest for violating § 148(a)(1), a person must blindly obey an officer, and surrender all rights, upon the demand of someone with a uniform, badge, and sidearm. If that is how judges will allow the police, prosecutors, and juries to construe Penal Code § 148(a)(1), this nation's bedrock legal foundation has crumbled, and § 148(a)(1) is a primary tool for oppressive

policing under color of law.

Since the RPD's unwritten, unpublished search policy violated public law, it was a factual impossibility for Petitioner to know on May 4, 2002 that Officer Scott Mayberry was in the lawful performance of a lawful duty. The RPD's edict was too divergent from controlling law. Thus, it was impossible for Petitioner to have any intent to violate § 148(a)(1).

78. Penal Code § 148(a)(1) is Unconstitutionally Overlybroad.

Literal application of §148(a)(1) impermissibly chills First Amendment Rights to Petition an officer on patrol to speak to him about matters of concern within the reasonable scope of the officer's duties, consistent with citizens' legitimate interests, which must be respected.

79. Penal Code § 148(a)(1) Unconstitutionally Violates the Doctrine of Strict Scrutiny.

The Doctrine of Strict Scrutiny safeguards the right to free speech through the "least restrictive means" test. Even if a statute is drafted in a way that satisfies the overbreadth and void-for-vagueness standards, it may still be unconstitutional if its basic purpose can be fulfilled through a more narrowly-tailored means. This doctrine requires a lawmaker to use a means that is the least restrictive of free speech to avoid stifling personal liberties that can be more narrowly achieved. Penal Code § 148(a)(1), on its face, flunks the "strict scrutiny" test.

80. Penal Code § 148(a)(1) Unconstitutionally Violates The Right to Petition For a Redress of Grievance.

The Right of Petition arises in People v. Mancus in three ways: First, Petitioner had legally enforceable interests [right to privacy, right to possession, right to travel, right to freedom from unreasonable search and seizure, right to protest.] These rights were, and are, legal immunities from punishment for peacefully exercising any of these rights. Second, while

Mayberry claims he seized Petitioner for his own protection and that of air show patrons, after he had Petitioner and his possessions searched and found nothing illegal or threatening, he failed to return to reason–he failed to apologize, he failed to release Petitioner, he failed to treat Petitioner on a cite and release basis, he failed to return to Petitioner his property, wallet, and its contents, and he failed to remove or to even loosen the handcuffs, even after he learned Petitioner was an unarmed attorney with no criminal record. Third, Mayberry persisted with his unconstitutional violations of Petitioner's rights.

Williams and Mayberry testified that Petitioner repeatedly asserted Fourth Amendment rights and questioned them about the search policy and the limits on their powers. They confirmed Petitioner issued to them an on-the-spot Petition for Redress of Grievance, and both rebuffed it. Petitioner communicated with them clearly and repeatedly. The officers, however, did not heed his communications. They punished him for petitioning them.

81. Penal Code § 148(a)(1) Was Applied Against Petitioner Unconstitutionally.

Petitioner's conviction under § 148(a)(1) is unconstitutional because: A) the search policy, detention, seizure, and arrest were unconstitutional, B) the probable cause standard for arrest was reduced to furtive act, C) there was another "punishment" available which precluded use of § 148(a)(1), which the jury never decided, D) the arresting officer exceeded his lawful powers, E) the trial court failed to screen out invalid theories of conviction, F) there is an insufficiency of the evidence, and G) the verdict, which is based on an invalid theory for conviction, conflicts with established law.

Even a jury, via its verdict, cannot constitutionally strip anyone of

their federally guaranteed rights to Due Process of Law and Equal Protection of the Law.

82. Officer Scott Mayberrry Unconstitutionally Targeted Petitioner.

The record shows that Mayberry targeted Petitioner and misused § 148(a)(1). Mayberry did not cite and release Petitioner. Mayberry wanted to punish Petitioner by having him incarcerated because Petitioner verbally challenged his authority. Mayberry did not loosen the handcuffs because Mayberry wanted to inflict "street justice." Mayberry did not return Petitioner's wallet to him because Mayberry wanted to frustrate Petitioner's ability to make bail. Mayberry did not memorialize in his report exculpatory information in Petitioner's favor because he knew he was vulnerable to a meritorious federal civil rights lawsuit. Mayberry charged Petitioner with a § 148(a)(1) as a "cover charge" for his "contempt of cop" arrest.

83. Officer Scott Mayberrry Unconstitutionally Taunted Petitioner.

"[T]aunting or beating an arrestee is not within an officer's duties." People v. Olguin (1981) 119 Cal.App.3d 39, 44. Officer Mayberry's telling Petitioner he was Petitioner's boss because he was a cop, Petitioner had to obey his "rules," his "rules" were authority for his "rules," and Petitioner had to live by his "rules" in "[his] country" "or leave" because that is his "rule," is taunting.

84. Officer Scott Mayberry Was a Brute.

"A bland American civil servant can be as much of a beast as a ferocious concentration camp guard if he does not think about what his actions are doing. Single-minded Inspector Javert is a monster, even though he focused only on his duty. Half the cruelties of human history have been inflicted by conscientious servants of the state. The mildest of bureaucrats

can be a brute if he does not raise his eyes from his task and consider the human beings on whom he is having an impact." Jordan v. Gardner (9th Cir. 1993) 986 F.2d 1521, 1544.

Mayberry was a brute. He did this: A) At 6'5" 240 pounds, Mayberry seized, spun around, and forced Petitioner to the ground, hard, without a constitutionally legitimate reason; B) He slapped handcuffs on Petitioner hard enough to compress skin, muscle, nerves, and blood vessels against bone; C) He pulled Petitioner up by the handcuffs' chain, callously exerting an excruciating pain in Petitioner's shoulder joints; D) He refused to loosen the handcuffs; E) He shoved Petitioner in the back hard enough to make Petitioner's balance uncertain, treating him like a peon; and F) He refused to loosen the cuffs even when told Petitioner's wrists hurt and his hands had gone numb.

85. The Trial Court and the Prosecutor, Outside the Jury's Presence, Acknowledged Petitioner's Sincerity.

The legitimacy of this conviction is undermined by the fact that two de facto triers-of-fact, the prosecutor and the trial judge, outside the jury's presence, said everyone knew Petitioner thought the search policy was unlawful (RT 216.) The trial judge even opined Petitioner "strongly, passionately believes that he was within his constitutional rights to refuse the officer's request or insistence on searching those bags before they entered the air show. There is no doubt of your client's passion and his insistence on observance of what he perceived to be his constitutional rights." (RT 629.) Hence, Petitioner never manifested a union of *criminal* conduct + willful *wrongful* criminal general intent.[87]

[87] Nevertheless, the prosecutor said what Petitioner thought about the search policy did not matter (RT 217), and the trial judge said that because § 148(a)(1) is a general intent crime, which requires only volition to do the

86. The Prosecutor Did Not Prove a Union of Petitioner's Act and Wrongful Criminal Intent.

In all criminal cases the question of intent is important. People v. Lain (1943) 57 Cal.App.2d 123, 131. This rule is humane because when criminal intent is lacking the act or omission that would constitute the offense is robbed of its criminality. Id.[88]

87. The Conviction Must Be Reversed Because Government Punished Petitioner for the Peaceful Exercise of a Right.

A citizen who undertakes a course of action based on a good-faith interpretation of the Constitution should not be penalized for his passive, verbal exercise of what he reasonably believed to be his constitutional rights. Pierson v. Ray (1967) 386 U.S. 547, 557.

88. Penal Code § 148(a)(1) Has a Limited Specific Intent Component Which the Trial Court and the Prosecutor Hid From the Jury.

General intent crimes require that the defendant has the required mental state to do *the proscribed act* that causes harm. People v. Lara (1996) 44 Cal.App.4th 102. An attempt to complete a general intent crime includes an element of specific intent. People v. Matthews (1999) 70 Cal.App.4th 164, 174-175. Penal Code § 957 requires that § 148's (a)(1) "willfully" must be construed according to Penal Code § 7's definition of "willfully." Consequently, even though § 7 does not require any intent to violate the law it does require evidence that the defendant, when

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wrongful act, Petitioner's intent did not matter (RT 217.)

[88] Bus. & Prof. Code § 6068(a) and Penal Code § 148(a)(1), combined, put Petitioner in a no-win bind. Per § 6068(a), Petitioner had a law imposed duty to support the U.S. Constitution, but, when Petitioner peacefully did that, he was arrested and the prosecutor and the trial court told the jury Petitioner' intent was irrelevant; however, none of Petitioner's conduct was "clearly proscribed" "core criminal conduct," and Petitioner's intent to peacefully support constitutionalism is not wrongful criminal intent.

committing *the act* proscribed by § 148(a)(1), had the *purpose* to commit *the act* proscribed. Section 148(a)(1), therefore, has a limited *specific intent* component to it: A defendant, to be guilty of violating § 148(a)(1), must have manifested a *purpose* to commit *the act* proscribed.[89]

89. Petitioner Is Immune Because He Did His Duty.

When Petitioner was confronted with the unconstitutional conduct of Government Actors at the Redding Municipal Airport on May 4, 2002, Petitioner had a Bus. & Prof. Code § 6068(a) duty and a constitutional right "to execute the laws of the union" by calling himself out as a militia of one– a peaceful objector. Under the circumstances that confronted him, the lawlessness by Government Actors triggered Petitioner's duty, and right, to object to support the Constitution for the benefit of himself, others, community, and the nation. By peacefully objecting, Petitioner promoted "the security of a free state" to preserve the *Constitutional* Rule of Law.[90]

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[89] Petitioner's *purpose* was to peacefully stand on his rights, preserve the Constitutional Rule of Law, do his duty, avoid making conduct with Mayberry, stay out of trouble, enjoy the air show, move his camera gear, preserve his bodily integrity. Petitioner never had a *purpose* to commit *the act(s)* proscribed by § 148(a)(1).

[90] In the United States the following is true: A) There is no law that requires one to be a sworn peace officer to be a law enforcement officer; B) The common man has the prerogative to provide for the common defense and to secure the Blessings of Liberty; C) Every common man is vested with the power, and the right, to make a citizen's arrest, to make and to enforce a Petition For Redress of Grievance, to speak out, to object, to be armed, to enforce the law, and to use reasonable force against an officer's use of excessive force; D) The office of citizen is the highest political office; E) It is the function of the citizen to tell the Government when it is wrong; F) There is no law that imposes on citizens a duty to let a police department usurp power and constrict liberty; and G) Article I, Section 8, clauses 15 and 16 of the United States Constitution, and Amendment II of the United States Constitution, empower ordinary citizens to be law

No one else was standing up for *constitutionalism*.[91] Government Actors were usurping powers, taking money from one group of citizens that paid them to violate the rights of another group, and unduly compliant, intimidated, constitutionally illiterate citizens, went along to get along.

Justice Kennard said it well in People v. Neal, supra, 31 Cal.4th at 89, "A right that is not honored when invoked is no right at all." Since the officers refused to honor Petitioner's Fourth Amendment and First Amendment rights, Petitioner did not enjoy those rights; these officers, to that extent, stole his liberty from him.[92]

The Redding Police Department's search policy was a null and void unconstitutional police edict that was not binding on Petitioner. See Art. VI, § 2 U.S. Constitution.[93]

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enforcement officers as part of an organized or unorganized militia, including "a militia of one"–the individual.

[91] The United States Constitution is a piece of paper that memorializes a set of principles. It is not self-executing. It needs defenders to enforce it.

[92] The Constitution is the only thing that stands between "We, the People" versus Government and Tyranny. To the extent the Judiciary fails to make Government Actors obey the Constitution's commands, it becomes incumbent upon Citizens to make Government Actors obey those commands. If the Judiciary will not enforce the Constitution on behalf of Citizens, Citizens must enforce it on their own behalf. Constitutionalists will not let the Constitution become a dead letter.

[93] The Redding Police Department on May 4, 2002 bypassed Fourth Amendment safeguards and drove Liberty from the land. Petitioner, with his esoteric training, when he encountered this policy, experienced alarm bells. Petitioner, per his duty, peacefully protested and was arrested. Petitioner's orientation may be offensive or unfamiliar; however, it was the logic of the First Congress of the United States, and of the electorate who elected those senators and congressmen. Those rights and duties are still on the books.

90. The Trial Court's Evidentiary Rulings Prevented Petitioner from Presenting His Full Defense While Allowing the Prosecutor to Introduce Irrelevant and Prejudicial Evidence.

The Constitution guarantees a criminal defendant a fair trial through the Due Process Clause. Crane v. Kentucky (1986) 476 U.S. 683, 691. The trial court, however, made erroneous decisions which prevented Petitioner from fully presenting his defense to the jury while allowing the prosecutor to present irrelevant, inflammatory, evidence, which violated Petitioner' right to a fair trial. These rulings devastated Petitioner's defenses.

The trial court denied Petitioner the right to testify fully about his intent and knowledge of specific laws that supported him while allowing the prosecutor to do three devastating things: First, introduce evidence that Petitioner had filed a civil claim regarding the underlying incident; second, allow the prosecutor to repeatedly mock Petitioner before the jury on prolonged occasions: during cross-examination of Petitioner and during her summations; and third, as a result of the trial court's denying Petitioner the right to fully present his defense, the prosecutor had a license to mock Petitioner further for being unable to support his claim that he knew he was right and he knew the officers were wrong. The trial court's ruling had the effect of inviting egregious prosecutorial misconduct.

91. The Trial Court's Admission of Evidence of Petitioner's Civil Suit Was Prejudicial Error.

While ruling that Petitioner's defense would be too time-consuming, the court allowed the prosecutor to introduce evidence of his civil claim against the county, city, and certain local government employees, a decision which gave the prosecutor free reign to mock Petitioner in a manner which can only be seen as improper and prejudicial.[94]

[94] Petitioner moved *in limine* to exclude evidence that he had filed a

The "prejudice" referred to in Evidence Code § 352 applies to evidence that uniquely tends to evoke an emotional bias against the party as an individual and that has very little effect on the issues. People v. Kipp (2001) 26 Cal.4th 1100. The balancing test is critical where the defendant's liberty is at stake. People v. Burrell-Hart (1987) 192 Cal.App.3d 593.

The court's misapplication of these principles led it to rule on the one hand that Petitioner presenting the constitutional and case-law underpinnings of his defense would be too time-consuming, but, on the other hand, that it was fine for the prosecutor, in the midst of a trial which should have focused on the lawfulness of the officers' conduct and whether or not Petitioner willfully resisted arrest, to use the civil claim to prejudice the jury–and to misdirect the jury, namely, to get them to focus on how Petitioner's civil claim might impact their taxes and not focus on how the prosecution lacked the law and the facts to prove Petitioner guilty beyond a reasonable doubt.

The prosecutor initiated this prejudice during her cross-examination of Petitioner when she managed to recite each of the prospective defendants in the notice of claim. (RT 578-581.)

To exacerbate matters, the prosecutor asked Petitioner on cross-examination, "[W]hen you were on the ground after you were placed under arrest and you were on the ground being handcuffed, do you remember

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civil Notice of Claim against Shasta County, City of Redding, and the officers, and the court denied that motion. (RT 26-27) This was error. Petitioner's civil claim had no relevance to his alleged § 148(a)(1) conduct. The denial of this *in limine* motion allowed the prosecutor to ridicule Petitioner for that filing, and to appeal to local prejudice. (RT 578-580; RT 598-599; RT 658-659; RT 806-806; RT 816-817; RT 860-861).

saying to people who are passing by, 'Help me, help me. Take pictures. I will pay you'? Do you remember saying that?" (RT 576.) Petitioner denied remembering it, and he denied saying it. Id.

The prosecutor never called any witness during her case in chief or in rebuttal to contradict Petitioner's testimony on this point. It is improper for a prosecutor to examine a witness solely to imply or insinuate the truth of facts about which questions are posed. People v. Mayfield (1997) 14 Cal.4th 668, 753. This misconduct is not surprising, however, since the court had explicitly denied Petitioner' § 352 motion to exclude evidence of the Notice of Claim.[95]

The court's error allowed the prosecutor, during her cross-

[95] The prosecutor's attempts to raise the issue of Petitioner's alleged yelling to witnesses, after his arrest, betray her dogged pursuit of an irrelevant matter: First, during motions in limine, she indicated to the court that Petitioner had done this, and that she had made discovery of this information to defense counsel, which defense counsel denied. (RT 28-29). Then she claimed she first learned of it when Mayberry made that statement in open court at the Law and Motion hearing in defense counsel's presence, which Petitioner's defense attorney again denied. (RT 29). Then, she told the court she knew "absolutely" that Mayberry made this representation then because Mayberry heard Petitioner make those statements. (RT 30). After Judge Gallagher directed Mulligan to have Mayberry memorialize Petitioner's alleged comments (RT 30), the prosecutor reported to the court that Mayberry did not recall Petitioner telling spectators to take pictures and Petitioner would give them one half, that she did not provide that information to Petitioner's defense attorney and it was not Mayberry who told her that information about Petitioner; but that she was sure that Mr. Coombs or Mr. Johnson told her what she wrongly attributed to Mayberry, but, even with her notes, she was unable to determine who told her this. (RT 50-52). In their testimony for the prosecution, however, neither Mr. Coombs (RT 334-341) nor Mr. Johnson (RT 319-328) testified that they heard Petitioner say anything about spectators taking pictures and Petitioner would give them one half.

examination of Petitioner, to berate him with a recitation of each of the potential defendants listed in the Notice of Claim. (RT 578-581.) Indeed, the prosecutor, knowing that the real *constitutional* law and the material facts were against her, out of desperation, made a strategic decision: A) To avoid losing the case, she needed something to divert the jury's attention from the fact that the law and the facts were against her and the officers, and B) To create that diversion, that misdirection, she made Petitioner the issue rather than his conduct or the legality of the search or the arrest. The prosecutor's desperation is underscored by her resorting to ad hominem attacks instead of an objective analysis of the evidence and the law. The prosecutor, before the jury, referred to Petitioner as a "jerk" in her closing argument. (RT 805-806.) A prosecutor commits misconduct when he or she resorts to calling the defendant a derisive name before the jury. U.S. v. Rios (10th Cir. 1979) 611 F.2d 1335, 1343. [Prosecutor called an accused drug dealer "Mr. Big."].

The prosecutor's sustained misconduct created an atmosphere in which Petitioner could not possibly be expected to get a reasoned decision from the jury. It also allowed the prosecutor, in final argument, to further appeal to local prejudices by arguing that Petitioner engineered the entire incident to create for himself a federal civil case. To do so, she derisively used the cash-register-suggesting sound "cha-ching" four times to denigrate Petitioner and to inflame local prejudice against Petitioner. (RT 860-861.)

Nothing about Petitioner' Notice of Claim was relevant to the § 148(a)(1) charge. It is hard to imagine anything closer to the very definition of prejudice: " 'evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very

little effect on the issues,' " not the prejudice "that naturally flows from relevant, highly probative evidence." People v. Karis (1988) 46 Cal. 3d 612, 638, quoting People v. Yu (1983) 143 Cal. App. 3d 358, 377. A more expansive explanation appears in People v. Branch (2001) 91 Cal.App.4th 274, 286:

> To expand on this, the prejudice that section 352 ' "is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence." [Citations]. "Rather, the statute uses the word in its etymological sense of 'prejudging' a person or cause on the basis of extraneous factors. [Citation.]" [Citation.]' . . . In other words, evidence should be excluded as unduly prejudicial when it is of such nature as to inflame the emotions of the jury, motivating them to use the information, not to logically evaluate the point upon which it is relevant, but to reward or punish one side because of the jurors' emotional reaction. In such a circumstance, the evidence is unduly prejudicial because of the substantial likelihood the jury will use it for an illegitimate purpose." Id., quoting Vorse v. Sarasy (1997) 53 Cal. App. 4th 998, 1008-1009. [Emphasis added.]

Evidence of Petitioner' notice of claim had absolutely nothing to do with his guilt, but the prosecutor exploited that evidence to the fullest for its prejudicial and misdirection effects.

92. The Trial Court's Refusal to Let Petitioner Fully Present His Defense Denied Him Due Process of Law, a Fair Trial, and the Effective Assistance of Counsel.

Petitioner's trial attorney, outside the presence of the jury, told the trial judge that 1) The defense is the officers were wrong; 2) The detention, stop and arrest were unlawful; 3) Petitioner knew it was unlawful; 4) Petitioner did not make a mistake; 5) It was the officers who were mistaken or acted unlawfully; and 6) The requirement of an offense committed "willfully" is not met when the defendant relied in good faith on a prior

United States Supreme Court decision, which Petitioner did. (RT 77-80.)

A defendant may be examined as to the intent with which he did an act. People v. Gaines (1951) 106 Cal.App.2d 176, 180. A failure to afford a defendant a reasonable opportunity to defend himself against the charge is a denial of due process of law. In re Oliver (1948) 333 U.S. 257, 273.

The trial judge opined, however, that since Petitioner committed an act that is only a general intent crime Petitioner's subjective understanding of things are not relevant because one doesn't have to have the specific intent to resist, obstruct or delay in order to violate § 148(a)(1), and a person could resist, obstruct or delay by verbal refusals. (RT 79-80.)

The trial judge ruled he would not permit Petitioner to proceed with any defense based on Petitioner's reliance on a prior United States Supreme Court decision because Petitioner's testimony about his reliance upon such decisions would be unduly time consuming, would confuse the issues, the prejudicial effect outweighed the probative value, Petitioner should not be an expert in his own case, and § 148(a)(1) is a general intent crime. (RT 210-211; RT 213-217.) Consistent with this ruling, the court *twice* refused Petitioner's requests to take *mandatory* judicial notice of relevant constitutional provisions and case law upon which Petitioner relied in refusing a consent search. (RT 35.)

This issue was revisited toward the end of the trial, when defense counsel argued, unsuccessfully, that 1) The prosecution had made it an issue as to how Petitioner acted with the officers, suggesting that he acted improperly and illegally; 2) Petitioner had not fully explained why he did what he did, because the trial court denied him that right; and 3) Petitioner had a rationale for what he did.(RT 627-628.) The trial court, however, ruled that Petitioner had had a fair amount of time to explain his reasoning,

which had already been time consuming, and any further testimony from Petitioner as to why he did what he did would be unduly time consuming. (RT 629-630.)[96]

93. The Trial Court Abused Its Discretion When It Denied Petitioner His Due Process Right to Put on a Full Defense.

The most important witness for the defendant in a criminal case is often the defendant himself. Rock v. Arkansas (1987) 483 U.S. 44, 52. A court's restrictions on a criminal defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve. Id., 55-56. An essential component of procedural fairness is a criminal defendant's opportunity to be meaningfully heard in his own defense. Crane v. Kentucky, supra, 476 U.S. at 690. The Sixth Amendment grants to the accused *personally* the right to testify on one's own behalf in a criminal trial. Faretta v. California (1975) 422 U.S. 806, 819, fn 15; Washington v. Texas (1967) 388 U.S. 14, 17-19.

It is difficult to imagine evidence that is more "competent" or "reliable" than exact quotations from relevant case precedents from the California Supreme Court, the United States Supreme Court, the Ninth Circuit, and the United States and California Constitutions. Petitioner was willing, able, and ready to present these to the jury, but the trial court barred him from doing so. While it is true that allowing Petitioner to

[96] A major reason for publishing case law and for adhering to the Doctrine of *Stare Decisis* is so citizens can know what the law is and conform their conduct accordingly; however, after Petitioner devoted much of his adult life doing that the trial judge refused to let him fully explain his intent and prove that the published public law supported his defenses. Simultaneously, the trial court let Williams, Mayberry, and Mulligan tell the jury that they acted lawfully when Williams and Mayberry enforced the RPD's unpublished, unwritten, edict.

discuss these cases to prove he acted lawfully would be time consuming, he was not permitted to cite a single case to the jury–not even People v. Hyde with its expressed limitation on the administrative search exception for airline passengers, a limitation which the police violated and which the prosecution misrepresented to the jury. Instead, the Hon. Judge William Gallagher made Petitioner dependent on others to get the jury properly instructed. The jury, however, was not properly instructed as to Petitioner's theories of defense. The jury was never told that the California Supreme Court held in Hyde that the administrative search exception to the Fourth Amendment must be limited to ticketed, pre-boarding, passengers, and, if the police search for anything other than weapons or explosives, they need a search warrant.

EVEN WORSE: Even when the trial court, the prosecutor, and the defense attorney never told the jury about the Hyde ruling, or any of the federal rulings that support Hyde, the trial court denied Petitioner the right to tell the jury that fact himself.

STILL WORSE: Petitioner's request for the trial court to take *mandatory* judicial notice of relevant cases, including Hyde, was denied, *twice*.

The trial judge's preventing the jury from hearing the basis for Petitioner' beliefs, and his evidence to support them, prevented jurors from hearing the specifics that went to the very heart of his defense, which denied Petitioner his right to a fair trial.[97]

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[97] Although the court was correct that this was a general intent crime, the result was that Petitioner was prevented from putting on his defense, in violation of the California and United States constitutions. Chambers v. Mississippi (1973) 410 U.S. 284, 294-295. The very heart of Petitioner's

94. The Trial Court Abused Its Discretion in Refusing to Charge the Jury on the Defense of Good Faith.

Part and parcel with this is the court's further error in refusing to give several defense-requested instructions. A criminal trial judge must instruct the jury on every theory of the case supported by substantial evidence, including defenses that are not inconsistent with the defendant's theory of the case. People v. Montoya (1994) 7 Cal.4th 1027, 1047. Doubts as to the sufficiency of the evidence to warrant an instruction should be resolved in favor of the accused. People v. Wilson (1967) 66 Cal.2d 749, 762-763. Nevertheless, the court refused an instruction on the defense of necessity (CALJIC 4.43), which includes within it the defense that "The act charged as criminal was done to prevent a significant and imminent evil, namely, a threat of bodily harm to onself or another person . . . ." (CT 395.)

A sworn peace officer who violates one's rights, and who uses force unlawfully to do so, is, from the citizen's viewpoint, a "significant and imminent evil" to be prevented. A government that drives liberty from the land in the name of promoting public security is another "significant and imminent evil" to be prevented. To keep government from abusing its powers it is necessary for citizens to peacefully assert their rights and refuse to be cowered.

Given that it was Mayberry who initiated the physical contact and it was Petitioner's defense that his movements were in reaction to that, to remove CALJIC 4.43 from the jury was an abuse of discretion, especially

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defense was that he believed he had a duty under Bus. & Prof. Code § 6068(a) to support and to defend the U.S. Constitution by asserting his rights, he knew the search policy and the officers' conduct were unconstitutional, and he could prove it using case law. Petitioner's beliefs are compelling or at least meritorious.

since Government Actors acted unconstitutionally. Similarly, the jury should have been given CALJIC 4.60, as modified by defense counsel, regarding the entrapment defense, also refused over defense objection. (CT 397.)

Williams entrapped Petitioner when he *requested* a consent search, told Petitioner the encounter was *consensual*, and, after Petitioner refused a consent search and walked away, called for Mayberry to detain Petitioner because Petitioner refused a consent search.

How could it be plainer that Williams was wrong and unlawfully "pressed" Petitioner? Williams admitted, under oath, he was trained to press citizens who refuse a consent search because the refusal automatically creates probable cause to detain, to seize, to search!

Mayberry also entrapped Petitioner when Mayberry did this: A) He admitted to Petitioner he did not have probable cause and Petitioner was free to leave; B) He *requested* Petitioner to step back; and C) when Petitioner started to move after he was requested to step back, Mayberry seized Petitioner, used unnecessary and excessive force, and made an arrest based on what Mayberry described as a mere *furtive movement*.

Williams and Mayberry put Petitioner in a no-win box. Each exceeded their lawful powers in contravention of Petitioner's rights.

As it did with the elements of the defense of necessity, the court removed from the jury the factual determination of whether Petitioner's actions were reasonably induced by Mayberry's action.

These errors are magnified when they are evaluated alongside their unfortunate companion, namely, the trial judge's decision to allow the prosecutor to introduce evidence of Petitioner's Notice of Claim against the city, county, and their officers.

95. The Trial Court Committed Reversible Error by Twice Failing to Take Mandatory Judicial Notice of Evidence That Would Have Corroborated Petitioner's Defenses and Beliefs.

A trial judge must take judicial notice of case decisions, constitutional law, rules of professional conduct for licensed members of the State Bar, and facts of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute. Evid. Code § 451; Estate of Joseph v. Joseph (1998) 17 Cal.4th 203. When a party requests judicial notice and furnishes the court with "sufficient information" for it to take judicial notice, the court must do so when proper notice has been given to each adverse party. Evid. Code § 453.

While the trial court was failing to screen out invalid prosecution theories for conviction, Petitioner tried to get the "rest of the story" before the jury. The trial court, however, twice refused Petitioner's motions for mandatory judicial notice. (RT 31, 4-37, 25; RT 608, 9-19; RT 624, 23-625, 28,) and the prosecutor objected to the trial court taking judicial notice of the case law and these other materials (RT 626-628.)

Since the prosecutor was withholding material information and law from the jury, Petitioner twice requested that this information be noticed so it would become evidence that he could testify about to prove that there was a substantial, factual and legal basis that justified his conduct and that his attorney could argue and use as instructions. The trial court, however, said he did not take judicial notice of the specified cases because the defense did not articulate "a proper basis" for him to do so, namely, did not "set out in the case itself" why he should take judicial notice of it, which denied the prosecutor the opportunity to effectively argue against the motion. (RT 765-766, 15.) But Petitioner's 27 page Renewed Motion To Take Judicial Notice cited the cases, their holdings, and applied those

holdings to the facts of the case. That motion was served on the prosecutor. By citing the case holdings and applying them to the facts, Petitioner gave the prosecutor and trial court "sufficient information" for the trial court to take judicial notice. If the trial court had given sufficient weight to those cases or that motion the trial court should have granted Petitioner's motion for an acquittal or his motion for mandatory judicial notice or both. At a minimum, Petitioner's motions for mandatory judicial notice put the trial court on notice that it had a duty to instruct the jury *sua sponte* beyond what the attorneys had proposed.

96. Petitioner's Motion to Suppress Should Have Been Granted.

When a search is warrantless, a trial judge and/or reviewing appellate court must specifically determine whether the search at issue fits within one of the few recognized exceptions to the "warrant-based-on-probable cause" requirement of the Fourth Amendment. Stroeber v. Commission Veteran's Auditorium, supra, 453 F. Supp. at 932. Since the RPD's search policy did not fit within one of these exceptions the motion to suppress should have been granted.

97. Petitioner's Motion to Acquit Should Have Been Granted.

The trial court, for the reasons stated herein, should have granted Petitioner's motion to acquit. Construing the evidence fully in favor of Respondent, a reasonable jury, when properly instructed, could not reasonable convict Petitioner.

98. The Trial Court Committed Reversible Error by Instructing the Jury in a Manner That Materially Misdirected it Toward a Verdict of "Guilty."

The trial court gave the following instructions. (RT 772-790.)

A. The jury has two duties: Determine the facts from the evidence and apply the law he gives them, which they must obey, to the

evidence. (RT 772)

The trial court declared itself to be the sole "law giver." It was never Petitioner's intention to dispute that. Petitioner made that point clear in his renewed motion for mandatory judicial notice.

As the sole "law giver," the trial court had a high duty to instruct the jury on all of the principles applicable to the issues in the case. This the court did not do. This error is compounded by the court instructing the jurors that "they must obey" him. By withholding relevant law from the jury that undercut the prosecution's case and supported Petitioner's defenses and by instructing the jury on mixed fact/law issues in a way that resolved such issues in favor of Respondent, the trial court relieved Respondent of much of its burden of proof and misdirected the jury toward a "guilty" verdict. The trial court did this in two ways: First, it withheld law that supported Petitioner's defenses and second, it usurped the jury's powers and function by removing from jurors multiple mixed fact/law questions in the guise of instruction.

B. The word *willfully* when applied to the intent with which an act is done or omitted means with a purpose or willingness to commit the act or to make the omission in question; it does not require any intent to violate the law or to injure another. (RT 774.)

The trial court, however, acknowledged that he believed Petitioner was passionately sincere that Petitioner was right, but he instructed the jury that Petitioner's sincere beliefs, in effect, were 100% irrelevant.

C. For the crime charged, there must be a union of act and general criminal intent, which does not require an intent to violate the law. When a person intentionally does what the law declares to be a crime, he acts with a general criminal intent even though he may not know that his

act or conduct is unlawful. (RT 782)

Per this instruction and the previous one, the trial court essentially gave the jury a directed verdict instruction regarding the element of Petitioner's intent to commit a § 148(a)(1) violation, directing them toward a verdict of "guilty." But, when factual questions presented to the jury are complex, when the defense did not concede a relevant factual issue, and the trial court's instructions denied the jury an opportunity to consider the issue, a court cannot say beyond a reasonable doubt that a challenged instruction had no effect on the jury's verdict adverse to the accused. People v. Hedgecock (1990) 51 Cal.3d 395, 410.

A trial judge in a criminal case, by a jury instruction, may not withdraw from the jury or prejudge the issue of a defendant's intent. Sandstrom v. Montana (1979) 442 U.S. 510, 522. Such an instruction conflicts with the overriding presumption of innocence with which the law endows an accused and which extends to every element of the crime. Id.

D. The U.S. Constitution is the Supreme Law of the Land, the fundamental and paramount law of the nation, and its limits and commands may not be breached or violated. (RT 782)

But, the trial court never told the jury that the Fourth Amendment is part of the United States Constitution or that Petitioner did not have to obey a search policy that conflicted with the Supreme Law. It cannot be presumed that a lay jury knew this. The trial court also failed to give a single example to illustrate the concept, and it failed to let Petitioner prove the concept or explain it.

E. An officer's violation of Penal Code § 853.6(i) is not sufficient to invalidate an otherwise lawful arrest. (RT 777-778.)

The trial court impermissibly read that pro-prosecution slant into §

853.6(i) and, in effect, did an unconstitutional "legislation by trial court" in the guise of interpretation, which violated the Doctrine of the Separation of Powers. People v. Zapien (1993) 4 Cal.4th 929, 955.

The trial court was not authorized to re-write § 853.6(i) to conform to a pro-prosecution slant based on an assumed intention that does not appear in the statute. The Legislature painstakingly set out specific criteria for when a person is *entitled* to a cite and release non-custodial arrest and used the mandatory "shall" to enforce that entitlement. Mayberry admitted Petitioner satisfied that criteria. The Legislature does not kid around when it uses the mandatory "shall." Penal Code § 853.6(i) is a dense pack of "shall's."

By so instructing, the trial court breached the *law-fact* distinction under the guise of interpretation, resolved this *legal-factual* issue oppressively, against Petitioner in favor of the prosecution, in violation of Petitioner's right to not be burdened with an *ex post facto* law. By so instructing, the trial court further misdirected the jury and undermined Petitioner's credibility before the jury. Per this instruction, the trial court did not fully instruct the jury regarding the limits on Mayberry's lawful powers of arrest. It is factually and legally impossible for Mayberry to be acting "lawfully" when he violated Penal Code § 853.6(i). A criminal trial court judge may not instruct a jury in a way that relieves it from its duty to make findings on relevant issues. People v. Satchell (1971) 6 Cal.3d 28, 33.

F. Searches conducted as part of a regulatory scheme with an administrative purpose rather than as part of a criminal investigation to obtain evidence of a crime may be valid under the Fourth Amendment even if not supported by a showing of probable cause to a particular person or

persons. (RT 782-783.)

This instruction, combined with others, failed to articulate *when* and *per what criteria* as *determined by whom*, a search policy labeled "administrative" *may* be valid under the Fourth Amendment. This instruction said nothing about the Hyde limitation, even though it was lifted from Hyde, grossly out of context, without the limitation. This instruction, absent such details, is misleading, incomplete, and an untenable pseudo legal proposition which further reduced what the prosecution had to prove. This instruction is essentially a fallacy of the general statement of the law–one that is misleading without the general statement's limitations, e.g., one of those "refinements."

This instruction leaves this crucial decision up to lay jurors with insufficient guidance. It is the trial judge's special business, however, to guide the jury by appropriate legal criteria. Bollenbach v. United States (1946) 326 U.S. 607, 613. This instruction is, at best, only a broad, general, Hornbook, statement. This instruction, and the others--combined--failed to instruct the jury, per Hyde, of a crucial legal limit on what the RPD did: Airport screening procedures must be as limited in intrusiveness as is consistent with their justification, and an individual may avoid submitting to a search altogether by electing not to board an airliner.

This instruction suffers from another serious flaw: It is equivocal, namely, it allows for the possibility of more than one meaning or interpretation, it is of a doubtful nature, and it has an uncertain significance. A conviction may not rest on an equivocal direction to the jury on a basic issue. Bollenbach v. United States, supra, 326 U.S. at 613.

This instruction was a material misdirection on a basic "fighting issue": the constitutionality of the Redding Police Department's search

policy. A charge may not be misleading when it affects the substantial rights of an accused. Bollenbach v. United States, supra, 326 U.S. at 614.

G. An administrative search must be measured against the Constitutional mandate of *reasonableness*. (RT 783)

H. The test for determining *reasonableness* is to balance the need to search against the invasion which the search entails. (RT 783) This instruction conflicts with Florida v. Jimeno, supra, 500 U.S. at 250: A warrantless search is reasonable only when it falls within one of the clearly defined exceptions to the warrant requirement; precedent neither establishes nor condones application of an amorphous "reasonableness" test to determine the constitutionality of a warrantless search. Id., 250-251. But, this instruction was exactly what the United States Supreme Court declared it would not condone–the use of an amorphous "reasonableness" test.

I. The searches conducted at the Redding Airshow on May 4, 2002 were *administrative searches*. (RT 783)

Here, the trial court specifically treated "administrative searches" as some type of legal "magic bullet" that glosses over unconstitutional behavior and makes unwritten search policies which give searching officers unfettered discretion okay merely because it is labeled "administrative."

This instruction is also equivocal, misleading, and incomplete. The term *administrative searches* is undefined and amorphous. This instruction, coupled with the others, suggested to the jury that the trial court had approved of the Redding Police Department's search policy because the trial court withheld from the jury all of the expressed limitations on *administrative searches*. The trial court and the prosecutor treated *administrative searches* as some kind of legal magic bullet that trumps the Fourth Amendment because the label *administrative search* was pinned on

a harebrained policy. Calling mica gold does not make mica gold.[98]

J. What are the elements for a Penal Code § 148(a)(1) offense, per CALJIC. (RT 783-784.)

The trial court, however, did not instruct that "when no other punishment is prescribed" is a limiting element, and it also did not instruct that "other punishment" was prescribed for Petitioner's alleged "as if" arm movement which Mayberry characterized as "furtive" and "attempted assault." The prosecutor and trial court, cannot ignore an important qualifier that is an expressed element of a statutory offense. A jury's verdict cannot stand if the instructions did not require a jury to find each element of the crime under the proper standard of proof. People v. Figueroa (1986) 41 Cal.3d 714, 726; People v. Garcia (1984) 36 Cal.3d 539, 550. The jury never made a finding that there was "no other punishment prescribed" for what Petitioner allegedly did.

K. A peace officer discharges or attempts to discharge a duty when he lawfully detains a person or uses reasonable force to effect a lawful arrest or detention. (RT 784.)

L. Intentionally handcuffing a suspect too tightly *may* constitute excessive force. (RT 789.)

Intentionally handcuffing a suspect too tightly, is, by definition, excessive force. Mayberry admitted he handcuffed Petitioner fast and when he does that the cuffs probably go on tight, and he also admitted he never loosened them even when Petitioner requested that the tight cuffs be

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[98] Catch words, labels, and symbols tend to promote too relaxed thinking and suspended judgment, and, therefore, should be watched with circumspection lest they lull us into danger. Henneford v. Silas Mason Co. (1937) 300 U.S. 577, 586

loosened. (RT 292-293; RT 315; RT 317-318.) The trial court's use of the permissive "may" is too equivocal: It allowed the jury to resort to their own predilections on an ad hoc basis with insufficient guidance.

99. The Trial Court Committed Reversible Error by Failing to Instruct the Jury *Sua Sponte*.

A criminal trial judge has a duty to instruct the jury fully and correctly on all the rules of law necessarily involved in the case; therefore, erroneous instructions may be reversible error, even though invited by defendant's own neglect or mistake. People v. Sedeno (1974) 10 Cal.3d 703, 715. A criminal trial judge's failure to give the proper instructions is reversible error per se even when a defense attorney tells the judge the defense agrees with the proposed instructions. Id.; Penal Code § 1259. An attorney who submitted to a criminal trial judge's authority of erroneous adverse rulings after making appropriate objections or motions did not waive error by proceeding in accordance with the trial court's rulings and endeavoring to make the best of a bad situation for which he or she was not responsible. People v. Woods (1991) 226 Cal.App.3d 1037, 1055.

Instructions that a criminal trial judge must give sua sponte include: 1) The elements of the offense charged. People v. Sanchez (1950) 35 Cal.2d 522, 528, and 2) Any affirmative defense if there is substantial evidence to support it and the defendant relies on it. People v. Sedeno, supra, 10 Cal.3d at 716. The trial court did not instruct on one element: "When no other punishment is prescribed."

A criminal trial court judge must instruct the jury upon every material question upon which there is any evidence deserving of consideration, even if its character does not inspire belief. People v. Mayberry (1975) 15 Cal.3d 143, 151; People v. Montoya, supra, 7 Cal.4th

at 1047.

Petitioner's Renewed Motion For Mandatory Judicial Notice put the trial court on formal, written, notice of defenses that Petitioner was relying upon and demonstrated that there was case precedents, statute, and constitutional provisions to support those defenses. That notice triggered the trial court's duty to instruct the jury *sua sponte*. Had the jury been instructed based on legal authority cited in that motion, it is probable the jury would have acquitted Petitioner.

100. Instructions the Trial Court Should Have Given *Sua Sponte*.

The trial court should have instructed the jury *sua sponte* regarding the legal principles stated below.

A. The Fourth Amendment to the U.S. Constitution is part of the U.S. Constitution and the Supreme Law of the Land.

B. Petitioner, as a licensed member of the State Bar, has a law-imposed duty per Bus.&Prof. Code § 6068(a) to support and to defend the U.S. Constitution against all enemies, foreign and domestic.

C. Petitioner' sworn oath and duty as a licensed attorney to support and to defend the U.S. Constitution by peacefully asserting Fourth Amendment rights *is* entitled to respect and is *equal to* the sworn peace officers' duty or the prosecutor's duty. Petitioner had a duty to disobey, peacefully, an unconstitutional police edict.

D. A person who does not manifest clearly proscribed core criminal conduct cannot violate Penal Code § 148(a)(1).

E. A person who peacefully asserts a Constitutional right, without a manifestation of clearly proscribed core criminal conduct cannot violate Penal Code § 148(a)(1).

F. In the absence of Williams or Mayberry having an arrest

warrant or a search warrant for Petitioner or his belongings or both the burden was on the prosecutor to establish a well recognized, applicable exception to the Fourth Amendment.

G. The Fourth Amendment to the United States Constitution cannot be manipulated out of existence, suspended, or bypassed by a Redding Police Department search policy without benefit of a warrant or an adequate substitute for a warrant.

H. All *administrative searches* are subject to the Fourth Amendment's requirement of *reasonableness* and any search policy that is not reasonable is null and void and not binding against Petitioner, and *reasonableness* requires a search warrant or an adequate substitute for a search warrant.

I. The prosecution had the burden of proof to establish a judicially recognized *administrative search* exception to the Fourth Amendment that was specifically applicable to airshow patrons.

J. An officer's or a prosecutor's reliance on a generic, *administrative search* rationale as an exception to the Fourth Amendment to justify a search is constitutionally infirmed. Officers who enforce a constitutionally infirmed search policy do not discharge a lawful duty.

K. For an *administrative search* policy to be Constitutionally legitimate, it must comply with these minimal requirements: It must be reduced to a formal writing; it must be reasonable; it must be judicially approved or there must be an adequate substitute for the lack of a warrant; it must strip a searching official of unfettered discretion; the Redding Police Department needed to manifest at the air show's entry gate a major "show of force" law enforcement presence [namely, many marked law enforcement vehicles, many uniformed officers, and flashing lights;] this

policy must be advertised in advance; and, if signage is a factor, all signage must comply with the Penal Code's requirements, which must be communicated to the jury. The jury, however, was not instructed as to any of this.

L. The Redding Police Department cannot constitutionally bypass the judiciary, usurp the judiciary's function, and attempt to do a defacto revision of the Fourth Amendment, without complying with Article V of the U.S. Constitution, and enforce its de facto "legislation by cop" police edict upon peaceful, law-abiding citizens, and arrest and punish any citizen who peacefully protests in good faith their illegal policy.

M. The "administrative pre-boarding search of ticketed, scheduled, commercial, airline passengers inside an airline passenger terminal" exception to the Fourth Amendment cannot be extended 2,000 feet and enforced against air show patrons.

N. On May 4, 2002 there was no administrative search of air show patrons exception to the Fourth Amendment.

O. Searching for food or beverages to help private air show concessionaires increase their sales does not qualify as reasonable suspicion to detain air show patrons or probable cause to search their containers.

P. Since the Fourth Amendment is part of the Supreme Law ofthe Land and all laws and policies that conflict with the Supreme Law are null and void and not binding on anyone, Petitioner did not have a duty to submit to the Redding Police Department's unconstitutional police edict search policy.

Q. Williams' training and understanding of the law was *in*correct as a matter of law.

R. Williams, as a matter of law, did not have a Constitutionally

legitimate basis to detain Petitioner, to search Petitioner's camera bags, or to call for back-up to detain Petitioner.

S. Mayberry, as a matter of law, was charged with knowing whatWilliams' knew about Petitioner and nothing that Williams knew or did not know about Petitioner added anything to Mayberry's reasonable suspicion or probable cause calculus.[99]

T. Mayberry, as a matter of law, was charged with knowing that Officer Long had concluded his investigation of the "suspicious caller" before the air show started, and, as a result, Mayberry could not rely upon any information from Long as probable cause calculus relative to Petitioner.[100]

U. What a *furtive gesture/movement* is.

V. Sworn peace officers and the prosecution may not exploit their violation of the Fourth Amendment.

W. A person who peacefully asserts a right does not, as a matter of law, create constitutionally legitimate, particularized, individualized, reasonable suspicion to believe that the person is somehow connected to criminal behavior.

X. A consent search request refusal does not give a sworn peace officer Constitutionally legitimate grounds to detain or search.

Y. A person's furtive movement, bladed position, agitated state, or refusal to submit to a search, or a combination of same are not sufficient for a seizure, search, or arrest.

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[99] People v. Ramirez (1983) 34 Cal.3d 541, 545-547; Florida v. J.L. (2000) 529 U.S. 266; United States v. Hensley (1985) 469 U.S. 221, 232-233.

[100] Ditto footnote 99.

Z. On May 4, 2002 "when no other punishment is prescribed" was a Penal Code § 148(a)(1) element that the prosecution had to prove.

AA. On May 4, 2002, there was "other punishment prescribed" for an attempted assault against a peace officer and a trespass.

BB. What are the elements for an *attempted assault* and a *trespass*.

CC. If the jury determined Petitioner committed an *attempted assault* or a *trespass* or both before Mayberry arrested Petitioner Petitioner could not be guilty of a Penal Code § 148(a)(1) violation.

DD. Since Mayberry admitted Petitioner satisfied the requirements for a cite and release arrest, Petitioner was entitled to such an arrest, and an officer who makes a custodial arrest instead of a cite and release arrest exceeds his lawful powers, which makes the arrest unlawful.[101]

101. The Trial Court Committed Reversible Error by Refusing Certain Defense Requested Instructions.

The trial court refused an entrapment defense instruction. (RT 699-700.) Entrapment is a recognized defense to a criminal charge. It is intended to discourage illegal police conduct. In re Foss on Habeas Corpus (1974) 10 Cal.3d 910, 932. Petitioner was entrapped by the officers to think he could walk away from each of them without being punished for doing so. The trial court refused a defense instruction on Petitioner's entrapment theory. (RT 699-700.) When the evidence shows entrapment, a criminal trial court judge has a duty to root out of the trial its effects, on its

[101] Since Penal Code § 853.6(i) placed mandatory limits on official discretion that required a certain outcome when specified criteria are satisfied, that section created a legally enforceable "liberty interest" in Petitioner's favor, which Officer Mayberry had a legal duty to respect, but he violated that section. Olim v. Wakinekona (1983) 461 U.S. 238, 249;

own initiative if necessary, and instruct on the entrapment defense. People v. Moran (1970) 1 Cal.3d 755, 760-761. When entrapment as a matter of law exists, a criminal trial judge should grant a motion for a judgment of acquittal. Pen.Code § 1118.1.

The trial court refused defense instructions regarding a broad constitutional perspective of the case. (RT 710-712.) This refusal allowed the prosecution to portray the police edict search policy as being constitutionally legitimate and binding against Petitioner when it was not.

102. The Trial Court's Charge Had an Unconstitutional Pro-Prosecution Slant.

When the court instructs the jury, the rules of law relating to any defense must be stated with absolute impartiality between the People and the defendant, and such rules should not be stated exclusively from the prosecution's viewpoint. People v. Moore (1954) 43 Cal.2d 517, 526-527. Unfortunately, the trial court's instructions regarding administrative search, "willfully," Penal Code § 148(a)(1)'s elements, and Mayberry's violation of Penal Code § 853.6(i) each had a pro-prosecution slant.

103. The Trial Court Controlled the Verdict.

The prohibition against a directed verdict of guilty in a criminal trial includes instructions which have the effect of so doing by eliminating relevant considerations if the jury finds one fact to be true. People v. Figueroa, supra, 41 Cal.3d at 724. The instructions given and refused resolved pivotal factual issues in favor of the prosecution. In that sense, the trial court controlled the verdict.

104. The Trial Court Construed the Law Oppressively in Violation of the Ban Against Ex Post Facto Law.

The critical question for an *ex post facto* violation is whether the law

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Hewitt v. Helms (1983) 459 U.S. 460, 466.

changes the legal consequences of acts completed before its effective date. Carmell v. Texas (2000) 529 U.S. 513, 520. This bar requires the government to play by its own rules. Id., 533.

Judges, as officers of government, have the power to construe the law oppressively and hence are proper objects of a healthy suspicion of the government's powers to oppress or to subvert the Constitutional Rule of Law. Neder v. United States (1999) 527 U.S. 1, 32. It is inherently unfair to apply a new rule of law [or a police department's unwritten search policy contrary to precedent] retroactively to a defendant currently before the court. People v. Scott (1994) 9 Cal.4th 331, 357-358.

The trial court construed the law oppressively against Petitioner because: A) It did not screen out an invalid theory for conviction,[102] namely, it allowed the Redding Police Department to enforce its police edict against Petitioner without benefit of a warrant or an adequate substitute for a warrant, contrary to controlling precedent[103]; B) It engaged in "legislation by judge" when it construed Penal Code § 853.6(i) with a pro-prosecution slant;[104] C) It twice violated the Evidence Code by refusing to take mandatory judicial notice of relevant case decisions, statutes,

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[102] A trial judge has a duty to screen out invalid theories of conviction by jury instruction or by not allowing them to be presented to the jury. People v. Guiton (1993) 4 Cal.4th 1116, 1131. Unsupported theories should not be presented to the jury. Id.; Griffin v. U.S. (1991) 112 S.Ct. 466, 474-475.

[103] A trial judge has a duty to comply with controlling precedent, and an accused is entitled to have the accused's trial conducted in accordance with then prevailing law. People v. Rincon-Pineda (1975) 14 Cal.3d 864, 872.

[104] A trial judge should protect citizens' constitutional rights against stealthy encroachment. Counselman v. Hitchcok (1892) 142 U.S. 547, 582.

Constitutional provisions, and major, undisputed historical facts; D) By its silence, it rewarded Williams and his superiors for implementing his appalling training, in contravention of precedents; and E) It condoned Mayberry arresting Petitioner because of an ambiguous, incomplete movement as a pretext for probable cause to arrest, also contrary to precedents.

105. The Trial Court Did Not Maintain Absolute Impartiality.

When the court instructs the jury, the rules of law relating to any defense must be stated with absolute impartiality between the People and the defendant. People v. Moore, supra, 43 Cal.2d at 526-527. The trial court violated this rule.

106. The Trial Court Unconstitutionally Decided Factual Issues.

A criminal trial court judge may not instruct a jury in a way that relieves it from its duty to make findings on relevant issues. People v. Garcia, supra, 36 Cal.3d at 551; McMillan v. Pennsylvania (1986) 477 U.S. 79, 85; Francis v. Franklin (1985) 471 U.S. 307, 313. The trial court violated this rule with its mixed fact-law instructions.

107. CALJIC's Definition of "Willfully" is Unconstitutional.

That part of CALJIC's "willfully" instruction which states the word *willfully* does not require an intent to violate the law, injure another, or to acquire an advantage, is unconstitutional. An instruction that conclusively presumes a person's intent is the unconstitutional equivalent of a directed verdict on that issue. Connecticut v. Johnson (1983) 460 U.S. 73, 78.

108. The Trial Court's Charge to the Jury Was Reversible Error.

An error in the jury instructions may justify a reversal when the jury is misdirected or misled upon an issue vital to the defense and the evidence does not point unerringly to the defendant's guilt. People v. Harris (1981)

28 Cal.3d 935, 956; People v. Rogers (1943) 22 Cal.2d 787, 807; Pen. Code § 1259. The evidence in People v. Mancus does not point unerringly to Petitioner's guilt, and the instructions did mislead the jury.

109. Deputy District Attorney Christie Mulligan Committed Prosecutorial Misconduct Which Infected the Trial.

Prosecutors are held to higher standards of conduct because they are a sovereign's legal representative, and they use the sovereign's powers on behalf of the sovereign, which is obligated to govern impartially. People v. Hill (1998) 17 Cal.4th 800, 819-820. A prosecutor must remain faithful to his client's overriding interest: That "justice shall be done." U.S. v. Agurs (1976) 427 U.S. 97, 110-111. A prosecutor's use of deceptive or reprehensible methods is a manifestation of prosecutorial misconduct. People v. Hill, supra, 17 Cal.4th at 819. Society wins when the accused are treated fairly, criminal trials are fair, justice is done to citizens in court, the guilty are convicted, and the innocent do not suffer. Brady v. Maryland (1963) 373 U.S. 83, 87.

A criminal prosecutor must respect the U.S. Constitution as a beacon that must guide a prosecutor's decisions. Berger v. United States (1935) 295 U.S. 78; Sheppard v. Rees (1990 9th Cir.) 909 F.2d 1234, 1238; Art. VI, § 2, U.S. Constitution.

A prosecutor may not impermissibly infringe upon an accused's rights. Donnelly v. DeChristoforo (1974) 416 U.S. 637, 643; In re William K. C. Ferguson (1971) 5 Cal.3d 525, 531.

Deputy District Attorney Christie Mulligan, however, never told the jury of Hyde's expressed limitations on the administrative search that she told the jury was already approved by the courts.[105]

[105] WORSE: Assuming Ms. Mulligan did not know of the case law

Insofar as they related to Petitioner's civil claim, defense counsel's objection during Ms. Mulligan's closing argument would have been futile. Petitioner's defense attorney's motion in limine to exclude evidence of Petitioner's Notice of Claim to Sue was denied. (RT 27.) Petitioner's defense attorney, early in Ms. Mulligan's initial closing argument, twice objected to Ms. Mulligan's misstatement of the evidence, and the court twice overruled those objections, stating that it was for the jury to decide what the facts were. (RT 793-794.) This in itself was error. U.S. v. Young (1985) 470 U.S. 1, 9; People v. Hill, supra, 17 Cal.4th 800.

Given the trial court's earlier denial of the motion in limine to exclude evidence of Petitioner's Notice of Claim of Intent to Sue, and the trial court's twice overruling her objections, Petitioner's attorney said, "Same objection. I won't object anymore." (RT 793-794.) Under these circumstances, it would have been futile for Petitioner's defense attorney to object further and to risk the trial court's wrath or offending the jurors, making continued objection unnecessary to preserve the issue for appeal. Hill, supra, at p. 821.

The prosecutor's argument further attempted to punish Petitioner before the jury for the exercise of *three* vital constitutional rights: First Amendment right to object and to petition for redress of grievance [at the airport and via the Notice of Government Tort Claim,] Fourth Amendment

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cited in Petitioner's renewed motion for the trial court to take judicial notice of such law, that motion put her on notice of its existence. Yet, she actively opposed the judge taking such notice, and she argued to the jury contrary to that authority. WORSE STILL: Once Ms. Mulligan knew, or should have known about how and why her theory for conviction was invalid, she persisted, contrary to her duty to be a guardian of Petitioner's rights, to govern impartially, and to not persecute Petitioner.

right against unreasonable search and seizure[106] and Sixth Amendment right to counsel.[107] A prosecutor may not make these kinds of arguments to a jury.[108]

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[106] Deputy District Attorney Christie Mulligan argued to the jury: "He's not letting anyone look in those bags. Why? Isn't that weird? If you have nothing to hide, why is it your mission in life to just go past these people as quick as you can and get into the air show making very clear that they are not looking in your bags? That in an and of itself justifies Officer Mayberry putting his hands on him to temporarily detain him." (RT 805) This argument penalized Petitioner for asserting his rights. It misstates the law. One has a right to peacefully exercise a right with immunity. Hale v. Henkel (1906) 201 U.S. 43, 74. When that happens, probable cause for a search or an arrest or both must be predicated on a suspect's specific acts and circumstances other than a mere failure to cooperate with an investigating officer. Gallik v. Superior Court, supra, 5 Cal.3d 855. The object of the federal Constitution is "to protect the rights and privileges, of the *individual* man."

[107] The prosecutor, in final argument, also told the jury: "That [characterizing something Petitioner testified he told Mayberry] didn't happen. That's something he's tailor-made now after the incident in his hours and hours of preparing his testimony. If you're innocent, why do you need to spend hours preparing your testimony?" (RT 803.) [Emphasis added.] This argument punished Petitioner's exercise of his Sixth Amendment right to counsel and to a jury trial.

[108] As Justice Black said in the context of the classic case in which a court allowed a prosecutor to comment on a defendant's exercise of his right not to testify against himself: "I can think of a no special circumstances that would justify use of a constitutional privilege to discredit or convict a person who asserts it. The value of constitutional privileges is largely destroyed if persons can be penalized for relying on them." Grunewald v. United States (1957) 353 U.S. 391, 425 [Black, J., concurring]. [Emphasis added.] Similarly, in U.S. v. Prescott (9th Cir. 1978) 581 F.2d 1343, 1351, a Fourth Amendment case, the court held that one cannot be penalized for passively asserting a Fourth Amendment right because, "If the government could use such a refusal against a citizen, an unfair and impermissible burden would be placed upon the assertion of a constitutional right and future consents would not be 'freely and voluntarily

Finally, Ms. Mulligan disingenuously argued two sides of the same issue: First, in her opposition to Petitioner's motion to suppress, the prosecutor argued to the Law and Motion judge that

> "the issue of lawfulness of the officer's actions in detaining or arresting the defendant is an evidentiary question that should *not* be resolved by the trial judge. Rather, it is a question of fact and an essential part of the corpus delicti itself. ¶ What defense counsel seeks to suppress is the very essence of this case. It is what *the jury* will be called on to determine–that is, whether defendant resisted an officer in the performance of his official duties . . . ." (CT 93-94.) [Emphasis added.]

Then, before the trial court, the prosecutor argued exactly the reverse, that it was for the court–evidently a judge more amenable to her arguments–to determine the lawfulness of the search. (RT 766-768.)

WORSE: Once Ms. Mulligan got the trial court to resolve certain mixed fact-law issues in her favor, taking them away from the jury, she then disingenuously told the jury that the legality of the search was not an issue for the jury to decide, the legality of what the officers enforced was not an issue for the jurors to decide, Petitioner's intent and what he believed are not relevant, and Petitioner was acting "like a jerk." In context, Ms. Mulligan was disingenuous with the law and motion judge, the trial judge, and the jury.

In context, Ms. Mulligan did not want the jury to make any meaningful determination of the law or of the facts. She simply got the trial judge to instruct the jury in a way that resolved all, or almost all, of the material factual and legal issues against Petitioner, via instructions. Hence,

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given.'" See also Griffin v. California (1965) 380 U.S. 609, 614 [prosecutor may not comment on defendant's exercise of Fifth Amendment privilege not to testify].

Petitioner enjoyed a sham jury trial.[109]

EGREGIOUSLY WORSE: Ms. Mulligan mocked Petitioner for "screaming his constitutional rights," suggesting they are unimportant and/or Petitioner is immature. Ms. Mulligan appears to lack insight to a critical dynamic–Petitioner would not have "to scream his constitutional rights" if Government Actors would honor them. In this nation, Petitioner has a right to stand on his rights and "to scream" to remind errant officials that rights exists, what their real duty is, and who is the "boss."

Ms. Mulligan condoned Williams' superior's indoctrination to violate citizens' rights [a consent search refusal automatically creates probable cause,] and Mayberry's training to violate the Legislature's command for "cite and release" treatment, but she remained mute about that, which is inconsistent with governing evenhandedly.

A prosecutor may not vouch personally–or for the government--for the appropriateness of the verdict urged by the prosecutor. People v. Benson (1990) 52 Cal.3d 754, 795. Such vouching may suggest the existence of "facts" outside of the record. Id. Ms. Mulligan, however, personally vouched for a *guilty* verdict being appropriate. (RT 860, 19; RT 856, 858-859.)

A prosecutor's brief and tangential mischaracterization of the law that subtly undermines the defendant's primary defense contributes to an

[109] WORSE STILL: Ms. Mulligan vested her disingenuous arguments with the full force of the stature of her office–she claimed she was just "searching for the truth" and "doing her job." EVEN WORSE: Ms. Mulligan claimed the officers were only doing their job, too, and Mayberry would have been the worse cop in the world if he had taken Petitioner's advice and not searched Petitioner's bags. Mayberry, however, had a law imposed duty to obey the Constitution and to respect Petitioner's rights.

overall unfairness of the trial. People v. Hill, supra, 17 Cal.4th at 831. In this case, Ms. Mulligan made a sustained, material, misleading, unethical, disingenuous, assault against Petitioner's core defenses, rights, and the *Constitutional* Rule of Law itself.

It is misconduct for a prosecutor to make comments calculated to arouse passion or prejudice. People v. Mayfield, supra 14 Cal.4th at 803. Ms. Mulligan violated this standard. (RT 820-822, 2; RT 864; RT 860-861; RT 805; RT 821; RT 803-806; RT 578-580, 25; RT 598-599.)

It is misconduct for a prosecutor to appeal to local financial interests, create jury confusion to gain the prosecution an unfair advantage by glossing over evidence, or lack of same, that damaged the prosecution's case, misstate the law generally, and, in particular, to attempt to absolve the prosecution of its failure to overcome reasonable doubt on all elements, and manifest an abrasive personality which contributed to a generally acrimonious trial atmosphere. People v. Hill, supra, 17 Cal.4th 800. Deputy District Attorney Christie Mulligan committed each of these acts of misconduct.

A prosecutor may also not present known false evidence to deliberately deceive the court or jury. Giglio v. U.S. (1972) 405 U.S. 150, 153.[110]

Prosecutorial misconduct violates due process if evidence presented,

[110] Deputy District Attorney Christie Mulligan knew that the Shasta County jail's audio-visual booking tape of Petitioner had a built in clock which showed that Petitioner was booked at that jail at 11:55 a.m. on May 4, 2002, which supported Petitioners' testimony as to when he was arrested, and she knew that Mayberry and all prosecution witnesses said the Mayberry-Petitioner incident occurred at "about 1:00 p.m.". (RT 818-819.) So desperate was Mulligan to get a conviction she discredited the accuracy

as a whole, gives a jury a false impression. Alcorta v. Texas (1957) 355 U.S. 28, 31. Ms. Mulligan's entire case was "a false impression."[111]

110. The Prosecutor Made an Unconstitutional Final Argument Which Was a Plea for Jurors to Nullify the Law In Favor of the Prosecution.

Ms. Mulligan's final argument to the jury was based on *utilitarianism*, not on *constitutionalism*. She argued, in essence, that Petitioner's rights were expendable because they had to be to promote the greater good of the group. That was the core essence of her argument that the Redding Police Department's search policy was *reasonable*.

Reasonableness is a cousin of *utilitarianism.* Both, however, when unchecked, are fraught with danger. Per an unchecked *reasonableness* or *utilitarianism* rationale, six men who rape Christie Mulligan may escape punishment because their pleasure outweighs Ms. Mulligan's rights.

It is all too easy for the group, or a spokesperson for a group, to jettison the rights of an individual. As Shakespeare had a character in one of his plays state, he who mocks the scar never felt the wound.[112]

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of the Shasta County Sheriff's jail's clock without credible evidence.

[111] Her handling of this case is a classic example of how *not* to do it if you want a conviction to stand up on appeal *if* the reviewing judges are competent and ethical.

[112] No one has articulated a convincing argument that the general welfare is promoted by stripping people of their rights or by allowing an unrestrained majority to have carte blanche to determine what are another's rights. Rights are not a matter of Government's grace or a Majority's grace. Ms. Mulligan's argument was an illegal "hail Mary" plea for the jurors to violate their sworn oath to obey the real law, but the jurors were constitutional illiterates, they were not properly charged, and Ms. Mulligan shuffled laws and facts like a card shark deals cards.

111. Deputy District Attorney Christie Mulligan Made Material Misrepresentations to the Jury on the Key Fighting Issue.

A prosecutor's conduct and statements are always reviewable on appeal because a prosecutor is an administer of justice. U.S. v. Young (1985) 470 U.S. 1, 9.

Consider the following juxtaposition.

A. ". . . airport screening procedures must be as limited in intrusiveness as is consistent with their justification, and an individual may avoid submitting to a search altogether by electing not to board the airplane." [Emphasis added.] Hyde, supra, 12 Cal.3d at 169, fn 6.

B. "[T]he issue of lawfulness of the officer's actions in detaining or arresting the defendant is an evidentiary question that should *not* be resolved by the trial judge. . . . It is what *the jury* will be called on to determine–that is, whether defendant resisted an officer in the performance of his official duties . . . ." (CT 93-94.) [Excerpt of what Ms. Mulligan told Judge Monica Marlow to defeat Petitioner's Motion to Suppress.] [Emphasis added.]

C. "Administrative searches are lawful. . . . the lawfulness of the search policy in this case is irrelevant. It's not a jury issue. It's not something you need to be concerned with. The courts have already decided that it was okay." (RT 852.) [Excerpt from Ms. Mulligan's final argument to the jury.]

D. "I'm here to find the truth, ..." (RT 856.) "I'm just doing my job." (RT 860.) [Excerpt from Ms. Mulligan's final argument to the jury.]

E. "[T]he prosecutor is not only the defendant's adversary, but is also the '. . . *guardian of the defendant's constitutional rights*. . . .' . . . . The intentional breach of the prosecutor's duty is the antithesis of his or her obligation.". Morrow v. Superior Court, supra, 30 Cal.App.4th at 1254.

F. "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it

shall win a case, but that justice be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocense suffer. He may prosecute with earnestness and vigor–indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger v. United States, supra, 295 U.S. at 88.

G. A prosecutor's intentional breach of the duty to protect the defendant's constitutional rights is the antithesis of the prosecutor's duty. Sheppard v. Rees, supra, 909 F.2d at 1238.

H. "It is no part of the proper duty of a prosecutor to use a criminal prosecution to forestall a civil proceeding by the defendant against policemen, even where the civil case arises from the events that are also the basis for the criminal charge." McDonald v. Musick (9th Cir. 1970) 425 F.2d 373, 375.

I. "It is the duty of an attorney to do the following: (a) To support the Constitution and laws of the United States . . . ." Bus.& Prof.Code § 6068(a)

Did Ms. Mulligan support the United States Constitution or a police edict? Did Ms. Mulligan do her "job," professionally? Did Ms. Mulligan mislead the jury? Where is the evidence that Ms. Mulligan was "a guardian" of Petitioner's "constitutional rights"? When Ms. Mulligan is asked to defend what she did and did not do in this case, would she argue for her own ignorance? Stupidity? Incompetence? Ruthlessness? Or would she admit to an intentional repeated violation of the law and her duties?

112. Petitioner Is Entitled to a Dismissal with Prejudice Because the Prosecutor Violated Brady Disclosure Duties.

The prosecution's suppression of evidence favorable to an accused upon request violates due process of law where the evidence is material to guilt or to punishment, irrespective of the good faith or bad faith of the prosecutor. In re John Brown, supra, 17 Cal.4th at 879; Brady v. Maryland (1963) 373 U.S. 83, 87; Kyles v. Whitley (1995) 514 U.S. 419, 433, 437. Deputy District Attorney Christie Mulligan withheld from Petitioner until her witnesses testified these facts: A) Redding Police Officer Allen Long, before this air show started, concluded his investigation of the "suspicious caller" about this air show, determined that person's identity, determined that person "rolled his R's," determined that person was not a threat, and reported to RPD that this case was closed (RT 86-92); B) Williams believed that because Petitioner refused a consent search Williams automatically had probable cause to detain Petitioner to force a search of Petitioner's camera bags (RT 137-138; RT 153-154); and C) Mayberry's entire basis for his alleged *probable cause* for detaining and arresting Petitioner was: 1) Mayberry relied upon Long's investigation of this "suspicious caller" and 2) Williams called for Mayberry to detain Petitioner (RT 275; RT 277; RT 301,) even though Long knew Petitioner was not the "suspicious caller."

Mayberry, however, did not have legitimate *reasonable suspicion* or *probable cause* to detain, to question, or to arrest Petitioner. Mulligan should have known this. This is because: 1) Mayberry relied upon stale information from Long, which the law does not permit him to do [113]; 2)

[113] A stale report of a crime, even one that is only one day old, does not convert the crime scene into "a no man's land" whereby "any passerby is fair game for a roving police interrogation." In re Tony C. (1978) 21 Cal.3d 888, 897.

Mayberry knew that Petitioner did not roll his "R's," which breaks any link between Petitioner and the "suspicious caller"[114] Long investigated, cleared, and reported same to RPD before this air show started; 3) Mayberry is charged with knowing that Long had cleared this case before this air show; 4) Williams' belief that he had *probable cause* to detain and search Petitioner because Petitioner refused a consent search is contrary to case precedents in force on May 4, 2002; and 5) Officers cannot use against a citizen a peaceful assertion of a right.

Petitioner's attorney made multiple informal and formal requests of Ms. Mulligan to disclose everything required by Brady timely. Petitioner' trial attorney did not have the above information when she filed a Motion to Suppress. Ms. Mulligan, by failing to disclose this information timely, kept from the defense material exculpatory information that undercut Mayberry's alleged probable cause.

If Ms. Mulligan had timely disclosed this information so Petitioner's attorney could have incorporated it in her Motion to Suppress, the odds are substantial that the Hon. Monica Marlow, the judge who ruled on that Motion, would have granted it. But Ms. Mulligan disclosed this information when her witnesses testified, which is not timely. Ms. Mulligan executed an

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[114] "[A] vague description" of a criminal suspect does not allow police to stop and question every person in an area who fits that description; otherwise, the law would sanction a "wholesale intrusion into the privacy of a significant portion of our citizenry" which "would be socially intolerable and constitutionally impermissible." In re Tony C., supra, 21 Cal.3d at 898. It is important to keep in mind Mayberry's alleged probable cause to detain Petitioner was a suspicious caller from the Los Angeles area who rolled his R's. Absent any link between that suspect's description and Petitioner, it is preposterous that Mayberry and Mulligan would parade that legal garbage in an American courtroom to justify

ambush, namely, a trial by surprise, in violation of Brady and Petitioner's rights. Ms. Mulligan simply did not function as "a guardian" of Petitioner's "constitutional rights."

The government's failure to provide information requested by a defendant pursuant to Brady so a defendant could effectively cross-examine important government witnesses requires an automatic reversal. In re John George Brown, supra, 17 Cal.4th at 887.

113. The Prosecution Denied Petitioner His Sixth Amendment Right to the *Effective* Assistance of Counsel, Ambushed Petitioner at Trial, and Denied Petitioner Due Process of Law.

Government may not, when confronted by contrary evidence, opportunistically pursue different theories of guilt throughout a trial and adopt only one theory at summation. Such a tactic amounts to trial by ambush, which impedes the effective presentation of a defense during the trial by misleading defense counsel as to the government's theory of guilt. Siddiqi v. United States (2nd Cir. 1996) 98 F.3d 1427, 1438.

Deputy District Attorney Christie Mulligan did this: A) She violated her Brady duty; B) Her withholding of material information from defense counsel interfered with Petitioner's right to enjoy the *effective* assistance of counsel; C) She made contrary material arguments to the motion to suppress judge and to the trial judge; D) She mocked Petitioner before the jury for daring to exercise his rights; E) She materially mislead the jury regarding the issues, the law, and the facts; F) She repeatedly misstated the evidence; G) Since she lacked favorable law and facts, she made ad hominem attacks against Petitioner; and H) In her final arguments, when defense counsel had scant opportunity to reply, she interjected for the first

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Mayberry's arrest of Petitioner.

time into the case a new theory for conviction: Petitioner was guilty of being on the verge of committing the crime of trespass, knowing that (1) the jury would never be instructed on the elements of *assault*, *attempted assault*, or *trespass*; (2) defense counsel could not reply to the argument that Petitioner was guilty of a trespass; and (3) jurors tend to credit prosecutors for their sincerity when the prosecutor vouches for a conviction by telling the jurors they are only searching for the truth and just doing their job.

114. The Prosecution Made Prosecutorial Decisions In an Unconstitutional, Uneven Handed Manner.

A prosecutor must make all prosecutorial decisions in an evenhanded manner because the prosecutor's client, the sovereign, has a duty to govern impartially. Berger v. United States, supra, 295 U.S. at 79. Ms. Mulligan, however, prosecuted Petitioner contrary to the law cited herein.

115. The Prosecutor Proved the Elements for an Invidious Prosecution.

A defendant establishes a denial of equal protection that is *invidious*, namely, arbitrary and bears no rational relationship to legitimate law enforcement interests, when he demonstrates that the prosecutorial authorities' selective enforcement decision was deliberately based upon an unjustifiable standard or other arbitrary classification. Baluyut v. Superior Court of Santa Clara County (1996) 12 Cal.4th 826, 835. The *invidious* grounds in this case are: First, the prosecution prosecuted Petitioner based on the strength of Williams' training that a refusal of a consent search automatically triggers probable cause to detain and search; second, Mayberry seized and arrested Petitioner based on an incomplete arm movement which Mayberry characterized as "furtive;" and third, at every

turn the police and the prosecutor made it clear that they were intolerant of anyone, in their bailiwick–Shasta County--who peacefully asserted rights, refused to be another enabler in the further destruction of the Constitutional Rule of Law, and dared to file a notice of intent to pursue a federal civil rights claim. Individually, and in the aggregate, the prosecution abused its powers, failed to govern evenhandedly, failed to obey the law, and denied Petitioner Due Process of Law. Discriminatory law enforcement based on a classification that is arbitrary or unjustifiable is sufficient to establish a denial of the Fourteenth Amendment's guarantee of equal protection of the laws. Murgia v. Municipal Court (1975) 15 Cal.3d 286, 302.

Government must observe the law--scrupulously. A defendant who establishes that he is a victim of invidious enforcement is *entitled* to a dismissal of the criminal charge. People v. Municipal Court (1979) 89 Cal.App.3d 739, 748.

116. Petitioner Is Entitled to a Reversal Because Respondent Has Punished Petitioner For Doing What the Law Allows.

To punish a person for doing what the law allows is a fundamental due process violation of the most basic sort. People v. Bracey (1994) 21 Cal.App.4th 1532, 1543; U.S. v. Goodwin (1982) 457 U.S. 368, 372.)

117. The Prosecution Tried to Coerce Petitioner into Forfeiting His Civil Rights and Punished Him for Refusing to Do So.

Deputy District Attorney Christie Mulligan told Petitioner's attorney if Petitioner plead guilty as charged the punishment would be only a fine. (RT 874.) She wanted a conviction knowing a conviction would frustrate Petitioner's anticipated federal civil rights suit. But, it is not part of a prosecutor's duty to use a criminal prosecution to forestall a civil proceeding by the defendant against a peace officer who violated the defendant's rights. MacDonald v. Musick, supra, 425 F.2d at 375. *This*,

however, is what the Shasta County District Attorney's Office did: Filed charges against Petitioner to provide cover for Officer Scott Mayberry.

After Ms. Mulligan got her conviction, she urged the trial judge to impose ten days incarceration to punish Petitioner for exercising his right to a trial (RT 874,) but government is prohibited by the federal Constitution from punishing a person for the exercise of a constitutional right. People v. Collins (2001) 26 Cal.4th 297, 306.

118. The Prosecution Has Unethically Opposed Petitioner's Efforts For Post-Conviction Relief.

When a prosecutor learns of information that casts doubts about the correctness of a conviction, the prosecutor has an ethical duty post-conviction to inform the appropriate authority of information that casts doubts upon the correctness of the conviction. Imbler v. Pachtman (1976) 424 U.S. 409, 427, fn. 25. The sovereign's legal representatives who have defended this conviction on appeal have been put on specific notice of problems with this case that casts doubts upon the correctness of the conviction. Yet, not one of them has manifested the courage to move a court to have the conviction thrown out. This failure is further proof that the prosecution was vindictive from the get-go and of the existence of the clubby, incestuous relationship among the "Just Us" set.

119. Petitioner is Entitled to a Reversal Because Respondent Cannot Provide Petitioner With a Record of Sufficient Completeness of the Motion to Suppress So His Claims of Constitutional Error May be Reviewed.

Government has a duty to provide a criminal defendant with a record of sufficient completeness so that his claims of constitutional error may be reviewed on appeal. Coppedge v. United States (1962) 369 U.S. 438, 446. There is, however, no complete record of Petitioner's motion to suppress. It is impossible to determine if that motion was denied on procedural or on

substantive grounds.

120. Petitioner Was Denied Due Process of Law Because the Shasta County Law Enforcement Community Sought to Oppress Petitioner Who Resisted Their Tyranny.

A criminal defendant is entitled to the full protection of the Due Process Clause of the Fourteenth Amendment. Chambers v. Florida (1940) 309 U.S. 227, 235. The primary purpose of this clause is to bar civil authority from making scapegoats of the weak, of any type of minority who differed and would not conform, or who resisted tyranny. Id., 236.

121. The Trial Was Not Fair in Fact and Did Not Appear to be Fair.

A criminal trial defendant has a right to a fair trial in a fair tribunal. Herrera v. Collins (1993) 506 U.S. 390, 399. A criminal defendant has a right to raise on appeal for the first time the issue of the impartiality of the trial judge regardless of whether an objection to same was made below because such an issue involves the public's interests in the due administration of justice. Catchpole v. Brannon (1995) 36 Cal.App.4th 237, 244-245. A trial should be fair in fact and appear to be fair, and where the contrary appears, it shocks the judicial instinct to allow the judgment to stand. Webber v. Webber (1948) 33 Cal.2d 153, 155.

122. The Trial Court Manifested Material Signs of Judicial Hostility Toward Petitioner or His Beliefs or Both During the Trial.

A fatherly tone, an unsympathetic attitude toward the litigation, a courtly manner, a patronizing manner, a harsh or reprimanding manner, excessive judicial impatience, prejudgment, irritation, derision, a demeaning allusion, and/or stereotypical remarks manifest signs of judicial hostility and lack of impartiality. Catchpole v. Brannon, supra, 36 Cal.App.4th at 252-253, 259, 262.

The trial court made *statist* remarks mid-trial that reasonably appear

to be hostile to *constitutionalists*. Examples (RT 620-621) follow:

A) The Redding Police Department's search policy was reasonable;

B) " . . .the constitution is not a suicide pact. We shouldn't be so slavish in trying to gratify the interests of a single person who takes a very narrow view of the constitutional authority of the government[115] to intrude in their lives to the exclusion of the right of everyone else to be safe and secure in their persons or property or possessions.";

C) Petitioner's view of the Redding Police Department's search policy and the officers' duty and his rights was "narrow"; [116]

D) This unwritten police search policy "just screams out at you this is reasonable";[117]

E) ". . .we need to adhere to certain standards. We need to be sure that however we can protect people's individual liberty we do it."

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[115] The trial court presumed the existence of "the constitutional authority of the government to do what it did against Petitioner, before, and during the trial. Respectfully, the trial court's assumption was erroneous. Petitioner asked for evidence of that authority at the airport on May 4, 2002. None was produced. He asked for it again during the trial. None was produced. And none was produced during the appellate process. If Government has such authority, it needs to produce it.

[116] The trial court did not say Petitioner's view was "wrong." It is not a crimeto have a "narrow" view of constitutionalism, especially when one is correct.

[117] Per the authority cited herein, that opinion is nonmeritorious. Per what standards? Whose standards? The trial court's? Or the published public law? Where is the clearly established published public law that says the RPD on May 4, 2002 could enforce its warrantless, unwritten, no criteria, edict against air show patrons in the absence of individualized, particularized, probable cause when air show patrons are 2,000 feet from an airline passenger terminal, outside an airport's fence, outside an airport's air operations area, and on a public sidewalk, behaving peacefully and lawfully?

The trial court and Petitioner share common ground on "E". *That* was, and is, a major part of Petitioner's point: Civil authority must adhere to certain standards–*constitutional* ones--to "protect people's individual liberty." The Redding Police Department's edict did not do that, and the best way to do that is to obey the Constitution's commands, not circle the wagons to protect Officer Maberry and an unconstitutional police edict.

123. The Trial Court Manifested Material Signs of Judicial Hostility Toward Petitioner and His Beliefs at Sentencing.

A sentencing judge may not take into consideration a criminal defendant's abstract beliefs, however obnoxious, in deciding what sentence to impose because to do so violates the defendant's First Amendment rights. Wisconsin v. Mitchell (1993) 508 U.S. 476, 486. The trial court, however, at sentencing, made pejorative remarks about Petitioner and his beliefs (R.T. 875 -878), and manifested a harsh, reprimanding manner, irritation, and derision, which are signs of judicial hostility and lack of impartiality. Catchpole v. Brannon, supra, 36 Cal.App.4th at 252-253, 259, 262. The trial court's remarks are also a manifestation of *his* construction of one of the biggest legal ink blots in the Penal Code--§ 148(a)(1).[118]

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[118] Assuming Judge Gallagher's intent is above reproach and there is a proper basis for his remarks, his remarks at the time of sentencing are still consistent with *Elitism* or *Statism*. He either knew of the cases in Petitioner's renewed mandatory motion for judicial notice or he did not. If *ignorance* is the explanation, he lacked a legitimate excuse to be *ignorant*. If *defiance* is the explanation, he arguably waged war against the U.S. Constitution. Either way, a neutral, reasonably intelligent outsider could read this petition and reach the following conclusions: A) The verdict is a miscarriage of justice; B) The trial court construed the law oppressively; C) The trial court overthrew the law; D) The trial court was a primary factor that accounts for the verdict; E) The trial court unconstitutionally punished Petitioner because of an apparent difference in opinions as to how the Constitution should be construed; F) The trial court was not an adequate

124. The Trial Court Imposed a Sentence That is Disproportionately Heavy and Unconstitutional.

A convicted defendant is entitled to a sentence that is proportionate to the defendant's individual culpability. U.S. Const., Amend. Eight; Cal. Const., Art. I, Sec. 17; People v. Turner (1990) 50 Cal.3d 668, 718. A public perception that a trial judge is free to sentence a peaceful person to incarceration based on the defendant's political views will have an adverse effect on the public's confidence in the judiciary and a willingness to have anything to do with the police, prosecutors, or judges. United States v. Cotton (2002) 535 U.S. 625.

Petitioner peacefully asserted a right, and he made an innocuous movement. The former is protected First Amendment conduct. The later is not clearly proscribed core criminal conduct. Hence, there was no union of a criminal act and a criminal intent; there was no crime. Yet, Petitioner is punished–criminally. Thus, lower level judges have, in effect, inexplicably plunged a dagger in the heart of the Shasta County criminal injustice system, and, by implication, they have committed a form of legal harikari by impairing the public's confidence in the judiciary. They did this by memorializing a record of their decisions that violate the law.

The trial court's sentence is disproportionately high, in violation of Petitioner's rights to a sentence that is proportionate to his culpability. Petitioner's culpability is zero. The arrest, the prosecution, the trial, the sentence, the appeal–all are a theft of liberty, under color of law.

The Fourteenth Amendment's due process clause prohibits the states from attaching the *aggravating* label to factors that are constitutionally

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guardian of Petitioner's liberty; G) The trial court did not comply with controlling precedent; and H) The trial court imposed a sentence that is

impermissible or totally irrelevant to the sentencing process or to conduct that actually should militate in favor of a lesser penalty. Zant v. Stephens (1983) 462 U.S. 862, 885; People v. Benson, supra, 52 Cal.3d at 801. The trial court, however, wrongly treated Petitioner's refusal to cower as somehow being an "arrogant", dangerous, act of an alleged bad citizen without any redeeming value. But, when a judge punishes citizens who peacefully assert a right the judge morphs into a governor who governs oppressively.

Punishment may violate Cal. Const., art. I, § 6, if, even though not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity. In re Robert Nathan Foss, supra, 10 Cal.3d at 919. Disproportionate punishment can be tested by considering the nature of the offense, the nature of the offender, the degree of danger to society, the facts of the crime, the nonviolent nature of the offense, rational gradations of culpability, punishments imposed in the same jurisdiction for the same offense and for more serious offenses, and the purposes of punishment. Id. 919-920.

Where, however, is the evidence of the crime? Of clearly proscribed core criminal conduct? With criminal intent?

The sentence imposed is unconstitutional because Petitioner is a licensed attorney who is stable, non-violent, with no record of criminality, who peacefully did his duty for the benefit of himself, others, community, and the nation, and there is no evidence of culpability, or union of criminal act + wrongful criminal intent, plus a finding on each element of Penal

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disproportionately heavy and is not warranted by Petitioner's culpability.

Code § 148(a)(1).

America was built by *protestors*. Every Founding Father and signer of the Declaration of Independence was a *protestor*. It is illegitimate for the trial court to punish a constitutionally sensitive person who peacefully took a principled position, at substantial personal risk, without grandstanding, and without any expectation of gain, except for trying to preserve the *Constitutional* Rule of Law. This is especially true when the position taken is correct, and, if not correct, is meritorious and sincere.

125. The Verdict is Constitutionally Infirmed Because it is Based on an Invalid Theory for Conviction.

A claim that a conviction is based on a record that lacks any evidence to support an offense's element is a serious constitutional claim. Anderson v. United States (1974) 417 U.S. 211, 222. A government theory of guilt that is inadequate as a matter of law is a miscarriage of justice that warrants a reversal of a conviction. Sandstrom v. Montana, supra, 442 U.S. at 526. The jury's verdict in this case was a general one. As such, there is no way to determine which theory of conviction the jury accepted to convict Petitioner. The prosecution's theory for a conviction was, and is, invalid. This is because A) The foundation for everything Williams and Mayberry did was the Redding Police Department's unconstitutional extension of the Hyde exception for airline passengers to air show patrons--for the first time, without benefit of prior public law; B) Williams initiated this miscarriage of justice pursuant to his training that the police may "press" a citizen who refuses a consent search; C) Mayberry thought he could seize Petitioner because Petitioner was verbally agitated, stood in an "aggressive bladed position," made a pre-crime, "as if" arm movement; D) Ms. Mulligan, in her final summation, introduced for the first time the

concept of Petitioner committing a *trespass*; E) Petitioner was never put on notice that he had to prepare a defense against an uncharged *trespass* and an uncharged *attempted assault*; F) The jury was never instructed on the elements of *assault* or *trespass*; G) The jury was never instructed that "when no other punishment is prescribed" is an element of a § 148(a)(1) offense; H) The jury never made a finding on the *missing element* ["when no other punishment is prescribed."]; and I) Ms. Mulligan also argued that Mayberry had *probable cause* to arrest Petitioner when he did not.

Nothing about the prosecution's case against Petitioner passes *constitutional* standards. The prosecution's case, and every theory to support it, is invalid. There is no way of knowing if the jury found Petitioner guilty because he violated Penal Code § 148(a)(1) based on the "administrative search exception" theory, the "probable cause" theory, the "assault theory," or the "trespass" theory.

Respondent's legal representative was granted multiple extensions to file a reply brief during the appellate process. Despite such a one sided luxurious leave of court, Respondent failed to cite clear and unquestionable legal authority to justify any theory for conviction, as required by Terry v. Ohio , supra, 392 U.S. at 9.

When a criminal case is submitted to a jury on alternative theories and the jury's verdict is a general one, the unconstitutionality of any of the theories requires that the conviction be reversed because there is no way of knowing if the jury convicted a defendant based on an unconstitutional theory. Williams v. North Carolina (1942) 317 U.S. 287, 292; Stromberg v. California, supra, 283 U.S. at 367-368; Mills v. United States (1897) 164 U.S. 644, 646. In such a situation, the use of at least one constitutionally infirmed legal theory which culminates in a general verdict violates the

Sixth Amendment right to be informed of the nature and cause of the accusation and is reversible error *per se*. Sheppard v. Rees, supra, 909 F.2d at 1235,1237-1238.

126. There is Insufficient Evidence to Support the Conviction.

The Due Process Clause of the Fourteenth Amendment forbids a state to convict a person without pleading and proving each element of the crime charged. Fiore v. White, supra, 531 U.S. at 229; Jackson v. Virginia, supra, 443 U.S. at 314. A criminal defendant is entitled to more than a trial ritual. Id., 316. But, the jury never made a finding on one § 148(a)(1) element: "when no other punishment is prescribed."

127. Cumulative Errors Created a Miscarriage of Justice.

Fairness, as in *fair trial*, cannot be stretched too thin so that an unfair trial is called *fair.* A criminal defendant has a fundamental right to have his liberty preserved and be immune from criminal punishment until there has been a criminal charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power. Chambers v. Florida, supra, 309 U.S. at 236-237. In a "close case," namely, one in which the evidence is "evenly balanced" or "sharply conflicting," a lesser showing of error justifies reversal. People v. Collins (1968) 68 Cal.2d 319, 332. The cumulative effect of many errors, none of which may be separately deemed prejudicial, may be sufficient to warrant the conclusion that the trial was unfair and the verdict a miscarriage of justice. People v. Buffum (1953) 40 Cal.2d 709, 726. There is in People v. Mancus substantial evidence of numerous errors, none of which are harmless.

128. No Rational Trier of Fact Could Find Guilt Beyond a Reasonable Doubt.

The "reasonable doubt" standard, at a minimum, is one that is based on "reason." Jackson v. Virginia, supra, 443 U.S. at 317. When a state trial conviction occurs when no rational trier of fact could find guilt beyond a reasonable doubt the verdict cannot constitutionally stand. Id. A jury does not have the power to render an unreasonable verdict of guilty. Id., 318.

In People v. Mancus, the jury was not given the proper legal standards, and it was mislead by the prosecutor and the trial court. If the jury had been given the proper instructions, without the prosecutor inflaming them against Petitioner, a rational jury that obeyed constitutional norms could have made only one rational decision–acquit Petitioner.

129. The Trial Court Manifested Behavior Inimical to Public Confidence in the Judiciary.

Judicial behavior inimical to the public's confidence in the judiciary can never be countenance and may be the basis for a reversal. Catchpole v. Brannon, supra, 36 Cal.App.4th at 253.

The juxtaposition below underscores that the public cannot have assured confidence in the judiciary. This is because there is a material disconnect between the trial court's remarks and the Constitution's commands, as construed by other judges who disagree with the Hon. William Gallagher.

A. "This Constitution . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding." (Article VI, Section 2, United States Constitution.)

B. The U.S. Constitution is "a superior, paramount law, unchangeable by ordinary means," binding on all government officials at all levels of government, including judges; therefore, judges cannot violate the U.S. Constitution because they each take an oath to support it. To

permit otherwise would be "worse than a solemn mockery." Marbury v. Madison (1803) 5 U.S. 137, 179-180.

C. " . . . a law repugnant to the constitution is void; and . . . courts, as well as other departments, are bound by that instrument." Marbury v. Madison, supra, 5 U.S. at 180.

D. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." Marbury v. Madison, supra, 5 U.S. at 163.

E. ". . . rights . . . acquired are protected by law . . . . They cannot be extinguished by executive authority." Marbury v. Madison, supra, 5 U.S. at 167.

F. ". . . the start of abuse can 'only be obviated by adhering to the rule that constitutional provisions for the security of persona and property should be liberally construed.'" Boyd v. United States (1886) 116 U.S. 616, 635.

G. "It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." Boyd v. United States, supra, 116 U.S. at 635.

H. ". . . those lawfully within the country . . . have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing [they] are carrying contraband or illegal merchandise." Carroll v. United States (1925) 267 U.S. 132, 155.

I. "The individual may stand upon his constitutional rights as a citizen. . . . He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are . . . the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights." Hale v.

Henkel, supra, 201 U.S. at 74.

J. The U.S. Supreme Court's Fourth Amendment decisions disclose its sustained "jealous regard for maintaining the integrity of individual rights." Mapp v. Ohio (1961) 367 U.S. 643, 647.

K. "[T]he arm of the law extends constitutional protections which must be respected." Taglavore v. United States (9th Cir. 1961) 291 F.2d 262, 264.

L. Courts should condemn police who engage "in a deliberate scheme to evade the requirements of the Fourth Amendment . . . . [especially when a case involves] a deliberate, pre-planned attempt by the police to violate a suspect's constitutional rights by engaging in a subterfuge." Taglavore v. United States, supra, 291 F.2d at 267.

M. ". . . one cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution." Wright v. Georgia (1963) 373 U.S. 284, 291-292.

N. "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." Miranda v. Arizona (1966) 384 U.S. 436

O. Citizens are "entitled. . . to the benefit of the Constitution." Uniformed Sanitation Men Assn., Inc., Et. Al. v. Commissioner of Sanitation of the City of New York Et Al. (1968) 392 U.S. 280, 284.

P. "Gibson could not be disciplined when he refused to allow the appellants to violate his constitutional rights." Los Angeles v. Gates (9th Cir. 1990) 907 F.2d 879, 886

Q. "To punish a person because he has done what the law plainly allows him to do is a due process violation 'of the most basic sort.'" U.S. v. Goodwin, supra, 457 U.S. at 372; People v. Bracey, supra, 21 Cal.App.4th at 1543.

R. "He may, on the other hand, elect to stand on his constitutional right not to cooperate with the officers in securing evidence against him." Gallik v. Superior Court, supra, 5 Cal.3d at 861.

S. "The solution, as it has always been, is simply to insist upon good-faith compliance with the Constitution: . . . ." People v. Superior Court, supra, 3 Cal.3d at 827-828.

T. "A right that is not honored when invoked is no right at all." Justice Kennard, concurring, People v. Neal, supra, 31 Cal.4th at 89.

U. "Finally, although the line we draw today lets an unquestionably guilty man go free, we observe that 'constitutional lines have to be drawn, and on one side of every one of them is an otherwise sympathetic case that provokes impatience with the Constitution and with the line. But constitutional lines are the price of constitutional government.'"People v. Camacho (2000) 23 Cal.4th 824, 838.

Compare what judges said above to what the Hon. William Gallagher said below.

A. " . . .the constitution is not a suicide pact. We shouldn't be so slavish in trying to gratify the interests of a single person who takes a very narrow view of the constitutional authority of the government to intrude in their lives to the exclusion of the right of everyone else to be safe and secure in their persons or property or possessions." (Hon. William Gallagher, People v. Mancus, RT 620-621.)

B. "It was just mystifying that you would go to that air show and under the guise of trying to protect your constitutional rights instigate a confrontation with a police officer in a crowd of people trying to enter a public event and endanger not only yourself but endanger the police officer and those that came to assist that officer . . . ." (Hon. William Gallagher, People v. Mancus, RT 875.)

C. "Your choice as a means of vindicating your constitutional rights was absolutely wrong in my estimation. It was not the act of a good citizen. It wasn't the act of a reasoned attorney, an experienced attorney in your position, and it was staggering, as a matter of fact, the lack of insight you demonstrated in doing what you did." (Hon. William Gallagher, People v. Mancus, RT 876.)

D. ". . . if you thought your rights had been violated, it would have been absolutely appropriate for you to make note of that, to seek the redress of your grievances by filing suit in a court of law. But in acting the way that you did in trying to push past the officer into that air show just to gratify your own arrogance and your own sense that you were right and you were smarter than everyone else, as I said, you endangered yourself, you endangered the officers that had to deal with you, and you endangered the spectators . . . ." (Hon. William Gallagher, People v. Mancus, RT 876.)

Petitioner, on May 4, 2002, peacefully "insist[ed] upon good-faith compliance with the Constitution," as encouraged by the California Supreme Court in People v. Superior Court, supra, 3 Cal.3d at 827-828, believing that "A right that is not honored when invoked is no right at all.,"as stated by Justice Kennard in People v. Neal, supra, supra, 31 Cal.4th at 89. The Hon. William Gallagher, however, manifested, arguably, an Elitist or Statist orientation. He slammed Petitioner because Petitioner has uppity ideas, namely, A) Enforce the Constitution first; B) Do not presume a Government Actor has authority. Instead, peacefully challenge the Government Actor to prove his authority; C) Government is a servant government with limited powers; D) A person should "insist upon good-faith compliance with the Constitution" and demand that public servants slavishly gratify the rights of the individual as opposed to the group; and E) No one should grovel before a police officer who cannot cite published, clearly established, legal authority to support whatever directive he issues to a citizen.

Judge Gallagher's views are consistent with *Elitism, Utilitarianism* and *Statism*; they are foreign to *Constitutionalism*. One can only imagine what he would have said to Rosa Parks or Martin Luther King, Jr.

When one reflects upon the juxtaposition of quotations above, there is one compelling conclusion: Petitioner never stood a fair chance to secure

justice before the Hon. William Gallagher.[119]

The search policy edict, the seizure, the arrest, the unfettered search, the painfully tight shackles, the usurpation of powers, the failure to apologize, the arrogance, the refusal to return lawful property, the incarceration, the mocking at trial, the officers' mistaken or perjured testimony, the training of officers to violate citizens' rights, the judicial derision at sentencing, the sentence itself, and the failure of the trial judge and the lower appellate court judges to function as Guardians of Liberty, are insufferable. These perversions are damning evidence of a government gone bad. Public Servants have taken over the Big House.

130. Government Actors Betrayed This Nation's Most Cherished Principles.

Our justice system will crumble should those, in whose hands are entrusted its preservation and sanctity, betray its fundamental principles. Morrow v. Superior Court, supra, 30 Cal.App.4th at 1261. Courts have continually condemned any state practice which imposes adverse treatment on a person who exercises a constitutional right intended to protect against such adversity. People v. Bower (1979) 24 Cal.3d 638, 648.

Respondent's case against Petitioner consists of frank unconstitutional shenanigans. Reasonable minds can conclude, therefore, that the Government Actors who have approved what was done have not

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[119] Petitioner is a human being with inalienable rights born to liberty who knows the price paid in the most precious commodity, human blood, for his rights. He knows that others gave up their "today's and tomorrow's" so that he may have and enjoy his "today's and tomorrow's," in liberty. He knows the source of his rights is a Creator, not the State, not Society, not Government, and not the Hon. William Gallagher. Petitioner knows that a "right" dishonored when asserted and enforced years later, after thousands of dollars in fees and costs were incurred in litigation to enforce same, is

done their duty faithful to the Constitutional Rule of Law.[120]

131. People v. Mancus is Official Confirmation of Official Lawlessness Under Color of Law.

People v. Mancus underscores a sobering reality: We no longer have the *Constitutional* Rule of Law, we no longer have the appearance of the *Constitutional* Rule of Law, and we do not even have the pretense of it. Instead, we have public servants who have slipped their Constitutional collar who dare to control their public master, based on their "rules," and the *authority* for their "rules" is *their* "rules." Judges have officially condoned such constitutional heresy.

Apparently, some of these public servants are confident that their incestuous relationships and immunities will protect them from accountability. Regardless, instead of being tied by the Constitution's chains to the *Constitutional* Rule of Law, some of these servants persist with burdening citizens with the chains of their perversions of the law, and they dare to call their usurpations of power *law* and the unconstitutional outcome *justice*. Thus, we have official confirmation of official lawlessness under color of law.

In People v. Mancus, there has been a complete disregard of the law by some public servants. These public servants have inflicted substantial harm–to Petitioner and to the public's confidence in government, the

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not a "right" but a delayed vindication of a shadow of the "right."

[120] A person cannot be penalized for demanding respect for rights, and a demand for privacy cannot trigger "reasonable suspicion." In re William G. (1985) 40 Cal.3d 550, 567. The state may not transform a person's refusal to waive his Fourth Amendment rights into "suspicious activity". People v. Miller (1972) 7 Cal.3d 219, 226. *That*, however, is exactly what Williams did, the prosecution piled on in an unethical, unprofessional, partisan manner, and no judge has stopped the oppression.

police, prosecutors, and judges. One would think that in a "progressive" state such as California in 2002-2005, the type of egregious unconstitutional behavior visited upon Petitioner under color of law would not exist. [Hopefully, it would not exist in the modern South relative to Blacks or anywhere in the United States.]

The constitutional train in People v. Mancus jumped the tracks at high speed. The wreckage exists for all to see. The engineer of this result was Deputy District Attorney Christie Mulligan. When one lays out the facts and the law of this case on the left side and compares them to the result on the right side [a guilty verdict and incarceration with no appellate relief,] something is wrong. It is frightening that the real Constitutional Rule of Law was disobeyed on so many levels by so many public servants for so long.

Post-9/11, too many people bought into hysteria, and too many in government hyped the terrorist bogeyman–because it gives them a plausible excuse to do an end run around the Fourth Amendment. Law enforcement, and governments, have been inventing bogeymen long before 9/11. Systemically, governments, as institutions, need bogeymen, and government agents need bogeymen to rail against to advance their careers.

More specifically, the Redding Police Department, before and after 9/11, bypassed the judiciary, plus more than 200 years of Fourth Amendment jurisprudence, when it conceived, and enforced, an ill-advised, unconstitutional, warrantless, unwritten, search policy edict that gave searching officials absolute, unfettered discretion. The Crown's agents in the 1700's had *that* kind of power. Saddam's agents, the Gestapo, etc., wielded *that* kind of power. The RPD's edict gutted the Fourth. Pinning the label *administrative search* on this edict does not cure its unconstitutional

nature any more than putting a band aide on a tumor cures the tumor.

It gets worse, however. Herb Williams was trained to violate citizens' Fourth Amendment rights. Williams punished Petitioner for peacefully asserting a right. That punishment reduced the right to a worthless kind of freedom–one that disappears upon its assertion.

Citizens do not defecate tax tribute for *that* quality of freedom.

Officer Scott Mayberry made it clear–he thinks that because he is a cop he is every citizens' boss, and he was trained to always escalate to force, in violation of legal limits on his lawful powers.

Then, we have a trained, licensed, legal professional who took the same oath Petitioner took to support and to defend the United States Constitution, Deputy District Attorney Christie Mulligan. Ms. Mulligan, as a prosecutor, had a law imposed duty to support the *Constitutional* Rule of Law and to be a guardian of Petitioner's rights. Ms. Mulligan failed to discharge either duty. Instead, she went in the opposite direction at full speed.

Deputy District Attorney Christie Mulligan had a choice–one similar to Petitioner's: A) She could stand up for constitutionalism and refuse to persecute Petitioner or B) She could function as another enabler in the further destruction of the Constitutional Rule of Law by persecuting Petitioner. Ms. Mulligan elected to function as a domestic enemy of the United States Constitution. She made the wrong choice.

The Hon. Monica Marlow was also given a chance to put the knife to the prosecution's case but she denied Petitioner's Motion to Suppress without articulating a single reason to support her decision, and no adequate record was made of that legal drill.

Another trained, legal professional, the Hon. William Gallagher,

presided over the trial. Judge Gallagher denied Petitioner's motion to acquit after the prosecution rested her case and proved she did not have a case and Petitioner did not commit a crime, per the legal authority and analysis cited herein. Furthermore, at the time of sentencing, Judge Gallagher opined that Petitioner's conduct was not the act of a good citizen or the act of a reasoned attorney, he was mystified by what Petitioner did and Petitioner's alleged lack of insight, and he praised the officers for their alleged professional restraint. Perhaps if Judge Gallagher had a better command of applicable constitutional norms, he would not be mystified.

Two lower level judges–the Hon. Monica Marlow and the Hon. William Gallagher--had their chance to keep this train wreck from happening, but they let Ms. Mulligan "engineer" a contrived conviction, at full throttle, under color of law.

But, it gets worse. Three judges on the Appellate Division of the Superior Court in and for Shasta County had their chance to adhere to constitutional norms. Instead of doing so, they issued an opinion that affirmed the conviction. These judges did *that* even after Petitioner painstakingly gave them a 15-page opening appellate brief and a 15-page reply brief which illuminated compelling reasons for a reversal. The Shasta County Appellate Division's opinion is arguably consistent with a form of legal fraud that devalues the value of United States citizenship. These judges had the luxury of time and detached, mature, reflection, with access to a major law library–all the time and resources needed to insure that their decision was constitutionally sound. Yet, they failed to get it right.

Sadly, it gets worse. Petitioner timely filed a Petition For Reconsideration with the Shasta County Appellate Division, which was denied, and Petitioner timely filed a Petition For Transfer to the Third

Appellate District to give those judges an opportunity to remedy this train wreck, but those judges denied the request for transfer, which exhausted Petitioner's appellate remedies.

Eight judges[121] have reviewed this case or had a major role in it. They allowed this train wreck to occur or have refused to do their job to fix it, per constitutional norms.

Still, it gets even worse. People v. Mancus is an unpublished decision. These judges, by not publishing the Appellate Division's decision, get away with "hiding" what is arguably their[122] war against the *Constitutional* Rule of Law.

To make matters worse, by not publishing their decision, the following reality exists: 1) Those who played a major role in this case get to enjoy the aura of being perceived as competent, ethical, and professional, without being held accountable; 2) We now have two sets of legal authority co-existing–the published law that Petitioner relied on and the unpublished law that was used by this clubby, incestuous clique in Shasta County; 3) Shasta County has engineered a defacto secession from the Union; 4) Shasta County has set a legal trap for the unwary, e.g., woe to thee who relies on published law in Shasta County; 5) Public servants in Shasta County and on the Third Appellate District have created enduring, material harm to this nation's legal bedrock, and, in the process, they have substantially ruined the confidence some citizens use to have in law

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[121] These eight are the Law and Motion judge, the trial judge, the three judges on the Appellate Division and the three judges who compose the Third Appellate District.

[122] *Their* describes what can be laid at their feet, e.g., their rulings. Assuming their intent is above reproach, their rulings do not inspire confidence.

enforcement and the judiciary; 6) In the process, these public servants are breeding converts who have vowed to oppose usurpations of power; 7) Judges, who are suppose to be the Law Giver, the Gatekeeper, and the Guardian of Liberty, actively protected or promoted tyranny under color of law, and they have joined together as participants in what increasingly, arguably, looks like an Assembly Line of Injustice; 8) The primary actors in this misnamed "criminal justice system" have arguably manifested compelling evidence that the legal system is worthless, it is too arbitrary, the facts and the law do not mean anything, the only thing that matters is who is the judge and how well connected politically are the parities.

Hence, Government is arguably dysfunctional or corrupt or both, it has arguably forfeited its legitimacy, the System has proven that it has a perverted need to punish peaceful defenders of the Constitutional Rule of Law, and it has an inability to admit that its agents have made a mistake. A reasonable person is forced to conclude that the System is dysfunctional, corrupt, and insufferable. For men born to liberty the facts of this case ratchet us down tighter to civil war.

132. Respondent Has the Burden to Prove That it Prosecuted Petitioner Evenhandedly.

The mere *appearance* of prosecutorial vindictiveness places the burden on the prosecution to prove that it prosecuted the defendant in an evenhanded manner. Twiggs v. Superior Court (1983) 34 Cal.3d 360, 371.

A *crime* is an act committed or omitted in violation of a law forbidding or commanding it. Pen. Code § 15; People v. Brady (1987) 190 Cal.App.3d 124, 133. Per this definition, Petitioner did not commit a *crime*. Petitioner, at most, committed an arm *movement* that Officer Scott Mayberry misconstrued. Like a dog that returns to lick its own puke,

Deputy District Attorney Christie Mulligan, however, persisted with folly.

133. Respondent Wants the Judiciary to Rubber Stamp Official Lawlessness.

By defending this conviction, Respondent wants the judiciary to rubber stamp official lawlessness, but "It is morally incongruous for the state to flout constitutional rights and at the same time demand that its citizens observe the law." People v. Cahan (1955) 44 Cal.2d 434, 445-447.

Arnold Toynbee observed, "An autopsy of history would show that all great nations commit suicide." The prosecution's invidious discrimination of Petitioner for refusing to be cowered underscores Toynbee's observation.

Judge Gallagher got it wrong: While it is true that the United States Constitution is not "a suicide pact," Government's refusal to redress a meritorious petition for redress of a grievance is the root cause of a pending cataclysmic upheaval caused by Government's civic malpractice--oppressive, arbitrary rule.[123]

134. Petitioner Was Denied His Sixth Amendment Right to the Effective Assistance of Counsel.

A criminal defendant is entitled to an attorney's *effective* assistance. In re Charles Harris (1993) 5 Cal.4th 813, 832; U.S. Const., 6th Amend; Cal. Const., art. I, § 15; Kimmelman v. Morrison (1986) 477 U.S. 365, 374.

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[123] The United States is suppose to be "great" because it is *the* place that is supposed to have a *servant* government that has *limited* powers subject to a *Constitutional* Rule of Law that makes the individual and individual rights a paramount concern, and it is suppose to be *the* place where the individual can stand on his rights against government and a tyranny of the majority and be respected and not shouted down or punished. It is suppose to be the place where Government exists to enforce the rights of the common, man, against the Group, the Majority, Society, and Government itself.

Petitioner's trial attorney, Ms. Elwood, committed errors so serious that her deficient performance fell below an objective standard of reasonableness which deprived Petitioner of a fair trial.[124] There is a reasonable probability that, but for her error(s), the result of the proceeding would have been different. Hence, the verdict is unreliable. Strickland v. Washington (1984) 466 U.S. 668, 687.

Ms. Elwood committed the following errors: A) She did not make a careful investigation of the factual and legal aspects of the prosecution's case and Petitioner's defenses[125]; B) She did not file a motion for change of venue; C) She did not prepare a sufficient "good cause" statement for her Pitchess motion and she did not redo that motion; D) She did not have the motion to suppress recorded; E) Her *in limine* motion that Penal Code § 148(a)(1) was unconstitutionally vague and overly broad did not cite any authority; F) Her *in limine* motion for the trial court to take mandatory judicial notice of the specified materials failed to specify what parts of those materials should be noticed and why; G) She did not prepare and submit to the trial court jury instructions necessary to explain all of Petitioner's theories of defense. By failing to do so, she withdrew key defenses from the jury's considerations. Among the defenses she failed to raise were: Penal Code § 148(a)(1) is limited to clearly proscribed core criminal conduct, an officer may not make an arrest based on a furtive act, a

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[124] Petitioner periodically told Ms. Elwood she had done enough to win the case *if* the prosecutor and the trial court had obeyed the rules; however, since that was not the case, she needed to do more to be effective.

[125] A criminal defense attorney's failure to undertake a careful investigation of the factual and legal aspects of a case against a client that results in the attorney withdrawing a crucial defense amounts to a denial of the effective assistance of counsel to which the accused is entitled. People

search policy that is unwritten and grants searching officers unfettered discretion is unconstitutional, and the administrative search exception for airline passengers shall not be extended to others [126]; H) She never submitted a single proposed instruction that asserted as a defense Hyde's limitations on the administrative search of airline passengers or any of the federal cases that support Hyde; I) When the trial court asked her if she had any more special proposed jury instructions to submit or any objections to the charge to be given to the jury, she said "No." when she knew she had not given the court any of the special instructions Petitioner had prepared and she had mislead and promised Petitioner that she would give same to the trial court[127] ; J) Her motion to acquit did not cite Hyde's expressed command that the administrative search exception of airline passengers shall be limited to them; K) She failed to pursue having Correctional Officer Tim Renault testify about Petitioner's hands being purple when he was brought to the jail, which was evidence of the abusive use of too tight

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v. Stanworth (1974) 11 Cal.3d 588, 611.

[126] A criminal defense attorney has a duty to prepare jury instructions carefully and to request all instructions necessary to explain all of the legal theories upon which the accused's defense(s) rests. People v. Sedeno, supra, 10 Cal. 3d at 717.

[127] It was egregious for Petitioner's trial attorney to tell him unequivocally that she would finally submit to the trial court approximately 25 of the approximate 190 special proposed jury instructions that he had prepared, lead him to believe that she had done that, and concealed from him that she had not done that, up to and after the verdict. Petitioner's attorney materially mislead him, failed to execute his firm instructions to her–instructions that were moral, ethical, legal, and professional. Petitioner spent a substantial amount of time researching the case law that supports these proposed instructions and drafting same. Much of his trial strategy and confidence in the jury was based on these instructions, but his own attorney failed to submit what she promised to submit. There was no

handcuffs; L) She failed to object [or exploit] when Herb Williams said he was trained to violate citizens' rights when they refuse a consent search; M) She failed to object when Scott Mayberry said he was trained to always escalate to force, which violates Penal Code § 853.6(i); N) She failed to spend adequate time with Petitioner to review his testimony; O) She failed to familiarize herself with, or use, the materials Petitioner prepared for cross-examination of the prosecution's witnesses; P) She failed to renew any of her motions *in limine*; Q) Even after Petitioner prepared a Renewed Motion For Mandatory Judicial Notice, which included Hyde and federal cases that support Hyde, she failed to familiarize herself with that motion and to press that issue to overcome the trial court's rulings; R) When the prosecutor maligned Petitioner for exercising his rights before the jury, she never objected, which gave the prosecutor carte blanche to continue to malign Petitioner, to inflame the jury against Petitioner; and S) She never had any side bar discussion reported, contrary to Petitioner's instructions, and that failure makes it impossible for Petitioner to present a record of those side bar discussions, which are often a fertile ground for meritorious issues.

135. Respondent Benefitted From Constitutional Errors.

When a state is the beneficiary of an identifiable error it must be able to affirmatively show that it was harmless. In re Fred Banks (1971) 4 Cal.3d 337, 349; O'Neal v. McAninch (1995) 513 U.S. 432, 436; Fisher v. Roe (9th Cir. 2001) 263 F.3d 906, 917-918. Since Respondent was the beneficiary of the errors identified herein Respondent has the burden to prove that these errors were harmless. This Respondent cannot do. The errors are too material and too numerous to be harmless.

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meritorious "trial strategy" reason for failing to do so.

136. The Shasta County Superior Court's Appellate Division's Refusal to Grant Petitioner an Increase Page Limit Was an Unconstitutional Violation of Petitioner's First Amendment Right to Petition Government For Redress of a Grievance.

The First Amendment's Right to Petition For Redress of a Grievance is unqualified. It does not impose a page limit. An appeal is a formal petition for redress of a grievance. A 15-page limit violates the Right to Petition. To the extent Government Actors violate a person's rights, an arbitrary 15-page limit makes it harder for a convicted defendant to successfully appeal [petition.] A 15 page limit rewards a bad public servant, functions as a tool of oppression, and encourages public servants to violate the law repeatedly and egregiously.

137. The Third Appellate District's Refusal to Accept Petitioner's Petition for Transfer Without a Reply on the Merits Was an Unconstitutional Violation of Petitioner's First Amendment Right to Petition Government For Redress of a Grievance.

The First Amendment's Right to Petition involves a corollary right to a meaningful response from Government on the merits of the petition, just as the right to vote involves a corollary duty to count the vote and to report the count. The Third Appellate District had a duty to provide a meaningful response on the merits. Otherwise, the right to petition is a sham.[128] Confidence in Government is not increased when Government manifests deliberate indifference to a meritorious appeal via what appears to be an Assembly Line of Injustice on appeal.[129]

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[128] The Bill of Rights has its own preamble. Authority: U.S. National Archives. A Google search on "Preamble Bill of Rights U.S. National Archives" will yield this preamble. This preamble declares that the First Congress' intent in ratifying the Bill was to declare what are the Peoples' rights and what are further limits on Governments' powers, to promote the Peoples' confidence in Government.

[129] Even after Petitioner put the Third Appellate District on formal

VII.
QUOTATIONS TO PONDER

Petitioner respectfully submits for this Court's consideration the following brain protein. This wisdom is relevant to the issues raised herein.

Most Important Political Officer

> The most important political office is that of private citizen.
>
> –Justice Louis D. Brandeis

Disingenuous Public Servants

> We must always uphold the appearance of the law, especially when we are breaking the law.
>
> –Boss Tweed, "Tammany Hall," as quoted by his character in Martin Scorcese's film, "Gangs of New York"

Patience, Due Process, and Justice

> A fundamental principle of due process is 'he who decides must hear.'
>
> –Lacy Street Hospitality Service, Inc. v. City of Los Angeles (2004) 125 Cal.App.4th 526, 530

Reflections Upon "The Objector"

> The person whose rights are being determined should not be placed in a position of being required to object and thereby spur hostility or not object and thereby suffer waiver.
>
> --Rosenblit v. Superior Court (1991) 231 Cal.App.3d 1434, 1448

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notice, with specificity, as to how public servants violated this nation's bedrock legal principles, including citing Hyde's limitations, those judges rebuffed Petitioner's petition without a single reason given. That denial is not what the Framers envisioned. This judicial stiff arm is another symptom of an out of control government turned bad.

Constitutionalism

In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.

--Thomas Jefferson

. . . the Constitution which at any time exists, 'till changed by an explicit and authentic act of the whole People, is sacredly obligatory upon all.

--George Washington, Farewell Address

The Price of Constitutionalism

[C]onstitutional lines are the price of constitutional government.

–People v. Camacho (2000) 23 Cal.4th 824, 838

A right that is not honored when invoked is no right at all.

--People v. Neal (2003) 31 Cal.4th 63, 89

[Justice Kennard, concurring]

Respect for Law

If we desire respect for the law, we must first make the law respectable.

–Justice Louis D. Brandeis

. . . we cannot expect others to respect our laws until we respect our Constitution, . . .

--U.S. v. Verdugo-Urquidez (1990) 494 U.S. 259,

[Dissenting opinion]

Courts' Duty

It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.

–Boyd v. U.S. (1886) 116 U.S. 616, 635

The Importance of the Individual

> This Nation . . . was founded on the principle that . . . the rights of every man are diminished when the rights of one man are threatened
>
> –John F. Kennedy, 1963

Beware the Ole Switcheroo!

> One of the most effective ways of diluting or expanding a constitutionally guaranteed right is to substitute for the crucial word or words of a constitutional guarantee another word or words, more or less flexible and more or less restricted in meaning.
>
> --Justices Black and Stewart, dissenting, in Griswold v. State of Conn. (1965) 381 U.S. 479

Saddest Epitaph

> For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time.
>
> –Associated Press v. National labor Relations Board
>
> (1938) 301 U.S. 141 [Justice George Sutherland, dissenting]

Wisdom vs. Stupidity

> . . . there is a general rule which never fails: that a prince who is not wise in his own right cannot be well advised.
>
> --Niccolo Machiavelli, The Prince

Progress and Thought Control

> Progress generally begins in skepticism about accepted truths. Intellectual freedom means the right to re-examine much that has been long taken for granted. A free man must be a reasoning man, and he must dare to doubt what a legislative or electoral majority may most passionately assert. The danger that citizens will think wrongly is serious, but less dangerous than atrophy from not thinking at all. Our constitution relies on our electorate's complete ideological freedom to nourish independent and responsible intelligence and preserve our democracy from that submissiveness, timidity and herd-mindedness of the masses which would

foster a tyranny of mediocrity. The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error.

--Justice Jackson, concurring and dissenting, in American Communications Ass'n, C.I.O. v. Douds (1950) 339 U.S. 382, 442-443 [Emphasis added.]

Reflections Upon Liberty

The contest, for ages, has been to rescue Liberty from the grasp of executive power.

–Senator Daniel Webster, Senate Speech, May 27, 1834

The condition upon which God hath given liberty to man is eternal vigilance; which condition if he break[s], servitude is at once the consequence of his crime and the punishment of his guilt.

--John Philpot Curran

No man who is not willing to bear arms and to fight for his rights can give a good reason why he should be entitled to the privilege of living in a free community.

–Theodore Roosevelt, Thomas Hart Benton, Chpt. 2, p. 37

Hard liberty before the easy yoke.

--John Milton

What constitutes the bulwark of our own liberty and independence? . . . Our reliance is in the *love of liberty* which God has planted in our bosoms. Our defense is in the preservation of the spirit which prizes liberty as the heritage of all men . . . . Destroy this spirt, and you have planted the seeds of despotism around your own doors.

–Abraham Lincoln, Sept. 11, 1858

Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel. Unfortunately, nothing will preserve it but downright force and whenever you give up that force, you are inevitably ruined.

--Patrick Henry

Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it.

--Learned Hand

If a nation or an individual values anything more than freedom, it will lose its freedom; and the irony is that if its comfort or money it values more, it will lose that too.

–W. Somerset Maugham

Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue until they are resisted with either words or blows, or with both.

--Frederick Douglas

No man survives when freedom fails, the best men rot in filthy jails, and those who cry appease, appease are hanged by those they tried to please.

–Hiram Mann

To renounce liberty is to renounce being a man.

--Rousseau

God grants liberty only to those who love it, and are always ready to guard and defend it.

--Daniel Webster

The history of liberty is a history of resistance. The history of liberty is a history of the limitation of governmental power, not the increase of it.

--Woodrow Wilson

Those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it.

–Thomas Paine

We cannot defend freedom abroad by deserting it at home.

–Thomas Jefferson

Yes, we did produce a near perfect Republic. But will they keep it, or will they, in the enjoyment of plenty, lose the memory of freedom?

--Thomas Jefferson

You will never know how much it cost . . . [us] to preserve your freedom. I hope you will make good use of it.

--John Quincy Adams

Zero Tolerance

For Christ's sake, open your mouths; don't you people get tired of being stepped on?

--Bette Midler

How to Fight and What to Attack

To subdue the enemy without fighting is the acme of skill . . . . what is of supreme importance in war is to attack the enemy's strategy.

--Sun Tzu

The Power of Commitment

Never doubt that a small group of thoughtful committed citizens can change the world. Indeed, it's the only thing that ever did.

--Margaret Mead

Rule by Brute Force

We are fast approaching the stage of the ultimate inversion: the stage where the government is free to do anything it pleases, while the citizen may act only by permission; which is the stage of the darkest periods of human history, the stage of rule by brute force.

--Ayn Rand

Government as Teacher

> In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. . . . If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.
>
> –Olmstead v. U.S. (1928) 277 U.S. 438, 485
>
> [Justice Brandeis, dissenting]

Illegal Methods Used to Convict

> In determining the range and depth of the Fourth Amendment guarantees, courts must be aware that "in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves."
>
> --Spano v. New York (1959) 360 U.S. 315,
>
> 320-321.[Emphasis added.]

Cowardice

> "Judicial cowardice is not a very good reason to refuse to support the Constitution."
>
> --John E. Wolfgram,
>
> "How The Judiciary Stole The Right To Petition,"
>
> 31 U. West L.A. L. Rev. (Summer 2000)

Reality Check

> Don't piss on me and call it rainwater.[130]
>
> –One gunfighter to another, from a
>
> Clint Eastwood movie

[130] Petitioner apologizes for this quotation's vulgarity; however, this quote summarizes well what Petitioner, and others, think of Respondent's perversions of the law.

VIII.
CONCLUSIONS

This petition is an opportunity for this Honorable Court to discharge its vital work in a beneficent manner--by sending a much needed "message" which will revitalize hope and respect for the law by reversing this conviction and by rebuking the "Just Us" set who tarnish officers, prosecutors, and judges who function professionally, with honor and integrity.

The Redding Police Department's search policy edict was unconstitutional because A) It did not fall into any recognized exception to the warrant requirement, which are jealously guarded and narrowly construed against law enforcement; B) It was not supported by individualized probable cause, which is a requirement for most warrantless searches in the absence of an applicable, well recognized exception; C) It was unwritten; D) It gave the officer's unfettered discretion; and E) It was an unconstitutional extension of Hyde.

Since Officer Scott Mayberry enforced a constitutionally infirmed edict, which Deputy District Attorney Christie Mulligan and the trial court admitted was "the foundation" for everything Officer Mayberry did, Mayberry acted unlawfully. Mayberry had no "duty" to enforce an unconstitutional edict. He exceeded his lawful powers when he seized Petitioner to find out what he was going to do next. Since Penal Code § 148 (a)(1) must be limited to clearly proscribed core criminal conduct, per In re Andre P. , supra, 226 Cal.App.3d at 1176-1177, Petitioner did not violate that section because he did not commit such conduct. Mayberry's arrest of Petitioner, therefore, was unlawful. The conviction is a miscarriage of

justice that must be reversed.

In addition to the constitutionality of the RPD's edict, the fundamental constitutional issue is this: Is Penal Code § 148(a)(1) unconstitutionally vague and overly broad? For the reasons stated herein, it is. Beyond that, § 148(a)(1) is too often abused to control those who officers dislike on an ad hoc basis. This is a major, on-going, persistent problem that adversely affects tens of thousands of citizens-officers annually in the State of California. This problem needs to be fixed.

Petitioner has a meritorious grievance with Government. No one in Government has fairly redressed this grievance per constitutional norms.

What is the remedy for officers, prosecutors, and judges who intentionally fail to adhere to clearly established constitutional norms? Are there any viable, non-lethal, remedies left?

Incredibly, eight lower court judges failed to grant Petitioner relief.

Is there a judge who will read this petition carefully who has the personal, professional, and political courage to declare, "What government did to Petitioner is fecal matter, and I'm not going to go along with it? Petitioner did his duty. I shall do mine. I will be a Guardian of Liberty. I will grant the petition."?

In a different context, this case would be a comedy of errors where one mistake exacerbates another, humorously. But, in this context, it is a tragedy–a personal one for Petitioner and a damning indictment of certain Government Actors. The conviction is devoid of evidentiary support. Governments' agents are the outlaws, literally.

The trial of People v. Mancus started on the day U.S. Marines put a

chain around a statute in Baghdad and pulled down a tribute to a tyrant. Those Marines did not know that in their Homeland, while they were liberating Iraqi's and bringing *them* protection against Saddam's unfettered search and seizure practices, the law enforcement community in Shasta County had circled its wagons to try to justify its perversions of constitutional norms and dared to call their crimes *Law* and *Justice*. But, we cannot achieve freedom abroad for others while we abandon it at home for ourselves. The gap between Government's rhetoric and the reality of Government's abuse is stark and sobering.

Government especially must scrupulously obey its own laws; otherwise, it is all a colossal fraud. When Government colors outside the Constitution's lines, it hurts people. Sadly, Government persists in hurting people so much in the guise of "law and order" that it is the biggest criminal enterprise. Saddam, when on trial, can meritoriously mock Americans and their governments for their pervasive hypocrisy.

Petitioner applauds the California Supreme Court's holding in People v. Camacho, supra, 23 Cal.4th at 838: Honoring constitutional lines is the price of preserving a constitutional government. *That* truism is profound. It is the functional equivalent of a jurisprudential grand slam home run. The jurists who held in favor of Mr. Camacho knowingly let a damn drug dealer, Camacho, go free, properly so, because the police violated Mr. Camacho's Fourth Amendment rights. The jurists who set Camacho free manifested much needed integrity, and the courage to return to Camacho his freedom in order to preserve *constitutionalism*. In so doing, they respected the Fourth Amendment's commands. As such, those jurists were–and are–a comforting inspiration to all who strive to preserve and to

restore the *Constitutional* Rule of Law.

Petitioner is not a drug dealer. Petitioner and his rights are not expendable. Petitioner is the canary in the legal mine shaft.

When the Judiciary functions as Guardians of Liberty, when the Judiciary treats the Bill of Rights as Mankind's greatest achievement and as a Bulwark of Liberty, the United States *is* great. It is then a nation worth defending. It is then still "the beacon on the hill" for the world's oppressed.

Petitioner knows that. Officer Scott Mayberry, however, harbors a vision of the United States that is dangerous, myopic, and sophomoric.

When errant public servants violate the laws, the invisible glue that is suppose to bind this nation under the Constitutional Rule of Law lets go. When that happens, we commence a free fall toward tyranny.

Peacefully defending the Constitution's commands is not a crime. No Government Actor should ever dare to accuse a fellow United States citizen of hiding behind their Constitutional rights, as if that is evil, a character deficiency, not the act of a good citizen, or a threat to society.

What Petitioner did was the act of a good citizen who did his duty. He refused to let a rut of erosion start. He knew that no one can compromise on so called little things and store up strength to "stand up" for a bigger issue later.

It is ironic that Deputy District Attorney Christie Mulligan portrayed Petitioner as someone who believed he was "above the law."(RT 821.) Petitioner never believed *that*. Petitioner is neither above *nor below* the law.

Deputy District Attorney Christie Mulligan is correct on one point:

"If we're all accountable for our actions, if we all have to take responsibility for the things we do, why should it be any different for him?" (RT 821.) Question: Why should it be any different for *them*–the "Just Us" crowd, e.g., Williams, Mayberry, Mulligan, and their supervisors who failed to exercise oversight control?

IX.

REQUESTS FOR RELIEF

Petitioner is without remedy save for habeas corpus. Accordingly, Petitioner requests that the Court:

1. Issue a writ of habeas corpus.
2. Issue an order to show cause.
3. Declare the rights of the parties.
4. Grant any and all other relief found necessary or appropriate.
5. Order all law enforcement agencies to irrevocably, permanently, and thoroughly purge and sanitize their records [written and electronic] of any reference to Petitioner's detention, arrest, conviction, and any and all pejorative remarks arising therefrom.

DATED: February _____ , 2005

Respectfully submitted,

_____

PETER J. Mancus
Petitioner and Attorney at Law,
In Propia Persona

X.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

I. Habeas Corpus is a Proper Vehicle For the Presentation of Petitioner's Claims.

Habeas corpus is a remedy available to persons imprisoned in violation of rights guaranteed by the U.S. Constitution. Pyle v. Kansas (1942) 317 U.S. 213, 215.

The two core claims asserted in this petition are that Petitioner was deprived of his constitutional rights to due process and the effective assistance of counsel. These constitutional claims cannot be presented as strongly on appeal as they are presented herein because the factual basis for part of the denial of the effective assistance of counsel rests in part on evidence outside the record. In re Hochberg (1970) 2 Cal.3d 870, 875. Claims of ineffective assistance of counsel are typically presented in habeas petitions. In re Banks (1971) 4 Cal.3d 337. Where the record may be insufficient to illuminate the basis for the claim of ineffective assistance of counsel, habeas corpus is the appropriate vehicle, because there is an opportunity for an evidentiary hearing to have trial counsel fully describe his reasons for acting as he did. The reviewing court is then in a position to evaluate whether counsel's acts or omissions were in the range of reasonable competence. People v. Pope (1979) 24 Cal. 3d 412, 426.

II. Grounds For Granting a Petition For Habeas Corpus.

When a petitioner for a writ of habeas corpus demonstrates error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner, petitioner is actually innocent of the crime of which he was

convicted, the sentence imposed was imposed by a sentencing authority who had a grossly misleading profile of the petitioner, or the petitioner was convicted under an invalid statute, such a petitioner is entitled to the granting of a petition for habeas relief. In re Sanders (1999) 21 Cal.4th 697.

The presumption of the correctness of state court factual findings does not apply to mixed questions of law and facts because such questions involve the application of legal principles to the facts of the case. Cuyler v. Sullivan (1980) 446 U.S. 335, 341-342. A habeas corpus reviewing court may determine the facts and dispose of the case summarily as law and justice requires. Preiser v. Rodriguez, supra, 411 U.S. at 487.

Even though an issue was raised and rejected on appeal, the issue is cognizable on habeas corpus when a convicted defendant raises it again on habeas corpus by alleging that he is detained under a sentence which violates his fundamental constitutional rights. In re Robert Nathan Foss, supra, 10 Cal.3d at 916-917. Habeas corpus jurisdiction extends to testing whether the defendant was deprived of a fundamental constitutional right. Id., 930-931. A state prisoner who alleges that the evidence in support of his state conviction could not have led a rational trier of fact to find guilt beyond a reasonable doubt states a federal constitutional claim cognizable in a federal habeas corpus proceeding which the federal writ stands ready to correct. Jackson v. Virginia, supra, 443 U.S. at 321-323.

III. Petitioner is Entitled to a Writ of Habeas Corpus.

When a criminal defendant's claim of constitutional error is clear, fundamental, and strikes at the heart of the judicial process, he is entitled to another chance at judicial review. In re Charles Harris (1993) 5 Cal.4th 813, 834. A defendant is entitled to habeas corpus if there is no material

dispute as to the facts relating to his conviction and if it appears that the statute under which he was convicted did not prohibit his conduct or that his conviction is based on constitutionally protected conduct. In re Robert F. Brown (1973) 9 Cal.3d 612, 625.

Respectfully submitted,

Dated: February ____ , 2005

_____
PETER J. Mancus
Petitioner and Attorney at Law

XI.

TABLE OF EXHIBITS[131]

The exhibits itemized below are true and correct copies of what they are described as being. They are numbered consecutively in the lower right hand corner. Some documents have a stamp to direct the Court's attention.

Exhibit No.	Exhibit Description
1-5	Email between Petitioner and his defense attorney, Ms. Elizabeth Elwood, regarding relevant issues. Ms. Elwood noted on No. 1 that the Hon. Monica Marlow, who denied Petitioner's Motion to Dismiss, "cc'd the city attorney on the case." Since the District Attorney was the prosecutor, the fact that Judge Marlow copied the Redding City Attorney suggests she might have been influenced by Petitioner's Government Tort Claim Notice. The appearance of an improper influence does not inspire confidence in the judiciary.
6-62	Some of the approximate 190 pages of special proposed jury instructions Petitioner prepared, gave to Ms. Elwood and ordered her to submit to Judge Gallagher. It is Petitioner's understanding Ms. Elwood never submitted any of these even though she told Petitioner she submitted 25-35 of them. No. 32 deals with limits on airport administrative searches of airline passengers.
63	Page 3 from the "Renewed Motion For Mandatory Judicial Notice" that Petitioner prepared which Ms. Elwood filed. Per this page, Petitioner put the trial court, the prosecutor, and his own attorney on notice of the existence of the specified case law. The jury, however, was still never instructed about any

[131] A man who works for this Court who answers the public's questions about what needs to be filed with this Court unequivocally assured Petitioner that Petitioner did not have to submit with this petition any part of the Clerk's Transcript or the Reporter's Transcript. Petitioner has relied on that assurance. If that representation was incorrect, Petitioner asks leave of this Court to submit whatever documents mentioned herein that this Court might wish to review.

limits on administrative searches at an airport.

64-79 A "Declaration of James March" prepared by him with two exhibits attached, A and B. Exhibit A [No. 78] discusses Petitioner making additional arrangements to send Ms. Elwood jury instructions. The referenced Exhibit C is not attached because the original is part of the Clerk's Transcript.

80 Cover sheet of Petitioner's "Appellant's Supplemental Brief" which the Appellate Division for Shasta County ordered unfiled after rejecting Petitioner's application for a page length extension. The clerk returned the document so it is not part of the court's file. It is available for review upon request.

XII. VERIFICATION

I, Peter J. Mancus, state:

I am the petitioner in this action. I have read the foregoing Petition for Writ of Habeas Corpus and the facts stated herein are true of my own knowledge, except as to matters that are therein stated on my own information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February _____, at Sebastopol, California.

_____

PETER J. Mancus,
Petitioner and Attorney at Law

DECLARATION OF SERVICE BY MAIL

Re: People v. Mancus No. 02 CR AM 4250

I, RICHARD I. TARGOW, certify:

I am, and at all time mentioned herein was, an active member of the State Bar of California and not a party to the above-entitled cause. My business address is Post Office Box 1143, Sebastopol, California 95473.

I served a true copy of the attached "**PETITION FOR WRIT OF HABEAS CORPUS"** on each of the following, by placing same in a box, addressed, respectively, as follows:

Attorney General

Clayton S. Tanaka

Asst. Supervising Deputy Attorney General

Office of the Attorney General, State of California

1300 I Street

P.O. Box 944255

Sacramento, CA 94244-2550

Gerald C. Benito

Shasta County District Attorney

1525 Court Street, Third Floor

Redding, CA 96003

Each said box was then, on February , 2005, sealed and deposited in the United States Mail at Sebastopol, California, with postage fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: February _____ , 2005 _____

RICHARD I. TARGOW

Attorney at Law