**No. COA 09-705** **FIFTH DISTRICT**

**STATE OF NORTH CAROLINA COURT OF APPEALS**

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| **STATE OF NORTH CAROLINA,** | ) | |
| **Plaintiff/Appellee** | ) | |
| | ) | **FROM PENDER** |
| **v.** | ) | **COUNTY** |
| | ) | **08-CRS-1482** |
| **LTC Donald Sullivan,** | ) | |
| **Defendant/Appellant** | ) | |

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# DEFENDANT/APPELLANT'S REPLY BRIEF

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## ARGUMENT

I, Lieutenant Colonel Donald Sullivan, Appellant, appearing *sui juris*, specially and not generally, with all my rights preserved without prejudice (UCC1-308), come now to reply to the "Brief for the State". This court of appeals must take judicial notice that I stand and rely upon my brief in support of a reversal of my conviction and further reply as follows:

**I. In Response to the State's Brief: THE TRIAL COURT DID ERR BY EXERCISING JURISDICTION OVER ME, AND MY CONSTITUTIONAL RIGHTS WERE VIOLATED.**

Although my brief speaks for itself, there are some additional arguments on the subject of jurisdiction which I would like to present in response to the State's brief. The State contends that being forced against my will to contract with the State for a title and registration on my private property in order to be able to use it is not a violation of my constitutional right to property. The very definition of private property ownership flies in the face of that argument. It includes the right to own, use and dispose of said property without any regulation, restriction or restraint so long as one's use of that property does not offend the rights of others or threaten the public safety. The right to property is the very cornerstone of all rights, stemming from the right of life. The right to life is the source of all rights—and the right to property is their only implementation. Without property rights, no other rights are possible. Since man has to sustain his life by his own

NOTE: State notes on P. 2 that "Defendant should have served the proposed record on appeal on the prosecutor in this case rather than on the Attorney General...". Notice is hereby given that I did try to serve the proposed record on appeal to the ADA in this matter, and in person, at the Pender County Courthouse, but it was refused. I was instructed by the clerk to serve it on the Attorney General's office due to the lower court's no longer having any jurisdiction in the matter. I have informed the DA's office of this discrepancy, but was just sneered at by the ADA.

effort, the man who has no right to the product of his effort has no means to sustain his life. The man who produces while others dispose of, regulate and deny use of his product, is a slave.

It is a well established tenet of law that the State cannot charge a fee for the exercise of a right. It is the State's contention that I may not use my private property automobile for the purpose it was intended unless I pay the State a fee for registration. That is absurd and a violation of my State and federal constitutional rights.

The State also contends that by not registering my private property automobile, I somehow instantly became a threat to the public because I may not "be identified and held responsible if the motor vehicle is involved in an accident or in the commission of a crime." Such a statement is arbitrary and capricious, not to mention discriminatory. Surely, the State may exercise its police power over a person who is in fact a threat to the public safety and may in fact elude capture if he is not registered as such. But to assume everyone must be so restricted and monitored goes against the fabric of the founders of this country. By that argument, we should all be registered as potential sex offenders because we are male and may attack someone. It is ridiculous and smacks of totalitarianism, fascism and tyranny. When I and my vehicle commit an offense against the life, liberty or property of another, then the State is free to exercise its police power against me, for then I will have granted jurisdiction over my rights by my actions. I just cannot fathom why it is so hard for the State to realize that some of us can actually

govern ourselves, raise and educate our families and take care of our medical needs without its help.

These same arguments apply to the State's position on financial responsibility. It is a violation of my constitutional right to contract or not to contract for the State to force me under penalty of law to contract for insurance, or pay money into the public treasury as a surety in advance of my conviction for a failure to be accountable to my neighbor for my actions. I have a right to conduct my activities as I see fit and to decide to, or not to, contract for insurance. It is my choice and my right, so long as I act responsibly and with accountability. It is a violation of my right to include me with those who cannot be responsible and accountable just because I choose to exercise my right to travel. Should I commit some offense against the rights of others and refuse to make them whole again, then and only then will it be acceptable for my rights to be restricted.

This court must take judicial notice of the following wisdom from the State of Texas with regards to the exercise of rights versus the exercise of police power:

> "The rights of the individual are not derived from governmental agencies, either municipal, state or federal, or even from the Constitution. They exist inherently in every man, by endowment of the Creator, and are merely reaffirmed in the Constitution and restricted only to the extent that they have been voluntarily surrendered by the citizenry to the agencies of government. The people's rights are not derived from the government, but the government's authority comes from the people. The Constitution but states again these rights already existing, and when legislative encroachment by the Nation, State or municipality invades these original and permanent rights, **it is the duty of the courts to so declare**, and to afford the necessary relief. The fewer restrictions that surround the individual liberties of the citizen, except for those for the preservation of the public health, safety, and morals, the more contented the people and the more successful the democracy [sic]." *City of Dallas v. Mitchell*, 245 S.W. 944, 945-6 (Tex. Civ. App.-Dallas (1922) (Emphasis added)

This court must review this constitutional question in its true light, as a situation where the statutory authority of the State does not exceed the constitutional authority of

the private citizen to go his own way so long as he does not intrude on the rights of others in the process:

> "The public welfare demands that constitutional cases must be decided according to the terms of the Constitution itself, and not according to judges' views of fairness, reasonableness, or justice." -- Justice Hugo L. Black ( U.S. Supreme Court Justice, 1886 - 1971).

The State does not have the authority to regulate my exercise of my constitutionally guaranteed rights while I am exercising them responsibly and with accountability. The State, nor this court, has any jurisdiction over that exercise of right so long as I adhere to those principles. If it chooses to assume jurisdiction in spite of these truths which are self-evident, then we no longer can entertain any idea that we live in a free society; because the State can and does regulate everything we do and the exercise of every "right".

As to the lawful creation of the State of North Carolina after the Civil War (War Between the States), there is much authority to cite for that argument, but it didn't seem necessary to include it in my brief. Due to the State's rebuttal, I include herein the following cites of authority and proof that the State is not, and does not represent, the original Republic of North Carolina which was the 12th State of the Union.

It is easy to prove that the "United States of America" established by the "Constitution of the United States" no longer exists. What is now acting in its stead is a corporate fiction of law called the District of Columbia, dba "The United States of America". This is the reason nothing today having to do with the United States government and its relations with the people and the States makes any sense. This is the reason the people now have only the illusion of rights, otherwise known as privileges,

and that there is no remedy available to redress the problem. The root cause of this transition from a government by the people, for the people and of the people to the bureaucratic tyranny we have today is the passage of the Wade-Davis Bill in 1864, the passage of the Reconstruction Acts in 1867/8 following the War Between The States, the alleged passage and ratification of the 14th Amendment in 1868, and the incorporation of the District of Columbia in 1871. The history of this treasonous transformation is contained in the Congressional Record for June 13, 1967 and is available for anyone to see. This transition is not a secret; but neither is it included in any of our public, private or institutional education systems. If it were, one would hope the subterfuge would not be allowed to continue.

The way this all happened, that is, the way the "created" became the "creator", is very simple and very visible to anyone who looks for it. On July 19, 1866, in order to prevent any future acts of secession by the member States, the United States government, thru its "elected" representatives of the people, asked for a new and different form of government. The republican form of government constituted by the Constitution of the United States, which specifically allowed for the States to withdraw if they so chose, had proven to be uncontrollable by the majority members of States, the Federalists, without the use of force. Therefore, on July 19, 1867, as shown in the congressional record at Chapter 158, volume XIV, p 428, Ante 12 Post, page 29, 80, while the "rebel States' representatives yet had no voice the Congress of the United States of America passed in Chapter XXX, "An act supplementary to an Act entitled 'An Act to provide for the more efficient government of the rebel States (aka "The Reconstruction Acts" of March 2,

1867, and March 23, 1867)' to resolve this minor technicality. (40th Congress, Session I, 1867, Resolutions 38, 39, and 40).

Black's Law Dictionary of 1868 makes it very clear in its definition of "The Fourteenth Amendment": "It creates, or recognizes for the first time, a citizenship of the United States, as distinct from that of the States."

Unfortunately, there was no suitable ruling body of government to exercise this new authority over these illusory United States citizens. (It is worthy of note that the Citizens of the Republics were referred to with a capital "C", and the United States citizens were given a small-case "c".) So, in 1870, The "United States" declared itself a corporation in the District of Columbia called "District of Columbia and doing business as (dba) "The United States of America". This corporation is now the parent of all successor corporations in the United States, including the individual corporations we recognize as ourselves, unless we unincorporate.

The 14th Amendment created us as corporations beneath the "United States of America", and we ignorantly accept that corporate citizenship by entering into more and more contracts with the State along the way, the most formidable of which is the Social Security Number (SSN) which makes us jurisdictional "US Persons" by our own "voluntary consent", thus denying our constitutional State citizenship. By so doing we put ourselves under the color of law jurisdiction of the United States of America, which has priority over the States. This last is proven in our own Constitution for North Carolina in Article I, Section 5, "Allegiance to the United States", which states:

> "Every citizen of this State owes paramount allegiance to the Constitution **and the government** of the United States, and no law or ordinance in contravention or subversion thereof can have any binding force." (Emphasis added)

So, our first allegiance is to the "government of the United States" which today is that government which resulted from the Acts of Reconstruction, the 14th Amendment and the incorporation of the District of Columbia, Inc. (Which is not to be confused with the political subdivision of the United States of America called "District of Columbia", a mere territory of the United States.).

The term "'United States' has several meanings...it may designate territory over which sovereignty of the United States extends..." *Hoover and Allison Co. v. Lovatt, US, Ohio,* 324 US 652. Before we were corporate "citizens of the United States", we were sovereign "Citizens in the several States" as described in Article IV, Section II, Cl. 1, and the federal government had no jurisdiction over us. To wit:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

It is necessary at this point to have a discussion concerning the 14th Amendment; because, as has been shown, it is the root cause of this jurisdictional metamorphosis from "Citizen of the several States" to "citizen of the United States", and the vehicle by which the Republic of North Carolina, the 12th State, was not "restored" to the Union but replaced by the usurper North Carolina, Inc., the 39th state. In a nutshell, the 14th Amendment was never properly created or ratified: It never was offered to President Johnson for his signature or veto; it only had a one vote majority in the Congress; and not enough of the States ratified it. Further, the rebel States were forced to sign it at gun point to be "re-admitted" to the Union. In the first round of 1866, of the "rebel States" only Tennessee ratified it. Most of the "rebel States", including North Carolina, rejected it in 1866, 1867 or 1868. Then, after some other States, including North Carolina, "got their minds right" under threat, duress and protest, there were still not enough State

ratifications to make it legal. This is vividly shown in Document No. 102-188 from the House of Representatives for the 102nd Congress, 2nd Session, entitled, "The Constitution of the United States of America, as Amended", February 6, 1992, Printed by the US Government Printing Office (SH-1080), where the count when ratification was completed on July 9, 1868, was only 25. At the time the ratification was certified by the Secretary of State on July 21, 1868, there were only 27 signers, one short of ratification, New Jersey having rescinded its ratification on March 24, 1868. Oregon rescinded its ratification on October 15, 1868. To date, only 34 States have ratified the 14th Amendment, the last being Kentucky on March 18, 1976, after having rejected it in 1867; but still 3/4th of the "States" are not ratifiers of the 14th Amendment. It is worthy of note that, in order to accomplish the illusion of this dubious achievement, eleven States were not allowed to vote, or re-join the Union, until they agreed to toe the line, rewrite their constitutions and swear subordination to their own creation. These States' legislatures can easily to be seen to have been at that time in deep depression after the loss of their freedom and liberty at Appomattox and more easily maneuvered by their conquerors.

As shown above, the new "citizens of the United States" literally were without a government until three years later when the District of Columbia, Inc., was created to form an entity which could regulate this new citizenry. After that, all the individual corporate citizens began to be controlled by corporate policies (called statutes), ordinances, regulations, codes, etc., administered by bureaucrats, enforced by corporate police forces and punished for their violations of the penal codes by judges who were sworn only to the corporations (As are currently those in this "State"). Rights, which as

shown in *City of Dallas, supra*, cannot be regulated by the created governments, were disregarded in favor of State granted privileges, such as the "right" to vote, which are easily regulated and difficult to defend against. From the 14th Amendment and the United States Corporation we get such things as gun control and the licensing of all sorts of "privileges" which used to be "rights", such as, in this instant case, the right of liberty or the right to travel without regulation, restriction or restraint. All such laws have been passed in violation of the 9th and 10th Amendments and are unconstitutional as applied to the sovereign State citizen; but the United States Corporation and its sub-corporate "States" have passed these statutes, regulations and ordinances to deny us our rights and get our guns and keep us enslaved (It is easiest to enslave those who think they are free.). The "States" have merely followed the suit played by their creator, the federal government corporation. The federal corporation has put us into its jurisdiction as a smaller corporation, and under the jurisdiction of its municipal corporations such as the BATF, the FBI and the IRS via statutes and regulations which are merely corporate policies and mandates. Today, the several states are merely puppet governments, either because of their contracts (constitutions), or due to their incessant need for federal funding and the perceived impact of the Supremacy Clause of the US Constitution. (Approximately 34 of the several states are presently trying to retake their sovereignty via the 9th and 10th Amendments, but most still accept federal funding. Rather hypocritical, I would say.)

However, the Congressional Record for June 13th, 1967, page 15641 through 15646, as presented on the Senate floor, confirms that the 14th Amendment was not

properly ratified, thus is not a proper piece of legislation, and is void *ab initio* as repugnant to the Constitution. But, knowing this, we do nothing. It is as Ben Franklin opined during the fight for independence, "When government fears the people, there is liberty; when the people fear the government, there is tyranny." More and more today, the people are too afraid of their government, its courts and its black-suited police to speak out. It is so much easier to "go along to get along", so they blend in with their political environments like chameleons, hoping no one can see them as they do their best to conform and obey.

Stalin is credited with having said, "Give me one generation, and I can change the world." The enemies to my Constitution have had 141 years to change the United States. It appears that, with the unparalleled help of the generation of the sixties and seventies, they have succeeded. The system we live under today is not real. It is only the color of law. The Congress learned in 1967 that the 14th Amendment was not properly ratified, but the die was cast and the wounds were too deep for them to risk everything to put it back the way it was supposed to be.

Thus, this court remains an Article I, Section 8, Cl. 4, equity court due to the 14th Amendment instead of an Article III constitutional court, and has no jurisdiction over me in this instant matter. It is solely an equity court with jurisdiction only over those who are bound to the corporation which it represents. The "State" can show no such bonds between me and itself. I accept no benefit from the "State" or from the federal government and there can be shown no contract or implied contract between us.

The United States, Inc., has been in a state of emergency since 1931 thru the use of the Emergency War Powers Act, when the Constitution was perpetually suspended (although it can be argued that it was never restored after the War Between the States); and we have been living with that fiction of law, under the color of law, ever since. The Constitutional Republic of the United States has not technically existed since 1865, as memorialized in 1871. Similarly, the State formerly known as the Republic of North Carolina, has also been unrecognized as a part of the United States. Thus, there has been no real constitutional citizenship and no State sovereignty (Article I, Section 5, NC Const., *supra*). The rebel States had to ask permission to "re-enter" the Union and were forced to re-write their constitutions to do so, thereby subordinating their sovereignty to that which they had created, the United States government. This, notwithstanding the fact that their constitutional membership had never been given up, their having lost their bid to secede from that membership, they were forced to "root hog or die". Lincoln's war to preserve the Union has failed, because the Republic has been replaced by a corporate form of government, run by bureaucrats and administrators, and not by statesmen. The IRS, for example, is not a constitutional organization. Upon information and belief, it is an administrative agency controlled by the Federal Reserve System (Not a part of the United States government) and not by the United States. It is similar in its organization to the US Postal Service.

All the matrix of facades in this corporate United States is the direct fruit of the poison tree we know as the 14th Amendment. The national debt, gun laws, travel laws, the loss of private property, marriage laws, voting laws, tax laws, etc., are all the result of

the fiction of law called the 14th Amendment. Otherwise, there could be no "gun laws" property laws, or any such. All these laws which purport to regulate our God-given, constitutionally protected rights are fictions of law promulgated by the corporation. The right to bear arms and the right to travel (liberty), for example, are truly but government regulated privileges exercised thru the permission of the bureaucracies of that government by its jurisdictional corporate citizens.

There is only one constitutional law enforcement officer and that is the duly elected High Sheriff. All others are merely corporate policemen. Members of the FBI, for example, were originally called "G-Men" and were not allowed to carry guns. Only the Sheriff carried a gun, and only he enforced the constitutional law. These "G-Men" have no accountability to the Citizen, only to the bureaucracy. There is very little oversight therefore. The High Sheriff is elected by, and accountable to, the people, the Citizens. Unfortunately, he, too, has been compromised by the fictions of law and under the color of law due to his acceptance of the corporate lies and his coercion by "federal funding" under the "Supremacy Clause".

Native Americans can cross the jurisdictional line between sovereignty and subordination voluntarily any time they choose. We have the same ability, but not as corporate citizens. The 14th Amendment has cunningly usurped that ability, and it is treasonous. Fortunately, the 40th Congress on July 27, 1868, secured for us this right to cross that line with its "Expatriation Act" in Chapters 248, 249 and 250 where it was confirmed that Americans are not subject to the jurisdiction of foreign states. Further, the President must take any action necessary, save acts of war, to resolve any conflict thereto.

Page 224 of that Act says that any government officer who denies the citizen the right of expatriation is declared inconsistent with the fundamental principles of this government. It is a political choice, and we each have the authority to take it.

I have made my "political choice". I have decided to no longer be a "jurisdictional corporate citizen" of North Carolina, Inc. I am no longer subject to the fictions of law commonly known as the "United States" and "North Carolina", nor to the color of law promulgated by the corporate state of North Carolina, Inc, or of the corporate state of The United States, Inc. I am a constitutional citizen of the Republic of the State of North Carolina, and subject only to "the laws of Nature and of Nature's God". I accept no benefit from either the United States, Inc., or from the corporate state of North Carolina, Inc, save the right to protection of life and property, which are rights and not privileges. I am not a "U.S. Person". I grant no jurisdiction to this court except as I have offended the rights and privileges of another human being, that being the injured party. In this instant matter, there is no injured party, thus there is no jurisdiction by this court over this unincorporated Citizen. I am personally accountable and capable of the individual self-government won in the struggle for independence from the King of England. This opinion does not encourage anarchy, but encourages us to be the way we were intended to be after the war for independence, self-reliant and self-governing.

Thus, the corporate State of North Carolina has no authority to demand of me that I submit my private property to its jurisdiction in the form of vehicle titles and registrations, and it has no authority or jurisdiction to demand of me that I contract with a state-licensed insurance company (Which benefits the corporate "State") or put my surety

in the public treasury merely to exercise the right of liberty and to travel on the public way.

I have not argued at any time that "The statutes [I] violated in this case [were] unconstitutional." (State's Brief, P. 8) It is my argument that the statutes are being wrongly applied to my individual activities when they do not have jurisdiction. Certainly those who are members of the State corporation, or those who have demonstrated their inability to abide by the tenets of responsibility and accountability, can and must be regulated for the general welfare; but those of us who have demonstrated the opposite should and must be left alone to live our lives in liberty as examples to others that they may follow and also attain liberty for themselves. But, the "State" cannot allow this freedom. It would be dangerous for it if we knew we could be free. So, it resists.

Therefore, because the lower court erred when it assumed jurisdiction over me, the order of the lower court should be reversed.

**II. Response to the State's brief: "THE TRIAL COURT DID ERR BY DENYING MY MOTION TO DISMISS DUE TO MY BELIEF THAT I WAS NOT ACTING ILLEGALLY." My Assignment of Error was actually, "WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED MY DEMAND TO DISMISS FOR LACK OF "WILLFULLY" HAVING VIOLATED THE LAW AND SUSTAINING THE PROSECUTION'S CLAIM THAT "IGNORANCE OF THE LAW IS NO EXCUSE".**

Although my Brief speaks for itself, I must begin this rebuttal by restating two tenets of law previously stated in my Appellant's Brief:

> "WILLFULLY (BLACK'S LAW DICTIONARY, EIGHTH EDITION) 'It is synonymous with intentionally, designedly, without lawful excuse, and, therefore, not accidentally. *Miller v. State* (Okl.) 130 Pac. 813. It implies that the act is done knowingly and of stubborn purpose, but not with malice; *Miller v. State* (Okl.) 130 Pac. 813, 2 S. E. 68; and in penal statutes, it means with evil intent, or with legal malice; *Galvin v. Mill Co.*98 Cal. 268, 33 Pac. 93...A willful act is one that is done knowingly

and purposely, with the direct object in view of injuring another; *Hazle v. So. Pac. Co.*, 173 Fed. 431."

And,

"[T]here must be not only a wrongful act, but a criminal intention." *Morissette v. United States,* 342 U.S. 274, 96 L. Ed. at 306.

It has been easily shown from the transcript and testimony that there was never any "criminal intention" to "knowingly and purposely", "designedly, without lawful excuse, and, therefore, not accidentally", and, "knowingly and of stubborn purpose" to violate the law applicable to my individual exercise of my right to travel on the public way. In my own testimony, I related a conversation with the Sheriff of Pender County held after my acquittal (State's Brief, p. 9) for the same charges only a few months before. We spoke about that acquittal and my intent to continue "traveling" in my automobiles without titles, registration and insurance. I further testified that I left the Sheriff's office with the understanding that, unless I heard differently from him, it was my impression that my rights had been sustained by that court ruling, and that I would not be in violation of the law for "traveling" in my private property automobile in the public way. (T. P. 83,84) In fact, on that same day, as I drove away from the Sheriff's office, I was not charged by a Burgaw city policeman who had stopped me for having no proper registration, after I explained that very understanding to him.

For a crime to be committed, there must be an intent, a willfulness to break the law. Otherwise, it is merely negligence, or an accident. In this case, the charge specifically indicated such "willfulness" as I was charged with "did unlawfully and **willfully** operate a motor vehicle on a street without having in full force and effect financial responsibility...and failing to register a vehicle...." (T. p. 4, My Brief, p. 21). The court and the prosecutor were focused merely on showing that the "law" was broken,

not that there had been any intent on my part to break it. Thus, here again the State's argument is meritless.

"A state cannot require a defendant to prove the absence of a fact necessary to constitute the crime." *Mullaney v. Wilbur*, 421 U.S. 684, 697, 95 S.Ct. 1881, 1888, 44 L.Ed.2d 508 (1975). "The government must prove each element of the charged crime beyond a reasonable doubt." In *re Winship*, 397 U.S. 358, 362, 90 S.Ct. 1068, 1071, 25 L.Ed.2d 368 (1970). In this case, included in the charge was the term "willfully", meaning "with intent". Thus, there being no "*mens rea*" ("of guilty mind") element in the statute is not relevant to this matter since the charge clearly contains the element of intent to break the law, and the State failed to prove this "fact necessary to constitute the crime."

The State cites *State v. Stephenson*, 218 NC 258, 264 (State's Brief P. 10) in support of its definition of proper instruction to the jury on "willfulness". However, that cite tends more to support my argument for error. To quote the State, *Stevenson* found, "that the word 'willfully' 'implies committing the offense purposely and designedly in violation of the law'". The State proved no "design" to violate the law in my exercise of my "right to travel". In fact, everything presented in this trial tends toward my having done all I could to make sure I was not in violation of the law as it applied to me. Everything in my experience over the past ten years has led me to believe that the right to travel, as part of the right to liberty, is inalienable and can only be regulated by the State if I voluntarily waive that right, offend the rights of others, or threaten the public safety.

The lower court's failure to properly brief the jury to that effect is the direct cause of my conviction.

Therefore, the lower court has committed plain, reversible error; and the verdict of the lower court must be reversed.

**III. My Reply to the State's Title for this Argument: "THE TRIAL COURT DID ERR IN ITS INSTRUCTIONS TO THE JURY." However, the Title from my Brief was: "WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED MY DEMAND TO INCLUDE THE WORDS 'THE WILLFUL ACT THAT IS DONE KNOWINGLY AND PURPOSEFULLY WITH A DIRECT OBJECT IN VIEW OF INJURING ANOTHER' IN ITS CHARGE INSTRUCTIONS TO THE JURY, AND IMPROPERLY CHARGED THE JURY BY NOT ADEQUATELY DEFINING THE TERM "WILLFULNESS" TO THE DETRIMENT OF MY DEFENSE.**

Although my brief speaks for itself, I would like to add that, since the evidence presented at trial does not show any intent on my part to violate the statute and, in its own statement of facts in the "Brief for the State", the State's argument is replete with facts and statements that I did not knowingly intend to violate the statute, no proof of motive or intent on my behalf was presented. Therefore, because the charge included the requirement for "willful" violation, and as included in Argument II above, it was incumbent upon the court to impress the jury with the State's obligation to show "intent" on my part to break the law as a part of its "willfulness" instruction. The lower court's failure to appropriately define "willfulness" for the jury caused the jury to be biased toward conviction and constituted plain, reversible error on the part of the lower court. Therefore, the verdict of the lower court must be reversed.

**IV. Reply to the State's Brief: THE TRIAL COURT'S INSTRUCTIONS WERE BIASED TOWARD THE STATE AND DID DENY ME MY CONSTITUTIONAL RIGHT TO A FAIR TRIAL.**

My brief speaks for itself on this Assignment of Error; and, coupled with the arguments presented herein, it should be obvious to this court of appeals that the lower court did err in its instructions and did, therefore, deny me my fair trial and bias the jury toward the State. Therefore, the lower court did commit plain, reversible error and its verdict must be reversed.

## V. [COURT TO TAKE JUDICIAL NOTICE!] THE TRIAL JUDGE WAS NOT PROPERLY SEATED TO PRESIDE OVER MY TRIAL.

In deference to the fact of law that not having a valid, lawful oath on file with the clerk in the given jurisdiction invalidates the judge's authority (to include itinerant judges, who, by appearing on the bench in a given county, become "in residence" in that jurisdiction for the tenure of their duty); and, further, since it is unethical for an attorney to misrepresent the law to the court by misstating the facts or by omission of the facts, it is imperative that this court of appeals take strict judicial notice to the arguments below.

In its arguments, the State says, "In any event, the oath defendant states that Judge Hockenbury took complies with NCGS 11-7 [known as the "incidental oath] and therefore was proper." While my brief speaks for itself, I direct your attention to the following in response to the State's argument:

Our Constitutions are the will of the People clearly set down for their agents, elected and appointed, to follow. No law, statutory or otherwise, supercedes these Constitutions, and only those laws passed in "pursuance" of them may stand. The People commanded in Article VI, Clause 3, of the federal Constitution that:

> "[A]ll Executive and Judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution;..."

Judges and attorneys are referred to as "officers of the court", and they are required to take the oath mentioned above and support the Constitution as it is written and as it says, not what they or others would like for it to be or say.

To accomplish this federal mandate, Article VI, Section 7, Constitution of the State of North Carolina, states very plainly:

> Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:
>
> > "I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God."

The State Legislature has been diligent in passing law in pursuance of this constitutional mandate. NCGS 11-11, "Oaths of sundry persons: Forms", states in part:

> "The oaths of office to be taken by the several persons hereafter named shall be in the words following the names of said persons respectively, **after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina**:
>
> Justice, Judge, or Magistrate of the General Court of Justice
>
> I, _____, do solemnly swear (affirm) that I will administer justice without favoritism to anyone or to the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my office, except the salary and allowances by law provided; and that I will faithfully and impartially discharge all the duties of _____of the _____Division of the General Court of Justice to the best of my ability and understanding, and consistent with the Constitution and laws of the State; so help me, God." (Emphasis added)

NCGS 11-7, "Oath or affirmation to support Constitutions; all officers to take", states:

> "Every member of the General Assembly and every person elected or appointed to hold any office of trust or profit in the State shall, before taking office or entering upon the execution of the office, take and subscribe to the following oath:

'I, _____, do solemnly and sincerely swear that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God.'"

It would appear from NCGS 11-7 that the State's brief **misstates and omits** very important areas of this subject of a proper oath for all "justices, judges and magistrates" of the courts of this State. Of course, this is merely the result of mis-education and mis-information. A correct oath for a "Justice, Judge or Magistrate of the General Court of Justice" must contain all three oaths, in order. The State completely ignores the inclusion of the Article VI, Section 7, oath required by the Constitution and by statute.

Upon information and belief, no officer of the court, or of the State **(including the State's attorneys),** has taken the proper oath required by the statutes and the Constitution; thus, no officer of the court or of the State has, or has had, proper authority to occupy said offices, including Judge Hockenbury. If we are, in fact, "a nation of laws" and "bound by the statutes", as the State's attorneys are so proud to say during their arguments, oral and written, then those laws must apply, as written, to all within the jurisdiction of those laws, including and especially all agents of the State, and especially "Justices, Judges or Magistrates".

According to my research and that of the clerks of court, upon information and belief, Judge Hockenbury's oath, to this day, is not on file with either the New Hanover or Pender County clerk's office; notwithstanding the fact my copy of the oath is stamped by the New Hanover County Clerk's office. That copy, attached to this brief (Appendix A), was obtained by me from the AOC in Wake County. **Even if it is on file, it is not a**

**valid oath in compliance with the Constitutions or the above statutes: It does not contain the oath mandated by NCGS 11-11 and both Article VI, Section 7, of the North Carolina Constitution, and Article VI, Cl. 3, of the Constitution of the United States.** Thus, the conclusion of this court must be that the sitting judge for the lower court in this matter was not properly seated, and all actions and rulings of that court are null and void *ab initio*. Further, there being no lawful judges who have taken the mandatory Article Six (VI), Section Seven (7), North Carolina Constitutional oath, as Mandated in N.C.G.S. § 11.11, I must conclude these "pretend" judges do not sit in any U.S. Constitutional Article III capacity and are to be held accountable, as I have been. They have no "immunity", since they have no standing as officers of the State, and they should have known better. For any clerk or other official of the judicial or law enforcement systems to ignore these facts places them in a position of "accessory" to a violation of law.

Further, NCGS 128-6 – "Persons admitted to office deemed to hold lawfully", states:

> "Any person who shall, by the proper authority, **be admitted and sworn into any office**, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom, or **his admission thereto be, in due course of law, declared void**. (Const., art. 4, s. 25)"

This court is to take judicial notice that federal law takes this type of offense very seriously, "ignorance of the law being no excuse":

> **"TITLE 18 - CRIMES AND CRIMINAL PROCEDURE, PART I - CRIMES, CHAPTER 43 - FALSE PERSONATION; HEAD**: Sec. 912. Officer or employee of the United States. STATUTE: Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or thing of value, shall be fined under this title or imprisoned not more than three years, or both."

It would be safe to assume that the general statutes of North Carolina have a similar code, since, as I mentioned *supra*, "nearly every aspect of the North Carolina General Statutes makes reference to the federal codes." Thus, judicial notice should also be taken of NCGS 128-5 – "Oath required before acting; penalty":

> "Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the State, shall take **ALL** said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars ($500.00) to the use of the poor of the county in or for which the office is to be used, AND OF BEING EJECTED FROM HIS OFFICE or place by proper proceedings for that purpose." (Emphasis added)

Further, inasmuch as corporate North Carolina has availed itself of the benefits of the United States, it and its officers are therefore obligated by its federal codes and regulations.

Therefore, the lower court did commit plain, reversible error and the verdict in this matter must be reversed. **[COURT TO TAKE JUDICIAL NOTICE!]**

## VII. Reply to the State's Brief: THE TRIAL COURT DID ERR BY DENYING MY DEMAND TO DISMISS THE CHARGES ON THE GROUND THAT THE STATUTES WERE VOID FOR VAGUENESS.

Here, again, my brief speaks for itself; however, the comments of the State in its brief merit some exposure herein. Not for the first time, the State's brief tends to bear witness to the truth of my arguments in my Brief. The State quotes the prosecutor from the transcript at P. 45 on P. 12 of its brief as follows:

> "...These statutes go on for at least 30 to 40 pages. And depending on how broad you want to give them [the jury] the statutes, including the definitions of the language used within the statutes, they kind of refer to each other. It's hard to understand one part without looking at other parts. And it's going to turn into a mess with the jury getting confused as to what the law actually is."

As I argued in my brief, the prosecutor has admitted that the laws in question, when taken literally from the law books, become too much for the jury to comprehend. This seems to me to be the very concept of "void for vagueness", when the jury and the parties cannot agree as to what the statute is trying to say. More to the point, it is the State's position that the jury should NOT be given the law, lest they be confused by it.

The State then quotes from *State v. Green*, 348 NC 588, 597 (T. p. 12),in part as follows:

> "...When the language of a statute provides an adequate warning as to the conduct it condemns and prescribes boundaries sufficiently distinct for judges **and juries** to interpret and administer it uniformly, constitutional requirements are met." (Emphasis added)

The State then goes on to explain what the prosecutor "really meant" when he stated that the statutes were going to confuse the jury, but the cat was already "out of the bag" at that point. It doesn't take much common sense to recognize a problem with confusing statutes when one reads the quotes above. I am 61 years old and have several advanced degrees with many years of experience in the private sector as well as 23 years in the military. I have aviation training and ratings up to and including "Airline Transport Pilot" and am a Certified Flight Instrument Instructor (CFII). I have better than average intelligence, and I can see that what the prosecutor said was exactly what he meant, that the statutes were so vague that they were "going to turn into a mess with the jury getting confused as to what the law actually is"; and, perish the thought, I might get acquitted. What he meant to say was, "The jury is not going to be able to read the laws the way I want them to." This is the very definition of "void for vagueness", and is the reason I demanded the lower court do its duty under the law and dismiss the charges.

Therefore, the lower court did commit plain, reversible error by not dismissing the charges due to the statutes being void for vagueness; and this court must reverse the verdict of the lower court.

## X. THE TRIAL COURT DID ERR BY DENYING MY MOTION TO CONTINUE TO OBTAIN ADVICE OF COUNSEL AND BY REFUSING TO ALLOW MY SON TO ACT AS MY "NEXT FRIEND" COUNSEL.

Although my Brief speaks for itself, I present the following in response to the State's rebuttal in this matter: The attorney for the State shows in his Brief on page 3 that I did seek the Court to allow my "Next Friend" to assist me, who happened to be my son and my Counsel of Choice. He also shows that my "Next Friend" was allowed to sit at my table (not exactly correct, as my son was told to sit in the row of seats behind me by the court), but was not allowed to speak to me, or into the record of the Court. He also shows that on an occasion my "Next Friend" did speak and was threatened to be removed from the court if he spoke again, rendering me without any assistance and by myself. Because of the voice microphone system, my "Next Friend" could not speak to me for fear of being overheard and removed as threatened. This "Gag Order" was a complete denial of my Counsel of choice by the court.

The Attorney for the State has totally cited this argument out of context and shown case law and Court rulings in an attempt to satisfy his arguments. I will accept that, upon information and belief according to statute, only licensed attorneys may represent others in Court. While this position, in my opinion, is unconstitutional, it is nonetheless true once a client has given her/his power of attorney to the licensed Attorney, who is nothing more than a state-created entity of privilege. However, I

understand the differences in the meanings of the word "Assist" and the word "Represent", as will be developed in detail herein. I will also ask this Court to consider several other cases herein, including but not limited to *United Mine workers vs. Illinois Bar Association,* 389 U.S. 217, *NAACP vs. Button,* 371 U.S. 415 and *Brotherhood of Trainmen vs. Virginia State Bar*, 377 U.S. 1 (1964); and Attorney Client Relationship in American Corpus Juris Secundum.

My only reasonable conclusion was that the lower court in this case was attempting to force me into a contract where I would be giving up my Right to be assisted by an impartial person. It appears to me that an attorney is an officer of the Court whose loyalties are suspect. I further believe that to hire an attorney is to render oneself a Ward of the Court with no Rights to defend himself. Also it would set up a conflict of interest as the Judge is an officer of the Court as well as the attorney, and the attorney can not afford to upset the judge if he intends to continue the practice of law in that district.

It is a well settled argument in the higher courts that I have the Right to decide whether or not I will be assisted by what is referred to in those courts as a "Next Friend". To deny me this Right would constitute an unreasonable and arbitrary interference with my defense.

While the State's argument that my understanding of *Argersinger v. Hamlin*, Sheriff, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530, turns out to be correct with regards to "unlicensed layman", and I apologize to this court for that error of interpretation, the following relevant quotes are offered from *Argersinger*:

> "With respect to rights of public trial, jury trial, confrontation and compulsory process and right to be informed of nature and cause of accusation, Sixth Amendment, by reason of Fourteenth Amendment, is applicable to the states. U.S.C.A. Const., Amends. 6, 14...

> "Absent knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony, unless he was represented by counsel at his trial. U.S.C.A. Const., Amends. 6, 14; 18 U.S.C.A. § 3006A(b); Fed. Rules Crim. Proc. rule 44(a), 18 U.S.C.A.; Const. Or. Art. 1, § 9...The right of an indigent defendant in a criminal trial to the assistance of counsel, which is guaranteed by the Sixth Amendment as made applicable to the States by the Fourteenth, *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799, is not governed by the classification of the offense or by whether or not a jury trial is required. No accused may be deprived of his liberty as the result of any criminal prosecution, ***whether felony or misdemeanor***, in which he was denied the assistance of counsel...In *Washington v. Texas*, supra, we said, 'We have held that due process requires that the accused have the assistance of counsel for his defense, that he be confronted with the witnesses against him, and that he have the right to a speedy and public trial.' 388 U.S., at 18, 87 S.Ct., at 1922...The assistance of counsel is often a requisite to the very existence of a fair trial...We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.'" (Emphasis added)

The implication from the above quotes, inasmuch as they presume the desire on the part of a defendant for "professional, licensed counsel", is that the benefit of having someone to "counsel" the defendant is far superior to his standing before the court alone.

It is my argument that I was denied both licensed and lay counsel by the lower court. In the State's brief, it is admitted that my request for a continuance so that I could consult with my attorney after several of my objections to the court were denied, not the least of which was that the court was not properly set (State's Brief, P. 13). It is further admitted that my demand that my son be recognized as my "counsel to sit here and provide me aid and counsel during the trial" was denied (State's Brief, P. 14,15). The State then quotes our Supreme Court from *State v. Walls*, 342 N.C. 1, which concludes "...a denial of a motion to continue is only grounds for a new trial when defendant shows both that the denial was erroneous, and that he suffered prejudice as a result of the error." (State's Brief, P. 14). The record and the presentation of facts of law in my brief and herein certainly show that the ruling of the court was erroneous and that the denial of counsel will always prejudice the proceedings against the defendant. Therefore, the lower

court has committed plain, reversible error; and the ruling of the lower court must be reversed.

Contrary to the arguments of the State, at no time did I imply that I needed to be "represented" during this trial. At all times I did maintain that I did not need such representation since I was appearing as myself, for myself. My demand to the court was merely for the assistance of one whose expertise and loyalty I trusted, my only begotten son and a layman, and that of a licensed attorney whom I mentioned by name.

We find in *Johnson v. Avery*, 393 U.S. 493, 498, that:

> "Their [court filings, etc.] preparation must never be considered the exclusive prerogative of the lawyer. Laymen--in and out of prison--should be allowed to act as "next friend" to any person in the preparation of any paper document or claim, so long as he does not hold himself out as practicing law or as being a member of the Bar."

Or, as held in *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar,* 377 US 1, 6:

> "Virginia undoubtedly has broad powers to regulate the practice of law within its borders but we have had occasion in the past to recognize that, in regulating the practice of law. A State cannot ignore the rights of individuals secured b the Constitution. For, as we said in *NAACP v. Button, supra,* 371 US at 429. 'A State cannot foreclose the exercise of constitutional rights by mere labels.'"

My demand for counsel of choice in this matter was solely based upon the one word, "Counsel", mentioned in NCRCP 30(b)(2); in Article I, Section 23, NC Const.; and the Defendant's right to have the "Counsel" of his choice by reference to the context of the Sixth Amendment to the Constitution of the United States (Constitution), which states, in part.

> "In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of Counsel..."

I ask the court to take judicial notice of the fact that we don't see the words "lawyer", "attorney" or "representation" in the above statement.

Many of the men who contributed to the writing or ratifying of our federal Constitution were attorneys, such as John Jay, first Chief Justice of the Supreme Court of the United States, and John Marshall, a later Chief Justice. Though these men shared different politics, the former being a statist and the latter a federalist, they shared a common profession and a common understanding of the legal English language. John Adams, James Wilson, John Blaire, and Oliver Ellsworth were among the many fine attorneys who assisted in approving the language used in that Constitution. Are we to believe that the word "Counsel" was selected by these "attorneys" with no thought whatever to its common law meaning of that time?

In discussing the Right of Counsel, the Supreme Court of the United States held:

> "An accused must be allowed to employ **counsel of his own choosing**, and he must be given a reasonable opportunity to do so...his right to be heard through his own counsel is **unqualified.**" *Chandler v. Fretag*, 348 US 3 (emphasis added)

In consulting Noah Webster's First Edition of An American Dictionary of the English Language, 1828, Republished in facsimile edition by "Foundation for American Christian Education, San Francisco, California, Second Edition. 1980, we find:

> **"UNQUALIFIED: adj. ...not modified, limited or restricted by conditions or exceptions..."**

It is undeniable that the explicit use of the word "Counsel" in the Sixth Amendment was intended to mean someone other than an attorney, as well as an attorney. This view is upheld by a U.S. District Court when they recognized an accountant as counsel and reprimanded an IRS employee in *US v. Tarlowski*, (69-2 USTC & DC EDNY, 305 F.Supp. 112, 1969):

> "Yet, while he was informing the prospective defendant of his Right to Counsel, he was simultaneously requesting that the Defendant's Counsel leave the interrogation. In effect,

> the investigator informed Tarlowski that he might have his attorney present, but not his accountant."

Then, ruling in favor of Defendant Tarlowski's motion to suppress, the court said:

> "For a government official to mouth in a ritualistic way part of the warning about the right to counsel, while excluding the person relied upon as counsel is, in effect, to reverse the meaning of the words used." *Tarlowski, supra.*

I also ask the court to take notice of the use of the word "Counsel" in the 17th century:

> "...and in all courts persons of all persuasions may freely appear in their own way, and according to their own manner, and there plead their own causes themselves; or, if unable, by **their friends."** Fundamental Constitution for the Province of East New Jersey (emphasis added)

To have a "friend' act as Counsel was a common law right and was recognized as such in the Bill of Rights when the word Counsel" was used instead of "Attorney". No limit or qualification was ever intended to be put upon the Right to "Assistance of Counsel" in the Sixth Amendment; and I submit the word "counsel" was used in recognition of the Common Law right to have one's "friends" speak for a litigant, if he so chose. Reference to the Common Law is mandatory in a proper interpretation of the Constitution, but most particularly in the Bill of Rights. The preponderance of cases from The Court upholds my position as to interpretation of the Constitution and the word "Counsel":

> "As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution and the people who adopted it must be understood to have employed the words in their natural sense, and to have intended what they have said." *Gibbons v. Ogden,* 22 US 1 (1824).

Little did the framers of our Constitution, who labored so long to fashion it, realize that the day might come when it would be ridiculed by law professors, snickered at by law clerks, and consigned to the wastebasket by attorneys, the Bar, the Judiciary, the Congress and the President of the United States. To narrowly interpret the word

"Counsel" to mean only "licensed attorney" is an infringement of a defendant's right to Counsel, which even The Court has held is "unqualified", *Chandler supra*. The words of the Sixth Amendment, used here by reference, including "Counsel", are simple, clear, and not ambiguous.

> "A state or federal court which arbitrarily refuses to hear a party by counsel, employed and appearing for him in any case, **civil or criminal**, denies the party a hearing, and therefore denies him due process of law in the constitutional sense." *Reynolds v. Cochran*. 365 US 525, 51 Ed. 2d 754. 81 S.Ct. 723 in Am. Jur. P. 979. (Emphasis added).

Each of us, acting as parties to a legal proceeding, has the right to be foolish as well as wise; and our liberty is ours to do with as we please. To deny me my freedom to choose my own counsel is to unduly interfere with my liberty and my choice of how to proceed with my defense, and constitutes a denial of the will of the People, from whom the court's authority is derived. A substitution in lieu thereof is being used, that of the will of the "attorneys'. If I decide to be assisted by either licensed or unlicensed Counsel, I have the right to do so. If I believe a combination of both may be to my advantage, as was the case in this matter, to deny me this right would constitute an unreasonable and arbitrary interference with the execution of my defense by denying me my constitutional right to freely associate with whom I choose; my right to my freedom of speech; my right to my freedom to petition for redress of grievances; and my religious right of conscience and freedom of choice, not to mention my right to justice.

I recognize the profession being protected is one of those "privileged" occupations established by statute and license rather than by any natural process. It, therefore, is a creature of the State, licensed by the State for the "public good". The State, therefore, provides it special consideration. However, choice of one's own Counsel is one

of those natural and "unalienable" rights not established by the State and not subject to its whim. It is, unfortunately for those "privileged" occupations, one of those rights which precedes the government and is undisturbed by any act of that government. It is up to "we the people" to continue to protect and defend that right, and others like it, which government seems so determined to undermine and condemn.

But surely we cannot have special laws for attorneys and special grants of privilege to them as a class which are denied all other citizens. Each of us has a freedom of choice and must take responsibility for his own actions. Should any litigant make either the choice of a licensed attorney or a "Next Friend" Counsel, he has the ultimate responsibility for that choice and is personally accountable for the good or evil which results therefrom. It cannot be left to the legal profession to make that choice for him. Any profession, no matter how well regulated, is self-preserving, the legal profession even more so. I have mentioned, *supra*, that it is worthy of note and well recognized by many that members of the legal profession share their allegiance among the Bar, the profession, the court, the law and their clients, in that order. I prefer to choose Counsel which, solely in my own opinion, puts my best interests first; and I am willing to accept the risks of that decision.

I believe it is vital to the conduct of my case to seek whatever assistance in which I have confidence; that, if I decide to be assisted by either licensed or non-licensed Counsel, I have the right to do so. The lower court's denial of this right is an arbitrary interference with my defense and denies me my constitutional right to freely associate with whom I choose, to my freedom of speech, my freedom to petition for redress of

grievances and my religious right of conscience and choice, without which religion is worth but little.

The licensed attorneys and "attorney-judges" say that, "The Constitution is what the Supreme Court says it is." What if the Congress passes a law saying that any bureaucrat gets 'First Night" privileges with any layman's bride, and the Supreme Court says, "Yes, that is perfectly in harmony with the Constitution."? This far-fetched example is no more or less incredible than what was being attempted by the attorney for the State and the court, when they conspiratorially, under color of law, denied me my right to counsel of my choice, thereby trampling on the rights of this Sovereign individual person, which rights these officers of the court are allegedly sworn to protect. And what happens to the member of the Bar, the licensed attorney, who now steps forward and announces that The Court is mistaken? Where does his license go? What judge is going to continue to permit him to appear in his court, or listen to his arguments if he does, when said "extremist, anti-government" attorney refuses to buckle down and stop rocking the establishment? Informed and aware laymen would not stand for such nonsense. The licensed attorney?---Who knows?

The court would force me to accept a licensed attorney who is a member of the Bar and who has accepted a license to practice law from the State of North Carolina, or to proceed without assistance. I desire neither such conflicted representation. It is obvious that I was not afforded my right to a fair hearing or trial when I was disallowed my "Next Friend" Counsel and compelled to either accept a licensed attorney member of the Bar Association, or move forward alone. Neither of these solutions is acceptable to me, nor

should I be so limited. To choose a licensed attorney as my primary defense, in my opinion, would create such a tremendous conflict of interest in my defense against the State's charges that it would automatically restrict the want of a licensed attorney to even argue the good faith effort, and tries the constitutional arguments of Article I, Section 10, of the United States Constitution.

It is my observation that, in many cases, The Court refers back to its own earlier opinions and maintains strict consistency with those opinions. Hence, The Court has ruled that a State cannot abrogate a constitutionally protected right. Thus, I must not be disallowed the right to assistance of Counsel of my choice, so as to regulate the legal profession. This opinion was soundly stated and echoed in *NAACP v Button, supra. .Johnson Avery, supra,* and *Commissioner of Correction, et al*, 393 US 483, 490:

> "In reversing the District Court, the Court of Appeals relied on the power of the State to restrict the practice of law to licensed attorneys as a source of authority for the prison regulation. The power of the States to control the practice of law cannot be exercised so as to abrogate federally protected rights."

Or, as we see further in *Johnson v. Avery, supra:*

> "That traditional, closed-shop attitude is utterly out of place in the modern world where claims pile high and much of the work of tracing and pursuing them requires the patience and wisdom of a layman rather than the legal skills of a member of the bar. And, in *Chandler v. Fretag*, 348 US 3 (1954). 'An accused must be allowed to employ counsel of his own choosing, and he must be given a reasonable opportunity to do so... his right to be heard through his own counsel is unqualified.' This 'right to counsel' is very precious and must not be arbitrarily denied without a hearing. As stated in *US v. Mitchell*, 246 F.Supp., 874, 877 (1965), "The constitutional right of assistance of counsel is too precious for such degenerate subversion."

I am perturbed at the intentional erosion of my Right to Counsel of my choice by the legal profession, the State and the lower court. The restriction by the courts to representation by only professional attorneys is the result of attorneys sitting in our legislatures and voting upon laws which involve, for them at least, a conflict of interest

upheld by their brother attorneys sitting on the benches of the courts, ruling in violation of the Sovereign will of the People, which it is allegedly their sworn duty to obey. The very fact this conflict was allowed to occur by the courts and the legislatures is itself a violation of the Separation of Powers required by both the State and Federal Constitutions. To wit, a member of the Bar is, by definition, an officer of the court and a member of the Judicial Branch of government. How then can this member of the judiciary be allowed to occupy a seat in the Legislative Branch and make law which will later be judged by that same Judicial Branch. It is elementary that such conflicts exist and are blatantly unconstitutional, but tolerated by a judiciary allegedly sworn to uphold the Constitution. This conflict of interest has completely undermined the Sovereignty of the People and constitutes collusion of the Branches, not Separation. However, this argument will forever be vigorously defended against by the legal profession and its members of the Bar as "frivolous", and never be heard, using their argument that lay litigants cannot possibly be able to defend themselves against a "professional" system. In other words, one has to be a shark to swim with sharks.

To be denied a lay man to assist with advice and to act as a spokesman at a defendant's request, is to subject that defendant to unequal treatment under the law and deny him a "meaningful hearing". As is reported in an article from "Newsweek", September 2, 1974, edition, I, as an "un-convicted" citizen, have less rights than, and inferior treatment to, prisoners in State and Federal prisons who are permitted and guaranteed to have access to "Jailhouse Lawyers", lay prisoners who "practice law" on behalf of their fellow prisoners and with the approval of many courts, including The

Supreme Court of the United States (The Court). One may quite easily interpret from the gist of this article that this practice at the time was limited only to black men, and might be able to conclude that only black men, or others of a "protected class", have Constitutional rights. However, this right to equal treatment is guaranteed to all "citizen" "Free" persons in the due process clause of the Fifth Amendment, to wit:

> "The due process clause of the Fifth Amendment guarantees to each citizen the equal protection of the laws and prohibits a denial thereof by any Federal official." *Bolling v. Sharpe*, 327 US 497.

I, an "un-convicted" citizen, was denied the right to contract guaranteed by Article I, Section 10, of the Constitution when I was forbidden the assistance of one who was willing to speak for me on my request. Although touted as a way to protect the client from the intricacies of the law with its rules and procedures, the sophistry of the denial of my right to contract, it is respectfully submitted, is because attorneys are members of the Bar Association in this State, for which they have promoted a monopoly in the practice of law through their controlled legislature. They have purported to make "law" to protect the "public", when they have actually instigated a self-serving franchise which, in great part, is at the expense of that public and is, in my opinion, to the detriment of Constitutional government.

We were told by our United States Supreme Court in *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar, supra,* that,

> "A State could not, by invoking the power to regulate the professional conduct, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest. Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries, Cf *Gideon v. Wainwright,* 372 US 335: and for them [individuals] to associate together to help one another to preserve and enforce rights granted them under

> federal laws cannot be condemned as a threat to legal ethics. The State can no more keep these workers from using their cooperative plan to advise one another than it could use more direct means to bar them from resorting to the courts to vindicate their legal rights. The right to petition the courts cannot be so handicapped."

I am denied a "fair trial and an "impartial jury" when a so-called "law", or "legal practice", prohibits me from contracting with one of my choice for my legal arguments against a hostile government, in the form of the State and the courts, bent upon punishing me merely for the exercise of the very constitutional rights and liberties the government and this court should be upholding rather than attacking and denying. All those aforementioned rights are infringed, abridged, and denied when the word "Counsel" is qualified to mean only attorneys who may speak for a defendant in a court of, or at, law. In fact, when one accepts representation by a licensed attorney, he not only admits to being "incompetent, retarded, or insane", but also accepts no longer being "visible" to the court and having no right to speak to the court, other than during testimony as a witness for the defense.

Wherefore, in conclusion, it is my contention that the lower court did err by denying my request for a continuance to seek the opinion of my professional counsel and by ordering the exclusion of my "Next Friend" Counsel from assisting me in this instant matter, thereby acting to defend the Bar and the licensed privilege of attorneys at the cost of denying this natural, individual, Sovereign Citizen his constitutional rights. Any denial of Counsel is an attempt to accomplish that which is specifically prohibited by the Constitution. The rights set down therein say nothing about only "court-approved counsel" and are in no way qualified.

The Court held in *Miller v. Milwaukee*, 272 US 713, 715, that if a statute is part of an unlawful scheme to reach a prohibited result, "...the statute must fail...". This was again upheld in *McCallen v. Massachusetts*, 279 US 628, 630. Legislators, neither federal nor State, may restrict the courts to "attorneys only" in order to effectively deny counsel to any litigant who evinces a desire to be represented or assisted by a "next friend" in preference to an "attorney". What cannot lawfully be done by the front door cannot otherwise be done by the back.

Legislators who pass laws do not have to be attorneys, nor do those who execute the law: Sheriffs, governors, presidents, etc. Even the justices of The Court need not be licensed attorneys. To exclude the People from defending their "friends" in the courts turns the said courts into a playground for the legal establishment, and is a blatant violation of the People's right to Counsel of their choice, due process of law, and equal protection under the law. Justice Brandeis said in *Nat'l Life Ins. Co. v. US*, 277 US 508, 630:

> "Discrimination is the act of treating differently two persons or things under like circumstances."

As far back as 1886, The Court was concerned with the unjust and illegal discriminations which were running rampant. The Court frowned upon law administered with an "unequal hand" in *Yick Wo v. Hopkins, Sheriff*, 118 US 356:

> "...so as practically to make unjust and illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

Therefore, the courts cannot be the exclusive territory of the "elite legal corps", but must be open to all the Sovereign People alike, on an equal basis. The Ninth and

Tenth Amendments both prohibit the denial of Counsel of choice. Nowhere have I or my predecessors delegated such restrictive power to qualify that right to the United States or to the State of North Carolina. If the court will closely examine these Amendments, it will find that the right to Counsel of choice, such as I herein claim, is also secured in the penumbra of these Amendments, particularly the Ninth, which protection, *arguendo,* attached to the States (against "practice of law" statutes) by the Fourteenth Amendment; *Roe v. Wade*, 41 LW 4213 (1973); *Shapiro v. US*, 641, 394 US 618 (1966); *Griswold v. Connecticut*, 381 US 479 (1964).

In speaking of controlling constitutional law as opposed to mere statute law, Chief Justice Marshall said:

> "Those, then, who controvert this principle, that the Constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the Constitution and see only the law...This doctrine would subvert the very foundation of all written constitutions." *Marbury v. Madison,* 5 US 137, 174 (1803).

The Court also pointed out in this decision that, in declaring what should be the supreme law of the land, the Constitution itself was mentioned first, and "...not the laws of the united States generally...".

The attorneys who sit in our State legislatures and our Congress have no right to pass law which infringes or abolishes our rights under the Constitution, including those not enumerated. Such unconstitutional laws which purport to do so must be declared null and void (*Miranda v. Arizona*, 384 US 436, page 491), and not binding upon the courts, as if they had never been written.

The comments of Mr. Justice Douglas, dissenting in *Hackins v. Arizona*, 389 US 143 (1967), are also worthy of judicial notice:

> "Whether a State, under guise of protecting its citizens from legal quacks and charlatans, can make criminals of those who, in good faith and for no personal profit, assist the indigent to assert their constitutional rights, is a substantial question this Court should answer...Rights protected by the First Amendment include advocacy and petition for redress of grievances (*NAACP v. Button*, 371 U.S. 415, 429; *Edwards v. South Carolina*. 372 U.S. 229. 235), and the Fourteenth Amendment ensures equal justice for the poor in both criminal and civil actions [see *Williams v. Shaffer*, 13 U.S. 143. 1451 385 U.S. 1037 (dissenting opinion)]. But to millions of Americans who are indigent and ignorant - and often members of minority groups - these rights are meaningless. They are helpless to assert their rights under the law without assistance. They suffer discrimination in housing and employment, are victimized by shady consumer sales practices, evicted from their homes at the whim of the landlord, denied welfare payments, and endure domestic strife without hope of the legal remedies of divorce, maintenance, or child custody decrees...As this Court's decisions in *NAACP v. Button, supra*, and *Railroad Trainmen v. Virginia Bar*, 377 U.S. 1, indicate, state provisions regulating the legal profession will not be permitted to act as obstacles to the rights of persons to petition the courts and other legal agencies for redress. Yet, statutes with the broad sweep of the Arizona provision now before this Court would appear to have the potential to 'freeze out' the imaginative new attempts to assist indigents realize equal justice, merely because lay persons participate. 11 Cf. *NAACP v. Button*. 371 U.S., at 436. As we said in Button, the threat of sanctions may deter as forcefully as the imposition of the sanctions. Id., at 433. In such circumstances, 'the State may prevail only upon showing a subordinating interest which is compelling.' *Bates v. Little Rock*, 361 U.S. 516, 524. Certainly the States have a strong interest in preventing legally untrained shysters who pose as attorneys from milking the public [389 U.S. 143. 152] for pecuniary gain. Cf. *NAACP v. Button*, at 441. But it is arguable whether this policy should support a prohibition against charitable efforts of non-lawyers to help the poor, Cf. *Opinion of the Justices to the Senate,* 289 Mass, 607. 615. 194 N. E. 313. 317-318. It may well be that until the goal of free legal assistance to the indigent in all areas of the law is achieved, **the poor are not harmed by well-meaning charitable assistance of laymen**. On the contrary, for the majority of indigents, who are not so fortunate to be served by neighborhood legal offices, lay assistance may be the only hope for achieving equal justice at this time...Since the very nature of the inequity suffered by the poor precludes them from asserting their rights to legal assistance in court, why should the layman who steps up to speak for them not be held to be asserting their constitutional rights? *Johnson v. Avery, supra*, at 786, Cf. *Barrows V. Jackson*, 346 U. S. 249, 257. (Emphasis added)

And, again, in *Chandler v. Fretag*, 348 US 3 (1954),

> "A state or federal court which arbitrarily refuses to hear a party by counsel, employed and appearing for him in any case, civil or criminal, denies the party a hearing, and

> therefore denies him due process of law in the constitutional sense." *Reynolds v. Cochran*, 365 US 525, 51 Ed. 2d 754, 81 S.Ct. 723, in Am. Jur. 'An accused must be allowed to employ counsel of his own choosing, and he must be given a reasonable opportunity to do so...his right to be heard through his own counsel is **unqualified.** This 'right to counsel' is very precious and must not be arbitrarily denied without a hearing. (Emphasis added)

And, finally, once more referring to the *United Mine Workers v. Illinois Bar Association, supra, NAACP v. Button, supra,* and in *Brotherhood of Railroad Trainmen v. Virginia State Bar, supra,* it was held that,

> "[A] State may not pass statutes prohibiting the unauthorized practice of law or to interfere with the right of freedom of speech secured in the First Amendment. Thus, this Defendant is entitled to the equal protection of laws and that includes his right to speak through whomever he pleases, when he pleases. As stated in *US v. Mitchell*, 246Supp. 874, 877 (1965), '**The constitutional right of assistance of counsel is too precious for such degenerate subversion**." P. 979. (Emphasis added)

Therefore, because the lower court did commit plain, reversible error by denying me both the assistance of licensed counsel and that of my "next friend", the ruling of the lower court must be reversed.

## CONCLUSION

After having been properly sworn, the Justices of this Court of Appeals must reverse the trial court's conviction in this matter for the plain, reversible errors hereinabove stated.

Respectfully submitted, this the Twenty-Eighth Day of September, 2009.

[WITHOUT PREJUDICE, UCC 1-308]

Donald Sullivan, Defendant, *Sui Juris*
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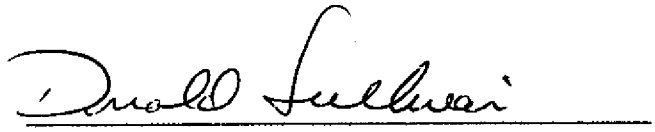
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he served a copy of the foregoing brief on counsel for the appellee by depositing a copy, contained in a first-class-postage-paid wrapper, into a depository under the exclusive care and custody of the United States Postal Service, addressed as follows, this Seventeenth day of July, 2009: ATTN: Mr. Robert C. Montgomery, Special Deputy AG for NC, PO Box 629, Raleigh, NC, 27609-0629.



Donald Sullivan, Appellant, *Sui Juris*

[WITHOUT PREJUDICE, UCC 1-308]

STATE OF NORTH CAROLINA

OATH OF OFFICE
OF
JAY DONALD HOCKENBURY
SUPERIOR COURT JUDGE, 5th JUDICIAL DISTRICT

I, Jay Donald Hockenbury, do solemnly swear that I will support the Constitution of the United States, so help me God.

I, Jay Donald Hockenbury, do solemnly and sincerely swear that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability, so help me God.

I, Jay Donald Hockenbury, do solemnly swear that I will administer justice without favoritism to anyone or the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my office, except the salary and allowances by law provided; and that I will faithfully and impartially discharge all the duties of Superior Court Judge of the General Court of North Carolina, to the best of my ability and understanding, and consistent with the Constitution and laws of the State; so help me God.

Jay Donald Hockenbury



95-1-186X

EXHIBIT (1) A.

95 m 5

Sworn to and subscribed before me, this the 1st day of January, 1995.

Vivian S. Wright
Notary Public

My commission expires: Aug. 4, 1999