**Taken From Jack Smith Monday Night Class - July 2, 2007.**

[ with extra notation for Australians from ***K****eeper's* ***W****atch* ***M****inistry* of Adelaide ]

# [In]effective Assistance Of Counsel Remedy

Any time a judge finds a defendant 'guilty' in a court case, this is based upon the fact that the parties were **in full agreement** as to the 'facts' - that is no evidence was introduced or brought forward by any party to **rebut the assumptions and presumptions in any of the charging instruments.** What you have in such a case is a contractual offer and acceptance and therefore an 'agreement of the parties' because no party offered any counterclaim or rebuttal to any or all of the assumptions and presumptions in any of the charging instruments

[ ***KWM Note***: - which may or may not include an assumption and presumption that one is 'mentally incompetent', which is often the last thing a court, particularly the Family Courts, have left to deny you a remedy when you have successfully deflected all other allegation through your private administrative process - this is an issue that requires special attention - be sure to privately submit several affidavits from many of your friends who have known you for a considerable amount of time as soon as possible, and request that your fiduciary enter them into the evidence file - send a courtesy copy of same to the judge and the other parties in interest also ].

The Judge makes his finding of 'guilty' based upon the 'agreement of the parties' as to what the 'facts' are in any given matter, and since the defendant accepted/agreed with the facts in the charging instrument by simply having failed to rebut them in the proper manner

[ ***KWM Note*** - private administrative process instead of arguing in court ] , you end up with a **'contractual stipulation'** and the judge is then going to issue a finding/judgment of guilty based upon that 'agreement of the parties'. That judgment would then be based not upon the issues of law or what the 'true' facts in the matter are, or would have been had one brought forward evidence that no one brought forward previously, particularly evidence which could have rebutted the assumptions and presumptions in any and all of the charging instruments in a matter

[ ***KWM Note*** - e.g. your Certificate Of Protest, evidence of a private agreement/stipulation ] The Judge cannot make any 'guesses' as to what the facts are, but only proceed on whatever evidence has been placed before him - so you end up with a contractual offer and acceptance if no counterclaim or rebuttal is brought forward.

[ ***KWM Note*** - this is true even when the judge knows that you have evidence to submit in your possession after carrying out your private administrative process - he and your fiduciary will never inform/warn you to submit your evidence into the proceedings, if anything, the other parties will often attempt to circumvent your remedy through deceitful tactics such as attempting to use the Mental Incompetency issue against you, if it remains unrebuted to sneak in a Final Order before you get the chance to rebut the presumption of 'mental incompetency' ] So often a

judgment has nothing to do with reality but is based on the logic of the actions of the parties in interest in any matter.

Often when a defendant states that they “do not understand the charges”, this may result in the judge ordering a psychiatric assessment which is a colourable way of the judge saying “hello, you need to get a clue about what is going on here!”

[***KWM Note***: - Bear in mind however, that the ordering of psychiatric assessments has now become an integral and normal collateral test and weapon on and against defendants in the current admiralty system, most likely to be used against fathers falsely accused of child abuse at the commencement of proceedings in the Family Court of Australia more so than in any other case, which if not handled properly either by way of responding correctly to such an order for psychiatric assessment in the first instance [eg by conditional acceptance upon proof of claim that any test the psychologist or psychiatrist undertakes is more reliable and accurate than twenty affidavits from twenty of your friends who have known you for several years ] and/or by way of rebutting any ‘lingering presumptions’ of mental incompetency that are created as the outcome of any psychiatric assessments. The mental competency issue and the rebutting of any presumptions as to mental competency is often overlooked by defendants in any matter and this one issue alone can destroy your private administrative remedy even if you have carried out your private administrative remedy correctly and perfectly in every other way and in regards to all other allegations and assumptions and presumptions in the charging instruments.

When an incorrect/unjust judgment has been issued, you have to do a direct attack on the judgment itself. You cannot just fully accept for value and return for value a judgment, you have to go back to the **substantive** side of a case, and show that you are not guilty on the **substantive** side of a case.

[ ***KWM Note*** - this is where a lot of experts in the commercial redemption movement fail in their understanding, and incorrectly apply the principle of ‘all crimes are commercial’, it is more correct to say that ‘all crimes are given a commercial value’ but there is also a private [substance] side to every case and one still needs to rebut the presumptions that they committed any crime rather than just fully accept and return for value any and all charging instruments - when it comes to a false allegation of any kind, one still needs to show that they did not commit that particular crime otherwise it appears as if they are merely attempting to get away with doing the crime by simply ‘paying it off’, which of course is neither honorable nor scriptural ] The mere attempt to resolve the issue in ‘form’ is not going to be sufficient to get you out of trouble. You have to go back and deal with the **substance** too: Were you really truly the bad guy/girl or were you innocent?

So when it comes to having a judgment overturned, (when you were in fact innocent), the problem was that you did not understand something that was going on, but rather the case was that you relied upon the lawyer for **EFFECTIVE** ASSISTANCE OF COUNSEL, and being denied **EFFECTIVE** ASSISTANCE OF COUNSEL could be a **substantive** reason, to vacate or set aside a judgment and have a retrial (or commence new hearings), because the **substantive** issue is whether or not true/natural justice has been done here in terms of meaning ‘due process

and protection under the law'. upon **<u>INEFFECTIVE</u>** ASSISTANCE OF COUNSEL. A party cannot merely file any kind of public document into the public side of the court such as a "Motion To Dismiss" the judgment because the Judge would literally ignore it anyway being a public Strawman filing and an argument on top of that. One must obtain an agreement/stipulation with the lawyer who denied **effective** assistance of counsel that he did in fact deny **effective** assistance of counsel through his silence and/or non-response. A mere public filing such as a "Motion" would also constitute the act of "charging your brother" as one did not give the lawyer an **opportunity to cure** which is an essential and necessary element of commercial law principles. A private administrative process including a Notarial Protest is the correct procedure required to establish the stipulation/agreement that one has been denied due process rights in this case, the **effective** assistance of counsel. **Substantive** rights are guaranteed only on the private side of any matter. Registered mailing applies to **substantive** rights.

A party first of all has to get the agreement/stipulation of the parties [especially the lawyer involved], that they were substantively denied **effective** assistance of counsel. One must go through private Letter Rogatory to the lawyer who is the "nexus" to the proceedings. Exculpatory evidence is that which would rebut the presumption of the plaintiff and support those of the defendants. There have been many cases whereby exculpatory evidence has been handed back to the defendants - this is quite normal. One should not get "mad" and "upset" about this. What does the law require the Watchman [ in this case your fiduciary/legal counsel ] to do? Give notice of danger to anyone whom which the Watchman has knowledge of such danger [such as when presumptions need to be rebutted as to any issue/allegation]. In Scripture it says, if the Watchman does not warn the party that is in danger, who is at fault?

If the Watchman warns the party who is in danger and if the party who is in danger does not heed the warning then it would be the fault of the party that did not heed it. The defendants need to catch the court's mistake - which can be done **even after a judgment has been delivered.**

[ In a particular matter, the lawyers returned the exculpatory evidence back to the defendants after they had already been convicted and a judgment was issued ]

First of all, this party draws the attention to the lawyer as to the exculpatory evidence that come back and then in the letter it goes on:

" Despite my numerous requests for you to do so and my ongoing statements to you that there were documents that would exonerate the defendant/respondent on the unfounded and unproven allegations and charges and subsequent convictions based on, by your own words, *"hunches, suspicions and half-truths"* that were not rebutted and so stand presumptively as agreement of the facts in this case between the parties" .

[ ***Jack Smith Commentary*:** The lawyers from the beginning said, "there's no evidence here, just some *hunches*, *suspicions* and *half-truths*" on the part of the government - so the question is did the lawyers know what they were up against in this case? Absolutely! All there were *hunches*, *suspicions* and *half-truths*.]

The Letter then goes on:

“It has been confusing to me and puzzling as to how a person can be found guilty of a crime **without any substantial evidence being brought by the prosecution/plaintiff**. Furthermore, I recall at the nomination hearings to the United States Supreme Court Of Mr. Bork a number of years back, Mr. Bork stated on record that 99 per cent of everyone in jail on a criminal conviction are there at their own agreement or words to that effect. After some objective inquiry and unsolicited commentary I find it necessary to write this letter, which I will call a private Letter Rogatory to solicit your help in resolving this matter”.

[ ***Jack Smith Commentary*****:** Who is going to resolve the matter? The lawyer! Why is the lawyer going to resolve this matter? Because the lawyer created the problem! By **INEFFECTIVE** ASSISTANCE OF COUNSEL! How does that make you feel? Well, we can really get angry at that lawyer, or, how does that make me feel? I have to go back to the woman/man that is going to correct this problem for me! And that woman/man is the lawyer! **So it makes me feel real good that I can give him/her the opportunity to correct the problem.** ]

The Letter goes on:

“After some objective inquiry, I find it necessary to write this letter, which I will call a private Letter Rogatory, please respond to me in writing **within ten (10) days** of receipt hereof, if you have any evidence or counterclaim as to anything that might be incorrect in the following presentation and documentation. Your failure to respond with a supported counterclaim will constitute your agreement/stipulation and consent with the undersigned in this matter”.

**The Undersigned’s Claim**

**Major Premise:** There was no substantive evidence presented by the prosecution/plaintiff against the defendants in Case Number 12345 in United States Supreme Court to prove that the defendants committed a crime - all the facts presented by the prosecution were assumptive and presumptive of the facts that were associated with an “alleged crime”.

**Minor Premise:** The defence failed to rebut the assumptive and presumptive facts, so the assumed and presumed facts stand as truth. Therefore the defendants have voluntarily consented and agreed with the prosecution’s assumed and presumed facts as offered by ‘tacit admission’. The facts are not in dispute by ‘agreement of the parties’ **whether they are true or not.**

**Conclusion:** The tacit admission of the facts by the defendant can only result in a finding of guilty by the court by the ‘agreement of the parties’ **and not as a judgement in law based upon substantial evidence**.

This is the first claim of the writer.

[ ***Jack Smith Commentary***: Do you agree with me or not Mr Lawyer, if you do not agree with it, then come on back and put in your counterclaim as to why this is not true. Now underneath that claim goes **the following questions** from the writer -

**A.** "Have I not now discovered that this nation is no longer under a system of law in the public that was in existence when the nation was founded, in which the defendant is presumed to be innocent until proven guilty? Is it not true that a defendant in court on a criminal charge in 'THIS STATE' is now assumed and presumed to be guilty by the charging facts in the case unless and until the defendant proves himself innocent by rebutting these facts?

Your response is agreement/stipulation herewith unless you respond with supported evidence to the contrary.

[ ***Jack Smith Commentary*:** So what are we doing? We are stating a claim, and bringing some facts [ eg. such as the evidence of the stipulation/agreement and any other evidence ] in support. You need to break the judge's presumption that the defendant's understood the necessary procedure required in order for them to obtain a remedy.

[ ***KWM Note***: - In America, counsel is appointed for an accused defendant in a criminal matter anyway - this is probably because in the American Constitution it **clearly** and **blatantly obviously** states that every party involved in a criminal case has the right to "effective assistance of counsel" and because it is written in such a blatantly open manner, the courts grant the assistance of a legal counsel so as to not let 'the cat of the bag'. Although It is not expressly written as such in the Australian Constitution, Australians have a right to a "fair trial" which encompasses both assistance of counsel - **(*see Dietrich v The Queen 1992*)** and "**effective** assistance of counsel" especially under the current system of Admiralty law which requires an accused party to be buffered by legal counsel - this is because "ineffective assistance of counsel" or even no counsel at all would result in an **unfair trial**, and as in the case of ***Dietrich v The Queen 1992*** **[High Court Of Australia]**, Dietrich's conviction was overturned on appeal on the basis that he had no counsel at all through no fault of his own - (N.B. in Australia you have a dance a round or two with the Legal Services Commission in your State to get a lawyer, and if the Legal Services Commission can place your into a dishonour, they then do not have to give you a lawyer, because then it was your own fault) - in the matter of Dietrich v The Queen 1992 - High Court Of Australia, Olaf Dietrich brought forward the fact the he had repeatedly pleaded with the court that he could not go ahead without counsel as he did not understand the proceedings, and did not have enough knowledge, but the court went ahead with the trial and convicted him. More than likely the reason why the Australian Courts do not give Australians a lawyer as they do in America, which should be the case when a father is falsely accused in the Family Court, is because the right to "**effective** assistance of counsel" is not written in such blatant wording and therefore, it would not be so risky in Australia to not tell an accused defendant that they not only need legal counsel to buffer them in the current system of Admiralty, but they also have a right to the **effective** assistance of counsel otherwise the trial/hearings would not be a fair trial or hearing and that would constitute a denial of substantive/natural rights - only problem is, the accused is required to be sharp enough to pick up on these points and unfortunately, Australia is not the best place for "details" ].

[ ***KWM Note (continued) -*** Substantive rights are protected on the private side of any legal matter in today's Admiralty jurisdiction courts. So rather than go into the court 'publicly', by appearing generally or by filing any public motions or documents, one needs to **submit** their record/evidence being **confidential commercial information** [ comprising stipulation/agreement of the parties that you were denied **effective** assistance of counsel ] into the private side of the court [ registered mail directly to your fiduciary and the judge in private chambers - courtesy copies to other parties ] requesting/petitioning for review of the evidence showing that you were denied **effective** assistance of counsel and that a procedural error has occurred. In the First instance, one must get the significant parties to any legal matter to agree/stipulate with them that they were denied **effective** assistance of counsel. This would ensure that the issue has already been resolved in private and there is no need to go into the public to try and make such a point which would not work in your favour anyway.

[ ***Jack Smith Commentary:*** This Letter Rogatory is written to the lawyer/counsel to get his tacit agreement that you were denied **effective** assistance of counsel because he failed to disclose/point out to you necessary procedural actions that were required to be taken in order to give you your remedy. This is going to be a mirror image of what the court did to you to find your guilty in order to get the lawyer in **agreement** with you that you were denied **effective** assistance of counsel remembering here that a 'fact' is only that which has already been '**agreed/stipulated** ' to .]

The letter goes on:

**B.** Is it not true that since 1933 there is no lawful money of substance circulating in the public by sanction of public law, and so there can be no judicial proceedings in law, since in law requires the ability to provide a remedy at execution in lawful money of substance which does not exist in public policy?

Your response is agreement/stipulation herewith unless you respond with supported evidence to the contrary.

**C.** Is it not true that civil and criminal proceedings in the courts of 'THIS STATE' are de-facto and based upon private commercial contract law proceedings between the plaintiff/prosecution and the defendants/respondents?

Your response is agreement/stipulation herewith unless you respond with supported evidence to the contrary.

[ ***Jack Smith Commentary*** - In the United States, Title 18 suggests that all criminal cases are commercial and so we are just repeating that in Point C ]

**D.** Is it not true then that the Criminal/Family/Supreme/District/Magistrate Court in 'THIS STATE' in this case did not try this case by bringing substantive evidence, but rather, was relying

upon an agreement of the parties by the hopeful failure of the defendants/respondent to rebut the assumptions and presumptions of the charging facts?

Your response is agreement/stipulation herewith unless you respond with supported evidence to the contrary.

**E.** Is it not true that you, as legal counsel appointed for the undersigned made a statement to the undersigned that the prosecution did not have any evidence, and you as the defense legal counsel would mount an evidence in chief to defeat the charges?

Your response is agreement/stipulation herewith unless you respond with supported evidence to the contrary.

[ ***Jack Smith Commentary* -** As you can see from the above questions, we have to attack the judgment based upon the action of setting it aside/vacating it, due to the fact that the procedural due process was not followed i.e. it was a 'bad game' and **the game is going to have be played over again with procedural and substantive due process being observed the second time around** to re-determine who wins. So it is not directly about innocence or guilt. How is it that we are going to get the game set aside/vacated? What is the only thing that will now set aside/vacate the game? It was an **unfair** game [KWM Note - i.e. **unfair trial** in Australia]. So the purpose of this Letter Rogatory is to get a new hearing by proving that the lawyer was incompetent through his/her tacit agreement ] .

[ ***Jack Smith Commentary*** - If the defendants merely go into the public side of the court and say "that lawyer was incompetent, what is the court going to do? The Judge will merely say, "Excuse me, they passed the Bar Exams, they have years of experience and they go to regular classes each year!" "I was personally in this court and I never see them make any kind of misjudgement when I was sitting as the Judge on this case, therefore I am ruling against you!" That is exactly what is going to happen! And that is why the correct manner in which to secure a rehearing is through this Letter Rogatory.

The purpose of this Letter Rogatory is to get the lawyer to confess that he/she was incompetent through their inability to provide proof of claims to the contrary, because if they 'admit' they are incompetent, and the defendants claim they were incompetent, have we not now got an agreement of the parties? Then obviously the court could not say the parties were wrong because you would now have an agreement/stipulation between the parties that the lawyer was incompetent. You are not going to prevail by attempting to get the lawyer to **expressly** admit that he/she was incompetent!

If we set this procedure up to say that:

**"Everybody understands that to win in court one is required to rebut the presumptions in a charging instrument!"**

Would the lawyer then say no that is a lie? If the lawyer then says that is a lie he has then just admitted that he is incompetent because he does not know how the system works!

You are saying to the lawyer that 'everybody knows that unless the defendant rebuts the assumptions and presumptions in a charging instrument, he is going to be found guilty! So if the attorney then states that this is a false statement, he himself would be proving that he is **incompetent** because he is then showing that he does not even know the rules as to how the court is operating! If the lawyer were to respond with "No!, you don't have to do that!", then everyone else would be thinking where the hell did that lawyer get his/her licence? We don't care whether or not the lawyer is incompetent or not, all we care about is protecting the rights of the defendant in this scenario! Now as far as the court is concerned, since all of this is private, is any of this likely to surface in the public to embarrass that lawyer? Mostly certainly not! Not unless somebody does a hell of a lot of private research! So this procedure takes place in the private, it is not secret, just in the private! Because our purpose is NOT to destroy the attorney [ ***KWM Note:*** Remembering and taking into account here that in Scriptural and Commercial Law, one must always provide a party with **an opportunity to cure** ] Because maybe the lawyer was not out to destroy, but was rather, just a part of the wacky world of Alice In Wonderland!

Well then how did that make you feel when the lawyer did not assist you to rebut the presumptions? Surprised? Well I am glad then that you did not become antagonistic or warfare like, I'm glad that you came back to the lawyer and caused the problem to attempt to get him to resolve it! Now let's have a look at where this is going - let's assume that you set up all of these questions and the question are all set up in such a manner that if the lawyer AGREES with what you said, he/she will not answer you. Because you're telling way too much reality and truth in this private Letter Rogatory document are you not? At least as far as the public is concerned? And he is licensed to operate in the public is he not? So if a newspaper editor came up to him and said that he just saw a letter from a defendant alleging that the lawyer was incompetent and the lawyer responded with, "that is a bunch of lies, and I did not even bother responding to it!" What did the lawyer just do then? He admitted that the defendant's claims in the letter were all true **because he did not rebut them**. Which means that his real answer was, "my client was absolutely on point!", "And that is why he is going to get a remedy!" "BUT I cannot say that!" The other reason why this is colourable is because you are not asking the lawyer to respond to you if they **agree** with you! That way nobody can 'charge' the lawyer with screwing up because he/she failed to respond! That lawyer will just say "I did not agree with any of that, I did my best!", "The guy was just guilty as sin!" And the sleeping public as usual, will believe that because as usual, they will not look into it!

So this is the perfect result because if the lawyer who represented you fails to respond, and you do the correct private administrative procedure and you have an 'agreement of the parties' that you can privately take back to the court and get a remedy - NOT judicially but by way of private administrative Data Integrity Board hearing [Ministerially], and if you can get that judge to agree/stipulate that your procedure in getting this agreement into the evidence record of the court, is correct, then the end result will correctly have the judge acting 'ministerially' and not 'judicially' by 'reviewing it for error in procedure', and he will say, "well, I concur with this and we are going to issue a vacation of the judgement and we are going to set the case for more

hearings". Do you then have to go up on appeal [ which is argument/dishonour ] **HELL NO!** There is nothing to 'appeal' right now, other than the fact that YOU did not rebut the presumptions, and therefore you cannot get a remedy on appeal!

So what happened in **Step Number One [1]** is that we got him basically to AGREE with the rules in regards to the way the court operates and is supposed to operate, and the basic way the court operates is that we needed to rebut the presumptions.

Under **Step Number Two [2]** we had the **MAJOR PREMISE** that you as the lawyer are trained and licensed and presumed to know the proper form, substance and procedure to defend the defendants against the assumed and presumed charges for which the plaintiff/prosecution has brought no prima facie evidence.

**MINOR PREMISE** - In this case, you did not put on a 'case in chief', to rebut the false assumptions and presumptions of the criminal charges against the defendant, that would have required the prosecution to present **substantive** evidence to prove the charges.

**CONCLUSION** - You are either **grossly incompetent** in assisting the defendant/undersigned in this case, or else you acted maliciously and with intent to keep the defendant/undersigned from bringing a necessary and sufficient defence in this matter.

Then we go through a series of statement/questions to get them to admit the facts in support of this as it applies to this case.

And then finally, in **Step Number Three [3], MAJOR PREMISE** - the undersigned has an unalienable right to due process of law and equal protection under the law including but not limited to the right to **effective assistance of counsel**

[ ***KWM Note:*** this right is cleverly hidden from recognition by the largely sleeping Australians under the umbrella of the Constitutional right to a **'fair trial'** in Australia - see ***Dietrich v The Queen 1992*** **- HIGH COURT OF AUSTRALIA** which colourably states that we have a right to assistance of counsel, especially when and if we did not explicitly waive that right, this right includes the 'effective' assistance of counsel also which is just another necessary element required in order for one to have had a fair trial ] in defence of the criminal charge.

**MINOR PREMISE** - You were not effective in your assistance of counsel in this case, because you were either incompetent, or malicious in failing to represent the defendant by assisting in rebutting the assumed and presumed facts and charges against the defendant when the undersigned was willing and able to testify by negative averment and present facts by way of admissible evidence to demonstrate that the assumed and presumed charges were not true.

**CONCLUSION**: The defendants were denied effective assistance of counsel in this case, and the judgement in this case should be set aside based on incompetent assistance of counsel and then some facts in support of that.

**Number 1 - W**e set down some rules as to the way the court proceeds and we necessarily had to do that.

**Number 2 - W**e set down that the lawyer did not do it.

**Number 3 - W**e set down because you (the lawyer) did not do it, we were denied an ***effective*** *assistance of counsel* which is a denial of a **substantive** right requiring the court then to vacate/set aside the judgement.

Now if we get an 'agreement between the parties' on the above questions/statements, and carry out the proper procedure to take it back into the evidence file in the case, then what more is there for the Judge to do? Not much **OTHER THAN TO SET ASIDE/VACATE THE JUDGEMENT!**

But if you incorrectly went in on a public side 'Motion' to set aside/vacate the judgment, the judge simply CANNOT SEE IT! Worse yet, let's say we go the ***Habeas Corpus*** route where you are unlawfully going to put the defendants in prison. Where is that going to go? **NOWHERE!** And why is it going to go **NOWHERE?** Because you are involved in a contract allowing and consenting and giving permission to the public to do it, and now you want to issue a ***Habeas Corpus*** saying that they do not have such a right? What's wrong with **AGREEING** with your contract? So you see, all of these criminal cases are based upon **contract law** which has nothing to do with law or any of those things most patriots think that these courts are doing!

And then these Patriots end up being upset with the lawyers, and upset with the judges, and some are even upset at the denial of an Article III [Chapter III Court in Australia] Constitutional Court, but why do we need any of those things when Contract Law is so relatively important in these cases?

**JUST DON'T CONTRACT YOU IDIOTS!**