No Oral Argument Requested

No. 06-_____

In The
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: Michael Edward Bufkin,
Petitioner,

v.

UNITED STATES DISTRICT COURT DISTRICT OF OREGON,
Respondent,

And,
United States, UNITED STATES,
United States of America, UNITED STATES OF AMERICA,
Richard Fuselier, RICHARD FUSELIER,
Joseph O. Saladino, JOSEPH O. SALADINO,
Freedom & Privacy Committee, and FREEDOM & PRIVACY COMMITTEE,
As the known or estimated real parties in interest.

On Petition for Mandamus to the
UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

In re: Grand Jury Subpoena,
Misc. No. 3:06-mc-9172

FIRST PETITION FOR MANDAMUS

Michael Edward Bufkin
1136 Gail Lane
Sleepy Hollow, Illinois

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9th CIR. R. 28-2.1 [Abrogated, 9th Cir., 1 July 1990]

Related Cases

No known related cases.

No Oral Argument Requested

Oral argument is not expected to aid the resolution of this matter.

Relief Sought

Recognition of, and application of, the law by the jurists.

The trial court denied Bufkin's motion to quash the subpoena. Thus, that court has invited encouragement, via mandamus, to review that initial ruling.

The Issues Presented

Grand Jury *of the United States District Court???* We are not in France.

Point 1: Is the grand jury function executive or judicial?

Buckley v. Fitzsimmons, 509 U.S. 259 (1993).
Burns v. Reed, 500 U.S. 478 (1991).
Imbler v. Pachtman, 424 U.S. 409 (1976).

NOTICE OF STATUTORY CHALLENGE

Point 2: Because 18 U.S.C. § 3321 turns the grand jury function into a judicial operation, does this statute violate Separation of Powers?

18 U.S.C. § 3321 (2000).

18 U.S.C. §§ 1623, 6002, 6003 (2000).
21 U.S.C. § 884 (2000).
28 U.S.C. § 1826 (2000).

Hurtado v. California, 110 U.S. 516 (1884).
Beavers v. Henkel, 194 U.S. 73 (1904).

NOTICE OF STATUTORY CHALLENGE

Point 3: Because 18 U.S.C. § 3331 turns the special grand jury function into a judicial operation, does this statute violate Separation of Powers?

18 U.S.C. § 3331 (2000).

See Point 2.

The confused facade of feigned authority; impersonating the grand jury.

Point 4: Whose subpoena is this?

FED. R. CRIM. P. 17.

Doe v. DiGenova, 779 F.2d 74 (D.C. Cir. 1985).
Schulz v. IRS, 395 F.3d 463 (2d Cir. 2005) ("*Schulz I*").
Schulz v. IRS, 413 F.3d 297 (2d Cir. 2005) ("*Schulz II*").

28 U.S.C. § 1746(1), (2) (2000).

Rule 17 and "this state".

FED. R. CRIM. P. 17, throughout.

Point 5: Is a grand jury proceeding, in and of itself, a civil or a criminal proceeding?

FED. R. CIV. P. 45.

Doe v. DiGenova, 779 F.2d 74 (D.C. Cir. 1985).
USOA v. R. Enterprises, Inc., 498 U.S. 292 (1991).

Point 6: Of what relevance is the caselaw offered by "USOA", or is it "UNITED STATES"?

USOA v. Calandra, 414 U.S. 338 (1974).
USOA v. R. Enterprises, Inc., 498 U.S. 292 (1991).

Point 7: Does a "USOA", or is that "UNITED STATES", subpoena have authority beyond the border of "this state"?

Pennoyer v. Neff, 95 U.S. 714 (1877).
O'Connor v. Board of Educ. of School Dist. 23, 449 U.S. 1301 (1980).

Point 8: Does *anyone* with Treasury have authority to serve papers in a "tax" case?

Coson v. USOA, 533 F.2d 1119 (9th Cir. 1976).

Point 9: Regardless of who "serves" the papers, where the alleged witness is not served personally, is there service?

Jones v. Flowers, __ U.S. __ (No. 04-1477) (4 Apr 2006).
App. p.39.

Point 10: What is UNITED STATES DISTRICT COURT DISTRICT OF OREGON?

28 U.S.C. §§ 117, 132 (2000).

Point 11: Can UNITED STATES DISTRICT COURT DISTRICT OF OREGON possibly exist outside "this state"?

4 U.S.C. §§ 105, 108 (2000).

Point 12: What is the proper seal for this matter?

(Rule 17).

Point 13: Doesn't the document served have to show (legibly) that seal?

(Rule 17).

Point 14: What does *attend* mean?

(Rule 17).

Two fundamental realities

Reality 1—"Taxpayer" means "Fiduciary"

Point 15: As a matter of law, is there any mens rea?

Due Process requires Notice.

Reality 2—The feds have outsmarted themselves, again (and again …).

Point 16: As a matter of law, has the Patriot Act rendered the fiduciary obligation at issue void as against public policy?

The so-called Patriot Act.
Hamdan v. Rumsfeld, 548 U.S. ___, 126 S. Ct. 2749 (2006).

100-year-old bad habits can't withstand those with "standing".

Point 17: Does prior lack of standing compel consent?

Allen v. Wright, 468 U.S. 737 (1984).
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1982).

Why the Writ Should Issue

Summary

Investigation is an executive function, not a judicial one.

There is no such thing as a grand jury of any "United States District Court". Investigation is an *executive* function; it's not a "case or controversy". Thus, it violates Separation of Powers to pretend that such a subpoena may even issue under the name, thus authority, of the judicial power.

The "congress" can't change that division of powers.

The "congress" have no authority to convert the executive, investigative function into a judicial function. Thus, the statutes that purport to create any so-called "grand jury of the United States District Court" are void on their face.

This is not even a grand jury subpoena.

The mere existence of the "intended use" theory is the confession that the labels and the reality don't match. Without a signature from the grand jury foreman, the subpoena is not a grand jury subpoena. Period. Everything else is an impersonation. Thus, the proper label is *administrative* subpoena, and *administrative* subpoenas regularly double as bird-cage-floor lining.

Mandamus applies to non-discretionary duties.

Subject matter jurisdiction is non-discretionary. Where there is no "case or controversy", no subpoena may ***lawfully*** issue under the name of ***any*** court.

Grand Jury *of the United States <u>District Court</u>???* We are not in France.

Points 1-3 focus on this statement in the subpoena. "YOU ARE HEREBY COMMANDED to appear and testify before the ***Grand Jury of the United States District Court*** at the place, date, and time specified below." (***emphasis added***).

Point 1: Is the grand jury function executive or judicial?

<u>Executive.</u>

<u>"Advocate" distinguished from "detective" in the "immunity" analysis.</u>

In *Buckley*, the Court discussed immunity for a state prosecutor. They distinguished "absolute" from "qualified". They overruled the Seventh Circuit who held that the prosecutors had "absolute" immunity. It's in that context that they distinguished two roles prosecutors animate: (A) "advocate" and (B) "investigator". The Court found that where the prosecutor animates the role of "advocate", "absolute" immunity theories apply. However, where the prosecutor animates the role of "investigator", "qualified" immunity theories apply. Police, as investigators, have a "qualified" immunity, and prosecutors animating the role of "investigator" likewise have a "qualified" immunity. The point is this. The state prosecutor obtains only to "qualified" immunity, here, *because* the work related to determining probable cause and working with the grand jury is "administrative" or "investigatory," i.e., ***executive***.

> Judge Fairchild again dissented. He adhered to his earlier conclusion that Fitzsimmons was entitled to only qualified immunity for the press conference, but he was also persuaded that *Burns* had drawn a line between "'conduct closely related to the judicial process'" and conduct in the role of "'administrator or investigative officer.'" He agreed that trial preparation falls on the absolute immunity side of that line, but felt otherwise about the search for favorable evidence that might link the bootprint to petitioner during "a year long pre-arrest and pre-indictment investigation" aggressively supervised by Fitzsimmons. 952 F.2d, at 969 (opinion dissenting in part).

Buckley, 509 U.S. at 267.

> [Context: application of common law doctrine of absolute immunity.] Those considerations [n.4 omitted] supported a rule of absolute immunity for conduct of prosecutors that was "intimately associated with the ***judicial phase*** of the criminal process." [*Imbler v. Pachtman*, 424 U.S. 409 (1976),], at 430. In concluding that "in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under 1983," we did not attempt to describe ***the line between*** [(A)] a prosecutor's acts in preparing for those functions, some of which would be absolutely immune, and [(B)] his acts of investigation or "administration," which would not. *Id.*, at 431, and n. 33.

Buckley, 509 U.S. at 270 (***emphasis added***) ([(A)] and [(B)] also added).

> We applied the *Imbler* analysis two Terms ago in *Burns v. Reed*, 500 U.S. 478 (1991). There the 1983 suit challenged two acts by a prosecutor: (1) giving legal advice to the police on the propriety of hypnotizing a suspect and on whether probable cause existed to arrest that suspect, and (2) participating in a probable cause hearing. We held that only the latter was entitled to absolute immunity. … Under that analysis, appearing before a judge and presenting evidence in support of a motion for a search warrant involved ***the prosecutor's "'role as advocate for the State.'"*** Id., at 491, quoting *Imbler*, 424 U.S., at 431, n. 33. Because issuance of a search warrant is ***a judicial act***, appearance at ***the probable cause <u>hearing</u>*** was "'intimately associated with ***the judicial phase*** of the criminal process,'" *Burns*, 500 U.S., at 492, quoting *Imbler*, 424 U.S., at 430.

Buckley, 509 U.S. at 273 (***all* emphasis added**).

> To be sure, *Burns* made explicit the point we had reserved in *Imbler*, 424 U.S., at 430-431, and n. 33: ***a prosecutor's administrative duties and those investigatory functions*** that do not relate to an advocate's preparation for the initiation of a prosecution or for judicial proceedings are not entitled to absolute immunity. *See Burns*, 500 U.S., at 494-496.
>
> On the other hand, as the function test of *Imbler* recognizes, the actions of a prosecutor are not absolutely immune merely because they are performed by a prosecutor. ***Qualified immunity "'represents the norm'" for executive officers***, *Malley v. Briggs*, 475 U.S., at 340, quoting *Harlow v. Fitzgerald*, 457 U.S., at 807, ***so when a prosecutor "functions as an administrator, rather than as an officer of the court," he is entitled only to qualified immunity.*** *Imbler*, 424 U.S., at 431, n. 33. ***There is a difference between*** [(A)] ***the advocate's role*** in evaluating evidence and interviewing witnesses as he prepares for trial, on the one hand, ***and*** [(B)] ***the detective's role*** in searching for the clues and corroboration that might give him probable cause to recommend that a suspect be arrested, on the other hand. [When a prosecutor performs ***the investigative functions normally performed by a detective or police officer***, it is "neither appropriate nor justifiable that, for the same act, immunity should protect the one and not the other."] *Hampton v. Chicago*, 484 F.2d 602, 608 (CA7 1973) (internal quotation marks omitted), *cert. denied*, 415 U.S. 917 (1974). Thus, if a prosecutor plans and executes a raid on a suspected weapons cache, he "has no greater claim to complete immunity than activities of police officers allegedly acting under his direction." 484 F.2d, at 608-609.
>
> The question, then, is whether the prosecutors have carried their burden of establishing that they were functioning as "advocates" when they were endeavoring to determine whether the bootprint at the scene of the crime had been made by petitioner's foot. A careful examination of the allegations concerning the conduct of the prosecutors during the period before they convened a special grand jury to investigate the crime provides the answer. *See supra* [*Buckley*], at 263, n. 1. The prosecutors do not contend that they had probable cause to arrest petitioner or to initiate judicial proceedings during that period. Their mission at that time was entirely investigative in character. [***A prosecutor neither is nor should consider***

himself to be an advocate before he has probable cause to have anyone arrested.] [n.5 omitted].

It was well after the alleged fabrication of false evidence concerning the bootprint that a special grand jury was empaneled. And when it finally was convened, its immediate purpose was to conduct a more thorough investigation of the crime - not to return an indictment against a suspect whom there was already probable cause to arrest. Buckley was not arrested, in fact, until 10 months after the grand jury had been convened and had finally indicted him. ***Under these circumstances, the prosecutors' conduct occurred well before they could [properly claim to be acting as advocates.]*** Respondents have not cited any authority that supports an argument that a prosecutor's fabrication of false evidence during the preliminary investigation of an unsolved crime was immune from liability at common law, either in 1871 or at any date before the enactment of 1983. It therefore remains protected only by qualified immunity.

After *Burns*, it would be anomalous, to say the least, to grant prosecutors only qualified immunity when offering legal advice to police about an unarrested suspect, but then to endow them with absolute immunity when conducting investigative work themselves in order to decide whether a suspect may be arrested. [n.6 omitted] That the prosecutors later called a grand jury to consider the evidence this work produced [does not retroactively transform that work from the administrative into the prosecutorial.] [n.7 omitted] A prosecutor may not shield his investigative work with the aegis of absolute immunity merely because, after a suspect is eventually arrested, indicted, and tried, that work may be [retrospectively described] [as "preparation" for a possible trial]; [every prosecutor might then shield himself from liability for any constitutional wrong against innocent citizens by ensuring that they go to trial.] ***When the functions of prosecutors and detectives are the same, as they were here, the immunity that protects them is also the same.***

Buckley, 509 U.S. at 274-76 (***emphasis <u>added</u>***).

Judicial and executive functions distinguished.

In short, to determine the proper immunity theory, the Court distinguished the judicial and executive roles. Thus, it's *because* the investigative, grand-jury-related activity is ***executive*** that the proper immunity standard is "qualified."

Here's why it matters—the Separation of Powers problem.

Because the grand jury serves in an ***investigative, executive*** role, it's a violation of Separation of Powers to convene a "**Grand Jury *of the United States District Court.***" We are not in France.

We might have a grand jury ***of the United States*** sitting or convened in the District of Oregon. But, it's an ***executive*** body, an ***investigative*** body, ***not*** a ***judicial*** body. Thus, there simply can be no such thing as a "Grand Jury ***of the United States District Court***". Nothing prevents the judges from giving the oath, but where the federal court purports to serve both conflicting, dual roles of investigator and trier-of-fact completely rips apart the fabric of Separation of Powers. Courts do not perform the ***executive*** function.

Why the writ should issue—the most abundantly obvious reason.

Thus, the writ should issue, because there simply is no such thing as a "Grand Jury of the United States District Court", and there never has been.

NOTICE OF STATUTORY CHALLENGE

Point 2: Because 18 U.S.C. § 3321 turns the grand jury function into a judicial operation, does this statute violate Separation of Powers?

Is there a grand jury Indictment requirement?

Does the grand jury Indictment requirement disappear only for "States"? *See Hurtado* (no Indictment needed for California murder case). Apparently so. *See Beavers* (feds have to indict). Thus, the "States" have no grand jury requirement, but "this state" does. ***Very*** inconsistent. But, either way, if there is going to be a grand jury, let it be organized and operated according to law.

"grand jury of the United States".

In five sections, the United States Code refers to an entity or body called a "grand jury of the United States". *See* 18 U.S.C. §§ 1623, 6002, 6003 (2000); 21 U.S.C. § 884 (2000); and 28 U.S.C. § 1826 (2000).

"Grand Jury of the United States District Court".

The "subpoena" at issue identifies no such entity or body. Instead it refers to "the **Grand Jury of the United States District Court**", which doesn't exist.

Hurtado, *Perry Mason*, and the Superior Courts of LA County—a horrific obliteration of Separation of Powers.

On the one hand, *Perry Mason* does teach the lesson from *Hurtado*. In the *Perry Mason* series, there is no grand jury, save perhaps one episode. As outrageous as that is, there *is* an educational "benefit", there. But, where they

determine probable cause via the infamous "preliminary hearing", the "benefit" ends abruptly. Thus, to watch that horrific subversion of the Separation of Powers live via the O.J. Simpson proceedings was too much.

Hurtado doesn't transform a court into an investigative body.

There's nothing about annihilating the grand jury, as also done by STATE OF CONNECTICUT, the still-self-styled "Constitution State", that transforms an executive function into a judicial function. Thus, even if *Hurtado* applies only to the "States", and even if *Beavers* still supplies the policy for "this state", i.e., for "the territory to which the jurisdiction extends", how in the *world* does the investigative function *ever* become a *judicial* one? We are not in France.

Determining "probable cause" (for the basis of a criminal charge) is ***always*** an ***executive*** function. *See* Point 1. The fact that Simpson was never Indicted, but was charged via an Information, where the DA determines probable cause, is the part that ***fits*** with *Hurtado*. It's the holding of these sham "preliminary hearings" to determine probable cause that is the part that ***doesn't fit***, with anything! It is ***not*** the ***judicial*** function to do the "investigation". Thus, it matters not what any statute, or even "state" "constitution", says; those infamous "preliminary hearings" are ***wrong, wrong, wrong!*** They defy the entire notion of Separation of Powers.

Patience with the "States" doesn't extend to the feds.

Where *Hurtado* confirms that there simply is no such thing as a grand jury requirement for the "States", it's somewhat understandable that something else exist to fill the void. But, where *Beavers* supplies the standard, i.e., where there must be a grand jury determination, and where the investigative, "law enforcement", i.e., ***executive***, function is carried out under the name and authority of the ***judicial*** power, the Separation of Powers violation screams from the page.

Thus, where 18 U.S.C. § 3321 purports to create these "Grand Juries ***of the United States District Courts***", with this phrase, "Every grand jury impaneled before any district court", and with this phrase, "the court shall order the marshal to summon … from the body of the district … a sufficient number of persons to complete the grand jury[,]" and with this phrase, "Whenever a challenge to a grand juror is allowed, … the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose[,]" that statute is void, for violation of the Separation of Powers doctrine.

Epilog—the 100-year history of rogue "grand juries".

See McDowell (discussing statute(s) authorizing district court to summon a grand jury). From today's vantage point, it's clear that such statutory policy has violated Separation of Powers from the inception.

See also Reese (Circuit Court of the United States, San Francisco); *Greene* (S.D. Ga.); *Beavers* (E.D.N.Y.); *Blau* ("United States District Court Grand Jury", D. Colo.); *Rogers* (D. Colo.); *Bridges* (N.D. Cal.); *Curcio* (S.D.N.Y.); *Kent* (D.C.); *Weller* (N.D. Cal.); *Ehlert* (N.D. Cal.); *Hamling* (S.D. Cal.); *Nixon* (D.C.); *Wheeler* (D. Ariz.); *MacDonald* (E.D. N.C.); and *Hubbell* (E.D. Ark.).

Why the writ should issue—another abundantly obvious reason.

The writ should issue, because the "congress" have no authority to delegate the executive function to any court.

NOTICE OF STATUTORY CHALLENGE

Point 3: Because 18 U.S.C. § 3331 turns the special grand jury function into a judicial operation, does this statute violate Separation of Powers?

Same song, second verse.

See Point 2. We can't read 18 U.S.C. § 3331 and see anything except the same attempt to turn the executive function into a judicial function. The "congress" can't violate Separation of Power by calling a grand jury "special".

The confused facade of feigned authority; impersonating the grand jury.

Point 4 focuses on this language, which ***<u>is</u> found in*** the subpoena:

- "SUBPOENA TO TESTIFY BEFORE GRAND JURY";
- "YOU ARE HEREBY COMMANDED to appear and testify before the ***Grand Jury of the USOA District Court*** at the place, date, and time specified below." (***emphasis added***);
- "Please provide the requested information to Melody Berkheiser, Paralegal Assistant, ***United States Attorney's Office*** …." (***emphasis added***);
- "This is a Subpoena Request from an [sic] ***Law Enforcement Agency***." (***emphasis added***);
- "This subpoena is issued on application of the ***United States of America***." (***emphasis added***);

as well as on this concept, which ***<u>is not</u> found in*** the subpoena:

- "Under authority of the grand jury of the United States, This and That District, John Doe, Foreman," accompanied by that signature, of course, with date information as to the term of that grand jury, and etc.

In short, this subpoena, under its present "enforcement" posture, compels the purchase of an apple pie that contains no apples.

Point 4: Whose subpoena is this?

Here's why it matters—the façade and fiction of "secrecy".

Borrowing from the lawyer-client privilege, if the communication is not all wrapped up in the facts and circumstances of confidentiality, it's not a confidential communication. So, where everyone EXCEPT the grand jury is demanding information, and where everyone EXCEPT the grand jury may see the information, how in the world does the cloak of secrecy even ***begin*** to apply? The secrecy is ***so*** great that even the ***grand jury*** don't know what's going on! [1]

Plus, how "secret" ***is*** the "grand jury" where the "king" is the one directing all the processes and information, which the grand jury may never see? The ***entire system*** right now runs on impersonating the grand jury.

All that stops here.

Here's another reason why it matters—the reality of administrative subpoenas.

Shulz I and II. ***Administrative*** "subpoenas" double really well as shredded paper on the bottom of birdcages.

[1] This is as ludicrous as Maxwell Smart's "cone of silence".

It's not the grand jury's subpoena!

> [Rephrased/"translated" first sentence: Even the authority of the district court is misused, for while the court's name is on the subpoena, typically there is no judge or magistrate who knows that any particular subpoena even exists.] [2] [n.10 omitted]. Nor does the grand jury necessarily approve or even have knowledge of a subpoena prior to its issuance. [3] [n.11, *infra*]. *See United States v. Santucci*, 674 F.2d 624, 627 (7th Cir. 1982) (U.S. Attorney may "fill in blank grand jury subpoenas without actual prior grand jury authorization"), *cert. denied*, 459 U.S. 1109, 103 S. Ct. 737, 74 L. Ed. 2d 959 (1983); *United States v. Kleen Laundry & Cleaners, Inc.*, 381 F. Supp. 519, 523 (E.D.N.Y. 1974) ("absence of a sitting grand jury when a subpoena is issued is not disturbing" if return date is set for a day when grand jurors would be in session). [4] Rather, grand jury subpoenas are issued at the request, [n.12, *infra*] and in the discretion of the prosecuting attorney involved in the case, [n.13, regarding fox-guarding-the-henhouse, DOJ prior-approval concepts, omitted] just as other subpoenas are issued at the

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[2] Frankly, no matter what the statutes say, this makes the U.S. District Court a willing participant and conspirator in the U.S. Attorneys' impersonation of the grand jury. ***All*** those jurists are knowingly allowing the use of the ***court's*** name and authority for ***non-judicial***, purely ***investigative***, i.e., purely ***executive*** matters, regarding information that the grand jury may ***never*** see. How in the world does ***any*** court get around this? Yes, there is a "statute" that, on its face, purports to justify the perversion of powers presently in practice. But, come on, now, who are the jurists, here, the "congress"? The brass tacks of the matter is this: the statutes may very well afford "immunity" from criminal prosecution, and maybe even from commercial claims, but, per *Buckley*, those statutes don't change the fact that ***investigators*** acquire only "qualified" immunity, and, at the heart of the matter, ***no*** statute overrules the Separation of Powers doctrine.

[3] Thus, so far, i.e., in these two sentences, what is confirmed is that neither (A) the judges of the court, nor (B) anyone on the grand jury, has a stinking clue what the U.S. Attorney's Office is doing in this ***executive, non-judicial***, matter, while those same U.S. Attorneys freely operate *carte blanche*, ***as the grand jury***, operating under ***both*** names! ***Both*** names, by the way, are ***judicial*** names: United States District ***Court*** and Grand Jury of the United States District ***Court***.

[4] "Not disturbing"?? This is all ***VERY*** disturbing.

request, and in the discretion of, any private litigant. *See* FED. R. CIV. P. 45.[5]

[n.11] ***In this sense, the term "grand jury subpoena" can be a bit misleading,*** [6] ***inasmuch as it implies a grand jury decision to compel testimony or the delivery of documents. It is important to realize that a grand jury subpoena gets its name from the intended use of the testimony, or documentary evidence, not from the source of its issuance.*** *See* [*In re Grand Jury Proceedings* ("*Schofield I*")], 486 F.2d at 90 [(3d Cir. 1973)]. (***emphasis added***).

[n.12] Rule 17 of the Federal Rules of Criminal Procedure provides that:

A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

The "party" that the rule speaks of in the grand jury context is, of course, the United States, which is represented by the United States Attorney. [7]

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[5] ***Not so! Not so! Not so!*** Who writes this stuff??? A ***private litigant*** (A) ***will*** have invoked the authority of the court with some type of pleading or motion, thus rendering the matter ***judicial***, (B) ***does*** have every intention of utilizing the discovery information for the purpose for which it is sought, which directly contrasts the "grand jury" information which may never even cast a shadow on the floor of the grand jury room, and (C) ***will not*** be impersonating any grand jury! What the ***private litigant*** does ***outside*** the context of pending litigation is addressed in *Shulz I and II*;.and that's not Rule 45, either! That is night and day different from what's going on here. Night and day different. Do we better understand the lesson from *Buckley?* Further, there ***is*** value in the reference to Rule 45, because it confirms the ***civil*** nature of the grand jury activities. *See* Point 5, *infra*.

[6] "A bit misleading"?! This qualifies for an "understatement of the decade" award.

[7] Further ***confession*** that everyone (except the recipient of the subpoena) knows that no one is talking about anything by, or even necessarily for, any grand jury.

DiGenova, 779 F.2d at 80 & nn.11, 12. *See also* SARA SUN BEALE, 1 GRAND JURY LAW AND PRACTICE 6-11 to 6-12 and n.13 (2d ed. 2004); *Durbin*, 221 F.2d at 522 ("It was clearly an improper use of the District Court's process for the Assistant United States Attorney to issue a grand jury subpoena for the purpose of conducting his own inquisition.").

From n.11: Let's *apply* the "intended use" theory.

"Pay no attention to that man behind the curtain!" Wizard of Oz.

How does ***any*** grand jury subpoena qualify as grand jury activity? In other words, what qualifies ***anything*** as grand jury activity? Hmm. What could that possibly be? Maybe ***the signature of the grand jury foreman?!***

The "intended use" theory says, "Let's pretend." It says, "Let's make false pretense allowable under the law." Where "everyone" knows that the grand jury may see *none* of that information, how does the "intended use" theory even hold water? Why is there ***any*** need to explain ***anything***? Because what is said and what is done are two entirely different things! Does not the mere *existence* of an "intended use" theory scream from the page the confession that whatever is going on, it's ***not*** done under the authority of the ***grand jury***? Does not the mere *existence* of an "intended use" theory scream "impersonation of the grand jury"?

Does not the *source* of the request control heavily the "intended use"? The actual "intended use" is whatever the U.S. Attorney's Office, i.e., the source of the request, has in mind for it. Period. Some of that which is requested actually gets to the grand jury. Some doesn't. But ***all*** of it purports to be blessed under the "intended use" theory. The reality is that the U.S. Attorney's Office is impersonating the grand jury in order to gain access to that information. No matter how noble the objective, it still constitutes impersonating the grand jury.

Where the grand jury have neither initiated nor received the fruit of a request for information, how does the "intended use" theory even remotely justify what's going on? Further, how does "secrecy" attach to ***non***-grand-jury communications?

Where the "U.S. Attorney's Office," or any AUSA, or any "Law Enforcement Agency", or "United States", or "United States of America" has an *administrative* request, let each assert it. Not one of these entities is the ***grand jury***. Thus, not one of these entities may conduct any investigation under a cloak of secrecy. Only the ***grand jury*** activity is so cloaked. Thus, where the grand jury aren't asking for anything, (A) there's nothing to indicate that this information will ever so much as cast a shadow on the floor of the grand jury meeting room, and (B) there's nothing that suggests that this "subpoena" has anything, at all, whatsoever to do with any grand jury investigation. Period.

Is there something in the law that prohibits the "intended use" from being simultaneously the "stated use"? Does the law compel us into subterfuge, disguise, false pretence, feigned process? Let each request identify the actual "requestor", and let ***administrative*** requests receive all the respect each is due. *Shulz I and II*.

From n.12: The party is, of course, "United States"—really?!

HOW DO "PARTIES" EXIST WITHOUT LITIGATION?

Even if we strain beyond comprehension the notion of *eo nomine*, there are no "parties". There is no litigation pending. There is no "case or controversy" going on. There is only an investigation, which is an ***executive*** function.

WHAT "PARTY" BESIDES THE GRAND JURY HAS AUTHORITY TO ACT LIKE THE GRAND JURY?

How does this whole façade and fiction of "parties" do anything except ***confess*** the reality that ***everything*** going on right now is nothing but perpetual and continuing acts of impersonation of the grand jury? Where we're talking about "parties", we're very obviously ***not*** talking about the grand jury!

WHY ARE ANY DOCUMENTS TO BE SENT TO THE "U.S. ATTORNEY"?

If the subpoena were from the grand jury, why are documents to be sent to the ***U.S. Attorney's Office?*** Is the "U.S. Attorney" now the grand jury? Further, just because the "U.S. Attorney" or any AUSA is doing something with subpoenas

hardly makes "United States" a party! *Durbin*, 221 F.2d at 522.

WHY IS THE SUBPOENA REQUESTED BY AN ALLEGED AND CLANDESTINE "LAW ENFORCEMENT AGENCY"?

If ***"United States" were*** "the party, of course", why did an unknown "Law Enforcement Agency" make the request? Is that "Law Enforcement Agency" now the grand jury? Where a "Law Enforcement Agency" makes the request, we have nothing but more confirmation of (A) the ***executive***, i.e., ***non-judicial***, nature of the activity, *see* Point 1, ***and*** (B) the fact that this is ***neither*** a ***grand jury*** matter ***nor*** a ***judicial*** matter.

EVEN MORE OBVIOUS HERE, WHY DID "UNITED STATES OF AMERICA" MAKE "APPLICATION" FOR THIS SUBPOENA?

If ***"United States" were*** "the party, of course", why in the world is ***"United States of America"*** making application for issuance of this subpoena? How *any* jurist can read 28 U.S.C. § 1746(1) and (2) and ***not*** recognize the difference between ***"United States of America"***, *see* § 1746(1), and ***"United States"***, *see* § 1746(2), is beyond comprehension. How *any* jurist can review the pre-1948 cases and the post-1948 cases and not see that ***UNITED STATES*** has been replaced with ***UNITED STATES OF AMERICA***, is beyond comprehension. These two entities are ***so*** different as to amount to a difference in "choice of law", ***and neither one of them is the grand jury***.

The present system is *designed* for inquisitions!

In *Costello*, mentioned by USOA, or was it UNITED STATES, for a history lesson, it is very clear that the grand jury authority is that of the **grand jury**, not that of the **prosecutor d/b/a the grand jury d/b/a the District Court**.

So, where the prosecutor does what all these prosecutors do, namely impersonate the grand jury, and where some prosecutors succumb to the temptations, do we just blame those prosecutors and let it go? Is that it? How do such inquisitions even get started? Asked another way, how much ***more*** inviting can the current practice possibly be to encourage ***more*** of the same?

Take the Elliot Ness version of a U.S. Attorney. No matter how self-disciplined the investigation management, it's ***clearly and always*** an improper use of the name and authority of ***any*** court to conduct ***any*** such investigation under the pretense of judicial power. [8] Moreover, it's just as ***clearly and always*** an improper use of the name and authority of the grand jury where there's ***nothing*** about the grand jury involved in the process.

[8] Search warrants, also "investigative" matters, become judicial matters because the law balances privacy rights with the need to preserve evidence of crime. While all searches, like all arrests, need probable cause, not all searches, or arrests, need warrants. Thus, the judicial participation in the warrant process obviously isn't about the "investigation", but rather the limits on the "investigation".

There's a reason Rule 17 requires a ***proceeding***. It's the *existence* of the ***proceeding*** that triggers the ***judicial*** power. Thus, the very clear condition precedent for Rule 17 is an adversarial, ***judicial*** proceeding. No investigation qualifies! But, let's contort the notion this far. Let's pretend that a grand jury "proceeding" *could* trigger the judicial power. Now, what's the best evidence of a grand jury "proceeding"? ***The foreman's signature!***

Everything else, ***everything*** else, is an administrative subpoena or summons by the US Attorney, or AUSA, or "Law Enforcement Agency", etc. But, it's worse, because ***these administrative*** processes come with an evil twist. They are feigned, simulated processes, impersonating not only the grand jury, but also the District Court. When exposed for what they are, ***these administrative*** subpoenas and summons may be completely ignored. *Schulz I and II*. Further, ***secrecy*** inures to the ***grand jury's activities***, not to the US Attorney's, or AUSA's, or "Law Enforcement Agency's", but to the ***grand jury's***.

The focus here is the ***cause*** for that which develops into the "inquisition". The point is that this entire process is very ripe for corruption. The prosecutor is not the grand jury! To keep the label and the activity consistent with both the purpose and the authority, there's one and only one cure: have all grand jury subpoenas issue upon request of the grand jury, via its foreman, and then on a

grand jury form, not a judicial form. Do the "congress" use ***judicial*** subpoenas?!

Where's the foreman's signature?

If this subpoena *were* from the ***grand jury***, why is it not signed by the foreman? Here, it doesn't matter whether this is a "grand jury of the United States" or a "Grand Jury of the United States District Court", because there's no signature by any foreman of *any* grand jury.

Summary—***Whose*** subpoena is this?

This subpoena is EVERYONE'S ***EXCEPT*** THE GRAND JURY's. It's (A) the "United States Attorney's," (B) the "United States' ", (C) "an Law Enforcement Agency's", ***and*** (D) the "United States of America's", via a subpoena that identifies ***no litigation*** by which to activate ***any judicial*** power.

Why the writ should issue—impersonation of the grand jury is a crime.

There may be defenses, and there may even be "immunity" ("qualified", of course, since we're talking about the "investigation" function), but there's nothing going on here except impersonation of the grand jury.

All that stops here.

Rule 17 and "this state".

Point 5: Is a grand jury proceeding, in and of itself, a civil or a criminal proceeding?

Where FED. R. CIV. P. 45 applies, the matter is a civil matter. *DiGenova*, 779 F.2d at 80 & nn.11, 12, *supra* p.14, and n.5. What both Rule 45 and Rule 17 confirm is the necessary condition precedent for any ***judicial*** subpoena: a case or controversy.

As confirmed in *R. Enterprises*, there are no evidentiary standards that apply. *R. Enterprises*, 498 U.S. at 298. Further, it ***is*** an ex parte matter, not an adversarial proceeding, and it ***is not*** a matter "of public Record". Therefore, it's very difficult to characterize the grand jury proceeding as a "criminal" proceeding, any more than a habeas proceeding is "criminal", or a motion to revoke supervision is "criminal".

Point 6: Of what relevance is the caselaw offered by "USOA", or is it "UNITED STATES"?

Unreasonable or oppressive.

In its response, USOA, or is it UNITED STATES, complains that Bufkin failed to establish the element of "unreasonable or oppressive" in his motion. Let the relevance of each case speak for itself. The cases are addressed in the sequence found in USOA's, or is that UNITED STATES', response to Bufkin's motion.

Calandra.

Points Bufkin raises *not* addressed in *Calandra*.

Did Calandra made a special appearance, or submit a disclaimer? No.

Did Calandra object to (A) the Separation of Powers problem, or (B) the "residence" v. "domicile" problem (the extent of "this state"), or (C) the distinction between "United States of America" and "United States", generally, much less in the context of the "unknown beneficiary" problem, or (D) whether the court purporting to have authority to issue any subpoena even exists (as a court, as distinguished from a commercial enterprise providing professional arbitration services in "this state" via a "tax exemption certificate"), or (E) "United States standard time", or (F) the fact that **"taxpayer" means "fiduciary"** (which wouldn't have come up in *Calandra*, since that's an illegal gambling case), or (G) the representation issue, i.e., the signature authority issue, which may be addressed as whether an "attorney for United States" has the authority to represent "United States of America" or "USOA", or as whether there's any grand jury foreman's signature, or (H) whether a "court" in "this state" can possibly exist outside of "this state", as in, in "Oregon" versus in "OR", or (J) the lack of competent seal on the subpoena, or (K) whether "attend" and "appear" mean the same thing, or (L) the conflict problem with an IRS agent's purporting to serve paperwork related to a

"tax" case (which wouldn't come up in *Calandra*, since that's an illegal gambling case), or (M) whether process in Illinois, not the "federal area" "IL", but Illinois, is anywhere provided for, or (N) how there's any indication that 40 U.S.C. §§ 3111 and 3112 are anywhere near satisfied? No.

Points Bufkin raises that *are* addressed here.

> Traditionally the grand jury has been accorded wide latitude to inquire into violations of criminal law. ***No judge presides to monitor its proceedings.*** It deliberates in secret and may determine alone the course of its inquiry. ***The grand jury may compel*** the production of evidence or the testimony of witnesses as it considers appropriate, and its operation generally is ***unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials.*** "It is a grand inquest, ***a body*** with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime." *Blair v. United States*, 250 U.S. 273, 282 (1919).
>
> The scope of ***the grand jury's powers*** reflects its special role in insuring ***fair and effective law enforcement. A grand jury proceeding is not an adversary hearing in which the guilt or innocence of the accused is adjudicated. Rather, it is an ex parte investigation to determine whether a crime has been committed and whether criminal proceedings should be instituted against any person. The grand jury's investigative power*** must be broad if its public responsibility is adequately to be discharged. *Branzburg v. Hayes, supra*, at 700; *Costello v. United States, supra*, at 364.
>
> In *Branzburg*, the Court had occasion to reaffirm the importance of the grand jury's role:
>
> > "***[T]he investigation of crime by the grand jury*** implements a fundamental governmental role of securing the safety of the person and property of the citizen . . . ." 408 U.S., at 700.

> "***The role of the grand jury*** as an important instrument of ***effective law enforcement*** necessarily includes an investigatory function with respect to determining whether a crime has been committed and who committed it. . . . 'When ***the grand jury*** is performing its investigatory function into a general problem area . . . society's interest is best served by a thorough and extensive investigation.' *Wood v. Georgia*, 370 U.S. 375, 392 (1962). ***A grand jury investigation*** 'is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed.' *United States v. Stone,* 429 F.2d 138, 140 (CA2 1970). Such an investigation may be triggered by tips, rumors, evidence proffered by the prosecutor, or the personal knowledge of the grand jurors. *Costello v. United States*, 350 U.S., at 362 . It is only after ***the grand jury has examined the evidence*** that a determination of whether the proceeding will result in an indictment can be made . . . ." *Id.*, at 701-702.

Calandara, 414 U.S. at 343-44. Note that the Court talk about the authority attributed to the ***grand jury***, not to any prosecutor; the investigation by the ***grand jury***, not by any prosecutor.

R. Enterprises, Inc.

Key fact not present here.

In addition to the items Bufkin raises not addressed in *Calandra*, no one is saying anything about ***corporate*** books and records or that Bufkin is a custodian of Records for such.

Points addressed here.

Even more to the point, the Court reconfirm via *R. Enterprises* the

extraordinarily clear distinctions between the ***executive*** and the ***judicial*** functions.

> The grand jury occupies a unique role in our criminal justice system. It is ***an investigatory body*** charged with the responsibility of determining whether or not a crime has been committed. ***Unlike this Court, whose jurisdiction is predicated on a specific case or controversy, the grand jury "can investigate*** merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *United States v. Morton Salt Co.*, 338 U.S. 632, 642-643 (1950). The ***function of the grand jury is*** to inquire into all information that might possibly bear on its ***investigation*** until it has identified an offense or has satisfied itself that none has occurred. As a necessary consequence of ***its investigatory function***, the grand jury paints with a broad brush. ***"A grand jury investigation*** 'is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed.'" *Branzburg v. Hayes*, 408 U.S. 665, 701 (1972), quoting *United States v. Stone*, 429 F.2d 138, 140 (CA2 1970).
>
> ***A grand jury subpoena is thus much different from a subpoena issued in the context of a prospective criminal trial, where a specific offense has been identified and a particular defendant charged.*** "[T]he identity of the offender, and the precise nature of the offense, if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning." *Blair v. United States*, 250 U.S. 273, 282 (1919). In short, the Government cannot be required to justify the issuance of a grand jury subpoena by presenting evidence sufficient to establish probable cause because the very purpose of requesting the information is to ascertain whether probable cause exists. *See Hale v. Henkel*, 201 U.S. 43, 65 (1906).
>
> ***This Court has emphasized on numerous occasions that many of the rules and restrictions that apply at a trial do not apply in grand jury proceedings.*** This is especially true of evidentiary restrictions. ***The same rules that, in an adversary hearing on the merits, may increase the likelihood of accurate determinations of guilt or innocence do not necessarily advance the mission of a grand jury, whose task is to conduct an ex parte investigation to determine whether or not there is probable cause to prosecute a particular defendant.*** In *Costello v. United States*, 350 U.S. 359 (1956), this Court declined to apply the rule against hearsay to

> grand jury proceedings. Strict observance of trial rules in the context of a grand jury's preliminary investigation "would result in interminable delay but add nothing to the assurance of a fair trial." *Id.,* at 364. In *United States v. Calandra*, 414 U.S. 338 (1974), we held that the Fourth Amendment exclusionary rule does not apply to grand jury proceedings. Permitting witnesses to invoke the exclusionary rule would "delay and disrupt grand jury proceedings" by requiring adversarial hearings on peripheral matters, *id.*, at 349, ***and would effectively transform such proceedings into preliminary trials on the merits,*** *id.*, at 349-350 [N.B. to wit: *Perry Mason*, O.J. Simpson]. The teaching of the Court's decisions is clear: ***A grand jury*** "may compel the production of evidence or the testimony of witnesses as it considers appropriate, and its operation generally is unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials," *id*., at 343.

R. Enterprises, 498 U.S. at 297-98 (all ***emphasis added***).

Costello.

Key fact not present here.

In the same way that items Bufkin raises were not even alluded to in either *Calandara* or *R. Enterprises*, the point for which *Costello* was mentioned eludes detection, for no one is saying anything, one way or the other, about the absence of evidentiary standards in the grand jury proceeding.

Point addressed here.

So, the relevance of *Costello* isn't the history lesson that explains why there are no evidentiary standards. The relevance is the confirmation that, because there are no evidentiary standards, we are not talking about a "case or controversy";

hence, the essence of the Separation of Powers violation.

Blair.

USOA, or is it UNITED STATES, is at least getting closer.

Of the cases identified so far, *Blair*, mentioned solely parenthetically, to support an interesting, but not very pertinent, point, is the first to come anywhere near addressing a matter relevant to Bufkin's objections. At least *Blair* talks to objections to statutes as the reason to decline the U.S. Attorney's, or was that "United States' ", or perhaps the "Law Enforcement Agency's", or maybe "United States of America's", invitation. But, not surprisingly, USOA, or is that UNITED STATES, one more time, throws itself against the ground, and misses.

STATUTE BEING ENFORCED V. STATUTE BEHIND THE SUBPOENA.

Where the *Blair* objection focuses on the statute ***being enforced***, Bufkin's objection looks to the statute ***behind the subpoena***. Bufkin is not saying that a fiduciary's willful misappropriation, or embezzlement, as deliberately misidentified in IRC § 7201, under the nondescript label of "tax evasion", or whatever (else) may be at issue per Title 26, is an invalid exercise of legislative power. Since embezzlement doesn't exist at the common law, there ***has*** to be a statute for it. So, that's not anywhere near what Bufkin is talking about.

As discussed in Points 2 and 3, the statutes that Bufkin challenges go to the

authority of the subpoena, itself. Bufkin points out the Separation of Powers problem in the subpoena, itself, and, thus, in the investigation process, itself.

STANDING.

Further, the *Blair* objection raises a statutory challenge for which the parties raising the challenge didn't really have standing. Thus, another difference here is that Bufkin most certainly does have standing to challenge the statute that goes to the heart of the basis of any subpoena authority of any so-called "Grand Jury of the United States District Court".

History lesson v. substantive law.

So, while *Blair* was cited, parenthetically, to support an interesting, but largely irrelevant, point about how the history of the grand jury confirms that the investigation is not limited to evidentiary standards of a trial, the relevance is the Court's confirmation of nature of the process at issue; hence, the Separation of Powers violation Bufkin ***is*** talking about.

In re Grand Jury Subpoena.

The Rule 17 discussion in *In re Grand Jury Subpoena* is the one point in USOA's, or is it UNITED STATES', entire response that actually addresses a point relevant to Bufkin's motion. USOA, or is it UNITED STATES, says that Bufkin failed to satisfy the "unreasonable or oppressive" standard. *Id*. at 854.

Magic words.

It's clear that rather than reading the motion for its substance, USOA, or is it UNITED STATES, is looking solely for "magic words". So, for them, to make clear the connection, here are the problems juxtaposed with the "magic words".

THERE IS NO SUCH THING AS A "GRAND JURY OF THE UNITED STATES DISTRICT COURT".

It is both unreasonable and oppressive to compel any response to any "subpoena" issued under the authority of an organization that doesn't exist, and has never existed, as a matter of law.

NO STATUTE CAN TURN THE EXECUTIVE FUNCTION INTO A JUDICIAL ONE.

We are not in France. It is all the more unreasonable and oppressive to compel such response where the statute, which pretends to jolt into life a monster called a grand jury operating under the ***judicial*** authority, defies the Separation of Powers, as it has from the instant that Frankenstein "congress" created it.

THERE IS NO SIGNATURE AUTHORITY—IMPERSONATION OF THE GRAND JURY; COMPLICITY OF THE DISTRICT COURT.

It is both unreasonable and oppressive to compel any response to any "subpoena" where such compulsion does nothing but perpetuate and encourage the continued impersonation of the grand jury. This is all the more especially the case

where that impersonation directly involves and implicates the District Court, itself, for knowingly allowing use of the court's name for blatantly ***executive*** operations.

ADMINISTRATIVE SUBPOENAS CARRY NO AUTHORITY, IN AND OF THEMSELVES.

It is both unreasonable and oppressive to compel any response to ***any administrative*** subpoena issued under the pretense of either, much less both, ***grand jury*** authority ***and judicial*** authority, by anything or anyone, including "United States of America", or "USOA", or "United States", or "UNITED STATES", or the "United States Attorney's Office", or an AUSA, or some alleged "Law Enforcement Agency", or whoever this is.

THIS ADMINISTRATIVE SUBPOENA DOESN'T EVEN HAVE PROPER SIGNATURE AUTHORITY FOR *THAT* PURPOSE.

It's both unreasonable and oppressive to compel anyone to respond to an official document that is based on no authorized signature. Who is "United States"? Who is "United States of America"? Who represents what? Are there enough conflicts of interest between the two that each deserves separate counsel?

THERE CAN BE NO MENS REA, GIVEN THE PUBLISHED "ANTI-NOTICE".

Where the published opinions defy the law, telling the world that **"taxpayer" means "fiduciary"** is ***not*** the reality, the courts have ***defied*** Due

Process, putting everyone on "Anti-Notice". Therefore, it is both unreasonable and oppressive to investigate for probable cause where there is, as a matter of law, no crime, due to legally impossible mens rea. [9]

THERE CAN BE NO ENFORCEABLE FIDUCIARY OBLIGATION, PERIOD, IN LIGHT OF THE PATRIOT ACT.

It is both unreasonable and oppressive to investigate for probable cause for alleged fiduciary misconduct where such fiduciary obligations, if they ever really existed, have been rendered illegal, and thus completely null and void, by the so-called Patriot Act, which affirmatively makes it a crime to finance terrorism.

"RESIDENCE" CANNOT BE COMPELLED.

It is both unreasonable and oppressive to allow "United States of America", or "USOA", or "United States", or "UNITED STATES", or the "United States Attorney's Office", or an AUSA, or some alleged "Law Enforcement Agency", or whoever this is, or even the grand jury, through a mere subpoena request, to compel "residence" in "this state" by means of the mere allegation of such.

It's both unreasonable and oppressive to suggest that both the "grand jury" and "service" have authority where there's no indication that 40 U.S.C. §§ 3111 and 3112 are anywhere near satisfied.

[9] If Bufkin doesn't have standing to assert this, Fuselier does.

It is all the more unreasonable and oppressive where the motion to quash specifically denies, by verified statement, such alleged "residence", and where there is not even an inkling of evidence to the contrary asserted.

IN GENERAL, NO SUBPOENA MAY BE DELIVERED BEYOND "THIS STATE".

Because Bufkin has no "residence" in "this state", it both unreasonable and oppressive to compel him, or ***anyone*** similarly situated, to respond to such subpoena. There is no evidence of anything that justifies service into Illinois, which place is beyond "this state".

"TIME" CANNOT BE COMPELLED.

In the exact same way that "residence" in "this state" is a purely voluntary act, so is adopting "United States standard time". Thus, it's both unreasonable and oppressive to compel anyone to adopt "United States standard time".

NO GRAND JURY OF THE UNITED STATES DISTRICT COURT, OR EVEN OF THE UNITED STATES, CAN POSSIBLY "RESIDE" OUTSIDE OF "THIS STATE".

It is both unreasonable and oppressive to purport to run a "Grand Jury of the United States District Court" from the land of Oregon, or from the land ***anywhere***. No such entity can possibly "reside" outside of the "federal area" known as "OR", i.e., an administrative subdivision of "this state". Thus, the entity again purports to

have authority that it flat out does not, and cannot, have.

THERE IS NO PROPER SEAL, HERE.

It is both unreasonable and oppressive to purport to satisfy a requirement of operating under seal but which isn't satisfied at all by way of any proper seal.

COMMERCIAL ENTITIES NEED TO RECOGNIZE WHAT THEY ARE.

There is no such entity as "UNITED STATES DISTRICT COURT DISTRICT OF OREGON" created by any act of the "congress". Such commercial entity, providing professional arbitration services, doing business in "this state" via the benefit of a tax exemption certificate, has a very different source of authority than what most presume. It is both unreasonable and oppressive to compel participation that may exist solely by voluntary act and consent.

CONFLICT OF INTEREST IN TREASURY, GENERALLY.

It is both unreasonable and oppressive to purport to limit who may serve papers in a case but then turn right around and let IRS agents serve papers for a "tax" case. The interest in the "tax" case is "too close" for IRS agents.

SERVICE WAS WOEFULLY INADEQUATE.

It's both unreasonable and oppressive even to suggest that service may be accomplished anywhere by abandoning the document in the presence of someone

other than the party to be served. *See* App. p.39.

APPEARANCE AND *ATTENDANCE* ARE TWO VERY DIFFERENT THINGS.

It's both unreasonable and oppressive to enforce a document that purports to equate "appearance" with "attendance", where such equating may not be lawful.

IN GENERAL, ALL THRESHOLD BURDENS OF PROOF ARE ON THE ISSUER AND ON THE SERVER.

There is no presumption of authority, here. It's not Bufkin's burden to prove "no authority". It's the court's job and the applicant's job and the server's job to prove authority. Bufkin's verified motion to quash remains, to date, unrebutted.

Rule 17 is manifestly violated, here.

In addition to the manifest problems of no "parties" and no "litigation", thus no ***judicial*** authority, which is the condition precedent for Rule 17, the U.S. Attorney's Office now has five full pages plus of "magic words" juxtaposed with the objections that spoke for themselves from the outset. Now that the "magic words" faction has been appeased, maybe we can get back to the merits of the matter. Rule 17, as one more source of such limits, limits the grand jury, is violated, here.

Santucci.

The issue not addressed here.

This is a ***perfect*** example of the threshold problem and issue! While this one purports to respond to the signature authority issue, it doesn't. *Santucci* doesn't address the 1746(1) ("United States of America") versus 1746(2) ("United States") problem, because that's not the issue that was raised.

The threshold problem is confirmed, one more time.

To get to the heart of the problem, which is the fact that the ***grand jury*** function is an ***executive*** process, not a ***judicial*** one, *Santucci* four-square confirms that the subpoena is not part of any ***grand jury*** investigation, but rather the ***prosecutor's*** investigation. The grand jury don't necessarily even know that a subpoena has even been issued! *DiGenova*, 779 F.2d at 80 & nn.11, 12. *Santucci*, 674 F.2d at 627. The prosecutor simply must intend to include the grand jury in on the investigation. *Santucci*, 674 F.2d at 632.

That's not a ***grand jury*** investigation. That's a ***U.S. Attorney*** investigation pretending to be a ***grand jury*** investigation via impersonation of the grand jury. There may not be anything wrong with a ***U.S. Attorney*** investigation, in and of itself, but there's a lot wrong with it when the U.S. Attorney impersonates the grand jury, and then suggests, by issuance of a ***judicial*** subpoena, the existence of ***judicial*** authority that in no way exists.

Coson.

Time to reevaluate the policy.

Where the courts have operated for more than 100 years on a manifest misunderstanding of the scam called the "federal income tax system", operating clandestinely via fiduciary obligations from the outset, it's more than time to reevaluate the conflict of interest policy regarding service of papers. *Coson*.

Summary.

The cases offered by USOA, or is it UNITED STATES, are relevant, but for the exact opposite reason they are cited. To read them is to realize that these cases prove up Bufkin's position quite solidly.

Point 7: Does a "USOA", or is that "UNITED STATES", subpoena have authority beyond the border of "this state"?

Pennoyer v. Neff is an Oregon case!

> The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, in illegitimate assumption of power, and be resisted as mere abuse. D'Arcy v. Ketchum et al., 11 How. 165.

Pennoyer, 95 U.S. at 720.

In the only evidence of Record, Bufkin denies "residence" in "this state". *See O'Connor* (unrebutted evidence is taken as true).

Point 8: Does *anyone* with Treasury have authority to serve papers in a "tax" case?

Coson is a ruling from a generation ago, at a time when ignorance of the law regarding the private obligation nature of the "federal income tax system" was still running rampantly and amuck through the federal trial and appellate judiciary. Since the cure for such massive, nationwide ignorance now exists, it's time to reinvestigate this conflict of interest issue.

IRS agents have too close an interest in "tax" cases to serve papers for them. The paperwork "served" here, in the "tax" case, was by an IRS agent.

Point 9: Regardless of who "serves" the papers, where the alleged witness is not served personally, is there service?

How could there ***possibly*** be? *Cf. Jones*.

See App. p.39. *But cf*. Rule 17(d).

Assume it possible for an IRS agent to serve papers in a "tax" case. Assume that a party may be compelled to adopt a "residence" in "this state". How can abandonment of the documents to be served in the presence of some other party, without some sort of Affidavit showing personal service difficult or impossible, ***ever*** constitute service?

Point 10: What is UNITED STATES DISTRICT COURT DISTRICT OF OREGON?

It's a commercial enterprise, offering professional arbitration services, doing business in "this state" via the benefit of a tax exemption certificate.

Cf. 28 U.S.C. § 117 (establishing a "judicial district", i.e., a "federal area" or "federal zone", known as Oregon), *and* § 132 (creating an entity known as a "United States District Court" for each "federal zone" called a "judicial district").

It is not a grand jury.

Point 11: Can UNITED STATES DISTRICT COURT DISTRICT OF OREGON possibly exist outside "this state"?

The entire point of the elaborate creation of "this state" was to create a commercial zone free from the land, thus, free from the Law of the Land, in particular the Law regarding the exclusive use of an honest system of weights and measures. Therefore, it's instantly inconceivable that anything about any UNITED STATES DISTRICT COURT, or any "U.S. Courthouse", can ever in a million years be found outside a "federal zone", in this case, "OR". 4 U.S.C. §§ 105, 108.

Thus, the address, 1000 SW Third Avenue, 3rd Floor, Room 3111, in Portland, "Oregon", for the "U.S. Courthouse", is impossible and manifestly false. It is simply one more manifest misrepresentation in the entire series of

misrepresentations involved in this matter.

Point 12: What is the proper seal for this matter?

Do the ***"congress"*** issue *their* subpoenas under a ***judicial*** seal? So, why would a ***grand jury*** issue their subpoenas under a ***judicial*** seal, either?

Moreover, if there ever ***were*** a need to use the ***judicial*** power to issue a ***grand jury*** subpoena, doesn't the seal have to be both (A) of a court, not of a commercial enterprise, and (B) legible to the recipient?

There is no legible seal, period. Further, if it is of the UNITED STATES DISTRICT COURT DISTRICT OF OREGON, how is that any different from a seal saying GENERAL MOTORS or FORD?

Point 13: Doesn't the document served have to show (legibly) that seal?

Whatever the proper seal, the document served must be "certified" by the issuing authority, which means that such seal must be affixed ***and legible***. The document abandoned near Bufkin's wife has no such "certification".

Put a proper and legible seal on the document that is to be delivered, by competent service, or don't bother serving the document.

Point 14: What does *attend* mean?

Is the difference between *appear*, of the document, and *attend*, of Rule 17, mere semantics, or is it substantive?

These two terms change dramatically the scope of the subpoena power. Where one *appears*, one may do so "conveniently", whether by mail or by counsel. Where one *attends*, one may be rather much inconvenienced, and for which certain expenses would expect to be significantly greater. To *attend* is to be there bodily, with the full expectation of the opportunity to meet directly with the grand jury.

Attendance has nothing to do with that side of an "investigation" that never gets to the grand jury. *Attendance* has nothing to do with any ***administrative*** effort by anyone, including the U.S. Attorney's Office. Rather, *attendance* has everything to do with a ***grand jury*** investigation.

In this context, then, *attend* certainly seems to be an intentional limitation on the scope of the "unilateral", administrative "investigative" scope of the prosecutor(s). Therefore, this subpoena, which seeks only an *appearance*, fully intends to exceed the scope of that limited authority, rendering it void on its face.

Two fundamental realities

Reality 1—"Taxpayer" means "Fiduciary"

Point 15: As a matter of law, is there any mens rea?

The federal trial and appellate courts have openly defied the law, openly denied that the law is the law, all under color of law and office, thereby producing "Anti-Notice".

See Stearman v. COMMISSIONER, T.C. Memo. 2005-39 (VASQUEZ); *Florance v. COMMISSIONER*, T.C. Memos. 2005-60, -61 (VASQUEZ); *Tello v. COMMISSIONER*, 410 F.3d 743 (5th Cir. 2005) ("*Tello I*") ("*Tello II*" is unpublished, No. 04-61146); and *Stearman v. COMMISSIONER*, 436 F.3d 533 (5th Cir. 2006).

No mens rea, as a matter of law, due to "Anti-Notice".

Due Process requires Notice. So, where the prospective victims of the system have "Anti-Notice", how is Due Process satisfied? Some more specifically, where the published discussions give "Anti-Notice", to the effect that the law is not the law, and that those who argue the law will be sanctioned, where's the mens rea for any "income tax" case?

The "income tax" system is based on a scam and a lie. It's a very intentionally disguised fiduciary obligation. Where the jurists throughout "this state", so far including the Tax Court and various trial courts in the Fifth, Eighth,

Ninth and Eleventh Circuits, have had ***no idea*** of the legal mechanism behind the "federal income tax system", it's ***unconscionable*** to attribute "knowledge" to the people. Where the courts have "no knowledge" of what is the law, how can the defendant have "knowledge"? Where the courts not only publish opinions that defy the law, but also sanction the litigants who dared to argue the law, all that the rest of the litigants have is "Anti-Notice". Therefore, where the law itself gives "Anti-Notice", then, as a matter of law, there is no mens rea.

> Since some know better, now, they could withdraw the published "Anti-Notice" or publish "Notice". Either one. But they've done neither. Therefore, having left the "Anti-Notice" in full force, they've rendered legally impossible the element of mens rea.

The Wallis case.

Now *cf.* Wallis v. COMMISSIONER, No. 8244-04 (U.S.T.C. FOLEY, J., 30 Nov 2005) (**unpublished**), presently on appeal in the Fifth Circuit (No. 06-60256). DOJ has ***not*** filed any motion for sanctions, despite the existence of both *Tello I* and *Stearman*. Not just once, but twice, FOLEY denied COMMISSIONER's motions for § 6673 penalties. Those motions alleged that it's "frivolous" and "groundless" to argue the legal reality that **"taxpayer" means "fiduciary"**. The first motion was filed 7 February A.D. 2005. FOLEY denied it on 29 November A.D. 2005, having taken ten months to study the matter. The second motion was filed on or about 14 March, and was denied, by silence, in the final order of 30

November, i.e., about nine months later. But, none of that legal reality is published.

The Florance case.

See also Florance v. COMMISSIONER, No. 05-60552 (5th Cir. 29 Mar 2006) (**unpublished**). Up through 13 January A.D. 2006, the date of the *Stearman* decision, the Fifth Circuit directed and encouraged a full-steam-ahead RICO-sized criminal enterprise extortion, not caring what was or wasn't proved at trial. But, then something happened! ***Despite*** the Tax Court opinions, and ***despite*** *their own published opinions*, on 29 March A.D. 2006, the Fifth Circuit ruled in exactly the *opposite* direction in *Florance*.

The salient parts of the Florance case include these items. Florance, as did Tello, Stearman, and Wallis (5th Cir.), Tharp (8th Cir.), O'Connor (9th Cir.) and Arnold (11th Cir.), argued the legal reality that **"taxpayer" means "fiduciary".** The Chief Counsel's office, via Area 6 (Dallas), also ***declared war*** on Florance, telling him that even as a Texas national and an American national, he was subject to the "income tax". Given VASQUEZ' rabid and maniacal hatred of the law to which he's sworn an oath, as demonstrated by his "unfiling" some ***54 documents, including 10 "secret orders",*** and then issuing sanctions against Florance for Florance's demanding proof of the alleged fiduciary obligation, Florance appealed. About the time that DOJ's Brief was due, DOJ requested that one of the two

Florance cases be remanded to the Tax Court for an alleged clerical error. On 6 December A.D. 2005, the first panel with the Fifth Circuit granted that motion, remanding one of the two cases in *Florance* (Docket No. 11782-03) to the Tax Court (VASQUEZ).

But, VASQUEZ went silent. Practically four months later, on 29 March A.D. 2006, a completely *different* panel, *fully* aware of the remand, entered the *judgment*, anyway, ***without*** **citation to *Tello I* or *Stearman***, *without* monetary sanctions, and *before* VASQUEZ could enter an increased "judgment" amount. Even DOJ recognizes that the Fifth Circuit had "no jurisdiction" to enter that ruling, at least as regards the one matter that the first panel had remanded, but, we have the appellate ruling, already, anyway. Why would they do that?

Why would an appellate court with ***all*** that apparent "authority" in one direction make a ruling in exactly the opposite direction? After being on a roll, leading the ***nation*** in issuing "sanctions" awards, the Fifth Circuit all of a sudden slammed on the brakes. Their heretofore runaway freight train ran full tilt into the mountainside of the legal reality. After issuing *Tello I*, the Fifth Circuit then pounded the daylights out of Stearman. They published the first version of the opinion as of Friday, 13 January A.D. 2006. On 13 February A.D. 2006, Stearman filed a $50,000,000 claim, asserting jurisdiction under 28 U.S.C. § 1333(1),

alleging a host of criminal activity committed against him in the process of the trial and appellate process engaged in by the Tax Court and Fifth Circuit. *See* Stearman v. SMITH, et al., No. 3:06-CV-273-L (pending appeal, No. 06-10797). About that same time, Wallis filed his Notice of Appeal, which brought the first "no sanctions granted", **"taxpayer" means "fiduciary"** case of this series of cases to the attention of the Fifth Circuit.

Thus, on 29 March, a mere six weeks after (A) Stearman charged criminally and sued commercially three Fifth Circuit jurists, the DOJ appellate attorney, the Tax Court judge, the Tax Court Clerk (at the time) and the attorney for COMMISSIONER in the Tax Court, and (B) Wallis appealed to the Fifth Circuit the first Tax Court case confirming that **"taxpayer" means "fiduciary"** is neither frivolous nor groundless, the Fifth Circuit issued the Florance ruling.

Note that it was a different panel who issued the final order from the one who had remanded that one case (of two) for "correction". Note that where the *Tello I* and *Stearman* opinions were **published** to the world, the *Wallis* and *Florance* opinions are ***un***published. Thus, where the Fifth Circuit had previously set ***national*** records for sanctions in "tax" cases, they suddenly dropped off the radar screen and issued no more sanctions.

Note that the Fifth Circuit basically issued an order that is in part,

completely without subject matter jurisdiction, and note that DOJ did not take that issue up the line to the Supreme Court. In sum, note that within six weeks after having to be charged criminally and sued commercially, the Fifth Circuit finally decided they *could* go back to the law library, after all. When they did, they realized the value in changing their attitude, perspective and demeanor not only about *pro se*'s generally, but also about the legal reality of the "income tax" system, in particular.

And, there's more. The mandate in the Florance case adds the epilog. Recall the remanded case. Recall that VASQUEZ went silent. When the second panel issued their ruling on 29 March, VASQUEZ finally got around to doing something. If there was to be any correction, it was one figure in a one-page "judgment" document. Normally, the Fifth Circuit issue their mandate about 30 days after entering their final judgment. But, here, rather than issuing the mandate about 29 April, it was issued on 23 May. Why the delay? Because VASQUEZ was still engaging in on-going, and meaningless, activities in the Tax Court. Thus, the Fifth Circuit allowed time for these proceedings to come to their natural conclusion. By so waiting, the Fifth Circuit issued yet another subtle message with this particular mandate. The Fifth Circuit had no intention of altering their 29 March ruling. Subject matter jurisdiction or not, the *Florance* case was over.

Period. But, the problem remains, for all of the reality remains ***un***published.

Thus, where FOLEY, J., in the Wallis case, *did not* have to be charged criminally and sued commercially to be motivated to invest the nine months that he invested after the "trial" date to rule that **"taxpayer" means "fiduciary"** is neither frivolous nor groundless, and where the Fifth Circuit, in the *Stearman* case, *did* have to be charged criminally and sued commercially to motivate them back into the law library, finally, both the Tax Court and the Fifth Circuit have repented of their prior conduct and rulings that horrifically violated the ancient law of a place called "this state." However, what remains published is "Anti-Notice".

The Fifth Circuit's rulings, here, are very, very inconsistent. The reason for the inconsistency is that the Fifth Circuit ***finally*** figured out that the only people who had ever talked legal reality to them about the "federal income tax system" were these *pro se* litigants. Thus, the Fifth Circuit ***finally*** woke up to the fact that they were engaging in RICO-level criminal violations, under color, as charged, and they repented and renounced.

That's great, as far as it goes. Here's the problem. The published "Anti-Notice" is still published "Anti-Notice".

The published lessons taught by the Supreme Court.

The *Pollock I* case.

Why is it that the very same activity is (A) illegal to do 1894, but (B) illegal not to do in 1931? In 1894, Farmers' tried to make a contribution to "United States". Pollock objected. The Supreme Court opened their opinion this way.

> Mr. Chief Justice FULLER, after stating the facts in the foregoing language, delivered the opinion of the court.
>
> The jurisdiction of a court of equity to prevent any threatened breach of trust in the misapplication or diversion of the funds of a corporation by ***illegal*** payments out of its capital or profits has been frequently sustained. *Dodge v. Woolsey*, 18 How. 331; *Hawes v. Oakland*, 104 U.S. 450. As in *Dodge v. Woolsey*, this bill proceeds on the ground that the defendants would be ***guilty*** of such ***breach of trust*** or duty in voluntarily making return for the imposition of, and paying, an unconstitutional tax; and also on allegations of threatened multiplicity of suits and irreparable injury.

Pollock I, 157 U.S. at 553-54 (emphasis added). This is an odd way to open a "tax" case discussion. Pollock, the stockholder, i.e., an equitable interest holder, i.e., a "beneficiary", sued the "fiduciaries", the directors of the company, to stop them from violating their fiduciary duties to him, to all other stockholders, and to the clients of their trust management services. The Court upheld his position. "United States" was an unknown beneficiary to Farmers' at the time.

But, when Al Capone said he had no intention of volunteering to make the

very same type of contribution to "United States" in 1931, he went to jail.

What changed? Since it most certainly wasn't the law of trusts, all that can *possibly* have changed is the relationship of the parties. In 1894, "United States" was an "unknown beneficiary" to Farmers'. Where at least one beneficiary of Farmers' objected, for Farmers' to continue would be for Farmers' to commit embezzlement of trust funds. However, by 1931, "United States" was a commonly accepted entity as a "beneficiary". Therefore, when Capone's attorneys negotiated on his behalf, they "volunteered" him as a fiduciary, at which instant, he also had "volunteered" to willful misappropriation, for which he was convicted. Thus, Farmers' *was not* a fiduciary to "United States", but Capone *was*.

The *Cheek* case.

Cf. Cheek. To translate this discussion, Cheek was alleged to be a "taxpayer", i.e., a "fiduciary", and he, like everyone else in that entire proceeding, until it got to the Supreme Court, had ***no idea, i.e., were completely ignorant of the reality***, that "taxpayer" means "fiduciary"; thus "mistake of law" and/or "mistake of fact" are 100% legitimate defenses, especially for fiduciaries, especially when they have no clue that they are fiduciaries. And, since "no" jurists this side of the Supreme Court had the remotest clue that we're dealing with trust law, it follows that all alleged "taxpayers" have the 100% legitimate defense of

"mistake of law" and/or "mistake of fact". Thus, there is no crime here to investigate, as a matter of law. Period.

It's pure speculation, but if Cheek ***had*** known that what truly is at issue, namely a clandestine fiduciary obligation, he would have even more formally argued "mistake of fact" and "mistake of law". What's not speculation is that where the parties don't have any idea what is the basis for the charge, because the jurists, themselves, (A) have no idea, and (B) have published "Anti-Notice" to the American people about it, the people have ***no way*** to know the charge against them, or that there is a defense, much less that such defense is 100% unassailable!

The *Arnold* case.

Arnold, another criminal tax case, proves up the corollary. The general theme is this: the "income tax" obligation is an alleged fiduciary obligation. The corollary is this: the "employment" "tax" obligation sounds in contract law. Thus, it's legally impossible to charge someone criminally for non-payment of alleged "employment" "taxes". This is not overtly addressed by the Supreme Court in *Arnold*. It's more clearly addressed in *Jannuzzio*.

Published or not, the reality is being recognized administratively.

Surely, it's pure coincidence that the Wallis case was decided in late November, A.D. 2005, and SNOW tendered his resignation in December. Surely,

it's pure coincidence that "taxpayer" means "fiduciary" has been argued for at least three years, and there has recently been disclosed the plan to bring in private collections agencies to work on the "income tax" matters (which effectively divests the IRS of that work).

Submarines have multiple compartments for a very good reason. When one floods, it may be isolated, and the ship may still continue. On the litigation side of the house, the IRS has been a Nazi submarine of one chamber. Where the American legal reality of **"taxpayer" means "fiduciary"** floods that chamber, the whole is flooded. To bring in "regional", independent, debt collection firms adds the multiple chambers in an effort to isolate that flood. It'll work long enough to reduce the administrative personnel slowly enough to prevent what Ross Perot would call a "giant sucking sound." It's a good idea, but it's also ***very*** confessional.

Surely, it's pure coincidence that the DC appellate court is beginning, ever so slightly, to narrow what "income" means. *Murphy*.

If not coincidence, could it possibly be that over the past three years, or so, that certain people have finally figured out what the *pro se*'s have been telling them regarding the legal reality of the matter? Could it be that they've finally figured out that **"taxpayer" means "fiduciary"?** Could it be that they've finally figured out what the scam is and how it works?

Summary.

"Taxpayer" means "fiduciary". For so long as there is even one published opinion to the contrary, the people are on "Anti-Notice". That "Anti-Notice" renders mens rea legally impossible to prove, as a matter of law. Thus, there is no point in any "investigation", by anyone, of any "tax" matter, as a matter of law.

Reality 2—The feds have outsmarted themselves, again (and again …).

Point 16: As a matter of law, has the Patriot Act rendered the fiduciary obligation at issue void as against public policy?

Whatever may have been enforceable before the Patriot Act has been rendered illegal and unenforceable, by their own policy and activities.

In addition to the fact that mens rea is legally impossible, as a matter of law, and given the current political environment, no one can stand before His Maker and say that he knew all about the state-sponsored terrorism but didn't even try to do something about it. By virtue of recent and superceding legislative policy, via the so-called Patriot Act, it's (now and formally) illegal to finance terrorism. Therefore, the fiduciary obligation at issue has been rendered illegal, thus void and unenforceable, as violating their very own policy!

They can't have it both ways. They can't say, "It's illegal to finance terrorism," but then turn right around and say, "We'll put you in jail if you don't

finance ***our*** home-grown terrorism."

In terms of "tax", think of it this way. For "cash basis" "taxpayers", the time of the "income" or "expense" is at the time of the transaction. Thus, all "cash basis" transactions subsequent to the insanity called the Patriot Act are affected.

No obligation?—no breach. No breach?—no crime, as a matter of law.

No one in clear conscience finances state-sponsored massacre.

Why do millions upon millions of sensible people have no desire to finance this thing called the "federal government"? In addition to the fact that the "income tax" system is based on a scam and a lie, the feds ***murder*** people. They ***ARE*** "organized crime", both in the commission and in the escape from prosecution of multiple, multiple violent crimes. Pearl Harbor was ***not*** a surprise. Bullets just can't do what the "Warren Commission" says they can. Bobby's fatal wound was to the ***back*** of his head, not any front entry wound. The tree, which very obviously blocked the trajectory from the alleged hotel room in Memphis, was chopped down very quickly after MLK was murdered. Remember Ruby Ridge and Waco.

TWA 800 blew up from a fuel line problem? Of course it did. That's explains perfectly all the military-grade shrapnel in that plane, and the bodies.

Some guinea pig experiments that we know about are these. The U. S. Army released over civilian communities balloons containing "weaponized"

mosquitoes. Those viruses were intentionally grown at Fort Dietrich, Maryland. Regarding the contamination of Fort Dietrich, itself,

> [a] 1948 New England Journal of Medicine report titled "Acute Brucellosis Among Laboratory Workers" shows us how actively dangerous this agent is. [n.7: Howell, Miller, Kelly and Bookman, "Acute Brucellosis Among Laboratory Workers", New England Journal of Medicine 1948;236:741.] The laboratory workers were from Camp Detrick, Frederick, Maryland, where they were developing biological weapons. Even though these workers had been vaccinated, wore rubberised suits and masks and worked through holes in the compartment, many of them came down with this awful disease because it is so absolutely and terrifyingly infectious.
>
> The article was written by Lt[.] Calderone Howell, Marine Corps, Captain Edward Miller, Marine Corps, Lt[.] Emily Kelly, United States Naval Reserve, and Captain Henry Bookman. They were all military personnel engaged in making the disease agent Brucella into a more effective biological weapon.

<http://www.rense.com/general18/mcc.htm>. In 1950, the bacteria "serratia marcesens" was released by governmental agents into San Francisco Bay, where people died from infection. San Francisco still has three times the normal amount of such bacteria. The government's "MK Naomi" project of the 1950's and 1960's involved dropping biological warfare agents out of aircraft to see how many people would become ill in six entire towns (including Ft. McClellan, Ala., San Francisco, Cal., Ft. Wayne, Ind., Minneapolis, Minn., and St. Louis, Mo.). In 1966, some 12,000 recruits at Kessler Air Force Bases were turned into guinea pigs without their knowledge, being injected with the experimental "micropasma vaccine". In

1977, a Senate report, S, 1892, found that the potentially incapacitating psycho-chemical compound "EA3167", which would absorb into the skin on contact, was tested on prisoners in Kentucky and Pennsylvania using an adhesive tape and also tested on other civilian and military people. Also in 1977, a Senate committee exposed "Project MK-Ultra", involving more that 40 universities and institutions, where covert drugs were used secretly on unwitting citizens. Further, the 1997 "Tuskeegee Experiment" involved the withholding of treatment of 399 black men with syphilis.

Biologicals are not the only methods used against the unsuspecting populace. The Oklahoma City Bombing was an inside job. How can an alleged "truck bomb" vaporize, into oblivion, absolutely ***everything*** about that alleged truck, except the rear axle, which was miraculously found about a block from the alleged explosion site, fully intact, save a bend which looks as if that axle had been bent in a hydraulic press? There is no evidence of any truck or "truck bomb" related to the APM Building. [10] No ANFO device could rip off the roof of the Journal Records building 250+ feet away. No ANFO device produces greatly

[10] Where the original photos of "the truck" in the Memorial Museum were of fully intact, white, not damaged whatsoever, body shells of a passenger van found at a junk yard, recent reports indicate that the Memorial Museum in Oklahoma City now has pieces of the "mangled truck." This is more than 10 years later! It's just another effort to rewrite history. Where's the engine, transmission, etc.?

increased Geiger counter readings. The bombs were ***inside*** that building. Stored there, still missing, and presumed destroyed are (A) the Iran/Contra investigation materials and (B) the Mena, Arkansas drug trafficking investigation materials.

Per recent polls, at least one-third of the American people are satisfied that S-11 was an inside job. That figure may understate the exact percentage.

In sum, state-sponsored terrorism is exactly what USOA intends to compel people to finance through this "income tax" scam, and the people have had enough of this "income tax" scam ***and*** of the state-sponsored terrorism.

Bufkin stands with the Supreme Court opposing tyranny.

The Supreme Court soundly stopped the tyranny efforts possible for them to address in the *Hamdan* case. On this end, we have to do our job, as well.

Summary.

The insanity called the Patriot Act adds policy in several areas, including rendering illegal those transactions that ultimately sponsor terrorism. Since the "federal government" has been complicit in that very line of conduct, specifically patterned after Hitler's Reichstag fire, and since the "tax" "dollars" are used for such activities, it follows that the Patriot Act has rendered all "income tax" obligations illegal on their face, thus void and uncollectible.

No obligation?—no breach. No breach?—no offense, period. Thus, there is

no "tax" charge to investigate. T**he buck stops here.**

100-year-old bad habits can't withstand those with "standing"

Point 17: Does prior lack of standing compel consent?

The only ones in a position to object are those with standing.

In *Allen*, where a national class action suit was filed to make the IRS withdraw tax-exempt status for non-desegregated *private* schools, the Court addressed the Separation of Powers issue inherent in the analysis of standing.

> The Constitution, after all, assigns to the Executive Branch, and not to the Judicial Branch, the duty to "take Care that the Laws be faithfully executed." U.S. Const., Art. II, [n.3 omitted]. We could not recognize respondents' standing in this case without running afoul of that structural principle.

Allen, 468 U.S. at 761.

The plaintiffs alleged no direct injury relative to any of the private schools at issue (and then asked only for prospective relief). *Id.* 468 U.S. at 745-46. In short, because they had no direct injury, they had no standing. *See also Lujan,* 504 U.S. at 560-61 ((a) "injury in fact"; (b) causation; (c) favorable ruling will actually address the problem). The Court in *Lujan*, as did the Court in *Allen*, introduced the discussion on standing by mentioning Separation of Powers.

In short, regarding impersonation of the grand jury and the feigned, simulated process associated with these "subpoenas", until someone in a position to object is blessed with standing, certain objections are just simply not raised.

The perversion of powers has been practiced for so long, without objection by those with standing, that all parties involved clearly have forgotten that a barrier exists. So, the question here is whether a century's worth of perversion of powers, a matter Bufkin has not had standing to address, compels Bufkin's consent. Of course, the question answers itself. The entire policy of "this state" relies exclusively on *voluntary* consent.

Bufkin's verified lack of consent.

Bufkin's motion speaks for itself. There's no need to reiterate those details again, here. By way of that verified motion, Bufkin clearly demonstrated his lack of consent to everything in sight. *See O'Connor* (unrebutted evidence is true).

Conclusion

This subpoena is administrative (executive, investigatory), not judicial

The subpoena at issue is an ***administrative*** instrument. It is neither authorized by the grand jury, as evidenced by the complete lack of the foreman's signature, nor is there any pending litigation. Thus, this ***administrative*** subpoena has no force or effect. *Shulz I and II*. It's an issue over which no trial court has discretion. Bufkin's motion to quash should be granted, and mandamus may enforce that.

This subpoena is the direct result of long-standing, manifest impersonation of the grand jury, via the perversion of the assertion of judicial authority in a purely executive, investigatory, non-judicial matter. **This abuse stops here.**

The "congress" cannot delegate the executive function to the courts

The language at 18 U.S.C. §§ 3321 and 3331 is void for violation of Separation of Powers. Executive, administrative *investigation* is not the purpose of the judiciary. There simply is no such thing as a grand jury of any "United States District Court", and there never has been.

Mens rea is legally impossible, due to "Anti-Notice"

The allegations under review relate to the "federal income tax system", which is another 100-year-old scam. It's such a well-entrenched scam that it has

even fooled the Tax Court and the Fifth Circuit, which courts have ***published*** "Anti-Notice." That "Anti-Notice" renders the necessary mens rea wholly and completely impossible to prove, as a matter of law. There being no "tax" crimes ***to*** investigate, as a matter of law, there is no need for any such investigation.

Further, since the relevant fiduciary obligation is rendered illegal, thus void as against public policy, due to the Patriot Act, there are no "tax" crimes to investigate, anymore, as a matter of law.

Lack of authority is a non-discretionary issue

Mandamus is appropriate where non-discretionary functions are at issue. In *Kendall*, the Court also addressed the existence of the dividing line between executive and judicial authority. The Solicitor General entered into the settlement under the Act of the "congress". *Id.* 37 U.S. at 610-11. Once the sum was determined, the Postmaster General had no political discretion as to the amount to establish to the credit of Stokes.

Here, the mandamus is not to any executive authority, but rather to the trial court. The topic is lack of authority, and the result is this. The trial court has absolutely no authority to enforce the ***administrative*** subpoena at issue. The trial court is both (A) exercising authority it doesn't have, by issuing a subpoena, at all, under its name for a ***non***-judicial matter, and (B) refusing to exercise authority it

must exercise, i.e., enforcing the Separation of Powers, by which refusal the trial court is thereby fully participating in the U.S. Attorney's Office's manifest impersonation of the grand jury d/b/a the District Court. In both instances, these are non-discretionary matters. As a matter of law, ***none*** of such subpoenas should ever issue, and ***all*** of them are properly quashed, upon motion.

There is ***no grand jury authority*** behind the subpoena. There is ***no judicial authority*** behind the subpoena. There is ***only administrative authority*** behind the subpoena. The perpetuation of this perversion of powers is repugnant.

Relief and Remedies Sought

Bufkin demands that the law be recognized and applied.

Bufkin requests that this court encourage the trial court to reconsider its initial ruling of denying his motion to quash. If that encouragement rises to the level of needing to issue mandamus, Bufkin requests that such be issued.

Respectfully submitted,

Michael Edward Bufkin
Without prejudice
Without the United States

1136 Gail Lane
Sleepy Hollow, Illinois

Certificate of Service

By my signing below, I certify that on this the _____ day of September A.D. 2006, I have dispatched to the Clerk of the Court of Appeals, and have served on the following the proper number, for each, by 3-day delivery, or certified mail, return receipt requested, of true and correct copies of this Petition with Addendum:

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Certificate of Compliance

By my signing below, I certify that this Brief complies with the "Type-Volume Limitations" of FED. R. APP. P. 32(a)(7)(B). Including headings, citations, and footnotes, from the top of the Statement of Facts to the end of the Relief Sought, this Brief contains no more than 14,000 words of proportionally spaced Times New Roman (size 14) type, with headings of Arial (size 12). The actual MS Word ® (Microsoft) count is itemized as follows: 13,823

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Statement of Related Cases

There are no known related cases pending in this Court.

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Addendum

Rule 17. Subpoena [in the context of a criminal trial]

(a) Content.

A subpoena must state the court's name and the title of the proceeding, include the seal of the court, and command the witness to attend and testify at the time and place the subpoena specifies. The clerk must issue a blank subpoena -- signed and sealed -- to the party requesting it, and that party must fill in the blanks before the subpoena is served.

(b) Defendant Unable to Pay.

Upon a defendant's ex parte application, the court must order that a subpoena be issued for a named witness if the defendant shows an inability to pay the witness's fees and the necessity of the witness's presence for an adequate defense. If the court orders a subpoena to be issued, the process costs and witness fees will be paid in the same manner as those paid for witnesses the government subpoenas.

(c) Producing Documents and Objects.

> (1) In General.
>
> A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.
>
> (2) Quashing or Modifying the Subpoena.
>
> On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(d) Service.

A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena.

(e) Place of Service.

(1) In the United States.

A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.

(2) In a Foreign Country.

If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.

(f) Issuing a Deposition Subpoena.

(1) Issuance.

A court order to take a deposition authorizes the clerk in the district where the deposition is to be taken to issue a subpoena for any witness named or described in the order.

(2) Place.

After considering the convenience of the witness and the parties, the court may order -- and the subpoena may require -- the witness to appear anywhere the court designates.

(g) Contempt.

The court (other than a magistrate judge) may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. A magistrate judge may hold in contempt a witness who, without adequate

excuse, disobeys a subpoena issued by that magistrate judge as provided in 28 U.S.C. § 636(e).

(h) Information Not Subject to a Subpoena.

No party may subpoena a statement of a witness or of a prospective witness under this rule. Rule 26.2 governs the production of the statement.

Title 18

Section 3321. Number of grand jurors; summoning additional jurors

> Every grand jury impaneled before any district court shall consist of not less than sixteen nor more than twenty-three persons. If less than sixteen of the persons summoned attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. Whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose.

Section 3331. Summoning and term [regarding the Special Grand Jury]

> (a) In addition to such other grand juries as shall be called from time to time, each district court which is located in a judicial district containing more than four million inhabitants or in which the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any designated Assistant Attorney General, certifies in writing to the chief judge of the district that in his judgment a special grand jury is necessary because of criminal activity in the district shall order a special grand jury to be summoned at least once in each period of eighteen months

unless another special grand jury is then serving. The grand jury shall serve for a term of eighteen months unless an order for its discharge is entered earlier by the court upon a determination of the grand jury by majority vote that its business has been completed. If, at the end of such term or any extension thereof, the district court determines the business of the grand jury has not been completed, the court may enter an order extending such term for an additional period of six months. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

(b) If a district court within any judicial circuit fails to extend the term of a special grand jury or enters an order for the discharge of such grand jury before such grand jury determines that it has completed its business, the grand jury, upon the affirmative vote of a majority of its members, may apply to the chief judge of the circuit for an order for the continuance of the term of the grand jury. Upon the making of such an application by the grand jury, the term thereof shall continue until the entry upon such application by the chief judge of the circuit of an appropriate order. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.