

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN**

Gerald R. Ford Federal Building, 110 Michigan Street NW, Room 399, Grand Rapids, MI 49503

Tribunal - Unified United States Common Law Grand Jury¹

P.O. Box 59; Valhalla, New York 10595

TO - Chief Judge Robert J. Jonker, assigned by UUSCLGJ

[NOTE: *Written approval from UUSCLGJ required for any reassignment*]

Court of Origin - OTTAWA COUNTY 20TH CIRCUIT COURT FAMILY DIVISION, de facto

CASE NO. 14-078995-DM, statutory

Timothy Arthur Berry, Baruch Berry, Oriana Berry,
Calista Berry, Ephraim Berry and Joshua Berry,

Petitioner

Against

Judge Jon A. Van Allsburg, Ottawa County Sheriff
Gary A. Rosema, Prosecuting Attorney Dolores Trese
and Michigan State Attorney General Bill Schuette,

Respondents

Assigned Judge: Chief Judge Robert J. Jonker

FEDERAL CASE NO. 1776-1789-2015, de jure

CORAM NOBIS²

Default Judgment Coram Ipso Rege

Default Judgment - Entering a Default: *“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by Affidavit or otherwise [under seal], the clerk must enter the party’s default.”* FRCP Rule 55(a); FRCP Rule 58(b) (2); 28 U.S.C. §2243.

The respondents, against whom a judgment for affirmative relief is sought, have failed to plead or otherwise defend as provided by these rules; and, that fact is made to appear by Affidavit. **NOW, THEREFORE, THIS COURT OF RECORD** issues this Default Judgment Coram Ipso Rege to dispose of the matter as law and justice require, to wit:

IT IS ORDERED AND ADJUDGED that Petitioner be released from custody immediately; and, that the respondents, namely **OTTAWA COUNTY 20TH CIRCUIT COURT FAMILY DIVISION**, de facto, Michigan State, Ottawa County, Judge Jon A. Van Allsburg, Ottawa County Sheriff Gary A. Rosema, Prosecuting Attorney Dolores Trese and Michigan State Attorney General Bill Schuette, shall abate at law all proceedings in and relating to Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry Court Case No. 14-078995-DM. No damages, costs, or attorneys’ fees are awarded.

THE COURT, May 6, 2016.

(seal)


Unified United States Common Law Grand Jury Administrator

¹ “**The grand jury** is an institution separate from the courts over whose functioning the courts do not preside... the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three (3) Articles. It is a constitutional fixture in its own right. In fact, the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people... The grand jury’s functional independence from the judicial branch is evident, both in the scope of its power to investigate criminal wrongdoing; and, in the manner in which that power is exercised. ‘Unlike [a] [c]ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury can investigate merely on suspicion that the law is being violated; or, even because it wants assurance that it is not.’” United States v. John H. Williams, 112 S. Ct. 1735, 504; U.S. 36, 118, L. Ed. 2d, 352, (1992).

² **CORAM NOBIS**: Before us ourselves, (the King, i.e., in the King’s Bench) applied to Writs of Error directed to another branch of the same court, e.g., from the full bench to the court at nisi prius. 1 Archb. Pr. K. B. 234.

Affidavit for Default Judgment

I, Timothy Arthur Berry, Affiant, being of lawful age, qualified and competent to testify to, and having firsthand knowledge of the following facts, do hereby swear that the following facts are true, correct and not misleading:

On February 2, 2016, I filed a Petition for a Writ of Habeas Corpus, *see attached*; as is my unalienable right protected by the United States Constitution, Article I, Section 9, §2, with the Unified United States Common Law Grand Jury in the United States District Court for the Western District of Michigan, as per United States Constitution, Article III, Section 1 whereas: *“the Judicial power of the United States shall extend to all cases, in law and equity, arising under this Constitution”*; upon de facto Ottawa County 20th Circuit Court Family Division and respondents challenging jurisdiction.

“Once challenged, jurisdiction cannot be ‘assumed’, it must be proved to exist.” Stuck v. Medical Examiners, 94 Ca 2d 751, 211 P2s 389. *“Jurisdiction, once challenged, cannot be assumed and must be decided.”* Maine v. Thiboutot, 100 S. Ct. 250. *“No sanction can be imposed absent proof of jurisdiction.”* Stanard v. Olesen, 74 S. Ct. 768. *“The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings.”* Hagans v. Lavine, 415 U.S. 528. Other cases such as: McNutt v. G.M., 56 S. Ct. 789, 80 L. Ed. 1135; Griffin v. Mathews, 310 Supp. 341, 423 F. 2d 272; Basso v. U.P.L., 495 F 2d. 906; Thomson v. Gaskiel, 62 S. Ct. 673, 83 L. Ed. 111; and, Albrecht v. U.S., 273 U.S. 1; all confirm that, when challenged, jurisdiction must be documented, shown and proven to lawfully exist before a cause may lawfully proceed in the courts. *“The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings.”* Hagans v. Lavine, 415 U.S. 528.

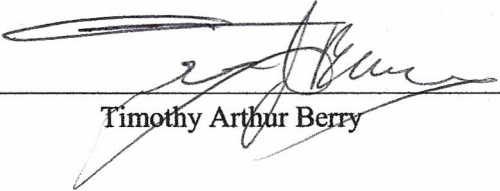
On February 2, 2016, a Habeas Corpus, Writ of Habeas Corpus Order to Show Cause and Writ Certiorari¹ issued, *see attached*, from the aforesaid Federal Court as per 28 USC §2243. Whereas the Grand Jury did file Writ Habeas Corpus, as is the unalienable right of the King’s Bench, presenting issues of both fact and law; and, thereby determining the applicant was entitled thereto; the Court ordered Judge Jon A. Van Allsburg, Ottawa County Sheriff Gary A. Rosema, Prosecuting Attorney Dolores Trese and Michigan State Attorney General Bill Schuette to Show Cause why the Writ should not be granted.

WHEREAS: February 9, 2016, Judge Jon A. Van Allsburg, Ottawa County Sheriff Gary A. Rosema, Prosecuting Attorney Dolores Trese and Michigan State Attorney General Bill Schuette defaulted; the record shows that no respondent made any Return; no respondent requested more time to answer; and, no respondent provided any objection to the proceedings; and,

THEREBY: law requires de facto court to abate at law; and, release of restraint on both person and property.

¹ **Writ Certiorari:** Latin meaning to be informed of; to be made certain in regard to; the name of a Writ of Review or Inquiry. Leonard v. Willcox, 101 Vt. 195, 142 A. 762, 766; Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, 229 Iowa 1028, 295 N.W. 858.

Default Judgment - Entering a Default: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend; and, that failure is shown by Affidavit or otherwise [under seal], the clerk must enter the party's default." FRCP Rule 55(a); FRCP Rule 58(b) (2); 28 U.S.C. §2243.



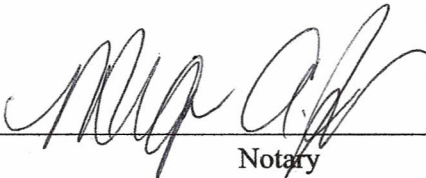
Timothy Arthur Berry

NOTARY

In Michigan State, Ottawa County, on this 04th day of February, 2016, before me, Megan A. Johnson, the undersigned notary public, personally appeared Timothy Arthur Berry, to me known to be the living man described herein, who executed the forgoing instrument and has sworn before me that he executed the same as his free will, act and deed.

(Notary seal)





Notary

My commission expires: 2-4-18

Megan A. Johnson, Notary Public
State of Michigan, County of Midland
My Commission Expires February 4 2018

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Default Judgment Coram Ipso Rege

FRCP Rule 55¹; Rule 58 (b) 2¹; 28 USC 2243

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COMES NOW THE ABOVE-ENTITLED COURT OF RECORD to review the record; summarily determine the facts; and, dispose of the matter as law and justice require.³

Habeas Corpus has been called “The Great Writ of Liberty”. Historically, that is a side issue. In the early days,

¹ “**The grand jury** is an institution separate from the courts over whose functioning the courts do not preside... the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three (3) Articles. It is a constitutional fixture in its own right. In fact, the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people... The grand jury’s functional independence from the judicial branch is evident, both in the scope of its power to investigate criminal wrongdoing; and, in the manner in which that power is exercised. ‘Unlike [a] [c]ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury can investigate merely on suspicion that the law is being violated; or, even because it wants assurance that it is not.’” United States v. John H. Williams, 112 S.Ct. 1735, 504; U.S. 36, 118, L.Ed.2d, 352, (1992).

² **CORAM NOBIS**: Before us ourselves, (the King, i.e., in the King’s Bench) applied to Writs of Error directed to another branch of the same court, e.g., from the full bench to the court at nisi prius. 1 Archb. Pr. K. B. 234.

³ 28 U.S.C. §2243.

15 Habeas Corpus was not connected with the idea of Liberty. It was a useful device in the struggle for control
together with privilege, was a well-established way to remove a cause from an inferior court where the defendant
could show some special connection with one of the central courts, which entitled him to have his case tried
there.⁴ In the early seventeenth century, The Five Knights' Case⁵ involved the clash between the Stuart claims of
prerogative and the common law; and, was, in the words of one of the judges, "*the greatest cause that I ever*
20 *knew in this court.*"⁶ Over the centuries the Writ became a viable bulwark between the powers of government
and the rights of the people in both England and the United States.

CONTENTS

25	I.	Summary
	II.	Jurisdiction of this Court
	III.	Exhaustion of Administrative Procedure
	IV.	Comity
	V.	Petition
30	VI.	Findings of fact
	VII.	Conclusions of law
	VIII.	Conclusion Summary

I. SUMMARY

35 Oliver Wendell Holmes once wrote, "*I long have said there is no such thing as a hard case. I am frightened
weekly; but, always, when you walk up to the lion and lay hold, the hide comes off; and, the same old donkey of
a question of law is underneath.*"⁷ Duty falls upon this court of record to lay hold of the lion; unhide the
underlying question of law; and, dispose of the matter as law and justice require.⁸

40 On February 2, 2016, Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and
Joshua Berry, a People of the United States, filed in the above-entitled court of record a Petition for Writ of
Habeas Corpus by a People in constructive custody. The Petition invited this court's inquiry into the following:

- A. The cause of the restraint
- B. The jurisdictional basis of the restraint
- 45 C. Prosecutorial vindictiveness
- D. Reasonable apprehension of restraint of Liberty
- E. Strict compliance with statutory requirements
- F. Diminishment of rights
- G. Charges of common barratry, maintenance and Champerty

50 The Petition presented issues of both fact and law. It did not appear from the Application that the applicant was
not entitled thereto; therefore, this court ordered the respondents to show cause why the Writ should not be

⁴ De Vine (1456) O. Bridg. 288; Fizerbert, Abridg., sub tit. "Corpus cum Causa".

⁵ Darnel's Case, 3 St. Tr. 1.

⁶ Ibid., at 31 per Doderidge J.

⁷ 1 *Holmes-Pottock Letters* 156.

⁸ 28 U.S.C. §2243.

55 granted. Explicit Return instructions were included as part of the Order to Show Cause to enable the respondents to fulfill the Order. All respondents were duly⁹ served with the Petition and Order to Show Cause. The record shows that no respondent made any Return; no respondent requested more time to answer; and, no respondent provided any objection to the proceedings.

ANALYSIS:

II. JURISDICTION OF THIS COURT

Tribunal - Unified United States Common Law Grand Jury:¹⁰

60 It is the duty of any court to determine whether it has jurisdiction even though that question is not raised, in order for the exercise of jurisdiction to constitute a binding Decision that the court has jurisdiction.¹¹ We fulfill that duty by examining the sovereign power creating the court.

65 But, first, what is a court? It is the person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. Further, a court is an agency of the sovereign; created by it directly or indirectly under its authority; consisting of one or more officers; established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof; and, of applying the sanctions of the law; and, authorized to exercise its powers in the course of law at times and places previously determined by lawful authority.¹² The source of the authority is acknowledged by the Preamble of the Constitution for the United States of America.¹³ The People of the United States, acting in sovereign capacity, 70 “ordain¹⁴ and establish¹⁵ this Constitution for the United States of America.” The Constitution contains nothing that would diminish the sovereign¹⁶ power of the People; and, no State may presume to do so.¹⁷

Further, the United States of America, and each Member State, is a Republic,¹⁸ which means that the People may act either directly or through their representatives.¹⁹ Here the sovereign People are acting directly. Beyond

⁹ Duly: According to law; in both form and substance. Black’s 6th.

¹⁰ “The grand jury is an institution separate from the courts over whose functioning the courts do not preside... the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three (3) Articles. It is a constitutional fixture in its own right. In fact, the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people... The grand jury’s functional independence from the judicial branch is evident, both in the scope of its power to investigate criminal wrongdoing; and, in the manner in which that power is exercised. ‘Unlike [a] [c]ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury can investigate merely on suspicion that the law is being violated; or, even because it wants assurance that it is not.’” United States v. John H. Williams; 112 S.Ct. 1735; 504 U.S. 36; 118 L.Ed.2d 352; 1992.

¹¹ State ex rel. Missouri Gravel Co. v. Missouri Workmen’s Compensation Commission, 113 S.W.2d 1034, 234 Mo.App. 232.

¹² Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black’s 4th, p425.

¹³ U.S. CONSTITUTION, PREAMBLE: “We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

¹⁴ ORDAIN: ...to enact a constitution or law. Black’s 6th.

¹⁵ ESTABLISH: ...to create, ratify or confirm... Black’s 6th.

¹⁶ ... at the Revolution, the sovereignty devolved on the people; and, they are truly the sovereigns of the country; but, they are sovereigns without subjects... with none to govern but themselves... Chisholm v. Georgia (U.S.) 2 Dall 419, 454, 1 LEd 440, 455, 2 Dall (1793) pp 471-472.

¹⁷ Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them. Miranda v. Arizona, 384 U.S. 436, 491; The State cannot diminish rights of the people. Hertado v. California, 100 U.S. 516; the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. Constitution for the United States of America, Amendment IX; The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively; or, to the people. The Constitution for the United States of America, Amendment X.

¹⁸ “The United States shall guarantee to every State in this Union a Republican Form of Government...” Constitution for the United States, Article IV, Section 4.

75 ordaining and establishing the Constitution, what are the powers of the People? The People retain all powers to self-determine and exercise rights.²⁰ The essence of the People's sovereignty distills to this: The decree of the sovereign makes law.²¹

80 Some have argued that the People have relinquished sovereignty through various contractual devices in which rights were not expressly reserved. However, that cannot hold because rights are unalienable.²² The People retain all rights of sovereignty at all times.²³ The exercise of sovereignty by the People is further clarified when one considers that the Constitutional government agencies have no genuine sovereign power of their own. All just authority of the Constitutional government agencies is solely that to which the People consent.²⁴ In the Petition, the petitioner identifies himself as "*a People²⁵ of the United States*". As such he decrees the law for this court; and, ultimately, for this court as a court of record. This, then, is the sovereign power by which this court is created. The Constitution for the United States of America mandates that: "*The judicial Power²⁶ shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...*"²⁷ This is a case in law, i.e., proceeding according to the common law in a court of record. This case arises under the Constitution and the Laws of the United States. It follows that "the judicial power" of [the People of] the United States "shall extend" to this case. Therefore, it is the Grand Jury, as arbiter, that shall be enforcer of the law. We read:

90 "*If any of our civil servants shall have transgressed against any of the people in any respect; and, they shall ask us to cause that error to be amended without delay; or, shall have broken some one of the articles of peace or security; and, their transgression shall have been shown to four (4) Jurors of the aforesaid twenty five (25); and, if those four (4) Jurors are unable to settle the transgression, they shall come to the twenty-five (25), showing to the Grand Jury the error which shall be enforced by the law of the land.*" Magna Carta, June 15, A.D. 1215, 61.

95 Justice Powell, in United States v. Calandra, 414 U.S. 338, 343 (1974), stated: "*The institution of the grand jury is deeply rooted in Anglo-American history; [n3] In England, the grand jury*

¹⁹ GOVERNMENT: Republican government: One in which the powers of sovereignty are vested in the People; and, are exercised by the People, either directly or through representatives chosen by the People to whom those powers are specially delegated. In re Duncan, 139 U.S. 449, 11 S. Ct. 573, 35 L. Ed. 219; Minor v. Happersett, 88 U.S. 21, Wall 162, 22 L. Ed. 627; Black's 6th.

²⁰ The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am.Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav. Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.

²¹ The very meaning of "sovereignty" is that the decree of the sovereign makes law. American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L. Ed. 826, 19 Ann.Cas. 1047.

²² UNALIENABLE: Not subject to alienation; the characteristic of those things which cannot be bought, or sold, or transferred from one person to another, such as rivers, and public highways, and certain personal rights; e. g., Liberty. Unalienable: incapable of being aliened; that is, [not capable of being] sold and transferred. Black's 4th 1891.

²³ RESERVATION OF SOVEREIGNTY: "[15](b) ... *The Tribe's role as commercial partner with petitioners should not be confused with its role as sovereign. It is one thing to find that the Tribe has agreed to sell the right to use the land and take valuable minerals from it, and quite another to find that the Tribe has abandoned its sovereign powers simply because it has not expressly reserved them through a contract. To presume that a sovereign forever waives the right to exercise one of its powers unless it expressly reserves the right to exercise that power in a commercial agreement turns the concept of sovereignty on its head.*" Merrion et al., dba Merrion & Bayless, et al. v. Jicarilla Apache Tribe et al. 1982.SCT.394.

²⁴ SOVEREIGN STATE: are cabalistic words, not understood [rejected] by the disciple of Liberty, who has been instructed in our constitutional schools. It is our appropriate phrase when applied to an absolute despotism. The idea of sovereign power [vested] in government of a Republic, is incompatible with the existence, and foundation, of civil Liberty; and, the rights of property. Gaines v. Buford, 31 Ky. (1 Dana) 481, 501.

²⁵ PEOPLE: ...considered as... any portion of the inhabitants of a city or country. Webster's 1828 Dictionary. The word "People" may be either plural or singular in its meaning. The plural of "person" is "persons", not "People".

²⁶ JUDICIAL POWER: The power to decide and pronounce a judgment; and, carry it into effect between persons and parties who bring a case before court for decision. Power that adjudicates upon, and protects, the rights and interests of persons or property; and, to that end, declares, construes, and applies the law. Black's 6th.

²⁷ Constitution for the United States of America, Article III, Section 2, Clause 1.

[p343] served for centuries, both as a body of accusers, sworn to discover, and present for trial, persons suspected of criminal wrongdoing; and, as a protector of citizens against arbitrary and oppressive governmental action. In this country, the Founders thought the grand jury so essential to basic liberties, that they provided, in the Fifth Amendment, that federal prosecution for serious crimes can only be instituted by a 'presentment or indictment of a Grand Jury'." Cf. Costello v. United States, 350 U.S. 359, 361-362 (1956). "The grand jury's historic functions survive to this day. Its responsibilities determination whether there is probable cause to believe a crime has been committed, and the protection of citizens against unfounded criminal prosecutions. Branzburg v. Hayes, 408 U.S. 665, 686-687 (1972)."

SUPERIOR COURTS ARE COURTS OF LAW: De jure²⁸ courts are any duly constituted tribunal [Jury] administering the laws of the State or nation; proceeding according to the course of the common law; and, governed by its rules and principles; as contrasted with a "court of equity". Court of "Law" means Court of Common Law, i.e., a court for the People CORAM IPSO REGE, which is to say BEFORE THE KING HIMSELF.

"The decisions of a superior court may only be challenged in a court of appeal. The decisions of an inferior court²⁹ are subject to collateral attack. In other words, in a superior court, one may sue an inferior court directly, rather than resort to appeal to an appellate court. The decision of a court of record may not be appealed. It is binding on ALL other courts. However, no statutory or constitutional court, whether it be an appellate or supreme court, can second guess the judgment of a court of record. 'The judgment of a court of record, whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact by deciding it.'" Ex parte Watkins, 3 Pet., at 202-203. [cited by Schneckloth v. Bustamonte, 412 U.S. 218, 255 (1973)].

THE JUDICIAL TRIBUNAL: "A 'court of record' is a judicial tribunal [Jury] having attributes and exercising functions independently of the person of the magistrate designated generally to hold it; and, proceeding according to the course of common law; its acts and proceedings being enrolled for a perpetual memorial." Jones v. Jones, 188 Mo. App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc., Mass., 171, per Shaw, C. J. See also Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

THE PEOPLE'S REMEDY: "The grand jury is not merely an investigatory body; it also serves as a protector of citizens against arbitrary and oppressive governmental action; and, must be both independent and informed." United States v. Calandra, 414 U.S., at 343, 94 S.Ct., at 617. Wood v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962): "Historically, this body has been regarded as a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused, whether the latter be an individual, minority group, or other, to determine whether a charge is founded upon reason, or was dictated by an intimidating power, or by malice and personal ill will." Id., at 390, 82 S.Ct., at 137.

²⁸ **De Jure:** of right; legitimate; lawful; by right and just title. In this sense it is the contrary of de facto. Black's 4th.

²⁹ **An inferior court** is a court whose judgments or decrees can be reviewed, on appeal or writ of error, by a higher tribunal, whether that tribunal be the circuit or Supreme Court. Nugent v. State, 18 Ala. 521.

III. EXHAUSTION OF ADMINISTRATIVE PROCEDURE

140 Ordinarily, exhaustion of state or federal administrative procedures is a requirement before a court of another jurisdiction will review the proceedings of another court. This is founded upon the principle of comity.³⁰ The courts of the United States, both equity and law, and the courts of the various States both equity and law, are independent of each other.³¹ Federal courts have no supervisory powers over State judicial proceedings,³² State court systems,³³ or trial judges.³⁴ Thus, federal courts have no general power to correct errors of law that may occur from time to time in the course of State proceedings.³⁵

145 However, a federal court and a State court are not foreign to each other. They form one system of jurisprudence, which constitutes the law of the land; and, should be considered as courts of the same country, having jurisdiction partly different, and partly concurrent;³⁶ and, as a matter of comity, one of such courts will not ordinarily determine a controversy of which another of such courts has previously obtained jurisdiction. In cases of apparent conflict between State and federal jurisdiction, the federal courts are the exclusive judges over their jurisdiction in the matter.³⁷ That being a given, federal intervention is only proper to correct errors of constitutional dimension,³⁸ which occurs when a State court arbitrarily, or discriminatorily, applies State law.³⁹ The rule of comity does not go to the extent of relieving federal courts from the duty of proceeding promptly to enforce rights asserted under the federal Constitution;⁴⁰ and, all considerations of comity must give way to the duty of a federal court to accord a People of the United States his right to invoke the court's powers and process in the defense or enforcement of his rights.⁴¹

As to the principle of exhaustion of state remedies; the Petitioner is not founding his Petition on the principle embodied in 28 U.S.C. §2254. The basis of Petitioner's Petition is addressed in section **V. PETITION** below. However, we will address it here.

160 In Friske v. Collins,⁴² the Court's view was that exhaustion was not a "rigid and inflexible" rule; but, could be deviated from in "special circumstances". In addition to the class of "special circumstances" developed in the early history of the exhaustion rule, exhaustion was not required where procedural obstacles make theoretically

³⁰ JUDICIAL COMITY: "The principle, in accordance with which, the courts of one State, or jurisdiction, will give effect to the laws and judicial decisions of another; not as a matter of obligation; but, out of deference and respect." Black's 4th; Franzen v. Zimmer, 35 N.Y.S. 612, 90 Hun 103; Stowp v. Bank, C.C.Me., 92 F. 96; Strawn Mercantile Co. v. First Nat. Bank, Tex. Civ. App., 279 S.W. 473, 474; Bobala v. Bobala, 68 Ohio App. 63, 33 N.E.2d 845, 849.

³¹ Claffin v. Houseman, N.Y., 3 Otto 130, 93 U.S. 130, 23 L.Ed. 833.

³² Smith v. Phillips, 102 S.Ct. 940, 455 U.S. 209, 71 L.Ed.2d 78, on remand 552 F.Supp. 653, affirmed 717 F.2d 44, certiorari denied 104 S.Ct. 1287, 465 U.S. 1027, 79 L.Ed.2d 689; Ker v. State of California, Cal., 83 S.Ct. 1623, 374 U.S. 23, 10 L.Ed.2d 726, 24 O.O.2d 201; Burrus V. Young, C.A.7 (Wis.), 808 F.2d 578; Lacy v. Gabriel, C.A.Mass., 732 F.2d 7, certiorari denied 105 S.Ct. 195, 469 U.S. 861, 83 L.Ed.2d 128; Smiths v. McMullen, C.A.Fla., 673 F.2d 1185, certiorari denied 103 S.Ct. 740, 459 U.S. 1110, 74 L.Ed.2d 961.

³³ U.S. ex rel. Gentry v. Circuit Court of Cook County, Municipal Division, First Municipal Dist., C.A.Ill., 586 F.2d 1142.

³⁴ Harris v. Rivera, N.Y., 102S. Ct. 460, 454 U.S. 339, 70 L.Ed.2d 530.

³⁵ Buckley Towers Condominium, Inc. v. Buchwald, C.A.Fla., 595 F. 2d 253.

³⁶ Claffin v. Houseman, N.Y., 3 Otto 130, 93 U.S. 130, 23 L.Ed. 833.

³⁷ Craig v. Logemann, 412 N.W.2d 857, 226 Neb. 587, appeal dismissed 108 S.Ct. 1002, 484 U.S. 1053, 98 L.Ed.2d 969.

³⁸ Burrus V. Young, C.A.7 (Wis.), 808 F.2d 578; Lacy v. Gabriel, C.A.Mass., 732 F.2d 7, certiorari denied 105 S.Ct. 195, 469 U.S. 861, 83 L.Ed.2d 128; Smiths v. McMullen, C.A.Fla., 673 F.2d 1185, certiorari denied 103 S.Ct. 740, 459 U.S. 1110, 74 L.Ed.2d 961;

INCONSISTENT VERDICTS: Court of Appeals erred when it directed State trial judge to provide explanation of apparent inconsistency in his acquittal of codefendant and his conviction of defendant, without first determining whether inexplicably inconsistent verdicts would be unconstitutional. Harris v. Rivera, N.Y., 102 S.Ct. 460, 454 U.S. 339, 70 L. Ed. 2d 530.

³⁹ Jentges v. Milwaukee County Circuit Court, C.A.Wis., 733 F. 2d 1238.

⁴⁰ Everglades Drainage Dist. v. Florida Ranch & Dairy Corp., C.C.A.Fla., 74 F.2d 914, rehearing denied 75 F.2d 1013.

⁴¹ Carpenter Steel Co. v. Metropolitan-Edison Co., D.C.Ga., 268 F. 980.

⁴² 342 U.S. 519 (1952).

available processes unavailable; where the available state procedure does not offer swift vindication of the petitioner's rights; and, where vindication of the federal right requires immediate action.⁴³

165 Exhaustion today is a rule rooted in the relationship between the national and State judicial systems. The rule is consistent with the Writ's extraordinary character; but, it must be balanced by another characteristic of the Writ, to wit: its object of providing "a swift and imperative remedy in all cases of illegal restraint upon personal Liberty."⁴⁴ That is, it "is not [a rule] defining power but one which relates to the appropriate exercise of power."⁴⁵

170 The Court noted that where resort to State remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the State affords no remedy; or, because in the particular case, the remedy afforded by State laws, proves, in practice, unavailable, or seriously inadequate; a federal court should entertain a Petition for Habeas Corpus; otherwise, a petitioner would be remediless. In such a case, the applicant should proceed in the federal district court before resorting to the Supreme Court by Petition for Habeas Corpus.⁴⁶

175 **28 U.S.C. §2243** provides as follows: Issuance of Writ; Return; Hearing; Decision. A court justice or judge, entertaining an application for a Writ of Habeas Corpus, shall forthwith award the Writ; or, issue an Order directing the respondent to show cause why the Writ should not be granted; unless it appears, from the Application, that the applicant, or person detained, is not entitled thereto. The Writ, or Order to Show Cause, shall be directed to the person having custody of the person detained. It shall be returned within three (3) days; unless, for good cause,
180 additional time, not exceeding twenty (20) days, is [be] allowed.

The State has been duly served; and, the State has not made; and, apparently cares not to make a Return. This question of timeliness constitutes a special circumstance justifying deviation from the exhaustion rule. Exhaustion is not required where procedural obstacles make theoretically available processes unavailable; where the available State procedure does not offer swift vindication of the petitioner's rights; and, where vindication of
185 the federal right requires immediate action.⁴⁷ Until the case is resolved in the district court, the petitioner will be unable to present his claims to the State Supreme Court.⁴⁸ This delay, and lack of timeliness, is a further special circumstance. In the interim, the petitioner would be required to lose his Liberty, because of the lack of swift State vindication of his rights.⁴⁹

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⁴³ Amsterdam, "Federal Removal and Habeas Corpus Jurisdiction", 113 U. Pa. L. Rev. 793, 893-94; Developments, "Federal Habeas Corpus", 83 Harv. L. Rev. 1038, 1097-107. Cf. Markuson v. Boucher, 175 U.S. 189 (1899) with Roberts v. LaVallee, 389 U.S. 40 (1967).

⁴⁴ Price v. Johnson, 334 U.S. 266, 283 (1947).

⁴⁵ Bowen v. Johnston, 306. U.S. 19, 27 (1939). See Brennan, "Some Aspects of Federalism", 39 N.Y. U.L. Rev. 945, 957-58; Brennan, "Federal Habeas Corpus and State Prisoners", 7 Utah L. Rev. 423, 426.

⁴⁶ Ex parte Hawk, 321 U.S. 114, 118; See also Ex parte Abernathy, 320 U.S. 219 (1943); White v. Ragen, 324 U.S. 760 (1945); Wood v. Niersteimer, 328 U.S. 211 (1946).

⁴⁷ Amsterdam, "Federal Removal and Habeas Corpus Jurisdiction", 113 U. Pa. L. Rev. 793, 893-94; Developments, "Federal Habeas Corpus", 83 Harv. L. Rev. 1038, 1097-107. Cf.; Markuson v. Boucher, 175 U.S. 189 (1899) with Roberts v. LaVallee, 389 U.S. 40 (1967).

⁴⁸ Magistrate's Report (#5), filed March 7, 2003, 6:46am, p3, L3-6.

⁴⁹ Amsterdam, "Federal Removal and Habeas Corpus Jurisdiction", 113 U. Pa. L. Rev. 793, 893-94; Developments, "Federal Habeas Corpus", 83 Harv. L. Rev. 1038, 1097-107. Cf.; Markuson v. Boucher, 175 U.S. 189 (1899) with Roberts v. LaVallee, 389 U.S. 40 (1967).

IV. COMITY

195 Comity is one court giving full faith and credit to the judicial proceedings of another court, provided that such
proceedings do not violate its own rules. Though comity is not mandated, it is encouraged by The Constitution
for The United States, Article IV, Section 1.⁵⁰ However, comity does not mean that one court involuntarily gives
up its jurisdiction to another court. Comity does not mean that one court must respect the improprieties of
another court. Comity does not mean that one court must submit to the whim of another court. Further, comity
200 cannot enter the equation when the question before the courts concerns which of the two courts has jurisdiction
regarding the vindication of the rights of the Petitioner. The protection of the Petitioner's rights from
encroachment by the State is the innate responsibility of the federal courts.

In the United States, Habeas Corpus exists in two forms: Common Law and Statutory. The Petitioner has chosen
Habeas Corpus at common law in a court of record. The Constitution for the United States of America
205 acknowledges the Peoples' right to the common law of England as it was in 1789. What is that common law? It
does not consist of absolute, fixed and inflexible rules; but, broad and comprehensive principles based on justice,
reason, and common sense...⁵¹

The common law is also the Magna Carta,⁵² as authorized by the Confirmatio Cartarum, if the accused so
demands.⁵³ The Confirmatio Cartarum succinctly says, "... *our justices, sheriffs, mayors, and other ministers,*
210 *which, under us have the laws of our land to guide, shall allow the said charters pleaded before them, in*
judgment in all their points; that is, to wit, the Great Charter as the common law and the Charter of the forest,
for the wealth of our realm."⁵⁴ In other words, the King's men must allow the Magna Carta to be pleaded as the
common law if the accused so wishes it.

Magna Carta says, "*Henceforth the Writ which is called Praeceptum shall not be served on anyone for any holding*
215 *so as to cause a free man to lose his court.*"⁵⁵ In this case, the free man's court is the court of record of the
petitioner, as above entitled. The Constitution for the United States of America, Article III, Section 2 Clause 1,
says, "*The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws*
of the United States..." The judicial power is thusly extended to this Habeas Corpus case at law in the above-
entitled court of record.

220 The above-entitled court of record, invoking the extension of the judicial power of the United States upon a case
in law, is proceeding according to the common law as sanctioned by the Constitution; and, considering the
matter that has arisen under the Constitution and laws of the United States. As stated above, the rule of comity
does not go to the extent of relieving federal courts from the duty of proceeding promptly to enforce rights
asserted under the federal Constitution;⁵⁶ and, all considerations of comity must give way to the duty of a federal
225 court to accord a citizen of the United States his right to invoke the court's powers and process in the defense or
enforcement of his rights.⁵⁷

⁵⁰ Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial proceedings of every other State. And, the Congress may, by general Laws, prescribe the Manner in which such Acts, Records and Proceedings shall be proved; and, the Effect thereof. Constitution for the United States of America, Article IV, Section 1.

⁵¹ Miller v. Monsen, 37 N.W.2d 543, 547, 228 Minn. 400.

⁵² June 15, 1215, King John I.

⁵³ November 5, 1297, King Edward I.

⁵⁴ Confirmatio Cartarum, Article I, Clause 3.

⁵⁵ Magna Carta, Article 34.

⁵⁶ Everglades Drainage Dist. v. Florida Ranch & Dairy Corp., C.C.A.Fla., 74 F.2d 914, rehearing denied 75 F.2d 1013.

⁵⁷ Carpenter Steel Co. v. Metropolitan-Edison Co., D.C.Pa., 268 F. 980.

230 This court accepts the duty obligation to proceed promptly to enforce rights asserted under the federal Constitution. Thus, this court has the subject matter jurisdiction to examine, and act, upon the Petition for Habeas Corpus. Further, the parties were duly served personally with a copy of the Petition and the Writ of Habeas Corpus thus this court has “in personam jurisdiction”.

V. PETITION

235 Title 28 of the United States Code⁵⁸ acknowledges that it is not the responsibility of the Petitioner to know by what claim or authority the State acts; but, that the Petitioner may inquire as to the cause of the restraint. Petitioner has requested an inquiry into the cause of restraint; but, none of the respondents has returned any statement of cause of the restraint. Therefore, this court may presume that there is neither legal nor lawful cause of restraint.

Petitioner has isolated five (5) points upon which he bases his Petition:

- 240 A. The lack of cause of the restraint
 B. The lack of jurisdictional basis of the restraint
 C. Prosecutorial vindictiveness
 D. Reasonable apprehension of restraint of Liberty
245 E. Strict compliance with statutory requirements
 F. Diminishment of rights

Because the respondents have made no Return, this court must rule solely upon the evidence before it, as provided by the Petitioner. Seneca wrote, “*He who decides a case with the other side unheard, though he decide justly, is himself unjust.*”⁵⁹ Mindful of the wisdom of Seneca, we proceed.

250 This court has taken judicial notice of the Federal Rules of Civil Procedure, Title 28, United States Code, insofar as it is not repugnant to the common law. F.R.C.P. Rule 55 regarding default⁶⁰ is applied here.⁶¹ The record shows that the *Petition* was filed; a *Writ of Habeas Corpus to Show Cause* issued; the *Petition* and *Writ* were

⁵⁸ 28 U.S.C. §2242 states in part: Application for a Writ of Habeas Corpus... shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him, and by virtue of what claim or authority, if known.

⁵⁹ Seneca's *Medea*.

⁶⁰ Federal Rules of Civil Procedure, Rule 55. Default: (a) Entry. When a party against whom a Judgment for Affirmative Relief is sought, has failed to plead, or otherwise defend, as provided by these rules; and, that fact is made to appear [has been brought before the court] by Affidavit or otherwise, the clerk shall enter the party's Default. (b) Judgment: Judgment by Default may be entered as follows: (1) By the Clerk: When the plaintiff's claim against a defendant is for a sum certain, or for a sum which can, by computation, be made certain, the clerk, upon request of the plaintiff, and upon Affidavit of the amount due, shall enter Judgment for that amount and costs, against the defendant, if the defendant has been defaulted for failure to appear, and is not an infant or incompetent person. (2) By the Court: In all other cases, the party entitled to a Judgment by Default, shall apply to the court therefor; but, no Judgment by Default shall be entered against an infant, or incompetent person, unless represented in the action by a general guardian, committee, conservator, or other such representative, who has appeared therein. If the party against whom Judgment by Default is sought, has appeared in the action, the party, or, if appearing by representative, the party's representative, shall be served with written Notice of the Application for Judgment at least three (3) days prior to the Hearing on such Application. If, in order to enable the court to enter Judgment; or, to carry it into effect; it is necessary to take an account, or to determine the amount of damages, or to establish the truth of any averment by evidence, or to make an investigation of any other matter; the court may conduct such Hearings; or, Order such references, as it deems necessary and proper; and, shall accord a right of trial by jury to the parties, when, and as required, by any statute of the United States. (c) Setting Aside Default: For good cause shown, the court may set aside an Entry of Default; and, if a Judgment by Default has been entered, may likewise set it aside, in accordance with Rule 60(b).

⁶¹ Courts of record have an inherent power, independently of statutes, to make rules for the transaction of business. 1 Pet. 604, 3 Serg. & R. Penn. 253; 8 id. 336, 2 Mo. 98.

255 duly served upon the respondents; no Return was filed; a *Notice of Default* was filed. So, no claim may be made that the State court was unaware of this court's proceedings; nor, may the respondents claim they were unaware of the consequences for failure to make a Return on the *Writ of Habeas Corpus*. Simply stated: the parties against whom a Judgment for Affirmative Relief is sought, have failed to plead or otherwise defend, as provided by these rules; and, that fact has been brought before the court by Affidavit in accordance with F.R.C.P. Rule 55(a).

VI. FINDINGS OF FACT

260 **THEREFORE, BASED UPON THE RECORD BEFORE THIS COURT:**

THE COURT FINDS THAT:

- 265
- (1) Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry are People as contemplated in the Preamble of the Constitution for the United States of America.
 - (2) This above-entitled court is a court of record.
 - (3) All respondents were duly served; and, court personnel were apprised of the Petitioner's claims and the Writ; all respondents had full Notice and fair opportunity to argue their cause; and, respondents did not argue their cause.
 - 270 (4) The respondents have not presented any legal or lawful cause of the restraint of Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry.
 - (5) The respondents have not presented any jurisdictional basis for the restraint of Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry. The court of the respondents did not fulfill the duty to determine whether it has jurisdiction in order for the exercise of
275 jurisdiction to constitute a binding Decision.
 - (6) The respondents have not presented any evidence to prove the absence of prosecutorial vindictiveness by the respondents against Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry.
 - (7) Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry
280 have a reasonable apprehension of future restraint of Liberty arising from the same facts.
 - (8) Strict compliance with statutory requirements was not met by the respondents.
 - (9) Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry have suffered an unlawful and illegal diminishment of rights.

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VII. CONCLUSIONS OF LAW

FURTHER, THE COURT CONCLUDES THAT:

- 290 (1) This above entitled court, has the sovereign authority to proceed as a court of record with jurisdiction to act in the instant case and subject matter.
- (2) Because all respondents were duly served; and, court personnel were apprised of the Petitioner's *Petition* and *Writ*; and, because all respondents had full Notice and fair opportunity to argue their cause; and, did not so do; and, because none of the aforementioned persons made a Return, Objection, or Motion, the
295 above-entitled court has acquired "in personam jurisdiction" of each of the respondents.
- (3) Because the respondents have not presented any legal or lawful cause of, or any jurisdictional basis for the restraint of Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry, the respondents do not have any legal or lawful cause against or jurisdiction over Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry.
- 300 (4) Because the respondents have not presented any evidence to prove the absence of prosecutorial vindictiveness by the respondents against Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry; and, because the burden of proof is upon the respondents when evidence of prosecutorial vindictiveness has been presented, as a matter of law the respondents have committed prosecutorial vindictiveness against Timothy Arthur Berry, Baruch Berry, Oriana Berry,
305 Calista Berry, Ephraim Berry and Joshua Berry.
- (5) Strict compliance with statutory requirements were not met by the respondents, Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry were denied due process, there is a reasonable probability that they will be denied due process, and there is a reasonable probability that Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and
310 Joshua Berry will be subjected to future restraint of Liberty arising from the same facts.
- (6) Because Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry have suffered an unlawful and illegal diminishment of rights Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry will very likely continue to be subjected to further unlawful and illegal diminishment of rights if not immediately released.
- 315 (7) It has become clear to this Grand Jury Investigative Body that the Court has taken advantage through undue influence⁶² of its victims by manipulating peoples' free will for money and is thereby guilty of common barratry⁶³, maintenance⁶⁴ and Champerty⁶⁵. Since this problem has been found in many courts in America we have concluded the courts guilty of racketeering.

⁶² **UNDUE INFLUENCE:** Any improper or wrongful constraint, machination or urgency of persuasion whereby the will of a person is overpowered; and, he is induced to do or forbear an act which he would not do or would do if left to act freely. *Powell v. Betchel*, 340 Ill. 330, 172 N.E. 765, 768. Influence which deprives person influenced of free agency; or, destroys freedom of his will; and, renders it more the will of another than his own. *Conner v. Brown*, Del., 3 A.2d 64, 71, 9 W.W.Harr. 529; *In re Velladao's Estate*, 31 Cal.App.2d 355, 88 P.2d 187, 190.

⁶³ **BARRATRY:** In criminal law; also spelled "Barretry". The offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. 4 Bla.Com. 134; *State v. Batson*, 220 N.C. 411, 17 S.E.2d 511, 512, 513; "Common barratry is the practice of exciting groundless judicial proceedings." Pen. Code Cal. §158; *Lucas v. Pico*, 55 Cal. 128; *Corn. v. McCulloch*, 15 Mass. 229; *Ex parte McCloskey*, 82 Tex.Cr.R. 531, 199 S.W. 1101, 1102.

⁶⁴ **MAINTENANCE:** Consists in maintaining, supporting or promoting the litigation of another. "Act of maintaining, keeping up, supporting; livelihood; means of sustenance." *Federal Land Bank of St. Louis v. Miller*, 184 Ark. 415, 42 S.W. 2d 564, 566.

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VIII. CONCLUSION SUMMARY

The respondents, namely Village, Town, City, County, State or Federal governments, Judge Jon A. Van Allsburg, Ottawa County Sheriff Gary A. Rosema, Prosecuting Attorney Dolores Trese and Michigan State Attorney General Bill Schuette, by their Default (their failure to Return the Writ of Habeas Corpus), have failed to prove their jurisdiction; therefore, they each and all of them shall abate at law all proceedings in and relating to Ottawa County 20th Circuit Court Family Division, de facto, Case No. 14-078995-DM.

None of the respondents, Judge Jon A. Van Allsburg, Ottawa County Sheriff Gary A. Rosema, Prosecuting Attorney Dolores Trese and Michigan State Attorney General Bill Schuette, is an infant or incompetent. None of the respondents, Judge Jon A. Van Allsburg, Ottawa County Sheriff Gary A. Rosema, Prosecuting Attorney Dolores Trese and Michigan State Attorney General Bill Schuette has appeared in the proceedings.

Default Judgment to be entered by this court in accordance with Federal Rules of Civil Procedure, Rule 55(b) (2). Timothy Arthur Berry, Baruch Berry, Oriana Berry, Calista Berry, Ephraim Berry and Joshua Berry, if not already released, are to be released straightway and any property seized returned immediately. No damages are awarded.

Chief Judge Robert J. Jonker shall confirm release of Petitioner and abatement and inform the Unified United States Common Law Grand Jury of the same by Fax: (888) 891-8977.

THE COURT May 6, 2016.

(seal)



Unified United States Common Law Grand Jury Administrator

⁶⁵ **CHAMPERTY:** A bargain to divide the proceeds of litigation between the owner of the liquidated claim and a party supporting or enforcing the litigation. *Draper v. Lebec*, 219 Ind. 362, 37 N.E.2d 952, 956; A bargain by a stranger with a party to a suit by which such third person undertakes to carry on the litigation at his own cost and risk in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. *Small v. Mott*, 22 Wend., N.Y., 405; *Gilman v. Jones*, 87 Ala. 691, 5 So. 785, 7 So. 48, 4 L.R.A. 113; *Jamison Coal & Coke Co. v. Goltra*, C.C.A.Mo., 143 F.2d 889, 895, 154 A.L.R. 1191; The purchase of an interest in a thing in dispute with the object of maintaining and taking part in the litigation. 7 Bing. 378.