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## Key Aspects of the U.S. Constitution and Other Laws

(Updated May 16, 2011)

Many people seem to have little idea as to what “the law” means, what “due process” is, what “null and void” means, how inviolate our rights are, that it is illegal to arrest and hold anyone even terrorists without warrants, that the US cannot "opt out" of the Geneva Convention, torture of abuse prisoners, etc.

This document, provides insights into and educational material on the Constitution, international treaties and conventions and other laws, civil rights, responsibilities of government officials, rule of law, etc. It specifically shows:

1. That constitutional rights cannot be limited, taken away or eroded without an amendment to the Constitution.
2. Violating, limiting, taking away or eroding rights guaranteed by the Constitution are crimes.
3. Absent a formal declaration of war by the Congress, the U. S. Constitution prohibits:
  - a. Congress authorizing the President to use U. S. forces in or against Iraq, to occupy Iraq or to appropriate funds to be used for any of these purposes.
  - b. The President or anyone using U. S. forces, private security contractors/guards, the CIA or anyone in or against Iraq, to conduct clandestine operations in Iraq or occupy Iraq, or to detain people in Iraq, etc.

Most people seem to have little idea as to what “the law” means, what “due process” is, what “null and void” means, how inviolate our rights are, that it is illegal to arrest and hold anyone even terrorists without warrants, that the US cannot "opt out" of the Geneva Convention, torture of abuse prisoners, etc.

This document will hopefully help improve this situation.

This memo is not to be construed as legal advice.

It is a “work in progress.” Please provide critical comments and suggestions for improving this document to its compiler Ron Fisher, [info@wethepeoplenow.org](mailto:info@wethepeoplenow.org), phone 703-725-7849, fax 703-521-0849.

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Attachment A - Salient Constitutional Rights

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1. The Constitution of the United States.

*"In questions of power...let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."* -- Thomas Jefferson

a. Unambiguous Constitutional Provisions Apply as Written.

*If a constitutional provision is plain and unambiguous, we do not construe it but apply it as written*<sup>1</sup>. The Constitution means exactly what it says. Most of the notes covering the discussions and debates during the framing of the constitution were required to be destroyed so that there would be little doubt and limited debate as to exactly what the words in the Constitution mean.

b. Purposes of the Constitution

*"The care of human life and happiness, and not their destruction, is the first and only legitimate object of good government."* --Thomas Jefferson

The overall purposes of the Constitution are found in its Preamble i.e. *We the People of the United States, in Order to*

*form a more perfect Union,*

*establish Justice,*

*insure domestic Tranquility,*

*provide for the common defense,*

*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*

c. The Constitution Enumerates and Guarantees But Does Not Limit Rights.

i. Attachment A provides a summary of salient rights enumerated in the Constitution. Please note that all these rights apply to *all the people* of the U.S. not just citizens.

ii. Rights are not limited to just what is in the Constitution. The Constitution requires and

guarantees "*The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.*" Ninth Amendment, U.S. Constitution.

- iii. These rights are "*inalienable*"(incapable of being repudiated) and universal. They exist even if there were no Constitution or if they were not enumerated in the Constitution.
  - iv. It is often said that certain rights are being limited, taken away or eroded. The President, the Supreme Court, the Congress of the United States, or all the Judges in the United States cannot legally change, limit, take away or "erode" rights guaranteed by the Constitution. To change or take away a right requires an amendment to the Constitution which would require two thirds of both Houses of Congress, and the Legislatures or Conventions in three fourths of the states to make amendments (change or modify) constitutional rights. Violating, limiting, taking away or eroding rights guaranteed by the Constitution is a crime.
  - v. The Supreme Court has ruled that "*Waiver of a fundamental right cannot be implied*" and that it may not be assumed or pretended that a person has waived a right absent such a statement by him not made under duress. For example, a person has not waived his right to a jury trial unless he specifically states that he does not want a jury trial.
- d. The Constitution is the Supreme Law of the Land. "*The Constitution of these United States is the supreme law of the land*"<sup>2</sup>and takes precedent over all "Laws" including the Constitution of each state. The "Supremacy Clause", Article VI of the U. S. Constitution includes: "*This Constitution and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*" United States Constitution, Article VI (2).
- e. The Constitution Limits Government Power and Actions. Under our Constitution the government may not interfere in people's lives without compelling reasons. *The Constitution restricts the power of government and establishes limits of governmental action*<sup>3</sup>.
- f. The Constitution Subjects the Government to the Control of the People. A fundamental principle under which this country was formed is that the power is reserved for the people. *The powers of government are not absolute and are subject to the control of the people through their constitutions*<sup>4</sup>
- g. The Constitution Mandates that Public Servants Support and Defend the Constitution. The U. S. is a government of the people and all government officials and employees are public servants.
- i. U. S. Constitution, Article. II. Section. 1. Clause 8 requires that The President "*Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."*

Article II, Section 3, requires that The President "*shall take Care that the Laws be faithfully executed*".

State Constitutions require the same of the governor e.g. the Virginia Constitution, Article V, Section 7, requires that: "*The Governor shall take care that the laws [including State and Federal laws] be faithfully executed [in Virginia].*"

Please note that:

"Shall" is a mandate and "faithfully" executed implies that the spirit and intent of the "Laws" are executed.

This mandate is all encompassing and covers all the private and public sectors, the legislative, judicial and executive branches of government, corporations, the election laws, banking laws. The president has the entire executive department to support him in executing this massive and critical responsibility.

“The Law” or “Laws”, are not limited to just codes and statutes. The Law is *“The whole body of rules of conduct applied and enforced under the authority of established government in determining that which is proper and should be permitted and that which should be denied, or even penalized in respect of the relation between a person and the state, between him and society or between him and another individual, including a provision of a constitution, a legislative enactment or statute, a municipal ordinance, a principle declared in an authoritative decision of a court, a rule of practice prescribed by a legislature or promulgated by a court acting with authority, even to some extent, a usage or custom.”*<sup>65</sup>

If any official (public servant), including judges and legislators, are not faithfully executing the laws, it is the responsibility of governors and the president to insure that they do.

- ii. *“Senators and Representatives ... and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several states, shall be bound by Oath or affirmation, to support this constitution.”* United States Constitution, Article VI (3). Supporting the Constitution requires that the officials understand and are loyal, steadfast and true to the “spirit and intent” of the Constitution and that he or she protects civil rights and takes no action to violate the civil rights of individuals. Even Supreme Court Justices can be removed from office through *“impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”* Violation of their oath of office, by failing to support the Constitution by for example violating a defendant’s rights or willfully usurping the power of another branch of government meets the threshold for *“high Crimes and Misdemeanors.”*
  - iii. Under the “Supremacy Clause”, *“state courts [attorney generals and prosecutors] have a concurrent duty to enforce federal law according to their regular modes of procedure.”*<sup>66</sup> *“Such a court may not deny a federal right, when the parties and controversy are properly before it, in the absence of a “valid excuse.”*<sup>67</sup> *“An excuse that is inconsistent with or violates federal law is not a valid excuse: The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source.”*<sup>68</sup> *“We [public servants] have no more right to decline the jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.”*<sup>69</sup>
  - iv. Requirement to report felonies. 18 US Code Section 4, Misprision of felony, requires:  
*Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.*
  - v. In 1928, Justice Brandeis said: *“Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its Example.”*
2. War Powers and Responsibilities of Congress and the President. The framers of the U.S. Constitution clearly intended that the president not have the authority to wage any acts of war without Congress specifically declaring war.

*“War ... should only be declared by the authority of the people, whose toils and treasures are to support its burdens, instead of the government which is to reap its fruits.”*

*“Testimony of all ages forces us to admit that war is among the most dangerous enemies to liberty, and that the executive is the branch most favored by it of all the branches of Power.”* President James Madison

- a. War Powers and Responsibilities granted to Congress by the Constitution under Article I. - The Legislative Branch, Section 8 - *“The Congress shall have Power:”*

*To Provide for the common Defense*

*To Define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;*

*To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;*

*To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;*

*To provide and maintain a Navy;*

*To make Rules for the Government and Regulation of the land and naval Forces;*

*To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;*

*To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.*

*To make all Laws<sup>1</sup> which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.*

- b. War powers and responsibilities granted to the President by the Constitution are very limited and are:

- i. Article II - Section 1:

(1) The executive Power shall be vested in a President of the United States

(2) The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; ...

- ii. Article II - Section 3

(1) The President *“shall take Care that the Laws [made by Congress] be faithfully executed”*.

Please note that:

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<sup>1</sup> “The Law” or “Laws”, are not limited to just codes and statutes. The Law is *“The whole body of rules of conduct applied and enforced under the authority of established government in determining that which is proper and should be permitted and that which should be denied, or even penalized in respect of the relation between a person and the state, between him and society or between him and another individual, including a provision of a constitution, a legislative enactment or statute, a municipal ordinance, a principle declared in an authoritative decision of a court, a rule of practice prescribed by a legislature or promulgated by a court acting with authority, even to some extent, a usage or custom.”*

“Shall” is a mandate and “faithfully” executed implies that the spirit and intent of the “Laws” are executed.

This mandate is all encompassing and covers all the private and public sectors, the legislative, judicial and executive branches of government, corporations, the election laws, banking laws. The president has the entire executive department to support him in executing this massive and critical responsibility.

- (2) Under the constitution, the president has no inherent war making powers or even the authority to make the rule or regulations for the conduct of war or handling of prisoners. As Commander-in-Chief he is responsible for executing the Laws, Rules and Regulations made by Congress.

### 3. Treaties and International Conventions.

- a. Treaties and International Conventions which the U. S. is a Party to are the supreme "Laws of the Land."
  - i. Article. VI. Clause 2 of the Constitution: This Constitution, ... and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. Article III, Section 2, "The judicial power [of the Supreme Court] shall extend to all cases, in law and equity, arising under ... treaties made ..." These clauses clearly:
    - ii. Make treaties and international conventions which the United States is a party to the "law of the land" apply to all citizens and non citizens alike all over the world.
    - iii. Prohibit the President or any other government official from arbitrarily deciding not to observe any part of a treaty or international conventions which the U. S. is a party to.
    - iv. Give an American citizen standing to bring a case in the Supreme Court for violations of human rights by our government (including by our courts).
- b. Salient Treaties and International Conventions which the U. S. Is a Party to and related U.S. Laws include:
  - i. The United Nations Charter outlawed the use of war as a legitimate instrument of foreign policy and under the UN Charter, the only legitimate war is a war of self-defense.
  - ii. The Universal Declaration of Human Rights (<http://www.unhchr.ch/udhr/lang/eng.htm>) which specifically requires among other things that:
    - (1) *Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*
    - (2) *Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*
    - (3) *Article 9. No one shall be subjected to arbitrary arrest, detention or exile.*
    - (4) *Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*
    - (5) *Article 11. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law,*

*at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

- (6) *Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*
- iii. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (<http://www.unhchr.ch/html/menu3/b/91.htm>), implemented by Title 18 Section 2340-2340A of the US Code, specifically:
- (1) *Prohibits cruel treatment and torture; ...and ... Outrages upon personal dignity, in particular, humiliating and degrading treatment;*
  - (2) *Classifies anything as abuse that violates the Fifth (e.g. double jeopardy, witness against himself, due process of law, etc.), Eighth (e.g. cruel and unusual punishment, etc.) or 14th (e.g. equal protection of the law, etc.) Amendments to the US Constitution.*
  - (3) *Requires that: No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*
- iv. The Geneva Convention Relative to the Treatment of Prisoners of War (<http://www.unhchr.ch/html/menu3/b/91.htm>) specifically requires among other things that:
- (1) *The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.*
  - (2) *Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations.*
  - (3) *The following acts are and shall remain prohibited at any time and in any place whatsoever :*
    - (a) *Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
    - (b) *Outrages upon personal dignity, in particular, humiliating and degrading treatment;*
  - (4) *The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*
  - (5) *The wounded and sick shall be collected and cared for.*
  - (6) *Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.*

Note: If the tribunal determines that the individual is a prisoner of war he must be treated as such. If the tribunal determines there is probable cause that the individual has committed a criminal act (including a terrorist act) he must be turned over to a court that has jurisdiction over him or to the International Criminal Court. If the individual has committed a crime against the U.S. or against a U.S. citizen he may be extradited to the U.S. However, it is wrongful and unlawful for the U.S. to detain and arrest individuals outside the U.S. without having them formally extradited.

- (7) *Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its*

*custody is prohibited, and will be regarded as a serious breach of the present Convention.*

- (8) *Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.* Note: None of the above requires that prisoners be pampered, coddled or indulged as some have alleged.
- v. The War Crimes Act of 1996 as amended 18 U.S.C. § 2441 ([http://assembler.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00002441----000-.html](http://assembler.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00002441----000-.html))
- (1) Provides a vehicle for anyone to be tried in federal courts for violations of the Geneva Conventions protections, whether inside or outside the United States, if the person committing a war crime or the victim of a war crime is a member of the Armed Forces of the United States or a national of the United States.
  - (2) Implements the Geneva Conventions as a law of the land.
  - (3) Makes it a federal crime for any military or civilian, US national to violate certain provisions of the Geneva Conventions including ordering or engaging in the murder, torture or inhuman treatment of a detainee.
  - (4) Violations of the War Crimes Act that result in death carry the death penalty.
  - (5) In addition, anyone in the chain of command who condones the abuse rather than stopping it could also be in violation of the act.
- vi. Nuremberg Principles (<http://deoxy.org/wc/wc-nurem.htm>). The Nuremberg Principles created and used during the Nuremberg Trials of Nazi party members following World War II and recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal were affirmed by the UN General Assembly and Adopted by the International Law Commission of the United Nations, 1950.

#### Principle I

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

#### Principle II

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

#### Principle III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

#### Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

#### Principle V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

#### Principle VI

The crimes hereinafter set out are punishable as crimes under; international law:

Crimes against peace:

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Principle VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principles VI is a crime under international law.

4. Due Process Rights, Equal Protection Rights and Immunities. This section covers general, due process and equal protection rights. Parental rights are in Section V below; property rights are in Section VI; and, violation of rights Section IX.
  - a. Due Process Rights and the Right to the Proper Administration of Justice. The U. S. Constitution requires and guarantees "*No state shall ... deprive any person [not just citizens] of life, liberty, or property, without due process of law.*" Fourteenth Amendment, Sec 2. US Constitution.
    - i. Due process rights are the rights that are due or owed individuals, under all the processes of the law, civil, criminal and administrative. The right to due process of law also implies the right to the proper administration of justice. That is, before the state can take a person's life, liberty, or property, there are processes which the state must observe. These due process rights apply for example when a court orders that a person's property or money be given to another party in a civil suit or to an attorney. Due process rights of individuals include:
      - (1) Adequate, proper and timely notification of complaints and hearings and the basis for the complaint and hearing.
      - (2) Adequate time to prepare for hearings and trials
      - (3) A neutral, impartial, honest arbitrator/judge who has jurisdiction over both the individual and the subject matter. "*Any disposition of a case by a judge for reasons other than an honest appraisal of the facts and the law, as disclosed by the evidence presented, will amount to conduct prejudicial to the proper administration of justice.*"<sup>10</sup>
      - (4) The right and opportunity to make written and oral presentations to the judge/decision maker.
      - (5) The right to have witnesses and present evidence

- (6) The chance to confront and cross-examine witnesses and challenge them.
- (7) Assistance of a [competent, affordable] counsel.
- (8) That the parties constitutional and other rights are observed including:
- (9) Right to a speedy and public trial by an impartial jury trial in criminal and in suits at “common law, where the value in controversy shall exceed twenty dollars.”
- (10) There are also due process rights that generally apply only to criminal trials, including:
  - (a) The right to compulsory process of witnesses;
  - (b) A right to pre-trial discovery of evidence; A public hearing;
  - (c) A transcript of the proceedings;
  - (d) A jury trial;
  - (e) A burden of proof on the government;
  - (f) The right to all exculpatory evidence in the hands of the government
- (11) The right of appeal to a higher body.
- (12) Fairness.
  - (a) *“Denying a fair trial denies DUE PROCESS.”*<sup>11</sup>
  - (b) *“Our system of law has always endeavored to prevent even the probability of unfairness.”*<sup>12</sup>

b. Right to Equal Protection under the Laws

- i. The Constitution requires and guarantees that *“No state shall ... deny to any person [not just citizens] within its jurisdiction the equal protection of the laws.”* Fourteenth Amendment, Sec 2. US Constitution
- ii. Equal protection of the laws is a *“guaranty that no person or class of persons shall be denied the same protection of the law which is enjoyed by the other person or other classes of persons.”*
- iii. 42USC1981- *Equal rights under the law* prescribes:
  - (1) *“Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”*
  - (2) *“Make and enforce contracts”* defined. For purposes of this section, the term *“make and enforce contracts”* includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
  - (3) *Protection against impairment. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.*

- iv. A non-custodial parent or a parent who has never been married has the same rights as a married parent.

Please note that all these rights apply to persons and people not just citizen and certainly not to corporations. Please also note that the Constitution distinguishes citizens from the people by stating that citizens have certain immunities and privileges such as voting.

- c. Privileges and Immunities of Citizens, Judges and Government Officials. There is nothing in the U. S. or Virginia Constitution about privileges or immunities of Judges or Government Officials except for some limited immunities of legislators when the legislature is in session. There is no mention of any public official being sovereigns (supreme rulers and monarchs) or our government being a sovereignty. Immunity of judges and officials and our government being sovereign was invented by the judges and officials to protect dishonest judges and corrupt public officials.
  - i. The Constitution requires and guarantees that:
    - (1) *"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"* Fourteenth Amendment, Section 2. U. S. Constitution.
    - (2) *"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."* Article IV, Section 2 of the U. S. Constitution.
  - ii. *"Qualified immunity defense fails if public officers violate clearly established rights because a reasonably competent official should know the law governing his conduct"*<sup>13</sup>
  - iii. *"Officers of the court have no immunity, when violating a Constitutional right, from liability for they are deemed to know the law"*<sup>14</sup>
  - iv. *"When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judges' orders are void, of no legal force or effect."* The U.S. Supreme Court, in *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that *"when a state officer acts under a state law in a manner violative of the Federal constitution,"* he *"comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct."* The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."
  - v. Judicial Immunity is a special "Law" that judges created, without going to our elected officials. *"The official immunity doctrine... 'has in large part been of judicial making..."*<sup>15</sup>
  - vi. Under *"equal protection rights"* and the *"privileges and immunities of citizens"* there can be no constitutional law that gives Judges immunity against a civil law suit that does not also immunize citizens.
  - vii. Constitutional law is applied in all circumstances including when parents are separated or divorced, or when children are born out of wedlock. The U.S. Supreme Court stated that "a (once) married father who is separated or divorced from a mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child. *Quilloin v. Walcott*, 98 S.Ct. 549; 434 U.S. 246, 255-56, (1978).

## 5. Parental Responsibilities and Rights

- a. Responsibilities of Parents. Parents have the responsibility to, among other things, do

everything reasonably possible to:

- i. Protect, care for and emotionally support their children
- ii. Provide food, health care, clothing and housing for their children
- iii. Inculcate in their children moral and ethical standards
- iv. Insure that their children are educated, physically active, healthy and gradually become self-sufficient.
- v. Give them access to information and opportunities so that they can make their own decisions as they mature

Parents must have custody, access, and frequent and continuing contact with their children to exercise these responsibilities.

b. Parental Rights.

- i. Parental rights are "a fundamental right protected by First, Fifth, Ninth and Fourteenth Amendments"<sup>16</sup>.
- ii. Parental rights are regarded as "far more precious than property rights"<sup>17</sup>
- iii. The Supreme Court characterizes the parental right as an "essential" right<sup>18</sup> that protects a substantial interest that "undeniably warrants deference, and, absent a powerful countervailing interest, protection".<sup>19</sup>
- iv. Parental rights "cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions",<sup>20</sup> and that, because of this, "there must be some compelling justification for state interference" with parental rights.<sup>21</sup>
- v. The state *is* required, to show by "clear and convincing evidence" that a compelling state interest is at stake before termination of parental rights.<sup>22</sup>
- vi. "[t]he interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court"<sup>23</sup>
- vii. Constitutional law has very strict requirements that dictate when and to what extent the state can invade the privacy of a parent-child relationship. This is embodied by the term "substantial harm". That is the threshold a trial judge must find a child in prior to issuing orders against a parent.
- viii. A non-custodial parent or a parent who has never been married has the same rights as a married parent. Constitutional law is applied in all circumstances including when parents are separated or divorced, or when children are born out of wedlock. The U.S. Supreme Court stated that "a (once) married father who is separated or divorced from a mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child. *Quilloin v. Walcott*, 98 S.Ct. 549; 434 U.S. 246, 255-56, (1978).

Taking away custody, blocking access, and or denying frequent and continuing contact of a responsible parent with his children is a violation of a fundamental, essential, precious right and a serious crime.

- c. Frequent and Continuing Parent-Child Contact Laws. Recognizing that during a separation or divorce, children require considerable more emotional and physical support than children in an intact family, Virginia and other states have what are called "frequent and continuing contact"

laws. These laws require that Judges, Guardian Ad Litem, and other officers of the court assure frequent and continuing contact with both parents. These laws cannot legally be used to decrease parent-child access or contact.

i. In Virginia the Code of Virginia § 20-124.2 requires: "*in cases of separation and divorce that*":

(1) "*The court shall assure minor children of frequent and continuing contact with both parents, where appropriate, and encourage parents to share in the responsibilities of rearing their children.*" DEFINITIONS:

(a) Shall: a mandate, the Court has no discretion.

(b) Assure: guarantee.

(c) Frequent: often, happening at short intervals, constant, habitual or regular, common, routine, everyday.

(d) Continuing: going on without interruption, remaining in existence for an indefinitely long time, lasting, abiding, enduring, persisting.

(e) Where appropriate: Frequent and continuing contact is always appropriate if there are two responsible parents. In cases where one or both parents are not responsible, the Judge is still required to do what is reasonably necessary to assure minor children of frequent and continuing contact with both parents.

(f) Neither this nor any other law allows a judge to decrease or inhibit the constitutionally guaranteed parental rights of responsible parents.

(2) "*As between the parents, there shall be no presumption or inference of law in favor of either.*"

(3) "*The procedures for determining custody and visitation arrangements shall ..... preserve the dignity and resources of family members.*"

(4) "*The court shall give due regard to the primacy of the parent-child relationship*"

(5) "*In any case in which custody or visitation of minor children is at issue ..... the court shall provide prompt adjudication, upon due consideration of all the facts*"

DEFINITIONS:

(a) Shall: a mandate, the Court has no discretion.

(b) Assure: guarantee.

(c) Frequent: often, happening at short intervals, constant, habitual or regular, common, routine, everyday.

(d) Continuing: going on without interruption, remaining in existence for an indefinitely long time, lasting, abiding, enduring, persisting.

(e) Where appropriate: Even if it is not possible to for minor children to have frequent and continuing contact with both parents, the court is still required to do what is necessary to meet the spirit and content of the law. For example:

(i) The court could provide for telephone and email contact and compensatory time if one parent is away on business, deployed as a service member for a lengthy period of time, works long odd hours, etc.

- (ii) Provide extensive supervised visitation for a parent who is attempting to alienate children against the other parent.

In any case, frequent and continuing contact laws, do not permit the court to legally decrease or inhibit constitutionally guaranteed parental rights.

- d. Responsibilities of Judges, Attorneys, Guardian Ad Litem, etc. Judges, attorneys, guardian ad litem, custody evaluators, psychologists, etc. are responsible for assuring that frequent and continuing contact laws are enforced and parental rights are observed. If this is done, most parents will care for and support their children, child welfare will markedly improve and the expense of enforcing child support laws will markedly decrease. Courts have no jurisdiction over responsible parents, whether married, separated, or divorced, who are willing to live up to their responsibilities.

Some attorneys and judges wrongfully and unlawfully use Child Custody and Visitation Laws to reduce parents' contact with their children so that parents have to pay more child support and so that the parents keep having to go back to court to get contact with their children or because they wrongfully and unlawfully favor one parent over the other. Much of the so called child support money often ends up in the hands of the attorneys and are not used to support the children. Except for the *Frequent and Continuing Parent-Child Contact Laws* described , Child Custody and Visitation Laws are mostly unconstitutional and not applicable to a responsible parent.

Parents are responsible for and decide how they raise their children. Married, separated and divorced parents must work out their own schedules for their children through intermediaries if necessary. Judges and attorneys are incapable of doing this. They are too expensive and have more important work to do than to try to determine who will pick up a child at school or go to a child's soccer game.

The state does not have the power, right or jurisdiction:

- i. To interfere with a responsible parent's parental rights whether that parent is married, divorced or never married
- ii. To take legal or physical custody away from a responsible parent against his will
- iii. To tell a fit parent when he can or cannot see his/her child.

If a parent makes it clear that he or she will live up to his or her parental responsibilities:

- i. The opposing party has no cause of action and any motion asking for child custody and limits on access (visitation) is frivolous and the opposing attorney is guilty of barratry and attempted child abuse and neglect.
- ii. A judge violates the rights of a responsible parent, is not faithful to the Frequent and Continuing Contact Laws - Code of Virginia §20-124.2, is not acting in the best interest of the child, and is guilty of child abuse and neglect and abuse if he/she:
  - (1) Does not ensure frequent and continuing contact for minor children with the responsible parent when asked to do so.
  - (2) Takes custody away from a responsible parent
  - (3) Grants exclusive use of the marital home to the other parent.
  - (4) Permits one parent to alienate a child against the other parent.
  - (5) Allows one parent to move away with the children against the other parent's wishes.

## 6. Property Rights

### a. General.

#### i. The U. S. Constitution requires and guarantees:

- (1) That, "*No state shall ... deprive any person of life, liberty, or property, without due process of law;*" Fourteenth Amendment, Sec 2. US Constitution. "Property" includes homes, land, real estate, funds, intellectual property, etc.
- (2) "*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures*" Fourth Amendment, U. S. Constitution.

#### ii. "Stolen property does not convey" [Common Law]

### b. Court Ordered Sales and Partition of Real Property.

#### i. "*Equity courts have no inherent jurisdiction to order a sale of land for the purpose of partition. This aspect of the partition power is purely statutory.*"<sup>24</sup>

#### ii. "*Today partition in Virginia is a statutory proceeding, governed by the applicable provisions of the Virginia Code.*"<sup>25</sup>

#### iii. "*Lack of substantial compliance with these statutes is fatal to the proceedings.*"<sup>26</sup>

#### iv. Courts which engage in a statutory proceeding, such as a divorce, paternity, adoption, probate, bankruptcy, etc., are governed by the rules of limited jurisdiction, which means that there is no presumption that the judge holds jurisdiction.

#### v. Should a judge engage in any act beyond the authority which the law or the statute grants him or her, the order of the court is void, of no legal force or effect anywhere and at any time and the previous owner is still the legal owner of the property.

#### vi. In the event that any officer of the court in any previous judicial hearing engaged in "fraud upon the court", or in which the judge engaged in any act which he had no authority to engage in, whether by law or by statute, the owner of the house or property at that previous time remains the legal owner of the house.

#### vii. A purchaser and all subsequent titleholders are chargeable with notice of the condition of the record and are not protected from the consequences of purchasing under a void judgment or decree.

#### viii. Any party, as purchaser at an execution sale, is presumed to be cognizant of every fact pertaining to the status of any judgment affecting the property.

#### ix. Every execution sale and all conveyances or other evidences of title founded thereon depend upon the authority of the officer who makes such sale. If a judgment is void and execution should nevertheless be sued out, it would confer no authority whatever upon the officer executing it and a sale made under it and all official conveyances or other evidences of title founded thereon would be absolutely null and void.

#### x. If the order issued by any court is void, then it must be reversed and the plaintiff must be restored to his former condition or status, the same as though the decree had not been rendered.

#### xi. Should a title company issue a title policy to a purchaser involved in a sale based on a void order, the title company becomes liable in damages under non-contractual tort liability.

#### xii. A title policy issued to a person who purchases based on a void order does not protect the

purchaser. The purchaser does not own the real estate in question (as the true owner remains the owner of the property) and the new purchaser becomes liable for damages.

- xiii. Further should a real estate salesperson be involved in the sale of real estate based on a void order, that person becomes liable to the true owner of the property. Damages could also be assessed against any party involved in moving or storage of any personal property taken from the involved real estate.
- xiv. And, if the judge has no jurisdiction and property has been sold thereto, then he and those who advise and act with him, or execute his process, are trespassers of the law.
- xv. Any party that provides financing for the purchase of property based on a void order, would also be liable for damages.
- xvi. Code of Virginia §§ 8.01-99. Bond required of special commissioner for sale.

*“... no special commissioner shall advertise the property for sale or renting, or sell or rent the same, until he shall have given bond in a penalty to be prescribed by the court sufficient to cover at least the probable amount of the whole purchase money ... and shall have obtained from such clerk a certificate that such bond has been given. The certificate or a copy thereof shall be appended to the advertisement; provided, however, that in any case of such sale or rental, the court may direct all the cash proceeds thereof to be deposited by the purchaser or lessee to the credit of such court in some bank to be designated by it, and may direct that all evidences of indebtedness arising from such transaction or rent be deposited for safekeeping with such bank or the clerk of such court and the court may in its discretion thereafter dispense with the bond.”*

*“The clerk shall make the certificate whenever the bond has been given and note the same in the proceedings in the cause. The certificate or a copy thereof shall be returned with the report of the sale or renting.”*

- xvii. Code of Virginia §§ 18.2-209.1. Penalties for false certificate or failure to give bond.  
Paragraph B. *“If any special commissioner appointed under Article 11 of Chapter 3 of Title 8.01 shall advertise property for sale or rent, and shall sell or rent the same before he shall have given bond as is required by §§ 8.01-99, he shall be guilty of a Class 3 misdemeanor.”*
- xviii. Code of Virginia §§ 8.01-595. Preparation of list of creditors; notice to them.  
*“When a receiver has been appointed he shall immediately prepare or cause to be prepared a list of all creditors, lien and general, of the person, firm, corporation or of any other legal or commercial entity for which he is a receiver; and the court may by proper order compel any defendant for whom a receiver is appointed, or any officer of the corporation or of any other legal or commercial entity for whom the receiver is appointed, to furnish or deliver to the receiver a list, duly sworn to, of all creditors, lien or general, together with their addresses if known. The receiver shall then promptly notify by mail each creditor whose name and address has been ascertained of the appointment of the receiver.”*
- xix. The Fairfax County Court Manual requires that a Special Audit Commissioner be assigned

- c. Child Support. The spirit and intent of child support statutes are to ensure minor children are financially supported. They are not intended to provide money for attorney’s fees or spouses. The Courts have no jurisdiction over a responsible parent, whether married or divorced, who is

willing to support and is supporting his minor children.

- i. If a parent makes it clear and provides evidence that he has and will continue to support his minor children:
  - (1) The opposing party has no cause of action and any motion asking for child support is frivolous and the opposing attorney is guilty of barratry and guilty of attempted larceny by false pretense.
  - (2) Any order issued by a Judge under these circumstances is null and void.
- ii. *"A man is under legal obligation to support his children, and he may often be required to do so when they are not living with him, but he cannot be said to willfully neglect and refuse to support them where his wife, without reasonable excuse, keeps them away from him."*<sup>27</sup>
- iii. *"A father has the right at common law to maintain his children in his own home, and he cannot be compelled against his will to do so elsewhere, unless he has refused or failed to provide for them where he lives."*<sup>28</sup>
- iv. *"Where a wife .... keeps her children away from her husband ... , the wife ... can[not] charge the husband in a civil suit for the support and maintenance of the children."*<sup>29</sup>
- v. *"These propositions [in paragraphs 1-3 above] are abundantly supported by authority."*<sup>30</sup>  
See Mihalcoe v. Holub, supra, and authorities cited therein.
- vi. *"It has been held that a father may not be convicted of abandoning and refusing to provide for his child, where it appears that his wife left his home contrary to his wishes, and that her child was born at the home of her parents thereafter."*<sup>31</sup>
- vii. Also, when a Judge does order a parent to pay child support, the Judge must follow the spirit, intent and letter of the law, in particular the Code of Virginia §20-108.1 and §20-108.2 which:
  - (1) Provide presumptive *"guidelines for determination of child support."*
  - (2) Require that the amount of child support awarded be based on these guidelines.
  - (3) Requires that a court which deviates from the presumptive guidelines
    - (a) use the *"factors set out in §20-108.1"* to determine the amount of required child support and
    - (b) *"make written findings in the order that state the amount of support that would have been required under the guidelines and give a justification of why the order varied from the guidelines."*
- viii. If/ the Judge does not follow the spirit, intent and letter of the statute when ordering child support, his order is null and void.

## 7. Liberty Rights

### a. Arrest and False Imprisonment

- i. The U. S. Constitution requires and guarantees that *"no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized"* Fourth Amendment, US Constitution
- ii. *"An officer who makes an arrest with or without a lawful warrant has a legal duty to bring the person he arrested before a magistrate without unnecessary delay. If the officer fails to*

*perform this, then he has falsely imprisoned the person he arrested.”*

- iii. False imprisonment is an intentional restriction of a person’s freedom of movement without legal right. A false imprisonment results from the intentional use of force, words, or acts which the person restrained is afraid to ignore or to which he reasonably believes he must submit.
- iv. It is not a legal defense to a claim of false imprisonment that one had an honest or a reasonable belief that he was acting lawfully in restricting another’s freedom. Any intentional restriction of a person’s freedom that is without legal right is a false imprisonment.
- v. The Supreme Court has held that *“a warrant less arrest will be judged by a somewhat higher standard of probable cause than if the same arrest had occurred under the direction of a neutral and detached magistrate”*<sup>32</sup> and *“an arrest in a private residence requires an arrest warrant unless there are exigent circumstances”*<sup>33</sup> .
- vi. *“An officer who makes an arrest with a or without a lawful warrant has a legal duty to bring the person he arrested before a magistrate without unnecessary delay. If the officer fails to perform this, then he has falsely imprisoned the person he arrested.”* Unnecessary delay is defined as absolutely less than 48 hours

b. Cruel and Unusual Punishment

- i. The Eighth Amendment prohibits the use of cruel and unusual punishment. In an arrest or detention context, these rights would prohibit the use of force amounting to punishment (summary judgment). The idea being that a person accused of a crime is to be allowed the opportunity to have a trial and not be subjected to punishment without having been afforded the opportunity of the legal process.

c. Exculpatory Evidence

- i. Due process of law requires that the government disclose to a criminal defendant favorable evidence in its possession that could materially aid the defense against pending charges (exculpatory evidence).
- ii. The U. S. Constitution requires and guarantees that *“In all criminal prosecutions .. the accused shall have compulsory process for obtaining witnesses in his favor, and to have the assistance of [competent, affordable] counsel”* Sixth Amendment, U. S. Constitution
- iii. The Virginia Constitution requires and guarantees *“That in criminal prosecution a man hath a right to... call for evidence in his favor.”* Art I, Section 8, Virginia Constitution
- iv. The prosecution has a constitutional obligation to disclose material, exculpatory evidence.<sup>34</sup>
- v. There is no statute of limitation or “21 day rule” on correcting records. *Even if the prosecutor did not know of the falsity at the time the evidence was introduced, the failure to correct it upon awareness thereafter is error equal to deliberate use.* Nape vs. Illinois 360 U.S. 264, 269, 795. Ct. 1173, 1177 3L. Ed 2d 1217 (1959) and Walker v. Commonwealth 4 Va, App 286, 300, 356 S.E. 2d 853, 861 (1987).

## 8. Search and Seizures

- a. The Fourth Amendment to the United States Constitution provides for the people's protection against unreasonable search and seizure in the United States. Case law has maintained that until an arrest has occurred, law enforcement are required to gain a warrant before they can effect a search.
- b. Under FISA (Foreign Intelligence Surveillance Act), anyone who engages in electronic surveillance of US citizens in the United States without a court order is subject to both criminal penalties and civil liabilities.

## 9. Protection From Violations of Rights

- a. Case law regarding protection from the violation of rights includes:
  - i. *"The very essence of civil liberty certainly consist in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgement of his court."*<sup>35</sup>
  - ii. *"The court is to protect against any encroachment of constitutionally secured liberty."*<sup>36</sup>
  - iii. *"Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them"*<sup>37</sup>
  - iv. *"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never passed."*<sup>38</sup>
  - v. *"Any disposition of a case by a judge for reasons other than an honest appraisal of the facts and the law, as disclosed by the evidence presented, will amount to conduct prejudicial to the proper administration of justice."*<sup>39</sup>
  - vi. *"The fact that a judge receives no personal benefit, financial or otherwise, from his improper handling of a case does not preclude his conduct from being prejudicial to the administration of justice. The determinative factors aside from the conduct itself, are the results of the conduct and impact it might reasonably have upon knowledgeable observers,"*<sup>40</sup>Id. (Peoples, supra, 296 N.C. 109, 154, 250 S.E.2nd 890, 916.)
  - vii. A violation of the Constitutional right is a violation whether or not the violation is appealed or a complaint is filed.
  - viii. The law also requires that when a Judge inadvertently violates a persons civil rights or is duped into violating a civil right he corrects his mistake.
  - ix. If a defendant has an honest Judge, he does not have to even know there is a Constitution to be protected by it
- b. Violation of a constitutional right is a crime. Violation of a material constitutional right under color of law is a very serious crime. There are criminal penalties for violation of constitutional rights:
  - i. 18USC241 - *Conspiracy against rights.*

- ii. 18USC242 - *Deprivation of rights under color of law.*
- c. Civil Penalties. There are also civil penalties for violation of rights including:
  - i. 42USC1981- *Equal rights under the law*
  - ii. 42USC1983 - *Civil action for deprivation of rights.*
  - iii. 42USC1985 - *Conspiracy to interfere with civil rights.*
  - iv. 42USC1986 - *Action for neglect to prevent.*
- 10. **Void Parts of Statutes, Regulations, Judgments, Decrees and Orders.** Any part(s) of a statute, regulation, court judgment, decree or order, and civil and military orders and instructions that are unconstitutional, violate Constitutional rights and/or were obtained by fraud and/or intended to commit fraud are null and void. Null and void portions of an order, judgment or statute are null and void whether or not a judge has found it to be null and void, the order, is appealed and/or a complaint is filed.

a. "A void judgment [is one]:

- (1) *which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally.*<sup>41</sup>
- (2) *which, also, from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree.*
- (3) *that has merely semblance without some essential elements, as want of jurisdiction or failure to serve process or Party in court. See also Voidable judgment.*<sup>42</sup>.

## DEFINITIONS

Null: Nonexistent; void; of No legal meaning

Null and void: That which binds No One; that which is incapable of giving rise to any rights or obligations under any circumstances; that which is of no effect.

- b. "Under settled legal principles, a judgment is void ab initio [from the beginning] if it has been procured by extrinsic or collateral fraud, or entered by a court that did not have jurisdiction over the subject matter or the parties."<sup>43</sup>
  - i. Extrinsic fraud: *The character of fraud which will afford a ground for setting aside a judgment that is, fraud which is collateral to the issues tried in the case wherein the judgment was rendered.*<sup>44</sup>
    - (1) *For the purpose of grounds of equitable relief against a judgment, fraud which has prevented a party from having a trial, from presenting, all his case to the court or has so affected the manner in which the judgment was taken that there has not been a fair submission of the controversy to the court.*<sup>45</sup>
    - (2) *For the purpose of serving as a defense to an action on a foreign judgment, any fraudulent conduct of the successful party in the foreign action, practiced directly and affirmatively on the defeated party outside the actual trial of the cases, whereby he was prevented from presenting his side of the cause fully and fairly.*<sup>46</sup>
    - (3) *Actual fraud characterized by an evil intent to take undue advantage of another person for the purpose of actually and knowingly defrauding him.*<sup>47</sup>

- ii. Collateral fraud: Same as intrinsic fraud
  - iii. Fraud: *An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.*" Black's 5th, 594
  - iv. *"Fraud vitiates the most solemn contracts, documents, and even judgments."* <sup>48</sup>
  - v. Intrinsic fraud. Intrinsic fraud includes:
    - (1) *Fraud practiced in procuring a transaction.* <sup>49</sup>
    - (2) *In the trial of an action:—perjury, forgery, bribery of a witness, and other frauds which could have been relieved by the court in the action itself.* <sup>50</sup>
    - (3) *In reference to relief from a judgment: fraudulent acts pertaining to an issue involved in the original action, or fraudulent acts which were or could have been litigated in the original action.* <sup>51</sup>
  - vi. *"Silence can only be equated with fraud when there is a legal or moral duty to speak, or when an inquiry left unanswered would be intentionally misleading ... We cannot condone this shocking conduct... If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately"* <sup>52</sup>
- c. Jurisdiction
- i. *"It is essential to the validity of a judgment or decree, that the court rendering it shall have jurisdiction of both the subject matter and parties. But this is not all, for both of these essentials may exist and still the judgment or decree may be void, because the character of the judgment was not such as the court had the power to render, or because the mode of procedure employed by the court was such as it might not lawfully adopt."* <sup>53</sup>
  - ii. *"We [public servants] have no more right to decline the jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."* <sup>54</sup>
  - iii. *"Under settled legal principles, a judgment is void ab initio [from the beginning] if it has been ... entered by a court that did not have jurisdiction over the subject matter or the parties."* <sup>55</sup>
  - iv. A court engaged in a statutory proceeding is governed by the rules of limited jurisdiction, there is no presumption that the judge holds jurisdiction. Should the judge engage in any act beyond that which the law or the statute grants him or her authority, the order of the court is void, of no legal force or effect anywhere and at any time.
  - v. *"Where the court, as here, is exercising special statutory powers, the measure of its authority is the statute itself; and a judgment or order in excess of the powers thereby conferred is null and void. In such a case, even though the court may have jurisdiction of the general subject matter and of the parties, an adjudication with reference thereto which is not within the powers granted to it is coram non judge."*
  - d. *"When a judgment is absolutely void, no rights are divested or obtained from that judgment"* <sup>56</sup>
  - e. *"Judgments that are void may be attacked in any court at any time, directly or collaterally."* <sup>57</sup>
  - f. *"It is well settled that, quite apart from the guarantee of equal protection, if a law "impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional."* <sup>58</sup>
  - g. *"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality*

*dates from the time of its enactment, and not merely from the date of the decision so branding it... No one is bound to obey an unconstitutional law, and no courts are bound to enforce it.*"<sup>59</sup>

- h. *"It is well settled that, quite apart from the guarantee of equal protection, if a law "impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional"*<sup>60</sup> and therefore null and void.
- i. *"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never passed."*<sup>61</sup>
- j. "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble" do you need explained to you? And the oaths of officers to support and defend those liberties secured by Constitutions?

"Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them." -- *Miranda v. Arizona*, 384 U.S. 436, 491 (1966)

## 11. Miscellaneous

### a. Finality of Judgments

- i. Rule 1:1 of the Rule of the Supreme Court of Virginia *"All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer.*
- ii. *"Jurisdiction divests after entry of final order. After an order becomes final, the trial court, pursuant to this rule, is divested of jurisdiction and every action of the court thereafter to alter or vacate that order, is a nullity unless one of the limited exceptions to the preclusive effect of this rule applies."*<sup>62</sup>
- iii. There is no statute of limitation or "twenty-one day rule" on correcting records.
- iv. *"Judgments that are void may be attacked in any court at any time, directly or collaterally."*<sup>63</sup>
- v. *"Even if the prosecutor did not know of the falsity at the time the evidence was introduced, the failure to correct it upon awareness thereafter is error equal to deliberate use."* *Nape vs. Illinois* 360 U.S. 264, 269, 795. Ct. 1173, 1177 3L. Ed 2d 1217 (1959) and *Walker v. Commonwealth* 4 Va, App 286, 300, 356 S.E. 2d 853, 861 (1987).
- vi. There is no statute of limitation or "21 day rule" on correcting records. *Even if the prosecutor did not know of the falsity at the time the evidence was introduced, the failure to correct it upon awareness thereafter is error equal to deliberate use.* *Nape vs. Illinois* 360 U.S. 264, 269, 795. Ct. 1173, 1177 3L. Ed 2d 1217 (1959) and *Walker v. Commonwealth* 4 Va, App 286, 300, 356 S.E. 2d 853, 861 (1987).

### b. Judicial notice of laws and Disclosure of Law and Facts.

- i. Code of Virginia Section 19.2-265.2. Judicial notice of laws.

*A. Whenever, in any criminal case it becomes necessary to ascertain what the law, statutory or otherwise, of this Commonwealth, of another state, of the United States, of another country, or of any political subdivision or agency of the same is, or was, at any time, the court shall take judicial*

notice thereof whether specially pleaded or not.

B. The court, in taking such notice, shall consult any book, record, register, journal, or other official document or publication purporting to contain, state, or explain such law, and may consider any evidence or other information or argument that is offered on the subject.

- ii. *"Damages will lie in proper case of negligent misrepresentation of failure to disclose."*<sup>64</sup>
- iii. *"Silence can only be equated with fraud when there is a legal or moral duty to speak, or when an inquiry left unanswered would be intentionally misleading... We cannot condone this shocking conduct... If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately"*<sup>65</sup>

c. Quashing Subpoenas

- i. *"The relevancy of the testimony sought is not an issue which may be raised by a motion to quash."*<sup>66</sup>
- ii. *"Nor is privilege a proper ground to quash a subpoena since the claim of privilege can only be asserted after the witness takes the stand and is asked questions regarding a privileged matter."*<sup>67</sup>

12. Rule of Law

- a. In Commonwealth law, the most famous exposition of the concept of rule of law was laid down by Albert Venn Dicey in his Law of the Constitution in 1895:
  - *every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. [Appointed government officials and politicians, alike] ... and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorise as is any private and unofficial person*<sup>68</sup> Thus, those who make and enforce the law are themselves bound to adhere to it.
- b. *The United States is a government of laws and not of men*, has been quoted with approval by the U.S. Supreme Court and every state supreme court in the United States.
- c. The concept "rule of law" is generally associated with several other concepts, such as:
  - i. No ex post facto laws
  - ii. Presumption of innocence - All individuals are "innocent until proven otherwise"
  - iii. Double jeopardy - Individuals may only be punished once for every specific crime committed. Retrials may or may not be permitted on the grounds of new evidence.
  - iv. Legal equality - All individuals are given the same rights without distinction to their social stature, religion, political opinions, etc. That is, as Montesquieu would have it, "law should be like death, which spares no one."
  - v. Habeas corpus - A person who is arrested has the right to be told what crimes he or she is accused of, and to request that his or her custody be reviewed by judicial authority.

Persons unlawfully imprisoned have to be freed.

- d. In the Anglo-American legal tradition rule of law has been seen as a guard against despotism and as enforcing limitations on the power of the government.
- e. Because the United States has a Constitutional Government all protections the people have, are fundamental, and can never be jettisoned. Accordingly practices such as an anti-terrorism legislation is unconstitutional and null void and does not legalizes government conduct such as holding extrajudicial prisoners and the use of torture.

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Attachment A to [Key Aspects of the U.S. Constitution and Other Laws](#)

## Salient Constitutional Rights

*Paragraph numbering added by the compiler*

1. *"No state shall ... deprive any person [not just any citizen] of life, liberty, or property, without due process of law"*
2. *"No state shall ... deny to any person [not just citizens] within its jurisdiction the equal protection of the laws."*
3. *The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.*
4. *"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"*
5. *"The right of the people [not just citizens] to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated"*
6. *"no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized"*
7. *The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it*
8. *The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury*
9. *In all criminal prosecutions, the accused shall enjoy the right:*
  - a. *to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and*

- b. *to be informed of the nature and cause of the accusation;*
- c. *to be confronted with the witnesses against him;*
- d. *to have compulsory process for obtaining witnesses in his favor, and*
- e. *to have the assistance of counsel for his defense.*

10. *No person shall .....*

- a. *be subject for the same offense to be twice put in jeopardy of life or limb;*
- b. *be compelled in any criminal case to be a witness against himself,*
- c. *be deprived of life, liberty, or property, without due process of law;*

11. *Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

12. *In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.*

13. *"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage other rights which are retained by the people [not just citizens]."*

14. *The powers [not rights] 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 [not just citizens].*

Please note that **all** these rights apply to persons and people not just citizen and certainly not to corporations. Please also note that the Constitution distinguishes citizens from the people by stating that citizens have certain immunities and privileges such as voting.

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#### End Notes

1. *Town of Madison v. Ford*, 255 Va. 429, 498 S.E. 2d 235 (1998).
2. *Marbury V Madison*, 5 US 137
3. *Terry v. Mazur* 234 Va. 442, 450 362 S.E. 2d 904, 908 (1987)
4. *Town of Madison v. Ford*, Va. 255 429, 432 (1998)
5. *Ballentine's Law Dictionary Third Edition*
6. *Clafin v. Hauseman*, 93 U.S. 130, 136-137.
7. *Douglas v. New York, N.H. & H.R. Co.*, 279 U.S. 377, 387-389
8. See, e.g., *Mondou v. New York, N. H. & H. R. Co.*, 223 U.S. 1, 57.
9. Chief Justice John Marshall stated in *Cohens v Virginia*, 6 wheat (19 U.S.) 264, 404

10. In re Peoples, supra, 296 N.C. 109, 154, 250 S.E.2d 890, 916.
11. Murchison, 349 U.S. 133, 136 (1955); see also Ward v. Village of Monroeville, 409 U.S. 11, 14 (1954); see also Murchison
12. Mayberry v. Pennsylvania, 400 U.S. 455, 469 (1971)”
13. Jones vs Counce 7-F3d-1359-8th Cir. 1993; Benitez V Wolff 985-F3d 662 2nd Cir 1993
14. Owens V Independence 100 S.C.T. 1398
15. Doe v. McMillan, 412 U.S. 306, 319 citing from Barr v. Matteo, 360 U.S., at 569
16. Doe v. Irwin, 441 F. Supp. 1247 1251 (D. Mich. 1977)
17. May v. Anderson, 345 U.S. 528, 533 (1953).
18. Meyer v. Nebraska, 262 U.S. 390, 399 (1923).
19. Meyer v. Nebraska, 262 U.S. 390, 399 (1923).
20. Irwin, 441 F. Supp. At 1251.
21. Id. At 1249.
22. Santosky v. Kramer, 102 S. Ct. 1388 (1982).
23. Troxel v. Granville U.S.(2000)
24. Sensabaugh v. Sensabaugh, 232 Va. 250, 349 S.E.2d 141 (1986); Nickels v. Nickels, 197 VA. 498, 90 S.E.2d 116 (1955); Cauthorn v. Cauthorn, 196 Va. 614, 85 S.E.2d 256 (1955)
25. See Va. Code Ann §8.01-81 et seq.; Price v. Simpson, 182 Va. 530, 29 S.E.2d 394 (1944); Phillips v. Wells, 147 Va. 1030, 133 S.E. 581 (1926).
26. Sensabaugh v. Sensabaugh, 232 Va. 250, 349 S.E.2d 141 (1986); Roberts v. Hagan, 121Va. 573, 93 S.E. 619 (1917).
27. Butler v Commonwealth of Virginia, 132 Va. 609; 110 S.E. 868; 1922 Va. LEXIS 58; 23 A.L.R. 861
28. Butler v Commonwealth of Virginia, 132 Va. 609; 110 S.E. 868; 1922 Va. LEXIS 58; 23 A.L.R. 861
29. Butler v Commonwealth of Virginia, 132 Va. 609; 110 S.E. 868; 1922 Va. LEXIS 58; 23 A.L.R. 861
30. See Mihalcoe v. Holub, supra, and authorities cited therein: Angel v. McLellan, 16 Mass. 28, 8 Am. Dec. 118; Baldwin v. Foster, 138 Mass. 449; Foss v. Hartwell, 168 Mass. 66, 37 L.R.A. 589, 60 Am. St. Rep. 366, 46 N. E. 411; Hyde v. Leisenring, 107 Mich. 490, 65 N. W. 536; Shields v. O'Reilly, 68 Conn. 256, 36 Atl. 49.
31. Preston v. State (1921) 106 Neb. 848, 184 N. W. 925.
32. 379 US 89
33. 445 US 573

34. Brady v. Maaryland,373 US 83
35. Marbury v. Madison, 5 US. 137 (1803)
36. Boyd V US, 116 US 616
37. Miranda v Arizona, 384 US 436
38. Norton v Shelby County, 118 US 425
39. In re Peoples, supra, 296 N.C. 109, 154, 250 S.E.2nd 890, 916.
40. Id. (Peoples, supra, 296 N.C. 109, 154, 250 S.E.2nd 890, 916.)
41. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2nd 1087, 1092.
42. Black's Law Dictionary Fifth Edition, Page 1412
43. Parrish v. Jessee, 250 Va. 514, 521 (1995).(Quoting Rook v. Rook, 233 Va.92, 95, 353 S.E.2d 756, 758 (1987)).
44. 30A Am Rev cd Judgm § 657.
45. Farley vs Davis, 10 Wash 2d 62, 116 P2d 263 155 AIR I302.
46. Britton v Gannon (Ok Ia) 285 P2d 407 55 ALR2d 667.
47. Flood v Templeton. 152 Cal 148, 92 P 78.
48. U.S. vs. Throckmorton, 98 U.S. 61.
49. Toledo Scale Co. v Computing Scale Co. 261 US 399, 67 L Ed 719, 43 S Ct 458.
50. Caldwell V Taylor, 218 Cal 471, 23 P2d 758, 88 ALR 1194.
51. 30A Am J Rev ed Judgm §~ 657. 784.
52. U.S. v. Tweel, 550 F2d 297, 299-300.
53. (Quoting Anthony v. Kasey, 83 Va. 338, 340, 5 S.E. 176, 177 (1887)). Evans v. Smyth-Wythe Airport Commission, 1998 Va. LEXIS 20, 7 (1998). Watkins v. Watkins, 220 Va. 1051, 1054, 265 S.E.2d 750, 752-53 (1980); Barnes v. American Fertilizer Co., 144 Va. 692, 706, 130 S.E. 902, 906 (1925).
54. Chief Justice John Marshall stated in Cohens v Virginia, 6 wheat (19 U.S.) 264, 404
55. Parrish v. Jessee, 250 Va. 514, 521 (1995).(Quoting Rook v. Rook, 233 Va.92, 95, 353 S.E.2d 756, 758 (1987)).
56. Atkisson v. Wexford Associates, 254 Va. 449, (1997).
57. Rook v. Rook, 233 Va.92, 95, 353 S.E.2d 756 (1987).
58. Harris v. McRae 448 U.S. 297, at 312 (1980).
59. 16 Am Jur 2d, Sec 177 late 2d, Sec 256

60. Harris v. McRae 448 US 297 (1980)
61. Norton v Shelby County, 118 US 425
62. Davis v. Mullins, 251 Va. 141, 466 S. E.2d 90 (1996)
- 63." Rook v. Rook, 233 Va.92, 95, 353 S.E.2d 756 (1987).
- 64.Van Buren v. Pima Community College Dist. Bd., 546 P.2d 821, 113 Ariz. 85 (Ariz.1976).
65. U.S. v. Tweel, 550 F2d 297, 299-300.
66. People v Slochowsky, 116 Misc 2d 1069, 456 NYS2d 1018.
67. People v Slochowsky, 116 Misc 2d 1069, 456 NYS2d 1018
68. Law of the Constitution (London: MacMillan, 9th ed., 1950), 194.