CIVIL Case No. _____

HARMON LUTHER TAYLOR,	§	In The
	§	
Applicant,	§	CHAPTER 24 DISTRICT COURT
	§	
v.	§	_____ JUDICIAL DISTRICT
	§	
COUNTY COURT AT LAW OF WALKER COUNTY, and/or	§	
	§	
	§	
MUNICIPAL COURT FOR THE, CITY OF HUNTSVILLE,	§	
	§	
	§	
"Restrainor(s),"	§	Concerning a matter arising in
	§	
Respondent(s).	§	WALKER COUNTY, TEXAS

TAYLOR'S APPLICATION FOR A PRE-TRIAL WRIT OF HABEAS CORPUS

Assertion of Rights

Harmon Luther Taylor ("Taylor") asserts all his unalienable rights, privileges and immunities at Natural Law, Common Law and Maritime Law, and all his commercial rights relevant to this state.

Application for a pre-trial writ of habeas corpus

Taylor applies for habeas in order that his present pre-trial "confinement" and/or "restraint," which are illegal, be terminated.

Simultaneous filings

For the reasons discussed in the ***disqualification*** matters, *infra*, Taylor files an application in both the county and district courts simultaneously.

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Ex Parte Tom Tong, 108 U.S. 556 (1883).
Kurtz v. Moffitt, 115 U.S. 487 (1885).
Farnsworth v. Montana, 129 U.S. 104 (1889).
In re Grimley, 137 U.S. 147 (1890).
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In re Frederich, 149 U.S. 70 (1893).
In re Lennon, 150 U.S. 393 (1893).

United States v. Pridgeon, 153 U.S. 48 (1894).
Hilborn v. United States, 163 U.S. 342 (1896).
Gonzales v. Cunningham, 164 U.S. 612 (1896).
Fisher v. Baker, 203 U.S. 174 (1906).
Riddle v. Dyche, 262 U.S. 333 (1923).
Holiday v. Johnston, 313 U.S. 342 (1941).
Hiatt v. Brown, 339 U.S. 103 (1950).
United States v. Morgan, 346 U.S. 502 (1954) (Minton, J. dissent).
Heflin v. United States, 358 U.S. 415 (1959).
In re Sawyer, 360 U.S. 622 (1959).
Smith v. Bennett, 365 U.S. 708 (1961).
Fay v. Noia, 372 U.S. 391 (1963).
Long v. District Court, 385 U.S. 192 (1966).
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Schlanger v. Seamans, 401 U.S. 487 (1971).
Parisi v. Davidson, 405 U.S. 34 (1972) (Douglas, J. concurring).
Wingo v. Wedding, 418 U.S. 461 (1974) (Burger, C.J., dissent).
Ellis v. Dyson, 421 U.S. 426 (1975) (Powell, J. dissent).
Blackledge v. Allison, 431 U.S. 63 (1977).
Browder v. Director, Dept. of Corrections, 434 U.S. 257 (1978).
Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).
Stafford v. Briggs, 444 U.S. 527 (1980).
McCarthy v. Harper, 449 U.S. 1309 (1981).
Coleman v. Balkcom, 451 U.S. 949 (1981) (Marshall, J. dissent).
Stephens v. Kempt, 469 U.S. 1043 (1984) (Brennan, J. dissent).
Granberry v. Greer, 481 U.S. 129 (1987).
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Hilton v. Braunskill, 481 U.S. 770 (1987).
Keeney v. Tamayo-Reyes, 504 U.S. 1 (1992).
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Bracy v. Gramley, 520 U.S. 899 (1997).
Woodford v. Garceau, 538 U.S. 202 (2003).
Rumsfeld v. Padilla, 542 U.S. 426 (2004).

Why file this at all?

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The Bank of the United States v. The Planters' Bank of Georgia, 22 U.S. (9 Wheat.) 904 (1824) ("government" as proprietor).
Griswold v. Connecticut, 381 U.S. 479 (1965) (STATE ***cannot*** compel engagement of commerce).
Lev. 19:35-36 (honest system of weights and measures).

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TX R. CIV. P. 18a, 18b, 18b(1)(b).
TX R. CIV. EVID. 605.

Bradley v. State of Texas ex rel. White, 990 S.W.2d 245 (TX 1999).
Tesco American, Inc. v. Strong Industries, 221 S.W.3d 550 (TX 2006).
McKenna v. State, 221 S.W.3d 765 (TX 2007).

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TX CRIM. PROC. CODE ANN. art. 45.018(b).
Rothgery v. Gillespie County, __ U.S. __ (23 June 2008).

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TX R. CIV. P. 103.
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TX CRIM. PROC. CODE ANN. art. 45.202.

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TX R. CIV. P. 18a, 18b.
TX R. CIV. EVID. 605.

Bradley v. State of Texas ex rel. White, 990 S.W.2d 245 (TX 1999).
Tesco American, Inc. v. Strong Industries, 221 S.W.3d 550 (TX 2006).
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Ballard v. Comm'r, 544 U.S. 40 (2005) (S. Ct. to tax court: "secret" orders violate Due Process).
Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189 (1915) (*Cotton Mills*) (violations of Due Process render judgments void).

Statutory Challenge Issues

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TX TRANS. CODE §§ 521.021, 521.025.
Gonzalez v. Carhart, __ U.S. __, 127 S. Ct. 1610 (2007).

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TX TRANS. CODE §§ 521.021, 521.025.
Cuellar v. United States, __ U.S. __ (2 Jun 2008).

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TX TRANS. CODE §§ 521.021, 521.025.
TX PENAL CODE ANN. § 1.04 (West 2003).
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Point 12: Does Art. 45.018(b) violate Due Process?

TX CRIM. PROC. CODE ANN. art. 45.018(b).
TX CRIM. PROC. CODE ANN. art. 27.14(d).
Rothgery v. Gillespie County, __ U.S. __ (23 June 2008).
Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999).

No Municipal *or* County Court Jurisdiction – No "actual grievance"

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TX TRANS. CODE §§ 521.021, 521.025.
TX Dept. of Parks & Wildlife v. Miranda, 133 S.W.3d 217 (TX 2004).
United States v. Lopez, 514 U.S. 549 (1995) (*Lopez*).

Point 14: Does the complaint charge a crime?

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Illegal "Confinement" and/or "Restraint"

Point 15: Is Taylor being "confined" or "restrained" in his liberty in violation of law?

Under Bond, but court has incurable jurisdiction problem.

Statement of Facts

Discovery Level

There is no discovery expected, because this court can order the presence of witnesses with the Subpoena Duces Tecum process. However, should we need to investigate into the facial and complete lack of any commercial nexus, which gives rise to STATE's complete lack of any "actual grievance," thus STATE's complete lack of standing, thus any trial court's complete lack of subject matter jurisdiction, hence, the illegal restraint, a copy of Taylor's recent discovery motion is attached.

Subject matter jurisdiction

Art. 11.05. This court has authority to grant habeas, generally.

Personal jurisdiction

The respondent courts have sufficient minimum contacts with "this state." By asserting personal jurisdiction over the parties by filing this application, Taylor in absolutely no conceivable way asserts or consents to personal jurisdiction in the underlying proceedings in either the municipal or county court.

Venue

All relevant activity has occurred in Walker County. The "confinement" and/ or "restraint" accrues in and arises in Walker County. By asserting venue by filing this application, Taylor in absolutely no conceivable way asserts or consents to venue in the underlying proceedings in either the municipal or county court.

Commerce cannot be compelled

Illegal "confinement" and / or "restraint"

By means of the orders issued in Case No. 07-1392, STATE v. Taylor, in the COUNTY COURT AT LAW OF WALKER COUNTY, Taylor is being "confined" and/ or "restrained" in violation of the constitution and/or laws of this state and / or of the United States. The person(s) engaging in the unlawful "confinement" and / or "restraint" is / are COUNTY COURT AT LAW OF WALKER COUNTY and / or MUNICIPAL COURT OF THE CITY OF HUNTSVILLE, both of which entities do business in WALKER COUNTY.

How this illegal restraint came to be

This is a "no driver's license" ticket case.

The "ticket" is not a "complaint."

The ticket is dated 24 January 2007. Taylor made his initial appearance in the municipal court by filing his motion to dismiss, which he served 31 January. In and by way of that motion, Taylor objected to lack of Notice. As of 19 February, the municipal court set that motion for hearing on 5 April, 8:30 a.m. (CDT). [1]

The "complaint" was not served timely.

On 5 April, the court called the docket about 8:30 a.m. (CDT) and at 8:45 a.m. there was the hearing on Taylor's motion, *then* the ***first*** arraignment, and *then* a *sua sponte* mandamus "display." *After* those ***three*** proceedings, at 9:13 a.m. (CDT), a clerk handed Taylor the "complaint" dated 5 April.

[1] Thus, STATE had at least 60 days in which to address Taylor's objection.

Commerce cannot be compelled

The "complaint" was never really served at all.

Also, the "complainant" is a clerk with the municipal court who came by the facts sworn to solely by virtue of her office.

There being no Notice of any charge, Taylor has consistently refused to enter any plea.

The "complaint" charges no offense.

The complaint cites a statute, TRANS. CODE § 521.02**1**, that defines no offense. *Cf.* § 521.02**5**.

The "complaint" compels disqualification.

Since the "complainant" is a deputy clerk, who is aware of the facts sworn to solely by virtue of her office, she's acting as an agent for the court in becoming a witness for STATE. Thus, by the law of agency, the court is actually the "complainant," which makes the municipal judge the "complainant," which renders the municipal court ***disqualified*** to try that case.

There is no commercial nexus.

STATE does not have and cannot produce any agreement by which Taylor has agreed always to engage in commerce no matter what he does or where he goes. Taylor is not in the transportation business under any choice of law, including "this state." He does not engage in "driving" or "operating," anywhere, much less in "this state," and certainly not "for profit or hire." Taylor "travels." Thus, there is no commercial activity subject to STATE's regulation by any of its various means, including "licensure." Thus, STATE has no standing in ***any*** court for this case.

Commerce cannot be compelled

Regarding the non-existence of municipal court orders.

STANDARD, ROUTINE OBJECTIONS TAKEN PERSONALLY?

Routine proceedings turned rather nasty rather early. Taylor opened the 5 April hearing by requesting judicial notice of the Record or the opportunity to call the Clerk to the stand. The judge opened the file and asked of what he should take particular Notice. Taylor said, "What's not there."

TRADITIONAL, TYPICAL ABSENCES IN MUNICIPAL COURT RECORDS.

Taylor's motion contains his objections, but, as of the hearing, these ideas seemed to be first impression. (*But cf. Rothgery* (the arraignment ***is*** a "proceeding")). As of the hearing date and time, the Record contained (1) no "complaint" and (2) no proof of any service of any "complaint," at *any* time, much less in compliance with Art. 45.018(b).

On the left was the "ticket;" on the right, Taylor's motion and the hearing Notice. STATE filed no response.

THE FIRST PROCEEDING WAS THE MOTION HEARING.

The docket was called at 8:30 a.m., and the hearing was conducted at the bench starting in earnest right at 8:45 a.m. (CDT). If someone in the gallery, at least 25' away, listened closely, he could likely make out the conversation. The ruling, **Denied**, about 8:50 a.m., was a proclamation to all in the gallery.

THE SECOND PROCEEDING WAS THE "ARRAIGNMENT."

Immediately afterwards, the court started an "arraignment."

GAINES: You're being charged with …. [2] How do you plea?

TAYLOR: I'm not pleading. There's nothing to which to plea. [3]

GAINES: Well, I'll set you a trial date, and I'll enter a plea of Not Guilty for you.

TAYLOR: Can you provide a Venire to be drawn from the vicinage that can be instructed to determine the law as well as the facts?

GAINES: I would empanel a jury.

TAYLOR: If I put myself on the country and demand a writ of Venire …

GAINES: Venire?

TAYLOR: Twelve people from the vicinage …

GAINES: You're only going to get a panel of six.

TAYLOR: Then we have another Due Process problem, don't we?

GAINES: **No, we don't have a Due Process problem, here! We're going to have a trial. Only I'm going to summon a panel, and we're going to have us a jury, and we're going to pick six of 'um, and they're going to decide whether you're guilty or not guilty.**

GAINES assured Taylor that Taylor would be getting a "complaint" shortly. Thus, as of 8:51 a.m., the Record still contained (1) no "complaint" and (2) no proof

[2] Conspicuously, the court gave no Notice of any "arraignment" proceeding. But, travel time alone is a six-hour round trip. As it turns out, something even more valuable than Time may be preserved, here.

[3] "All pleading of the defendant in justice or municipal court may be oral or in writing as the court may direct." Art. 45.021.

of service of any "complaint," at *any* time, much less at least one day before "any proceeding." *See* Art. 45.018(b),

THE THIRD PROCEEDING INCLUDED BOTH MANDAMUS AND INJUNCTIVE ORDERS ISSUED *SUA SPONTE*.

The court handled some other cases while additional paperwork was being handled. By about 8:59 a.m., a party named Ortega had not appeared. The judge told those there for that case that a *capias* would be issued and that Ortega would be arrested for not appearing.

The Clerk wanted some information filled in on the "JURY TRIAL" form. During this time, Taylor read it, modified it, dated it, and signed it, with his typical reference to choice of law. The Clerk, unsatisfied, turned the form over to the judge, who became visibly agitated.

(At 9:05 a.m., the following exchange occurred.)

GAINES: We need you to give us the names of two people so that in the event you don't show up, I can send someone to find you and bring you to court.

TAYLOR: You have my verified statement that I'll be here.

(Then came the mandamus "display.")

GAINES: We need witnesses for this. **Mr. Bailiff, Madame Prosecutor.** (motioning, hands raised, traditional hand signal for gathering). Make sure that we understand that I'm giving him Notice right now in open court that if you don't comply with my direct order … [pause]

TAYLOR: I'm still getting my witness. (Taylor also motioned to his witness,

which required turning his head and upper body toward the gallery, thus away from the bench.)

GAINES: I'm giving you Notice to let you know that when I call this, to let you know, and he doesn't show up, Turn Around! Understand, I want to be clear, …

(Taylor looked back toward the bench, where the judge was still gathering his witnesses. So, Taylor again looked toward the gallery and motioned for his witness also to join the group at the bench, so that Taylor, too, could have a witness to whatever this glorious event was going to be.)

TAYLOR: My father needs to hear this.

GAINES: I'm, … You can call … **you stay … TURN AROUND, *SIR!***

(GAINES was about to leap over the bench. If he had, he would have left his skin in his chair. Apparently, the judge could gather *his* witnesses, but *Taylor* couldn't gather his.)

GAINES: **If you don't comply, I'm being very, you know, accommodating with you, but if you don't comply and do this, this bailiff, here, he is going to take you into custody, and you're going to spend some days with us in the jail, and you won't be able to get out until I let you out. Do you understand?** [pause] **I'm giving you notice right now. That is a direct, you're going to be held in contempt, direct contempt, if you do not follow my orders. So put this down. If you'll comply with this, it's going to be real simple. You know, this gentleman right here, you know what, you can put him down as you are here. But, fill it out, or you're going to be**

wearin' an orange suit real soon. I'm not going to be havin' any of this non-sense. You understand me?!

(The judge, document in hand, thrust the document across the bench in Taylor's general direction.)

(9:06 a.m.)

TAYLOR: (after taking the document) What's your Social Security Number, please?

GAINES: (Stunned) **You're not entitled to my Social Security Number, *Sir!*** (leaning forward). **Fill out the form, as I've directed, or you won't be leaving this courtroom by the front door.**

Taylor starts rereading the document. [time passes]

(9:07 a.m.)

TAYLOR: We're going to 'round and 'round on this, aren't we?

GAINES: W**e're not going to go 'round on this, because I'll tell you how … You'll get everything you need … If you'll follow all the directions this will be very easy. But, in this court, I'm the rule-writer.**

TAYLOR: If you had the authority.

GAINES: **I have authority**.

TAYLOR: You have no jurisdiction.

GAINES: **Yes, I do.**

TAYLOR: Then we're going to go 'round and 'round.

GAINES: **No, we're not. And, I'm going to warn you at this time,**

you'd best be … keep your comments to yourself from this time forward or as I've indicated, I'll hold you in direct contempt.

TAYLOR: What are you calling comments?

(9:08 a.m.)

GAINES: **Right there. I order you to keep silent.** (leans back) [considerable direct eye contact] … **Are you finished with the form?"**

As seen on the Ex. D-406, Taylor noted the duress.

(9:08:30 a.m.)

Are you finished with the form?

(9:09:10 a.m.)

Have you finished the form?

TAYLOR: Just making real sure you have all this information (turning the page from front to back several times; two names; two addresses; two numbers; the invasion of privacy, under ***vociferous*** threat of contempt for not being invaded, was complete).

(Handing the form, with the information on the reverse side, back across the bench, Taylor inquired about getting draft orders to the court for signature.)

GAINES: You can send 'um, but I'll decide whether I want to sign 'um.

(Other brief conversation.)

(9:10 a.m.)

GAINES: In a perverse sort of way, I'm looking forward to this trial.

(Other conversation; new prosecutor to be coming in.)

(9:12 a.m.)

GAINES: Well, the thing is, it didn't happen. (Referring, of course, to the non-existence of any contempt order.)

TAYLOR: It DID happen! (Referring to the mandamus and threats of contempt.) And, I need for you to enter written orders.

GAINES: What orders?

TAYLOR: All the orders you've issued this morning! Contempt. Mandamus. Silence.

GAINES: (After a reflective pause) Well, you can send draft orders, but I may or may not ever sign 'um.

(Closing conversation focused on the trial date: 17 May.)

(9:13 a.m.)

Clerk gave copies of documents to Taylor. This was the first time Taylor had seen any "complaint" relevant to this matter. It's dated but has no timestamp.

Probation for life with a bi-monthly check-in.

Upon trial in the municipal court, even though the administrative advisory panel requested information about jury nullification, the panel returned a verdict of guilty, and Taylor was ordered to pay $100 fine and costs of $65. Taylor filed his bond, thereby activating the trial *de novo*. By having Taylor sign that first "reset form," the county court tried to trick Taylor into waiving his objection to Notice. From that time until very recently, the county court had Taylor make at least five

trips from Dallas to Huntsville, a six-hour round trip, on the county court's *de facto* pre-trial sentence of probation for life with a bi-monthly check-in. And, but for the collateral order doctrine appeal, which is still pending, during which the county court has no jurisdiction, twice over, and regarding which one motion for contempt has already been filed (and denied) due to continuing trial court activity during the pendency of that appeal, Taylor would ***still*** not have the transcript from the 28 November 2007 hearing on Taylor's motions (special appearance, to dismiss, and to quash) which he needs for trial purposes.

The Exhibits.

Ex. D-401. The "ticket." 24 January 2007.

Ex. D-402. Taylor's Special Appearance and Motion to Dismiss (municipal court) (1st page). Served 31 January 2007.

Ex. D-403. Setting for Taylor's Special Appearance and Motion to Dismiss (municipal court). 19 February 2007.

Ex. D-404. TX CRIM. PROC. CODE ANN. art. 45.018.

Ex. D-405. Municipal court paperwork regarding the first "arraignment." 5 April 2007. This also confirms that the motion to dismiss was denied.

Ex. D-406. Jury trial setting in municipal court. 5 April 2007. (Trial set for 17 May.) Taylor signed under duress, as described, *supra*.

Ex. D-407. The "complaint." 5 April 2007. The Affiant, Celia D. O'Dell, was / is a clerk with the municipal court. She's also the one who hand delivered the

"complaint" to Taylor.

Ex. D-408. TX Trans. Code Ann. § 521.021.

Ex. D-409. TX Trans. Code Ann. § 521.025.

Ex. D-410. Jury trial verdict and final order. GAINES conducted a fair trial. He just shouldn't have been conducting any trial, at all.

Ex. D-411. Initial county court order evidencing "restraint."

Ex. D-412. Taylor's Special Appearance, Motion to Strike / Rename the 17 October Setting [*see* D-411], First Motion to Dismiss, First Motion to Quash. (county court) (1st pg.). Served 31 August 2007.

Ex. D-413. The county court's initial response to Taylor's motions. That one got several people sued. *See Taylor v. Hale, et al.*, No. 3:07-CV-1634-L (N.D. TX) (to compel commercial activity, "choice of law," and religious / policial affiliation is to commit crimes under color).

Ex. D-414. The first county court case reset form with the pre-printed "waiver" statement to which Taylor objected vociferously.

Ex. D-415. Email confirmation of next case resetting.

Ex. D-416. The next case reset form.

Ex. D-417. The next case reset form.

Ex. D-418. The latest setting. This setting has been made during the pendency of the collateral order doctrine appeal; hence, Taylor's first motion for contempt filed with the appellate court, which has been denied. Taylor v. State, No. 10-08-00208-CR (TX. App. – Waco, pending). This setting has also compelled Taylor

to engage in discovery and to file his verified TX R. CIV. P. 12 motion to show authority.

The appellate court entered its ruling on or about 3 September 2008. Taylor served his petition for discretionary review as of 5 September 2008. Taylor has not yet received any confirmation of a case number from the Court of Criminal Appeals.

Ex. D-419. Taylor's recent motion for discovery. Served 25 September 2008.

Present events scheduled in / by the county court

Pre-trial / Docket Call – 29 October 2008

Jury trial – 17 November 2008

Discussion of the Issues

Nature of habeas

Point 1: Is habeas a civil proceeding?

Standard: Question of law – *de novo*.

Ex Parte Watkins; *Ex Parte Tom Tong*; *Kurtz*; *Farnsworth*; *In re Grimley*; *Cross*; *In re Frederich*; *In re Lennon*; *Pridgeon*; *Hilborn*; *Cunningham*; *Fisher*; *Riddle*; *Holiday*; *Hiatt*; *Morgan* (Minton, J. dissent); *Heflin*; *In re Sawyer*; *Bennett*; *Fay*; *Long*; *Harris*; *Schlanger*; *Parisi* (Douglas, J. concurring); *Wingo* (Burger, C.J., dissent); *Ellis* (Powell, J. dissent); *Blackledge*; *Browder*; *Santa Clara Pueblo*; *Stafford*; *McCarthy*; *Coleman* (Marshall, J. dissent); *Stephens* (Brennan, J. dissent); *Granberry*; *Finley*; *Hilton*; *Keeney*; *O'Neal*; *Bracy*; *Woodford*; *Padilla*.

Why file this at all?

Point 2: What's the big deal with the "no driver's license" ticket?

Standard. Question of law – *de novo*.

<u>Let's talk "funny money" for a moment.</u>

If the system matched the marketing, then gold and silver Coin would be circulating generally as currency. Directly attached to any currency is its default "choice of law." The Supreme Court teach quite thoroughly the mechanism of "choice of law" via *Ogden v. Saunders* (1827). In short, the "choice of law" is built into the deal, itself. To begin the process of altering that default "choice of law," gold Coin was sucked out of the system in the 1930's. To complete that "choice of

law" altering process, silver Coin was sucked out of the system by 1965. The masterminds behind that effort wanted the "funny money" system in place "right then" so badly that they assassinated Kennedy, who opposed the "funny money" scam and who preferred "United States notes" to "notes" of a private banking house masquerading as a part of the government. [4] So, as screams out from both (A) the lack of any *asset*-based honest system of weights and measures in general circulation, and (B) the "exclusive" general circulation of "legal tender" that is *debt*-based, the default "choice of law" has been changed. Due to the general circulation of "paper currency" all along, the transition in default "choice of law" was rendered imperceptible by all but a very, very few. [5]

Picture Great Britain and its Pound Sterling. Now picture post-WWI Germany and its property-consuming, run-away inflation with the debased paper Deutsche Mark. These represent the two fundamental choices of law. America went to bed at the end of 1964 with a default "choice of law" of the Common Law, the Law of the Land, inherited from Great Britain, due to the general circulation of the honest system of weights and measures. America woke up in 1965 on the deck of a huge barge anchored in the middle of the Rhine River in Germany, with a default "choice of law" being the maritime law, the Law of the Sea, due to the

[4] Lincoln also favored the "United States note" system over private banking house "notes," and he, too, was assassinated for opposing the international banking cartel who wanted to infect the world with their "funny money" scam, and who have largely succeeded, due to the generic "lack of awareness" of the problem.

[5] Equally imperceptible is the fact that the Treasury has recently stopped selling gold and silver Coins altogether, which compels the "choice of law" decision.

termination of the general circulation of the honest system of weights and measures. As it turns out, this duplicates almost exactly the fundamental operational transition from the Republic of Rome, governed by its Senate, to the dictatorship of Rome, governed by some generally insane madmen. Rome's transition was also very clearly accentuated by debasing its honest currency with the dishonest currency.

The single-most significant motivator for the Philadelphia Convention was the States' "attraction" to the circulation of "Bills of Credit." Why did the idea even come to mind for the States to want a super-sovereign? Because the leadership of the day wanted a "power" that could (A) render such "funny money" scams illegal ***and*** (B) enforce that policy / law successfully. Why does the "Constitution" prohibit the States from even "emit[ting] Bills of Credit?" Why does the "Constitution" prohibit the States from "mak[ing] any Thing but gold and silver Coin a [legal] Tender in Payment of Debts?" Because, the Founders understood that where the currency is not based on and directly tied to an asset-in-existence-based honest system of weights and measures, we end up right back in Rome under insane dictators, or under king George, the insane dictator of the day who was a bit closer to home. [6]

In short, if the system matched the marketing, there'd be no "funny money."

The banks profit greatly from the "funny money" scam. And, the banks have

[6] Obviously, king George had a ***lot*** of help from / by the Parliament.

been behind every war this nation has ever been dragged into, which is the reality to this very day. Some key references are these: ROGER SHERMAN, A CAVEAT AGAINST INJUSTICE (1752); M. W. WALBERT, THE COMING BATTLE (1899); EUSTICE MULLINS, SECRETS OF THE FEDERAL RESERVE (1952); RICHARD KELLY HOSKINS, WAR CYCLES, PEACE CYCLES (1985); G. EDWARD GRIFFIN, THE CREATURE FROM JEKYLL ISLAND (1994).

In this "funny money" system, "government" acts far more in its *commercial* character than in its *sovereign* character. *Cf. Planters' Bank*, 22 U.S. at 907-08 ("government" as proprietor) (1824 is also the first year of this so-called "popular vote" for presidential elections; if the "popular vote" were part of the original plan, why did it not exist until 1824?); § 3002(15)(A) ("United States" is "a federal corporation") (this is the proclamation to the world that "debt collection" activities (think, e.g., irs / tax) engaged by this thing called "United States" operates under the ***proprietorship doctrine***, rather than some outrageous notion of *sovereignty*).

Fundamental reality about the "law" of "this state."

Everything about "this state" depends upon *voluntary* agreement. The very threshold entrée into "this state" is *voluntary* agreement. *Ashwander*; FED. R. CIV. P. 9(a). The commercial identifier, i.e., the SSN, is *voluntarily* applied for. *See* Form SS-5; <http://www.ssa.gov/online/ss-5.pdf>; Social Security Numbers, 20 C.F.R. § 422.103(b)(1) at 1068-69. Transactions in "this state" are based upon *voluntary* use of 31 U.S.C. § 5103 items (the "funny money"). Asserting a *residence* in "this state" is purely *voluntary*. Even self-identification as a "taxpayer" is a

purely *voluntary* commercial transaction.

Thus, *compelled* agreement is the exact *antithesis* of the very soul of "this state." It's one thing to establish a line of commerce and to require a license for those who opt to engage in that line of commercial activity. But it's *completely* another to ***compel*** a party into any particular line of commerce, much less into a line of commerce ***and*** a "choice of law." A coerced will is not evidence. *See* 1 PAGE, THE LAW OF WILLS, §§ 5.7, 15.11. A coerced trust is not evidence. BOGERT §§ 42 at 434, 44 at 452 and n.16. A coerced commercial transaction is not evidence. U.C.C. § 1-103. In the ultimate setting, a coerced confession is not evidence. *Escobedo*; *Miranda*. The coercive environment vitiates the very "evidence" it purports to create. *See Rudzewicz*, 471 U.S. at 486; *Ohralik*; *Bates*. Parties may not be compelled to accept magistrate participation. *Gonzalez*. [7]

To understand what "this state" is, is to understand how it functions. To understand how it functions is to understand what the big deal is.

<u>This is what the big deal is—commerce cannot be compelled.</u>

What's the big deal? Commerce cannot be compelled.

STATE is not going to compel Taylor to engage in any particular line of commercial activity, including "driving" or "operating." STATE is not going to compel Taylor to adopt any particular "choice of law." And, the "driver's license"

[7] This was an initial issue in Taylor v. Hale, et al. Taylor's position has been fully confirmed via the *Gonzalez* ruling.

isn't really for commercial purposes, anyway. [8] It's ***primary*** function is as a STATE "ID card," and STATE is not going to compel Taylor to be a member of the "church of STATE OF TEXAS" come hell or high water! [9] That "church" exists to defy GOD, as is seen astronomically clearly in a multitude of ways, one of the more outrageous being STATE's defiance of and rebellion against the Scripturally-consistent honest system of weights and measures. *Cf.* Lev. 19:35-36.

What is ***any*** "license" for? The "license" is the pre-approved permission to engage in privileged commerce in "this state," at the licensee's discretion.

How is it that STATE's prosecutors have to have a "license" to "practice law" when presenting their case, but to perform that exact same activity, the ***exact*** same activity, Taylor doesn't need a "license?" The difference is that STATE's prosecutors present STATE's case "for profit or hire." Therefore, they have to have a "license." They're being paid to engage that line of commerce in "this state." Taylor isn't engaging any line of commerce in "this state," much less "for profit or hire."

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[8] One of the clearest examples is *Griswold*. What's a "marriage license" for? Engaging in the commercial activity of making babies. But, even "licensed" couples cannot be ***compelled*** to make babies. Hence, criminalizing the use of contraceptives egregiously invades the right ***not*** to engage in commerce, even where there's a "license" to do so! Said another way, to criminalize the use of contraceptives is to compel commercial activity (making babies). And, what the Supreme Court teach via *Griswold* is that no STATE may compel ***any***one to engage in ***any*** type of commercial activity, even when s/he ***is*** "licensed" to do so!

[9] It's through the scam of using the "driver's license" as the ID card that the "internationalists" will seduce Americans, by the millions, to join politically with the "new world order." Taylor *ain't* going "there," either! But, that's ***very much*** secondary to the tyranny of compelled commerce and religious affiliation.

Therefore, Taylor doesn't need a "license." [10] But, the end result is the exact same on both sides. The ***exact*** same. Both sides present their cases.

By this exact same dichotomy, namely "commercial" and "non-commercial," while "driving," or "operating," is privileged, commercial activity that is subject to regulation, "traveling" is not privileged, for it is a right. The end result is the exact same; people get from here to there. It's just that some do so by pretending to engage in privileged, commercial activity, whether "for profit or hire" or not, and Taylor isn't so pretending. The "licensees" engage in "transportation," but Taylor "travels." "Transportation" is privileged, commercial activity subject to regulation, including "licensure." "Travel" isn't commercial activity, at all; hence, "traveling" can't be regulated via any mechanism, including "licensure."

To compel anyone into the "transportation" business, and thus into "licensure" for such line of commerce, under threat of ***criminal*** sanctions, is to violate rights. But it's not just commerce, and it's not just licensure, and it's not just compelled "choice of law." Because that "license" isn't just a "license" but is also an "ID card," STATE is compelling Taylor into membership in "church of STATE OF TEXAS," which is tantamount to compelled political / religious association under threat of ***criminal*** sanctions. STATE OF TEXAS isn't big enough to dictate to Taylor what his political or commercial activities are going to be, who he will associate with politically / religiously, or Who his GOD is.

[10] In general, and as speaks for itself, at all times before "this state," those providing "Assistance of Counsel" needed no "license."

Compelled commerce has another name. It's called tyranny. [11] Those who want to volunteer into a maritime-law-based dictatorship may certainly do so, but Taylor isn't volunteering, and he will not be compelled into such system, either.

Why the simultaneous filings

Point 3: Is a "restrainor" trial court *disqualified* from ruling on the habeas application?

Standard: Question of law – *de novo*.

The facially obvious "convicting court" conflict.

Since this is a misdemeanor matter, Arts. 11.07 and 11.071 aren't relevant, except in concept. In concept, the "convicting court" idea has the court that orders the restraint turn right around and evaluate the legality of the restraint that it has ordered. It's this very concept that permeates this entire line of habeas activity. Thus, no matter the level of the offense charged, the habit of thought is that the judge ordering the restraint, whether pre-trial or post-judgment, is the same officer to whom is assigned the habeas application. In the worst case scenario, the judge presiding over the criminal case commingles the CIVIL habeas application with the underlying ***criminal*** matter. That sort of thinking and practice is fostered by (A) the tolerance of CIVIL jurisdiction in an otherwise "criminal case only" jurisdiction

[11] If the mob were doing it, we'd call it extortion. Some of the gravest challenges facing this nation, which is teetering at the edge of the abyss into tyranny, have recently been decided. *Hamdan*; *Boumediene*; *Munaf*; *Medellin*. In each case, tyranny has been the issue, and each time, tyranny has been overruled.

court, (B) the "*ex parte* ____" case styles used by the appellate courts, which hide the identities of the real parties in interest, and (C) the "convicting court" habeas assignment concept. Obviously, the fact that the criminal court may have jurisdiction to entertain the CIVIL habeas application doesn't also mean that the CIVIL habeas application is merely another "motion" in the underlying criminal case. Habeas is a separate, CIVIL proceeding where the responding party is the "restrainor." And, where the "restrainor" is the judge presiding over the criminal case, that judge is instantly a witness regarding the substantive issue of the legality of the restraint. Even more obviously, the "restrainor" judge "has an interest in the subject matter in controversy."

Judge can't be witness in, much less party to, the suit being presided over.

The judge who is a witness is ***disqualified*** to preside over that same matter. *Bradley*, 990 S.W.2d at 248, 249 ("[A] judge testifying as a witness violates due process rights ***by creating a constitutionally intolerable appearance of partiality***.") (emphasis added) (citing TX R. CIV. EVID. 605; *Brown*, 843 F.2d at 851; *In Re Murchison*). ***Disqualification*** is distinguished from (mere) *recusal*. *See* TX R. CIV. P. 18a, 18b; *Tesco American, Inc.*, 221 S.W.3d at 551-52 n.1, 553 n.10, 555 n.27. *Bradley*, 990 S.W.2d at 249. Whether or not the judge is ever actually called as a witness doesn't matter. Just ***being*** a witness raises the "constitutionally intolerable appearance of partiality." [12] Manifest, and key, where the ***very issue*** is

[12] This is why the *complaining* judge can't also be the *presiding* judge over a

the legality of the "restraint", the "restrainor" judge "has an interest in the subject matter in controversy." *Cf.* TX R. CIV. P. 18b(1)(b); *McKenna*.

Therefore, since the county court is a "restrainor," the county court facially lacks jurisdiction to rule on this application.

Policy suggestions.

Criminal courts and habeas.

If the ***criminal*** court system is going to exercise CIVIL habeas authority, and where a court and a judge are matched one to one, then the ***only*** guaranteed way to avoid the ***disqualification*** issue is to have the court at the next level up handle the original application for habeas. Thus, habeas for JP and municipal court matters is filed with the county court; habeas for county court matters is filed with the district court; and habeas for district court matters is filed with the state appellate court. Since habeas sounds in the nature of a review, application of a commonsense "appellate" review model fits perfectly.

This application implements this proposed policy.

Civil courts and habeas.

An even "cleaner" solution is for habeas always to be restricted to the CIVIL court system. In this way, about the only way a ***disqualification*** issue would arise is where the prosecutor, defense lawyer, or trial judge in the criminal case ends up being the civil court judge at the time the habeas is filed. That problem is expected

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criminal *contempt* case.

to be rare, and it's easily resolved by self-recusal-based "transfer" to another civil court, according to the normal process for any such transfer.

Per that model, it'd still be the case that JP and municipal court habeas matters would be filed with the county civil courts. The JP already doesn't have habeas authority, and the municipal court handles "criminal case only" matters. The misdemeanor matters at the county level would be filed with the CIVIL county courts, where there is a difference; same with the criminal and civil district courts. Where there isn't a difference, i.e., where there's one county court, and / or one district court, which handles all matters, civil and criminal, then the model outlined above for the criminal court system may be the only alternative, regardless.

Again, this application implements the proposed policy.

Federal courts and habeas.

One key distinction between the federal trial courts and the TX state trial court system is that the federal trial courts are actually courts, where there exist multiple jurists who animate the same court name and jurisdiction. Not terribly relevant to the immediate problem, but certainly something to keep in mind while revamping the entirety of the present habeas process, is that a habeas filing in the federal courts should be treated as any other civil matter and randomly assigned to the next judge in that assignment process. Should that random matching put that civil matter in the hands of the "restraining" judge, again, that problem is resolved in the normal course via the self-recusal process.

Whether the federal court system wants to treat habeas as a matter of

"review" or a matter of "original" jurisdiction is up to those in that process to determine upon its formal recognition of the manifest conflict issue raised here.

This court has jurisdiction to address this application.

Of the two applications filed, this is the one that actually triggers jurisdiction enough to address the application.

No Notice – Late

Point 4: If the clerk's office and court were sufficiently "disinterested" to be the agent for service, was service timely?

Standard. Question of law – *de novo*.

Where this whole matter started.

To see where this one started, presume away the problems addressed in the following Points regarding no Notice, *infra*. Art. 45.018(b) says that Notice has to be delivered at least a day before "any proceeding." By the creation of and the delivery of the "complaint," it's clear that everyone involved is talking about the same document when it comes to ***what*** has to be served. All that remains is ***when***.

For municipal court matters, STATE never gives timely Notice. The fact that it doesn't matter 99.9999% of the time likely contributes greatly to the mishandling of the case in which it does matter.

The ticket is dated 24 January 2007. Taylor made his initial appearance in the municipal court by filing his motion to dismiss, which he served 31 January. In and by way of that motion, Taylor objected to lack of Notice. As of 19 February, the

municipal court set that motion for hearing on 5 April, 8:30 a.m. (CDT). [13]

On 5 April, the court called the docket about 8:30 a.m. (CDT) and started the hearing at 8:45 a.m. *Then* came the ***first*** arraignment and *then* the *sua sponte* mandamus "display." *After* those ***three*** proceedings, at 9:13 a.m. (CDT), a clerk handed Taylor the "complaint," which is also dated 5 April.

What constitutes a "proceeding?"

STATE wants to read "any proceeding" to mean "whichever proceeding we pick," which typically means "trial." The problem is that the Supreme Court have read this quite differently for a while, now, as they have reconfirmed very recently. *Rothgery* (the arraignment ***is*** a "proceeding" for purposes of appointment of counsel). It follows that where the arraignment is a "proceeding" for one purpose, it is a "proceeding" for ***all*** purposes, including determining proper timing for Notice. [14]

Thus, since according to Art. 45.018(b), service of the "compliant" has to happen "not later than the day before the date of any proceeding," where "service" occurs after not just **one**, not just ***two***, but ***three*** proceedings, namely the hearing on Taylor's motion to dismiss for lack of Notice, the "arraignment," and the mandamus "display," it follows that it's impossible for STATE's Notice to be considered timely.

There's another confirmation that the "arraignment" is a "proceeding." Art.

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[13] Thus, STATE had at least 60 days in which to address Taylor's objection.

[14] Where the arraignment is a proceeding, it's impossible for the hearing on the motion to dismiss not also to be a "proceeding," and it's impossible for the *sua sponte* mandamus "display" not also to be a "proceeding."

45.0125 is an interesting source for this point, and it's ***very*** clear:

> (a) If a defendant is younger than 17 years of age and has not had the disabilities of minority removed, the judge or justice:
>
> (1) must take the defendant's plea in open court; and
>
> (2) shall issue a summons to compel the defendant's parent, guardian, or managing conservator to be present during:
>
> (A) the taking of ***the defendant's plea; and***
>
> (B) ***all other proceedings*** relating to the case.

Art. 45.0215(a) (emphasis added). "Other" is the operative term, here. Clearly, this provision doesn't apply directly, but it just as clearly documents the concept that the "arraignment" is a "proceeding." And, it's manifestly illogical to call the "arraignment" a "proceeding" for minors but "not a proceeding" for adults.

The impossibility of satisfaction of Notice, as a matter of law.

Again, by the creation of and the delivery of the "complaint," it's clear that everyone involved is talking about the same document when it comes to ***what*** has to be served per Art. 45.018(b). All that remains is ***when***. The mere existence of a "complaint," much less its "service," on the same date as the arraignment, and the other two proceedings, self-proves the non-satisfaction of Art. 45.018(b).

Consequences of no Notice.

> [I]t has been settled, that a judgment depending upon proceedings in personam can have no force as to one on whom there has been no service of process, actual or constructive; who has had no day in court, and no notice of any proceeding against him. That with respect to such a person, such a judgment is absolutely void ….

Harris, 55 U.S. at 339 (cited in *Commercial Equip.*, 678 S.W.2d at 918 (even a

default judgment is void where there is no service)). *See also Milliken* (the Wyoming judgment was valid because service was valid; hence, the Wyoming court *did* have personal jurisdiction); *Peralta* (even "meritorious defense" issue is irrelevant to question of Notice); *Browning*, 698 S.W.2d at 363; *Mullane*, 339 U.S. at 314. *See also Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation."); *Hamdi*; TX RS. CIV. P. 99, 108, 123, 124, 680, 681, 686, 689; 690, 693, 694; *International Shoe*; *Armstrong*, 380 U.S. at 552; *Sniadach*; *Boddie*; *Fuentes v. Shevin*; *N. Ga. Finishing*; and *Jones*.

Given the untimely Notice, all that any trial court can ever produce is a void judgment. *Commercial Equip.*, 678 S.W.2d at 918 (citing *Harris,* 55 U.S. at 339).

No Notice – Improper Service

Point 5: Where a clerk is the complainant, is the *clerk's office* now too "interested" to qualify as an agent for service?

Standard. Question of law – *de novo*.

Analogy: Why the cop isn't simultaneously also the process server.

The ticket isn't the complaint. But, even if it were, the cop issuing the ticket isn't also a process server for the simple and obvious reason that he's a witness. *Cf.* TX R. CIV. P. 103; FED. R. CIV. P. 4(c)(2); TX CRIM. PROC. CODE. art. 45.202. Moreover, it's impossible for delivery of a "ticket," which event precedes even the *existence* of a "complaint," to be ***service*** of a "complaint." Obviously, at the time the ticket is issued, nothing is even filed, yet, anywhere. So, nothing about delivery of a

"ticket" can constitute ***service*** of a filed document. *Murphy Bros., Inc.* (timing and sequence matter regarding filing and serving). In short, it's facially ridiculous to suggest that delivery of a "ticket" satisfies the procedural requirement of ***service*** of an instrument that must first be ***filed*** in order to start a criminal case.

No complainant may serve process.

All complainants are witnesses. Thus, no complainant is "disinterested" enough to serve the complaint. Which clerk "complained" and which served are fact issues resolvable by hearing.

But, where one municipal court clerk is necessarily an agent for *all* clerks in that office, then which clerk complained and which served it is irrelevant, for *all* clerks would be disqualified as service agents. *Cf.* TX R. CIV. P. 103; FED. R. CIV. P. 4(c)(2); TX CRIM. PROC. CODE. art. 45.202.

Due Process violation via Conflict of Interest

Point 6: Where a deputy clerk is the complainant, can that deputy remain a "custodian of records?"

Standard. Question of law – *de novo*.

Egregious conflict of interest violates Due Process.

In Point 7, agency is applied twice. (1) The deputy is the agent of the clerk, and (2) the clerk is the agent of the court. Here, agency is applied for just that first time, where the deputy is an agent of the clerk.

Where the deputy clerk is a witness for the prosecution, and even if that is

somehow *not* imputed to the court, there's still a major problem. A witness in the matter has full and direct access to the case file, not only from its inception, but also until that file is placed in storage. The "appearance of impropriety" factor skyrockets off the top of the charts. The conflict of interest, which manifestly sounds in Due Process, is egregious. The clerk / witness and the case file can't be in the same place day in and day out, and the file has to stay.

No Municipal Court Jurisdiction – *Disqualification*

Point 7: Where a deputy clerk is the complainant, is the court a witness / party, thereby triggering *disqualification*?

Standard. Question of law – *de novo*.

Loosy-goosy operations produce ***multiple*** defects of a permanent nature.

In addition to "complainant as agent for service," which produced the lack of Notice, thus, the lack of personal jurisdiction, ***disqualification*** goes to subject matter jurisdiction. Not only that, but also where there is a new trial, via trial *de novo*, there's a substantial likelihood that this ***disqualification*** issue will be rendered moot, because the county court doesn't face that same ***disqualification*** issue. Thus, this is necessarily raised at this time.

In short, where the court, itself, not the *executive* branch actually issuing the ticket, but the *judicial* branch, which learns of the matter *solely* as a consequence of serving in the judicial role, swears out the complaint, thereby rendering the ***court*** as a ***party*** to the case, how may a ***party*** to the case also be a ***judge*** over it?

Where a deputy clerk is the complainant, the court becomes a "witness" or a "party."

Participation solely by virtue of office / employment.

The complainant in this case is not a direct witness. Instead, it's a deputy clerk of the municipal court who has come into the information sworn to in the "complaint" solely by virtue of her employment. Thus, the deputy clerk purports to act "within the scope" of employment, but not in the role of someone qualified to *certify* the complaints. Art. 45.019(e)(2). Instead, she *swears out* the complaint, as a "hearsay complainant," thus, as a witness for STATE. Via employment, the deputy clerks are agents of *the* clerk, who, in turn, via employment, is an agent of the court. That means, effectively, that the ***court*** is the "hearsay complainant" for STATE by bringing each and every "complaint" sworn out by a deputy clerk.

The court can't accomplish by agency what it can't do directly.

There's little question that clerks, thus courts, *may* be complainants, but a witness for STATE can't ***also*** be the judge of that same case. And, where the clerk acts as agent for that court, that makes the judge the complainant.

If the judge were a direct witness, there's zero question that the judge would be ***disqualified*** to preside over that trial. *Bradley*, 990 S.W.2d at 248, 249. Care is made here to distinguish ***disqualification*** from (mere) *recusal*. The former is an issue of subject matter jurisdiction as well as of voidness in the judgment, whereas the latter is a discretionary matter that requires a timely motion, etc. *See* TX R. Civ. P. 18a, 18b; *Tesco American, Inc.*, 221 S.W.3d at 551-52 n.1, 553 n.10, 555 n.27.

> The judge presiding at trial may not testify in that trial as a witness. No objection need be made in order to preserve this point. TX R. CIV. EVID. 605. … These cases hold that a judge testifying as a witness violates due process rights ***by creating a constitutionally intolerable appearance of partiality***. *See Brown* [*v. Lynaugh*, 843 F.2d 849, 851 (5th Cir. 1988)] ("It is difficult to see how the neutral role of the court could be more compromised, or more blurred with the prosecutor's role, than when the judge serves as a witness for the state."); … *see also In Re Murchison*, 349 U.S. 133 … (1955) (disapproving of the "spectacle" of a trial judge presenting testimony which he must consider in adjudicating guilt or innocence.).

Bradley, 990 S.W.2d at 249 (emphasis added) (internal quotes omitted). A "constitutional" level problem sounds in ***disqualification***, not mere *resucal*. Thought of another way, the judge who is a fully willing, voluntary, non-coerced, non-subpoenaed fact witness, on either side, "has an interest in the subject matter in controversy." *Cf*. TX R. Civ. P. 18b(1)(b); *McKenna*. Not "mere" bias subject to *recusal*, but "a constitutionally intolerable appearance" of bias subject to ***disqualification***. Moreover, by being a ***complainant***, despite the full availability of an actual witness, the clerk, thus, the court, is saying that s/he has an injury or has agency authority to speak on behalf of the party alleging injury, which is one more way of saying that the ***court*** "has as interest in the subject matter in controversy." *Cf*. *Burkett* (judge is ***disqualified*** if also the / an injured party).

The spectacular Separation of Powers problem.

On the one hand, where a lawyer may testify as to administrative matters, e.g., foundation for a document, and not also have to resign the representation, it must also be the case that there's room for "foundational" (collateral, not-merits-oriented) testimony from a clerk. That level of participation is presumed valid and

not argued here either way.

But, to continue the analogy, where the lawyer testifies, even to hearsay, regarding the *merits* of the case, the lawyer would be instantly disqualified. This is the level of "participation" at issue, here, and, via agency, we're not merely talking about the clerks; we're talking about the ***court***. The deputy clerk, who came by the sworn-to information *solely* by virtue of her *judicial* office, swore out the complaint. Thus, via those hearsay statements made under oath, she has made herself an active participant in the prosecution. The act of starting a criminal case is an *executive* branch function. Thus, the clerk, while serving a *judicial* branch function, has also become witnesses for the prosecution, thereby also serving an *executive* branch function. She has crossed that line of Separation of Powers between *sitting in judgment of* the prosecution (judicial) and *being part of* the prosecution (executive). And, obviously, hearsay ***may*** justify a complaint, which puts the hearsay evidence as found in a complaint beyond the ability of the defendant to object to, for the purposes that any complaint serves. So, the deputy clerk ***is*** a witnesses for the prosecution. And, since the deputy clerk has joined the *executive* branch function, solely by virtue of her *judicial* office, what follows, via rather direct application of very basic laws of agency, is that the ***court*** has joined the *executive* branch function. Again, while clerks and courts ***may*** be complainants, the "complainant ***court***" ***may not also*** sit in judgment of those same cases.

The "goose-gander" aspect.

From still another angle, where the judge *can't* be a witness in the case being tried, *Bradley*, 990 S.W.2d at 248, and where a law clerk of the presiding court *can't* be a witness, *id*. at 249, and where a special master of the presiding court *can't* be a witness, *id*., it follows that a clerk of the presiding court ***can't*** be a witness, either. Why? Because that's effectively calling the judge as a witness. Thus, in the "goose-gander" analysis, if a **defendant** can't compel a clerk of the presiding court to testify regarding the merits, due to the clerk's official, formal relationship with the court, any more than a defendant could compel a judge, a law clerk, or a special master to testify (in that court), then **STATE** can't get a clerk of the presiding court to testify, either. Why? Because that's effectively calling the judge as a witness. Yet, that's exactly what happens where a clerk of the presiding court is the complainant. In that setting, STATE purports to get a pass to cross a line that no defendant may cross. STATE purports to be authorized to get sworn testimony from the ***court*** by which to start the case ***in that very same court***. Whether that's Due Process or Equal Protection, it's flagrantly biased, one-sided, and improper.

The entire matter is avoided by having the clerks stay as clerks, doing their jobs as clerks, rather than also becoming part of the prosecution, which is another systemic habit running amuck.

Where the clerk is the complainant, the court is disqualified.

Therefore, since the *municipal* ***court*** made itself a witness in the case, it instantly rendered itself ***disqualified***, not merely subject to *recusal*, but

disqualified, to preside over Taylor's case.

Since the municipal court judge is ***disqualified***, because one of his deputy clerks, solely by virtue of employment as a deputy clerk, is the complainant, the judgment is void. *Tesco American, Inc.*, 221 S.W.3d at 555 n.27; *Zarate*.

Void judgments are properly subject to review via appeal, but there's no way to reach the *municipal* court's judgment after a trial *de novo*. Thus, the time to reach this issue is right now.

Due Process violation via no written orders

Point 8: May a municipal court refuse to memorialize its orders?

Standard. Question of law – *de novo*.

"No verbatim transcript" versus "no Record at all."

To say that a municipal court has "no Record" is to speak non-sense, of course. Whatever the municipal court documents is to be transferred to the county court for trial *de novo*. Thus, while there may not be a verbatim transcript of hearings, the trial, etc., but there most certainly is a Record. *See* Art. 44.18.

County court *inherits* municipal court Record defects.

If there were no *municipal* court Record, where is the paperwork on which the *county* court bases *its* trial *de novo* jurisdiction? Art. 44.17. What "order" or "judgment" does that municipal court enforce? How does the preservation of objections via Art. 44.181(a) make any sense without a Record? So, the Record exists, and, nothing about trial *de novo* "cleanses" that Record, altering facts that

already exist.

To borrow a notion from quit-claim deeds, the municipal court cannot "transfer" more than it, itself, has. *Cf. TXO Prod. Corp.*, 509 U.S. at 447-50 and n.8; *Knight*, 142 U.S. at 187-88 (citing *Beard*, 70 U.S. at 491). So, nothing about "transfer" of the matter for trial *de novo* changes the already existing pre-trial facts.

Non-memorialization violates Due Process.

How in the world does Taylor obtain review of what happened in the municipal court unless and until the orders are memorialized? Thus, the municipal court's refusal to memorialize those rulings not only amounts to the same type of "secret order" activity that the tax court so enjoys engaging, and for which they've been very diplomatically admonished to stop, *see Ballard*, but also amounts to denial of access all the way up the rest of the line. Events occurred and rulings were made that directly impacted other events and threatened Taylor's liberty; however, there is no formal Record other than Taylor's verified statements.

This isn't an issue that is relegated to just the direct appeal. This affects the legitimacy of the entire system and raises issues of fatal voidness. Where there is not an appeal, via trial *de novo*, of the ***entirety*** of the municipal court rulings, then the system is broken. For the system to pretend that the lawlessness in the municipal courts doesn't happen and then to encourage more of the same by tolerating "secret" proceedings and non-memorialization of those orders is for that system to defy the very meaning of Due Process. Where the county court doesn't obtain a complete Record of all orders made by the municipal court, the county court

cannot possibly have subject matter jurisdiction to proceed. *Schlesinger* (habeas for review of court-martial proceedings); *Irvin* (Due Process violations render judgments void; here, fair and impartial trial not given); *Klapprot* (Due Process violations render judgments void; here, no evidence to support revocation of citizenship; hence, such judgments are subject to review via FED. R. CIV. P. 60(b)).

> But the fact that because, unobservedly or otherwise, judgments have been rendered in violation of the due process clause, and their enforcement has been refused under the full faith and credit clause, affords no ground for refusing to apply the due process clause and preventing that from being done which is by it forbidden, and which, if done, would be void and not entitled to enforcement under the full faith and credit clause. The two clauses are harmonious, and because the one may be applicable to prevent a void judgment being enforced affords no ground for denying efficacy to the other in order to permit a void judgment to be rendered.

Cotton Mills, 237 U.S. at 196-97. In other words, violations of Due Process render judgments void. And, it's a manifest violation of Due Process for Taylor to be subjected to municipal court rulings for which there is no possible mechanism of review. [15] Thus, no ***county*** court judgment can be anything but void on its face. Otherwise, the system ***defies*** Due Process.

See also Simon v. Southern R. Co., 236 U.S. 115 (1915) (default judgment void for lack of Due Process, here, no Notice); *Peralta* (even "meritorious defense" issue is irrelevant to question of Notice).

> [I]t has been settled, that a judgment depending upon proceedings in personam can have no force as to one on whom there has been no service of process, actual or constructive; who has had no day in court, and no notice of

[15] How can there be review of an order that "doesn't exist?" Yet, it does exist; it's just that the court issuing that "order" has refused to memorialize it.

> any proceeding against him. That with respect to such a person, such a judgment is absolutely void ….

Harris, 55 U.S. at 339. *See also Milliken* (the Wyoming judgment was valid because service was valid; hence, the Wyoming court *did* have personal jurisdiction). *See also Lloyd*, 5 U.S. at 366 ("A citation not served is as no citation."). Due Process has at least two fundamental components: (1) Notice and (2) opportunity to be heard. *Hamdi*; *International Shoe*; *Mullane*; *Armstrong*, 380 U.S. at 552; *Sniadach*; *Boddie*; *Fuentes v. Shevin*; *N. Ga. Finishing*; and *Jones*. What Taylor is saying is that it's impossible for him to be heard where there is no memorialization of the orders to which he objected then, to which objects now, and to which he will forever object. Thus, the municipal court's refusal to memorialize its orders is a manifest violation of Due Process that also amounts to effective denial of access to the courts. *Cf. Harbury*; *Boddie*.

Statutory Challenge Issues

Point 9: Does TRANS. CODE § 521.021 define a crime?

Standard. Question of law – *de novo*.

Where's the mens rea? Where's the actus reus? Where's the punishment level? Hence, where's the Notice regarding any crime? *Carhart*. There's no crime defined until § 521.025.

Point 10: What does "operate" mean?

Standard. Question of law – *de novo*.

"Operate" means to engage in "transportation" in "this state" "for profit or hire." It has everything to do with commercial activity and nothing to do with "traveling." Where "operate" is read to mean and include "traveling," ***all*** statutes using and referring to such term are instantly overbroad and facially void.

Recent rule of lenity discussions: *Begay* (Scalia, J., concurring) (rule of lenity applied); *Burgess* (rule of lenity not applied) (citing *Bifulco* (focus is "statutory ambiguity")); *Rodriquez* (Souter, J., dissenting) (rule of lenity should apply); *Santos* (rule of lenity applied). *Cf. Cuellar* (discussion of "how" v. "why" the money was concealed) (statutory term is clear, and United States didn't prove up that element).

Point 11: What does "this state" mean?

Standard. Question of law – *de novo*.

The "place" called "this state" has no borders, no boundaries, and exists in the same way a corporation exists. The law fully recognizes it, but it's a concept; it is intangible in nature. The "place" called "this state" is the whole of the parts, which parts are "federal areas" or "federal zones," which are "counties" within "this state." Those "counties" have names deceptively similar to those of the States with which names most people are familiar. TX is a "county" within "this state." OK is a "county" within "this state." Same with CA, NY, DC, and etc. The "place" called "this state" is the antithesis of the place called Texas. In "this state," it's possible to

run the "funny money" scam ***without*** simultaneously committing fraud. In Texas, it's ***not*** possible to run the "funny money" scam without simultaneously committing fraud. What's the difference? The default "choice of law." In Texas, that default choice of law will be the Law of the Land. In "this state," the default choice of law is the Law of the Sea.

Where "this state" is read to mean and include the Common Law place known as Texas, ***all*** statutes using such term are instantly overbroad and facially void, which would render the Penal Code void instantly. *See* § 1.04. *See* Point 10.

Point 12: Does Art. 45.018(b) violate Due Process?

Standard. Question of law – *de novo*.

It does if it's read to mean that delivery of a "ticket" satisfies Notice!

What is a "complaint?"

It sure *ain't* the "ticket!" Art. 45.018(a) seems just fine. "Complaint" means "complaint," as demonstrated by STATE's delivering a "complaint."

What must be served?

The problem is with Art. 45.018(b). What is "notice of a complaint?" Is that the "complaint," itself, or something that might incorporate a "complaint" by reference? If this is read to mean that the "complaint," itself, must be served (timely), then Art. 45.018(b) is fine, also. Otherwise, this statute completely dispenses with Notice.

The relationship with Art. 27.14(d)—a "waiver" is not a "complaint," either.

There ***are*** alternatives. *Cf.* Art. 27.14(d) (waiver and signed agreement). But, alternatives apply only for those who *waive* Notice, knowingly or otherwise.

Art. 27.14(d) applies where a "ticket" recipient doesn't insist upon service of a complaint. That non-insistence may, at first, appear to be a waiver.

But, let's read Art. 27.14(d) and see whether it's a waiver, or not. In general, a case isn't, and can't be, started until a "complaint" is both ***filed*** **and** ***served***. Is there an alternative? As it turns out, yes. ***But***, that alternative does not depend ***solely*** on a waiver of service of a "complaint."

> ***Art. 27.14(d).***
>
> (d) If written notice of an offense for which maximum possible punishment is by fine only [or of a violation relating to the manner, time, and place of parking] [element irrelevant] has been prepared, delivered, and filed with the court and a legible duplicate copy has been given to the defendant, **the written notice serves as a complaint to which the defendant *may*** [extraordinarily heavy emphasis on the optional nature of this] plead "guilty," "not guilty," or "nolo contendere." ***If*** [extraordinary emphasis on the conditional nature of this] the defendant pleads "not guilty" to the offense, a complaint shall be filed that conforms to the requirements of Chapter 45 of this code, and that complaint serves as an original complaint. A defendant ***may*** waive the filing of a sworn complaint and elect that the prosecution proceed on the written notice of the charged offense ***if the defendant agrees in writing with the prosecution, signs the agreement, and files it with the court.***

Art. 27.14(d).

Let's analyze this one phrase at a time.

- If written notice of an offense for which maximum possible punishment is by fine only [or of a violation relating to the manner, time, and place of parking] [element irrelevant] …

Let's call this "written notice" the "ticket." So, if a "ticket" exists for an alleged offense for which the maximum possible punishment is "fine only," then this element is satisfied. Here, since neither the ticket nor the complaint identify any statute that defines a crime, whatsoever, it's unknown whether this matter is a "fine only" matter or not.

- [If the "ticket"] has been prepared, delivered, and filed with the court …

  This premise is satisfied, here. Given the next phrase, it is presumed that "delivered" means "to the court."

- [If the "ticket" has been filed with the court] and a legible duplicate copy has been given to the defendant, …

  Notice that this doesn't say "served" but merely "given to." This element is satisfied here.

- [If the "ticket" has been filed with the court and given to the defendant] **the written notice serves as a complaint to which the defendant *may*** plead "guilty," "not guilty," or "nolo contendere." …

  The key here is ***may***. Thus, this language opens up the possibility of moving forward with the "ticket"-based matter without any actual "case or controversy," there being no Art. 45.019 "complaint" either filed or served. Since what we're talking about is Notice, and since Notice may be waived, this concept is definitely "pushy," but not offensive to one's liberty-leaning sensibilities.

- [Given a filed "ticket" that has also been given to the defendant, and given a plea ***by the defendant***, not the court, but the defendant] ***If*** the defendant

pleads "not guilty" to the offense, a complaint shall be filed that conforms to the requirements of Chapter 45 of this code, and that complaint serves as an original complaint.

In other words, the defendant ***may*** waive delivery of, i.e., formal service of, the complaint for purposes of the arraignment. But, look what the defendant ***may not*** waive. The defendant may not waive the existence of a "case or controversy." In other words, this very language confirms what we already know regarding the fact that the "ticket" is not the "complaint." If the "ticket" substituted for the "complaint," then this concept would not exist. Thus, whether that "complaint" is ever served or not, it must both exist and be filed, if there is to be a trial.

- [Finally] A defendant ***may*** waive the filing of a sworn complaint and elect that the prosecution proceed on the written notice of the charged offense ***if the defendant agrees in writing with the prosecution, signs the agreement, and files it with the court.***

Addressing this part is for purposes of completeness. Thus, a written, signed agreement, filed with the court, may substitute for the verified "complaint." There is no heart-burn, here, either. Since that agreement is with the prosecution, not the "ticketing" officer, again, we're saying that a "ticket" is not a "complaint." There will be an agreement or a "complaint," one or the other.

Compare and contrast with Arts. 45.018 and 45.019.

In sum, then, it's a ***highly*** risky venture for the system to rely on waiver. Where the "ticket" recipient *does* waive Notice for purposes of entering a plea, creation of, filing of, and service of the "complaint" at some future time may very

well satisfy Art. 45.018. That's an issue for another day. Here, the recipient *did not* waive Notice for purposes of the plea, which failure to provide (competent and timely) Notice is incurable.

What Art. 27.14(d) does is provide for the defendant's waiver of Notice, but solely for purposes of that plea. Thus, Art. 27.14(d) is instantly irrelevant where there is no such waiver at the threshold.

Ultimately, nothing about Art. 27.14(d) purports to do away with the requirement, to be found of Record, that there exist a "case or controversy," i.e., an "actual grievance," *TX Dept. of Parks & Wildlife v. Miranda*, from the beginning. For there to be an "actual grievance," there must first exist a competent charging instrument. Those elements are defined in Art. 45.019.

And, ultimately, nothing about Art. 27.14(d) purports to do away with the requirement, to be found of Record, that there exist timely, competent Notice of that "actual grievance," which is what Art. 45.018 is all about.

Thus, nothing about Art. 27.14(d) changes ***anything*** about Due Process.

Is Art. 45.018(b) infected by Art. 27.14(d)?

This brings us, then, to the statutory challenge. If Art. 45.018(b) intends to duplicate Art. 27.14(d), or vice versa, then one of them is void as duplicative. But, where we read them *in pari materia*, it follows that "notice of a complaint" does not mean or refer to any "ticket," i.e., the "written notice" talked about in Art. 27.14(d). Thus, it's all the more clear that "notice of a complaint" means just that: Notice of

the Art. 45.019-qualified instrument called the "complaint." Moreover, that Notice must be served, as in received in hand by the defendant, at least one day before that first proceeding, i.e., "any proceeding," relevant to that complaint. Art. 45.018(b).

Summary—the language seems clear and lawful.

Taylor doesn't really see any problem with Art. 45.018(b), save the fact that one-day's Notice is cutting it really, really thin. The problem isn't with the statute, but rather with the ***systemic*** habit of depending on waiver of Notice for the plea. Art. 27.14(d). That's the risk that Art. 45.018(b) addresses.

Taylor objects to Art. 45.018(b), because the practice that purports to be consistent with it openly defies it. So, if the systemic practice is based on the actual meaning of that language, then Art. 45.018(b) defies Due Process. *Yick Wo* (race-neutral statute enforced by unequal policy (against Chinese) violates Equal Protection); *Village of Willowbrook* (intentional, irrational, reproducible governmental action; "class of one" recognized).

No Municipal *or* County Court Jurisdiction – No "actual grievance"

Point 13: Where's the commercial nexus?

Standard. Question of law – *de novo*.

"Traveling" is a right. "Traveling" is not "transportation," which is a regulated commercial privilege. There is no commercial nexus, here. *Cf. Lopez*. Hence, STATE has no remote justification even for injunctive relief, much less for

asserting ***criminal*** charges. Since STATE has no "actual grievance," STATE has no standing. *TX Dept. of Parks & Wildlife v. Miranda*. Therefore no trial court has subject matter jurisdiction.

Point 14: Does the complaint charge a crime?

Standard. Question of law – *de novo*.

See Points 2 and 9-13.

The complaint depends on § 521.021, which defines no crime. *Carhart* (citing *Grayned*). The crime isn't defined until § 521.025, which provision is nowhere alleged in the complaint.

All courts have an inherent authority to determine their authority. *Marbury v. Madison*. That inherent authority is *civil* in nature. *Cf. United Mine Workers*. For a court to exercise *criminal* jurisdiction, STATE has to prove that the exercise of such jurisdiction is warranted. Thus, there's a burden of proof issue, and it starts at the threshold. In short, unless and until there's a competent *criminal* complaint, there is no *criminal* case in existence. Where someone is "summoned" to court (via a "ticket"), and where that "summons" operates by agreement, there being no existing "case or controversy" in existence at that particular moment, that matter is ***civil***. If it ever is to become a *criminal* case, there must be a (competent) *criminal* complaint. Until that happens, it's a ***civil*** case; hence, the Special Appearance(s).

There being no (competent) complaint filed at all, there is no "case or controversy," at all; hence, no subject matter jurisdiction on the face of the matter.

Illegal "Confinement" and/or "Restraint"

Point 15: Is Taylor being "confined" or "restrained" in his liberty in violation of law?

Standard. Question of law – *de novo*.

"Confined" or "restrained."

Via the Bond and / or the county court orders, Taylor is "confined" and / or "restrained" in his liberty. *Cf*. *Rothgery*.

In violation of law.

Taylor is subject to the exercise of authority by a court that has no jurisdiction to exercise. [16]

Effect of granting this petition.

The illegal "confinement" or "restraint" would be terminated in totality.

Request for Relief

Therefore, Taylor requests that this court issue a writ of habeas corpus and compel Taylor's "restrainor(s)," COUNTY COURT AT LAW OF WALKER COUNTY, and / or CITY OF HUNTSVILLE MUNICIPAL COURT, to justify the continued "confinement" and / or "restraint" of Taylor, and, upon failure to do so, order COUNTY COURT AT LAW OF WALKER COUNTY to release Taylor.

[16] Taylor has objected to jurisdiction from the outset. The municipal court judge insisted that jurisdiction existed. When Taylor said they'd be "going round and round" on the issue, the response was, "No, we're not!" But, here we are! The difference is that now we have specific guidance by the Supreme Court. *Rothgery*.

Respectfully submitted,

/s/ Harmon Taylor
HARMON LUTHER TAYLOR
I reserve all my rights
7014 Mason Dells Drive
Dallas, TX 75230

AFFIDAVIT of HARMON LUTHER TAYLOR

STATE OF TEXAS §
KNOW ALL MEN BY THESE PRESENTS: ss.
COUNTY OF DALLAS §

Before me, the undersigned Notary, personally appeared HARMON LUTHER TAYLOR, who, upon administration of oath or affirmation by me, declared and deposed as follows:

I am Harmon Luther Taylor. I am at least 21 years of age and am competent to make this Affidavit. I have personal knowledge of these facts, and these facts are true and correct.

I assert all my unalienable rights, privileges and immunities at Natural Law, Common Law and Maritime Law, and all my respective commercial rights relevant to the place called "this state."

I do not consent to personal jurisdiction or venue in the county court.
As of the date of the first proceeding, no "complaint" was served on me per the requirements of Art. 45.018(b).

Ex. D-401 is a true and correct copy of the "ticket" issued 24 January 2007.

Ex. D-402 is a true and correct copy of the first page of Taylor's Special Appearance and Motion to Dismiss (municipal court), which was served 31 January 2007.

Ex. D-403 is a true and correct copy of the setting for Taylor's Special Appearance and Motion to Dismiss (municipal court). It's dated 19 February 2007.

Ex. D-404 is a true and correct reproduction of TX CRIM. PROC. CODE ANN.

art. 45.018.

Ex. D-405 is a true and correct copy of the municipal court paperwork regarding the first "arraignment," which occurred 5 April 2007. The existence of the trial setting also confirms that the motion to dismiss was denied.

Ex. D-406 is a true and correct copy of the jury trial setting in the municipal court. It's dated 5 April 2007. It sets trial for 17 May. Taylor signed under duress.

Ex. D-407 is a true and correct copy of the "complaint." It's dated 5 April 2007. The Affiant, Celia D. O'Dell, was / is a clerk with the municipal court. She's also the one who hand delivered the "complaint" to Taylor on 5 April 2007.

Ex. D-408 is a true and correct reproduction of TX TRANS. CODE ANN. § 521.021.

Ex. D-409 is a true and correct reproduction of TX TRANS. CODE ANN. § 521.025.

Ex. D-410 is a true and correct copy of the jury trial verdict and final order in the municipal court. It's dated 17 May 2007.

Ex. D-411 is a true and correct copy of the initial *county* court order evidencing "restraint." It's dated 10 August 2007.

Ex. D-412 is a true and correct copy of Taylor's Special Appearance, Motion to Strike / Rename the 17 October Setting [*see* D-411], First Motion to Dismiss, First Motion to Quash. (county court) (1st pg.). Taylor served this on 31 August 2007.

Ex. D-413 is a true and correct copy of the county court's initial response to Taylor's motions. This is dated 21 September 2007.

Ex. D-414 is a true and correct copy of the first county court case reset form with the pre-printed "waiver" statement to which Taylor objected vociferously. It is dated 17 October 2007.

Ex. D-415 is a true and correct copy of the email confirmation of next case resetting. It is dated 14 December 2007.

Ex. D-416 is a true and correct copy of the next case reset form. It is dated 6 February 2008.

Ex. D-417 is a true and correct copy of the next case reset form. It is dated

28 April 2008.

Ex. D-418 is a true and correct copy of the latest setting. This setting has been made during the pendency of the collateral order doctrine appeal; hence, Taylor filed his first motion for contempt with the appellate court, which has been denied. This setting has also compelled Taylor to engage in discovery and to file his verified TX R. CIV. P. 12 motion to show authority.

The appellate court published its ruling for No. 10-08-00208-CR on or about 3 September 2008. Taylor served his petition for discretionary review as of 5 September 2008. Taylor has not yet received any confirmation of a case number from the Court of Criminal Appeals in that collateral order doctrine matter.

Ex. D-419 is a true and correct copy of Taylor's recent motion for discovery. It was served 25 September 2008.

Further, Affiant sayeth not.

/s/ Harmon Taylor
Harmon Luther Taylor, Affiant

Signed and sworn to before me on this the _____ day of October, 2008, for which witness my seal and signature.

_____ (seal)
Notary Public Signature
(If seal is not by stamp, or not legible)

My Commission Expires:

_____ _____
Notary Public Printed Name

Certificate of Service

By my signature below, I certify that on this the _____ day of October, 2008, I have served a true and correct copy of this application and its Exhibits by certified mail as follows:

BARBARA HALE, judge presiding
County Court at Law
1100 University Avenue, Suite 101
Huntsville, TX 77340

JOHN GAINES, judge presiding
Huntsville Municipal Court
717 FM 2821 West, Suite 200
Huntsville, TX 77320

DAVID P. WEEKS
Walker County DA
1036 11th Street
Huntsville, TX 77340

Hon. GREG ABBOTT
Attorney General's Office
300 West 15th Street
Austin, TX 78711

Given the statutory challenges, service by certified mail is also made as follows:

DONALD J. DeGABRIELLE, Jr.
U.S. Atty, S.D. TX
P.O. Box 61129
Houston, TX 77208

Hon. MICHAEL B. MUKASEY
Attorney General, United States
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Complimentary service is also made on the following:

TMCEC
1609 Shoal Creek Blvd., Suite 302
Austin, Texas 78701

/s/ Harmon Taylor
Harmon Luther Taylor