SECTION ONE: Secrets of the legal industry

We have a two-tiered court system. In our system, we have supreme courts and courts of inferior jurisdiction. When we were children and learning in school, we were instructed that there are three branches of government, the legislative, the executive, and the judicial. What we were not told was that courts of inferior jurisdiction, regardless of their claimed origin such as The United States Constitution Article Three, Section one, can not be presumed to act judicially.

Most courts of inferior or limited jurisdiction have no inherent jurisdictional authority, no inherent judicial power whatsoever. Courts of limited jurisdiction are empowered by one source: SUFFICIENCY OF PLEADINGS - meaning one of the parties appearing before the inferior court must literally give the court its judicial power by completing jurisdiction. Federal courts are courts of limited jurisdiction, and may only exercise jurisdiction when specifically authorized to do so.

A party seeking to invoke a federal court's jurisdiction bears the burden of establishing that such jurisdiction exists. See *Scott v. Sandford*, 60 U.S. 393 (U.S. 01/02/1856), *Security Trust Company v. Black River National Bank* (12/01/02) 187 U.S. 211, 47 L. Ed. 147, 23 S. Ct. 52, *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936), *Hague v. Committee for Industrial Organization et al*. (06/05/39) 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423, *United States v. New York Tlelphone Co.* (12/07/77) 434 U.S. 159, 98 S. Ct. 364, 54 L. Ed. 2d 376, *Chapman v. Houston Welfare Rights Organization et al*. (05/14/79) 441 U.S. 600, 99 S. Ct. 1905, 60 L. Ed. 2d 508, *Cannon v. University of Chicago et al*. (05/14/79) 441 U.S. 677, 99 S. Ct. 1946, 60 L. Ed. 2d 560, *Patsy v. Board of Regents State of Florida* (06/21/82) 457 U.S. 496, 102 S. Ct. 2557, 73 L. Ed. 2d 172, *Merrill Lynch v. Curran et al.*. (05/03/82) 456 U.S. 353, 102 S. Ct. 1825, 72 L. Ed. 2d 182, 50 U.S.L.W. 4457, *Insurance Corporation of Ireland v. Compagnie Des Bauxites de Guinee* (06/01/82) 456 U.S. 694, 102 S. Ct. 2099, 72 L. Ed. 2d 492, 50 U.S.L.W. 4553, *Matt T. Kokkonen v. Guardian Life Insurance Company of America* (05/16/94) 128 L. Ed. 2d 391, 62 U.S.L.W. 4313, *United States ex rel. Holmes v. Consumer Ins. Group*, 279 F.3d 1245, 1249 (10th Cir. 2002) citing *United States ex rel. Precision Co. v. Koch Industries*, 971 F.2d 548, 551 (10th Cir. 1992).

OKLAHOMA MAY SAY IT BEST! =

We recognize the district court, in our unified court system, is a court of general jurisdiction and is constitutionally endowed with "unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this

Article," Article 7, Section 7, Oklahoma Constitution.

However, this "unlimited original jurisdiction of all justiciable matters" can only be exercised by the district court through the filing of pleadings which are sufficient to invoke the power of the court to act. The requirement for a verified information to confer subject matter jurisdiction on the court and empower the court to act has been applied to both courts of record and not of record.

We determine that the mandatory language of 22 O.S. 1981 § 303 [22-303], requiring endorsement by the district attorney or assistant district attorney and verification of the information is more than merely a "guaranty of good faith" of the prosecution. It, in fact, is required to vest the district court with subject matter jurisdiction, which in turn empowers the court to act. Only by the filing of an information which complies with this mandatory statutory requirement can the district court obtain subject matter jurisdiction in the first instance which then empowers the court to adjudicate the matters presented to it.

We therefore hold that the judgments and sentences in the District Court of Tulsa County must be REVERSED AND REMANDED without a bar to further action in the district court in that the unverified information failed to confer subject matter jurisdiction on the district court in the first instance, *Chandler v. State*, 96 Okl.Cr. 344, 255 P.2d 299, 301-2 (1953), *Smith v. State*, 152 P.2d 279, 281 (Okl.Cr. 1944); *City of Tulsa*, 554 P.2d at 103; *Nickell v. State*, 562 P.2d 151 (Okl.Cr. 1977); *Short v. State*, 634 P.2d 755, 757 (Okl.Cr. 1981); *Byrne v. State*, 620 P.2d 1328 (Okl.Cr. 1980); *Laughton v. State*, 558 P.2d 1171 (Okl.Cr. 1977)., and *Buis v. State*, 792 P.2d 427, 1990 OK CR 28 (Okla.Crim.App. 05/14/1990).

To invoke the jurisdiction of the court under the declaratory judgments act there must be an actual, existing justiciable controversy between parties having opposing interests, which interests must be direct and substantial, and involve an actual, as distinguished from a possible, potential or contingent dispute. *Gordon v. Followell*, 1964 OK 74, 391 P.2d 242.

To be "justiciable," the claim must be suitable for judicial inquiry, which requires determining whether the controversy (a) is definite and concrete, (b) concerns legal relations among parties with adverse interests and (c) is real and substantial so as to be capable of a decision granting or denying specificrelief of a conclusive nature."*Dank v. Benson*, 2000 OK 40, 5 P.3d 1088, 1091. See also, 12 O.S. §1651. See also, *Easterwood v. Choctaw County District Attorney*, 45 P.3d 436, 2002 OK CIV APP 41 (Okla. App. 01/11/2002)).

Another well spoken authority: On the date specified in the notice of hearing, all parties may appear and be heard on all matters properly before the court which must be determined prior to the entry of the order of taking, including

the jurisdiction of the court, the sufficiency of pleadings, whether the petitioner is properly exercising its delegated authority, and the amount to be deposited for the property sought to be appropriated. See *City of Lakeland v. William O. Bunch et al.*. (04/03/74) 293 So. 2d 66.

I hope by now, everyone understands that a court DOES NOT GET ITS JURISDICTIONAL AUTHORITY FROM THE FLAG THAT IS POSTED!!!! Court's of inferior or limited jurisdiction get their authority from ONE SOURCE AND ONLY ONE SOURCE = pleadings sufficient to empower the court to act meaning one of the parties must give the court its power to act by way of written and oral argument (the parties NOT THEIR ATTORNEYS MUST DO THIS!). The following are comments by Mark Ferran. Many probably think Mark is a bit too harsh in his dissertation on the gold-fringed flag. I asked Mark's permission to reprint the information here and while Mark's tone may be harsh, I've been at the receiving end of far too many calls from some poor soul desperately seeking my help in literally the last few hours before their eviction!

Let me give you some insights into the Gold-Fringed Flag fixation that some people have. I attended Law School and did very well as a law-student (graduated with high honors). Law students are given lots of law-books to read, and some of these students actually read those books. You yourselves can buy and read these books. But none of these books include any discussion of the nature of the Flag types which may exist, nor any Flag Protocols, symbology, nor anything else about the American Flag except some cases that deal with First Amendment Rights: Can students be forced to salute the Flag in school? Can people be punished for burning flags, etc. So, for the most part, the symbology (e.g., gold fringes) on an American Flag means nothing at all to any Attorney or Judge.

"The nitwits have amongst themselves this strange superstition that the presence of a gold trim on a courtroom's flag somehow imposes some different sort of law than what's expected -- although they cannot get their stories straight on whether it's martial law or maritime law, the two being very different. They have absolutely no legal authority for any of this and seem to be making it up as they go along. They don't seem to have noticed that the gold trim appears only on INDOOR flags, which are made of fairly flimsy material and would hang limp and drab without either breeze or sunlight indoors, so the gold trim provides some esthetic compensation for the lack of sunlight and breeze, and that all OUTDOOR flags, even the ones at military bases and on ships, don't have this fringe, because outdoor flags are made of heavier fabric and the wind and damp would soon ruin a fringe. Back in 1925 the US Attorney-General relied on the opinion of the predecessor to the US Army's Institute of Heraldry that the fringe was not an addition or alteration of the flag, and therefore not

illegal, and moreover had no symbolic meaning. Currently the Institute of Heraldry and the non-government Flag Research Center both issue fact sheets debunking this militia myth about the fringe on the flag. There apparently has NEVER been a successful challenge to a court's decision or jurisdiction based on the absence of a correct flag or the presence of an "incorrect" flag in the courtroom. }" http://www.adl.org/mwd/sussman.doc

You can change the flag displayed in the Courtroom every five minutes, or once an hour, all day long. That won't change the behavior of the Judge, nor will it affect the finality or gravity of the result of the proceeding. Nobody on the other side of the "BAR" cares at all what the flag looks like or whether it has a gold fringe on it.

None within the "Law Profession", whose primary interest is extracting money from the general population, cares anything at all about how the Judge or the Court room is dressed, except to the extent that appearances make a good impression on the slobs who are paying attorneys for "Justice." Whitewashed Tombs are more saleable than tombs appearing in their natural state of decay and rot and stench. If any typical attorney ever even noticed a gold-fringe on a flag in the court room, it would mean nothing more to him than a suggestion of what he was there For (Money) after all, and he would wish the fringe was real gold so he could cut a gold tassle or two off it during an intermission.

Haskins v. Wilbert (D Kan unpub 11/5/97) ("Judge Wilbert's jurisdiction is in no way predicated on ... the design of the US flag."); *US v. Greenstreet* (ND Tex 1996) 912 F.Supp 224 ("decor is not a determinant for jurisdiction"); *Huebner v. State* (Tex.App unpub 5/8/97); *State v. Martz* (Ohio App unpub 6/9/97); (tried to sue judge for not removing fringed flag nor installing "a flag that met plaintiffs' specifications"; court imposed Rule 11 fine of $1000) *Wyatt v. Kelly*, Chief Bankruptcy Judge (WD Texas unpub 3/23/98) 44 USPQ2d 1578, 81 AFTR2d 1463, 98 USTC para 50326; (trying to sue a town official and a judge for "accepting" a fringed US flag supposedly thereby "suppressing" the perp's rights) *Marion v. Marion* (Conn.Super. unpub 6/18/98) http://www.adl.org/mwd/sussman.doc

The idea that only "IF the fringe is not there you can demand that you be under Constitutional Law" but that if a fringe is present in the room, you need not bother to demand respect for y our rights under the Constitution and the Laws is ABSOLUTELY INSANE AND SELF-DESTRUCTIVE.

Any private citizen who fixates upon the fringes upon the flag in a court room, or whether the Judge is wearing a whig or not, INSTEAD OF HIS OWN LEGAL RIGHTS UNDER THE WRITTEN LAWS AND THE CONSTITUTION, is simply a FOOL who is probably not worthy to live as a free man in a republic in the first place. That is certainly the view that many

judges and attorneys will take after being bothered or harassed by the "flag-fringe" maniacs. Slaves always aspired to learn to Read so that they might understand and claim the rights of free men under writen laws, instead of only being able to recognize only the symbols of the authority of their masters. Fools who can read, but who ignore written laws, choosing instead to fixate on symbols, are practically inviting their own enslavement. Judges and attorneys against them will take advantage of their foolish fixations to strip them of rights and property that they might have held onto if only they had instead fixated upon the Law, the Facts, and the Merits of their claims or defenses: In *G.D. Fowler v. State* (Ark.App 1999), 67 Ark.App 114, 992 SW2d 804, "the defendant's objection to the fringed flag was emphasized by the prosecution during cross-examination, and similarly during the cross-examination of the defendant's fellow militia group members, and on appeal the exploitation of the defendant's objection to the courtroom flag was held to be so prejudicial, because it was calculated to arouse the jury's hostility to the defendant, that the conviction was overturned) http://www.adl.org/mwd/sussman.doc

Some people truly deserve to be convicted of offenses, or to have their completely stupid lawsuits thrown out of Courts of Law, and when they are disposed of in that proper manner, some of those will try to blame the result on things like the fringes of the flag: ("The complaint will be dismissed not because this court operates under the regal splendor of a gold fringed flag but because the complaint is legally absurd.") *Ch.H. Cass v. R.J. Reynolds Tobacco* Co (MDNC unpub 10/1/98) 82 AFTR2d 6967

You can heed my warnings (www.billstclair.com/ferran), and/or the Warnings from the Courts themselves, or you can continue to fixate on symbology and "fringe" ideas. It won't hurt me immediately if you destroy yourselves, but the more flag-fixated people you lead to slaughter, the more emboldened the lawless among our Judges and Prosecutors will become. So, consider the impact that your self-destruction will have upon others before you choose your fixation.

Consider the slaughter that has already happened to flag-fixated fools in the Courts:

"XIII. The Flag Issue: A current popular argument is that the gold fringed flag indicates the admiralty jurisdiction of the court. Naturally, pro ses have made this argument and lost:

1. *Vella v. McCammon*, 671 F.Supp. 1128, 1129 (S.D. Tex. 1987) (the argument has "no arguable basis in law or fact")
2. *Comm. v. Appel*, 652 A.2d 341, 343 (Pa.Super. 1994) (the contention is a "preposterous claim")
3. *United States v. Schiefen*, 926 F.Supp. 877, 884 (D.S.D. 1995): in this case,

the CFR cross reference index argument, and those regarding the UCC, common law courts and the flag issue were rejected. http://freedomlaw.com /dismyths.html

"Judge Wilbert's jurisdiction is in no way predicated on ... the design of the US flag." *Haskins v. Wilbert* (D Kan unpub 11/5/97) See, also: http://www.adl.org /mwd/sussman.doc

See also: "BRITISH ACCREDITED REGISTRY" at http://home.hiwaay.net /~becraft/BAR.html

We have a common law court system. There are two basic forms of law in the world - code law and common law. Code law means that the law as written is the law. Unfortunately, code has to be continually expanded by legislative authority. The so-called Internal Revenue Service Code is an attempt to impose code law over common law - the results are disasters! Common law means that you can't read any statute, rule, or law for that matter any constitutional article and tell what it means on its face. A common law system means that what any statute, rule, law, or constitutional law means is determined by the highest court of competent jurisdiction in their most recent ruling. In America, only Louisiana uses a code law system.

DEVELOPMENT OF THE COMMON-LAW COURT SYSTEM IN AMERICA

The Supreme Court is a common-law court that operates in a system that has little "federal common law." Yet its common-law nature is important to the Court's functioning as a constitutional arbiter. "Common law is a system of law made not by legislatures but by courts and judges. Although often called "unwritten law," the phrase actually refers only to the source of law, which is presumed to be universal custom, reason, or "natural law." In common law, the substance of the law is to be found in the published reports of court decisions. Two points are critical to the workings of a common-law system. First, law emerges only through litigation about actual controversies. Second, precedent guides courts: holdings in a case must follow previous rulings, if the facts are identical. This is the principle of stare decisis. But subsequent cases can also change the law. If the facts of a new case are distinguishable, a new rule can emerge. And sometimes, if the grounds of a precedent are seen to be wrong, the holding can be overruled by later courts.

When the Constitution was drafted, American society was infused with common-law ideas. Common law originated in the medieval English royal courts. By 1776, it had been received in all the British colonies. The revolutionary experience heightened Americans' adherence to common law, especially to the idea that the principle embodied in the common law controlled the government. While there is no express provision in the

Constitution stating that the Supreme Court is a common-law court, Article III divides the jurisdiction of federal courts into law (meaning common law), equity, and admiralty. The Philadelphia Convention of 1787 rejected language that would limit federal jurisdiction to matter controlled by congressional statute. Thus the Constitution implicity recognizes the Supreme Court as a common-law court, as does the Seventh Amendment in the Bill of Rights.

The Constitution left open the question whether there was a federal common law. The Supreme Court first held, in *United States v. Hudson and Goodwin* 1812), that there is no federal common law of crimes, and then, in *Wheaton v. Peters* (1834), that there is no federal civil common law. But in *Swift v. Tyson* (1842), the Court permitted lower federal courts to decide commercial law questions on the basis of "the general principles and doctrines of commercial jurisprudence" thus opening the door to later growth of a general federal common law. A century later, the Court put a stop to this development in Erie *Railroad v. Thompkins* (1938) by declaring Swift unconstitutional. (Yet, at the same time, it acknowledged the existence of bodies of specialized federal common law, such as, for example, it refuses to render advisory opinions, waiting instead for litigants to bring issues before it. Precedent shapes the Court's power of judicial review; because of it, any ruling of the Court is a precedent for similar cases. Thus if one state's law is held unconstitutional, all similar statutes in other states are unconstitutional a point the Court was obliged to underscore forcibly in *Cooper v. Aaron* (1958) in the face of intransigent southern resistance to the Court's holding in *Brown v. Board of Education* (1954).

The Fourteenth Amendment

Under Article I, section 2 of the Constitution, a slave had been counted as three-fifths of a person for purposes of representation. Southern states expected a substantial increase in their representation in the House of Representatives after the Civil War. The Union, Having won the war, might lose the peace. Before the war, southern states suppressed fundamental rights, including free speech and press in order to protect the institution of slavery. Though the Supreme Court had ruled in 1833 in *Baron v. Baltimore* that guarantees of the Bill of Rights did not limit the states, many Republicans thought state officials were obligated to respect those guarantees. The Fourteenth Amendment prohibited states from abridging privileges and immunities of citizens of the United States and from depriving persons of due process of law or equal protection of the laws. Early interpretations of the Fourteenth Amendment drastically curtailed the protection afforded by the amendment. Decisions such as *Twinin v. New Jersey* in 1908 and *Gitlow v. New York* in 1925 expanded the Fourteenth Amendment to the Bill of Rights meaning that Federal protections applied to protect the individual from trespass on God-given rights by states.

Supreme Court decisions have also brought offense to rights done under color of law by private persons within reach of Federal protection. Source - The Oxford Companion To The Supreme Court of The United States

The essence of the Fourteenth Amendment in a nutshell

The Constitution of the United States was written to protect us from intrusion on our God Given Rights by the Federal Government. The Fourteenth Amendment was necessary to protect us from intrusion on our God Given Rights by state governments, political subunits, and individuals who act under color of law. The Fourteenth Amendment, contrary to what some believe takes no rights away. In fact, the Fourteenth Amendment is one of the most valuable legal tools we have at our disposal. Some Patriots have been misled with an argument that the Fourteenth Amendmant makes them inforier citizens. This propaganda originates from the belief that Lincoln "enslaved us all" by declaring martial law. In truth and reality, Lincoln's order invoking martial law was revoked by then Chief Justice Taney. Roger Brooke Taney was fingered as a bad guy as a result of the Dred Scott decision. Taney, like many others was a product of history. Taney's ruling in Scott was based on the fact that Taney was a strict constuctionist, believing that the Constitution pretty well says what it says and was reticent to be too creative with Constitutional interpretation. Simply put, Taney believed slaves were property and maintained the Constitution's protection of private property ownership warranted a constitutional amendmant if slaves were to be granted rights as citizens. Taney's revocation of Lincoln's order of marshall law fomented a Constitutional crisis in as much as Lincoln regarded Taney as a usurper of Presidential power claiming Taney had no authority to revoke his declaration of marshall law absent a case being presented to the court. After Lincoln's death, the Supreme Court removed all doubt in Ex Parte Milligan, 71 U.S. 2 (1866), ending any presumption that Lincoln had "made us all inferior citizens." The holding in Milligan = "The Constitution was not suspended in time of emergency. The Constitution was a law for rulers and people, equally in time of war and peace; therefore, the military trial of civilians which violated constitutional guarantees of indictment by grand jury and public trial by an impartial jury was impermissible where the civil courts remained open. Neither the president nor Congress can authorize the trial of civilians by military commission as long as the civil courts were open." Patriots due ill to the cause and obstruct justice for themselves by buying into the falsehoods surrounding the Fourteenth Amendmant.

UNITED STATES CONSITUTIONAL AMENDMENT VII = 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 re-examined in any court of the Untied States, than according to the

rules of the common law.

Federal courts, in adopting rules, are not free to extend the judicial power of the Untied States described in Article III of the Constitution. *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992). Rule 28A(i) allows courts to ignore this limit. If we mark an opinion as unpublished, Rule 28A(i) provides that is not precedent. Though prior decisions may be well-considered and directly on point, Rule 28A(i) allows us to depart from the law set out in such prior decisions without any reason to differentiate the cases. This discretion is completely inconsistent with the doctrine of precedent; even in constitutional cases, courts "have always required a departure from precedent to be supported by some 'special justification.' "*United States v. International Business Machines Corp.*, 517 U.S. 843, 856 (1996), quoting *Payne v. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J., concurring). Rule 28A(i) expands the judicial power beyond the limits set by article III by allowing us complete discretion to determine which judicial decisions will bind us and which will not. Insofar as it limits the precedential effect of our prior decisions, the Rule is therefore unconstitutional. *Anastasoff v. United States of America* 223 F.3d 898 (8th Cir. 2000).

The real law is found in the annotated statutes: The importance of annotated law: (1). It is organized. (2). It is abbreviated (you don't need to read the whole case) (3). The "holdings" define the real law. Examples of holdings:

Debtor, as natural person who was obligated to pay debt to hospital for services provided in connection with her kidney infection, was "consumer" within meaning of the Fair Debt Collection Practices Act (FDCPA). *Creighton v. Emporia Credit Service, Inc.*, E.D.Va.1997, 981 F.Supp. 411.

Patient who had received medical services on credit, and who was primarily responsible for payment of account at medical center, qualified as "consumer" under the Fair Debt Collection Practices Act (FDCPA). *Adams v. Law Offices of Stuckert & Yates*, E.D.Pa.1996, 926 F.Supp. 521.

Fair Debt Collection Practices Act, establishing liability of debt collector who fails to comply with the Act "with respect to any person," does not limit recovery to "consumers," and thus would not preclude recovery by person to whom debt collector sent letter seeking to collect debt of such person's deceased father even if such person were not a consumer; but, in any event, such person was a "consumer" when collectors admittedly demanded payment of debt from him. *Dutton v. Wolhar*, D.Del.1992, 809 F.Supp. 1130.

Unpaid administrative and other fees charged under rental agreement by automobile and truck rental company in event of accident constituted "debt" under Fair Debt Collection Practices Act. *Brown v. Budget Rent-A-Car*

Systems, Inc., C.A.11 (Fla.) 1997, 119 F.3d 922.

Workbook assignment: Visit a law library. Find the Federal Annotated Statutes and your State's annotatated statutes or code. Copy an annotated section from each. Write a summary of the real law regarding the statute.

There are a two types of jurisdiction relating to people. Personal jurisdiction is lawfully exercised over a defendant if the person lives in a jurisdiction, operates a business in a jurisdiction, owns property in a jurisdiction, or commits an injury in a jurisdiction and has had notice and opportunity free of fraud or mistake (is in receipt of service and has a copy of the petition, claim, or complaint). If these elements are complete, personal jurisdiction CANNOT BE DENIED. Even if these elements are lacking, personal jurisdiction can be waived by appearance, excepting a person, not represented by counsel entering a special appearance for the purpose of challenging the court's personal jurisdiction. Subject matter jurisdiction is the court's power to hear and determine cases of the general class or category to which proceedings in question belong; the power to deal with the general subject involved in the action. Subject matter jurisdiction can never be waived, cannot attach by mutual consent of the parties, or through lapse of time or course of events other than sufficient pleadings. Once established, subject matter jurisdiction CAN be lost. When subject matter jurisdiction is challenged, the party asserting that the court has subject matter jurisdiction has the burden of showing that it exists on the record. Once the court has knowledge that subject matter is lacking, the court (meaning the judge) has no discretion but to dismiss the action. Failure to dismiss means that the court is proceeding in clear absence of all jurisdiction and subjects the judge to suit. Contemplation of subject matter jurisdiction harkens to the memory of Vince Lombardi, who when ask if winning was everything replied, "winning is the only thing." Personal jurisdiction is not usually an issue, but subject matter jurisdiction is always, always an issue! Subject matter jurisdiction is not everything, it's the only thing! Incidentally, in rem is the power of a court over a thing so that its jurisdiction is valid against the rights of every person having an interest in the thing; quasi in rem gives the court jurisdiction over a property interest but only to the limit of the interest in the property and not the property entirely.

NOTE: Some contracts have a "forum selection clause" stating that if there is a controversy it will be resolved according to the law of a certain state. Is clause enforceable? Not if the clause is expressed in fine print, placed in the contract to avoid litigation, or if the forum selection clause could not have been disputed without impunity as part of a freely negotiated contract. See*Johnson and Johnson, v. Holland America Line-Westours, Inc*, 557 N.W.2d 475, Forum selection clause must be reasonable communicate terms and be fundamentally fair *Deiro v. American Airlines, Inc.*, 816 F.2d 1360, 1364 (9th

Cir. 1987). The forum selection clause must be "fundamentally fair." Shute, 499 U.S. at 595, In re: Hodes, 858 F.2d at 908, and *Shankles v. Costa Armatori*, S.P.A., 722 F.2d 861, 866 (1st Cir. 1983)

Attorneys can't testify. Statements of counsel in brief or in oral argument are not facts before the court.

This finding of a continuing investigation, which forms the foundation of the majority opinion, comes from statements of counsel made during the appellate process. As we have said of other un-sworn statements which were not part of the record and therefore could not have been considered by the trial court: "Manifestly, [such statements] cannot be properly considered by us in the disposition of [a) case." *United States v. Lovasco* (06/09/77) 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752, Under no possible view, however, of the findings we are considering can they be held to constitute a compliance with the statute, since they merely embody conflicting statements of counsel concerning the facts as they suppose them to be and their appreciation of the law which they deem applicable, there being, therefore, no attempt whatever to state the ultimate facts by a consideration of which we would be able to conclude whether or not the judgment was warranted. *Gonzales v. Buist*. (04/01/12) 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463. No instruction was asked, but, as we have said, the judge told the jury that they were to regard only the evidence admitted by him, not statements of counsel, *Holt v. United States*, (10/31/10) 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2, Care has been taken, however, in summoning witnesses to testify, to call no man whose character or whose word could be successfully impeached by any methods known to the law. And it is remarkable, we submit, that in a case of this magnitude, with every means and resource at their command, the complainants, after years of effort and search in near and in the most remote paths, and in every collateral by-way, now rest the charges of conspiracy and of gullibility against these witnesses, only upon the bare statements of counsel. The lives of all the witnesses are clean, their characters for truth and veracity un-assailed, and the evidence of any attempt to influence the memory or the impressions of any man called, cannot be successfully pointed out in this record. Telephone Cases.*Dolbear v. American Bell Telephone Company, Molecular Telephone Company v. American Bell Telephone Company. American Bell Telephone Company v.. Moleecualar Telephone Company, Clay Commercial Telephone Company v. American Bell Telephone Company, People's Telephone Company v. American Bell Telephone Company, Overland Telephone Company v. American Bell Telephone Company,*. (PART TWO OF THREE) (03/19/88) 126 U.S. 1, 31 L. Ed. 863, 8 S. Ct. 778. Statements of counsel in brief or in argument are not sufficient for motion to dismiss or for summary judgment, *Trinsey v. Pagliaro*, D. C. Pa. 1964, 229 F. Supp. 647. Factual statements or documents appearing only in briefs shall not be deemed to be a

part of the record in the case, unless specifically permitted by the Court - Oklahoma Court Rules and Procedure, Federal local rule 7.1(h).

Interested in knowing more?

WHAT'S IN THE NEWS

Why pay debt collectors when you can make them pay you?!
Make'm pay when they break the rules!

"Behind the mask that is liberism
Is the face that is Fascism"
JRS - 2013

Home | Contact us | Site Map | Privacy | Disclaimer | Disclosure