

1 JOHN STUART, *Pro per*  
10407 W. Trumbull Road  
2 Tolleson, Arizona (85353)  
Phone # (480) 232-0606  
3 <[themobinem@aol.com](mailto:themobinem@aol.com)>

4 John Stuart, *Sui Juris*  
Authorized Representative  
5

6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF ARIZONA

8 JOHN STUART,  
9 Plaintiff,

10 vs.

11 **Paul McMurdie**, individually, and in his  
official capacity as a Judge of the Maricopa  
12 County Superior Court, State Of Arizona;  
13 and **Susie Charbel**, individually, and in her  
official capacity as a Prosecutor of the  
14 County of Maricopa, State Of Arizona; and  
15 **Paul Dalton**, individually, and in his  
official capacity as a Police Detective of the  
16 City of Phoenix, State of Arizona; and **Al**  
17 **Shearer**, individually, and in his official  
capacity as a Police Detective of the City of  
18 Phoenix, State of Arizona; and **John**  
19 **Johnson**, individually, and in his official  
capacity as a Public Defender of the  
20 Maricopa County Superior Court, State Of  
21 Arizona; and **Tyler Harrison**, individually,  
22 and in his official capacity as a Public  
23 Defender of the Maricopa County Superior  
24 Court, State Of Arizona; and **Robert E.**  
25 **Lyon, DO**, individually, and in his official  
capacity as Maricopa County Medical  
26 Examiner, State Of Arizona

27 Defendants  
28

Case No. CV-10-44-PHX-ROS

**RESPONSE TO DEFENDANT**

**McMURDIE'S MOTION TO DISMISS**

**COMPLAINT;**

**AND**

**PETITION FOR SUMMARY**

**JUDGMENT IN FAVOR OF**

**PLAINTIFF**

**(Trial by Jury Demanded)**

(Assigned to the Hon. Roslyn O. Silver)

1 ***In the name of God, with the gaze of Our Lord, JOHN STUART, ens legis***, by and  
2 through his authorized representative, a separate entity, John Stuart, Authorized  
3 Representative and beneficiary for JOHN STUART, appearing specially and not generally,  
4 *vi et armis*, claiming, exercising and invoking ALL RIGHTS including but not limited to  
5 God granted Rights, human Rights, and all Rights guaranteed and protected by the united  
6 States Constitution, the Arizona Constitution, and International Treaties. Plaintiff adapts  
7 and incorporates herein by reference as if fully set forth, the entire Maricopa County  
8 Superior Court case CR2008-106594-001DT Court file including, but not limited to, all  
9 Minute Entries, Rulings and Orders, the entire docket, and submits the following facts, law  
10 and authority as basis for and in support of this pleading.  
11  
12

13  
14 ***Pro Se/pro per Standards***

15 Pursuant to the Supreme Court of the United States, *pro se/prop per* pleadings  
16 MAY NOT be held to the same standard as a lawyer's and/or attorney's; and whose  
17 motions, pleadings and all papers may ONLY be judged by their function and never their  
18 form. Plaintiff is considered *pro per* as the Superior Court again violated, *inter alia*, Rule  
19 6.3(c). Pro se are exempt from dismissal for form not function and pro se Petitions cannot  
20 be dismissed without the court allowing the opportunity for the pro se litigant to correct  
21 the Petition; AND the court MUST inform the pro se litigant of the Petitions deficiency;  
22 AND instruct pro se on the necessary instructions; AND the pro se litigant may introduce  
23 any evidence in support of his Petition.  
24  
25

26 *Pro se* litigants are held to less stringent pleading standards than admitted  
27 or licensed bar attorneys. Regardless of the deficiencies in their pleadings,  
28 *pro se* litigants are entitled to the opportunity to submit evidence in support  
of their claims. See *Haines v. Kerner*, 404 U.S. 519-421.

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Court errs if court dismisses the *pro se* litigant without instruction of how pleadings are deficient and how to repair pleadings.  
See Platsky v. C.I.A., 953 f.2d. 25.

Litigants' constitutional (guaranteed) rights are violated when courts depart from precedent where parties are similarly situated.  
See Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000);

**Governing Rules of this Case**

This case is governed by, *inter alia*, the Federal Rules of Civil Procedure and, *inter alia*, the United States Code, *inter alia*, the united States Constitution, *inter alia*, the Arizona Constitution, *inter alia*, the Treaty of Paris of 1781, *inter alia*, the Hague Convention, *inter alia*, ALL other human rights treaties, and all estoppels on government agencies and/or agents, and others. These Rules and Laws have not been abrogated.

**Invocation of Rights**

Plaintiff invokes ALL Rights; including but not limited to, God granted Rights, Constitutionally Protected Rights, and Human Rights as defined and Protected by ALL Treaties enforced by the United States and/or THE UNITED STATES and/or THE UNITED STATES OF AMERICA, et.al.

**Declaration of Status and Character**

JOHN STUART is the *ens legis* created *vi et armis* by the “State” and John Chester of the family Stuart (“John Stuart”) is a natural flesh and blood bondservant of God authorized to represent the interest of JOHN STUART. John Stuart, *a natural living man*, cannot by Constitution, Law and/or Treaty be held liable in any court anywhere in anyway for JOHN STUART, *ens legis*.

1 Pursuant to, *inter alia*, 42 U.S.C.A. § 1983, JOHN STUART, [STUART or  
2 “Plaintiff”] through undersigned agent, *sui juris*, declares and alleges for the record the  
3 following in response to Defendant’s Motion to Dismiss:  
4

5 Loyalty Oaths of Office are a requirement for any and all State Offices in Arizona.  
6 No one may hold the office of judge absent a valid Loyalty Oath of Office. Plaintiff has  
7 stated the claim McMurdie’s Loyalty Oath of Office is invalid and McMurdie has never  
8 and cannot rebut the fact his Loyalty Oath of Office is invalid. This court has a certified  
9 copy of McMurdie’s invalid Loyalty Oath of Office and can attest to the fact that said  
10 Loyalty Oath of Office is invalid. Irrespective of the prima facie evidence, McMurdie’s  
11 failure to rebut Plaintiff’s claims is McMurdie’s agreement to Plaintiff’s claims.  
12

13 *See: U.S. v. Tweel*, 550 F.2d 297, 299 (5<sup>th</sup> Cir. 1977). “Silence can only be equated  
14 with fraud where there is a legal or moral duty to speak, or where an inquiry left  
15 unanswered would be intentionally misleading.”

16 *See also: Connally v. General Construction Co.*, 269 U.S. 385, 391 Notification of  
17 legal responsibility is “the first essential of due process of law.”

18 All of Defendant’s arguments are therefore moot. Defendant voluntarily confessed  
19 to his crimes by his failure to rebut the allegations; and Defendant has chosen to use a  
20 fraudulent defense of “immunity” when, as a learned and educated non-layperson,  
21 Defendant is well aware of the law and incontrovertibly knows that he is required to have  
22 a valid Loyalty Oath of Office for immunity; and MUST rebut allegations.  
23

24 McMurdie is NOT a judge, McMurdie is an imposter, an actor, a Trespasser, a  
25 felon, a traitor to the constitutions of Arizona and these untied States, a terrorist, and  
26 several other heinous and criminal entities, but he is NOT a judge under any definition of  
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1 the term “judge” pursuant to the constitutions and laws of Arizona and the federal  
2 government.

3  
4 McMurdie’s felonious act of Trespassing on Maricopa County Superior Court case  
5 CR2008-106594 caused great harm to Plaintiff. McMurdie used his criminal acts to cause  
6 Plaintiff to be wrongfully imprisoned for eight (8) months, which led to Plaintiff’s wife  
7 and two of His children alienating Him, almost all of His friends abandoning Him,  
8 destroyed His reputation, caused His total financial destruction to a sum of \$2,000,000,  
9 and as such McMurdie is required to “make whole” Plaintiff for all Plaintiff’s loses. How  
10 much are the love and affection of a Wife and two Children worth? McMurdie is also  
11 criminally liable for the torture Plaintiff experienced while wrongfully imprisoned as  
12 Plaintiff elected to inform and testify against Sherriff Joe Arpaio in federal court while  
13 Plaintiff was wrongfully imprisoned in Arpaio’s jail. A feat only an innocent man could  
14 have the mental acuity to endure.  
15  
16

17 No court has the authority to claim for McMurdie that McMurdie is and/or was a  
18 judge while McMurdie was unlawfully “presiding” over the case against Plaintiff.  
19 Therefore, ALL of McMurdie’s orders were unlawful and must by law be stricken and  
20 purged from the record of that court. The Superior court’s failure to strike and purge  
21 McMurdie’s unlawful orders is additional prima facie evidence of the conspiracy of  
22 Defendants to deprive Plaintiff of Plaintiff’s Civil Rights under color of state law and/or  
23 color of authority.  
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26 This court has the authority and the jurisdiction to hold McMurdie accountable and  
27 to order the Superior Court to conduct itself pursuant to law. As such, it is now incumbent  
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1 on this court to move the Superior Court to strike and purge from the record ALL of  
2 McMurdie's orders and cause the Superior Court to dismiss with prejudice the criminal  
3 case against Plaintiff for the Superior Court's violations of Plaintiff's Due Process Rights.  
4

5 **MEMORANDUM OF POINTS AND AUTHORITES**

6 **I. Introduction.**

7 The Verified Complaint states a claim and/or claims upon which relief may be  
8 granted. McMurdie's failure to rebut Plaintiff's allegations are McMurdie's voluntary  
9 confession to the crimes Plaintiff has accused McMurdie's of committing under color of  
10 state law and color of authority and therefore this court should grant summary judgment in  
11 favor of Plaintiff and against McMurdie.  
12

13 **II. Paul McMurdie can be sued under § 1983**

14 Paul McMurdie ("McMurdie") is NOT a judge of the Maricopa County Superior  
15 Court, Federal Tax Identification Number 86-6000472. The Court may be a unit of the  
16 STATE of Arizona and as such a person may ONLY be a judge if and when that person  
17 subscribes to a VALID Loyalty Oath of Office ("Oath") as prescribed and required by  
18 Arizona Revised Statute § 38-231.  
19

20 Plaintiff, and this court, have no way of determining what McMurdie's "official  
21 capacity" might be other than the incontrovertible fact McMurdie is NOT a judge and has  
22 no official judicial authority.  
23

24 An invalid Oath is no Oath at all. There is no exception to this Rule. Either one  
25 has a valid Oath, or they do not have an Oath. Either one is a judge, or one is not a judge.  
26 There is no such a thing as a partially valid Oath and/or a partially valid judge. McMurdie  
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1 does not have a valid Oath as evidenced by the certified copy of McMurdie's invalid Oath  
2 entered into evidence as an exhibit in the original complaint. McMurdie is therefore, and  
3 ONLY may be considered by this court, a Trespasser on any and all cases where  
4 McMurdie acted as a judge. Immunity does not in fact reach to impersonators of an  
5 official office. The law is quite clear on this subject; no Oath equals no pay and no  
6 immunity.  
7

8 McMurdie is also not in fact a *de facto* judge and has never claimed to be a *de facto*  
9 judge. McMurdie's failure to state the claim he is a de facto judge when in fact he is not a  
10 *de jure* judge claiming to have immunity is McMurdie's confession he is not a judge in  
11 any way and is merely an imposter acting as a judge. Immunity ONLY applies to State  
12 agents who are *de jure* agents and have in place a **VALID Loyalty Oath of Office**.  
13

14 McMurdie unlawfully used his fraudulent position as a judge to commit Barratry as  
15 a means to falsely arrest, wrongfully imprison, and commit acts of Treason against  
16 Arizona and the United States; and falsely arrest, wrongfully imprison, and commit acts of  
17 terrorism against Plaintiff.  
18

19 Plaintiff has not stated a claim against a government agency as McMurdie cannot  
20 be an agent of the government absent a valid Oath.  
21

### 22 **III. McMurdie is not immune in his individual capacity**

23 McMurdie cannot claim he is immune from liability for his criminal acts since  
24 immunity reaches to the person through the office, not to the office through the person.  
25 The incontrovertible fact that McMurdie's Oath is invalid makes any claim by McMurdie  
26 of immunity moot as the immunity ONLY applies to the person, through the office, in  
27  
28

1 accordance with the Oath. If there were a valid Oath of Office the Judge needs to have  
2 clean hands to be covered by a veil of immunity.

3  
4 McMurdie's attempt to claim immunity is McMurdie's tacit acquiescence and  
5 confession and avoidance to Plaintiff's allegations and therefore McMurdie's agreement to  
6 Plaintiff's allegations and claims. McMurdie's failure to rebut Plaintiff's claims and  
7 fraudulent attempt to "capture" immunity now prohibits McMurdie from any future  
8 attempt at rebutting Plaintiff's claim. Absent immunity, McMurdie has thus confessed to  
9 Plaintiff's allegations.  
10

11 Ergo, McMurdie has voluntarily confessed that he has committed numerous  
12 felonies, including without limitations, Treason to maliciously prosecute and wrongfully  
13 imprison Plaintiff.  
14

15 Because McMurdie's Oath is invalid, McMurdie cannot claim immunity and  
16 therefore Plaintiff's allegations and claims stand and this court must grant summary  
17 judgment in favor of Plaintiff.  
18

19 **IV. This Court MUST grant Plaintiff's claim for injunctive relief.**

20 Paul McMurdie does not now, and has not for several years, had a valid Loyalty  
21 Oath of Office as evidenced by the certified copies of McMurdie's invalid Loyalty Oath of  
22 Office obtained from The Arizona Secretary of State's Office and entered into this court as  
23 evidence.  
24

25 Immunity springs from the Loyalty Oath of Office and accordingly, No Oath, No  
26 Office, No Immunity. Absent a valid Loyalty Oath of Office any person claiming any  
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1 position of authority in Arizona may ONLY be considered an “imposter” and there is NO  
2 IMMUNITY for imposters.

3  
4 Even if McMurdie was a *de jure* judge, immunity does not protect State agents  
5 when the agent commits a criminal act and/or violates A.R.Crim.P. to maliciously  
6 prosecute an innocent man.

7 **V. Oaths are required.**

8  
9 Pursuant to the, *inter alia*, Arizona Constitution Article VI section 26, a judge  
10 MUST have a valid Oath or he SHALL NOT be considered a judge in ANY matter and in  
11 ANY way, this Article has not been abrogated.

12 Arizona Article VI Section 26. Oath of office

13 Section 26. Each justice, judge and justice of the peace shall, before entering  
14 upon the duties of his office, take and subscribe an oath that he will support  
15 the Constitution of the United States and the Constitution of the State of  
16 Arizona, and that he will faithfully and impartially discharge the duties of  
17 his office to the best of his ability.

18 The oath of all judges of courts inferior to the superior court and the oath of  
19 justices of the peace shall be filed in the office of the county recorder, and  
20 the oath of all other justices and judges shall be filed in the office of the  
21 secretary of state.

22 It is not within this court’s jurisdiction to alter and/or abrogate any Article of the  
23 Arizona Constitution and accordingly this court can only adjudicated in accordance with  
24 said Article.

25 Accordingly, McMurdie does not have a valid Oath, therefore McMurdie  
26 CANNOT have immunity, and McMurdie’s orders were ONLY felonious acts that  
27 deprived Plaintiff of Plaintiff’s Civil Rights that caused Plaintiff to be wrongfully  
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1 imprisoned, tortured, and completely destroyed Plaintiff's Life, reputation, and stole His  
2 Liberty and has and continues to interfere with His Pursuit of Happiness.

3 **Additionally, all of these heinous acts committed by and/or caused by**  
4 **McMurdie were not because Plaintiff committed any crime, but ONLY because**  
5 **Plaintiff survived a savage assault and kidnapping by a drunken, drugged induced,**  
6 **psychotic maniac, who also happened to be financially tied to Maricopa County**  
7 **Attorney Andrew Thomas, attempting to murder Plaintiff and Plaintiff's wife.**

8  
9  
10 Such is no different then the numerous murders of the women in IRAQ that  
11 prevented Saddam Hussein's sons from raping them; and our soldiers being executed for  
12 fighting back against their animalist captors. In fact, the conduct of the Superior Court is  
13 more like something one would find in IRAQ and IRAN than any county in the United  
14 States.

15  
16 A judge that is not a judge; in a case against an innocent man created to protect a  
17 politician; being investigated by a detective that destroys exculpatory evidence; prosecuted  
18 by a prosecutor that commits perjury to fraudulently obtain an indictment and an arrest  
19 warrant and threatens witnesses to cause them to change their testimony; and  
20 incontrovertible evidence of all these terrorist type acts in the court's own record. Yet the  
21 court is so blatantly sure it can do as it wants it doesn't even attempt to conceal or give  
22 reasons why it violates laws and deprived Plaintiff of His Civil Rights under color of state  
23 law.  
24

25  
26 The court's own officers don't even attempt to rebut the allegations due to the  
27 obviousness of their offences; they only falsely claim and try to hide under immunity.  
28

1           **VI. Ex Post Facto Law.**

2           In the United States, the federal government is prohibited from passing ex post  
3 facto laws by Article I, section 9 of the U.S. Constitution and the states are prohibited  
4 from the same by clause 1 of section 10. This is one of the very few restrictions that the  
5 United States Constitution made to both the power of the federal and state governments  
6 prior to the Fourteenth Amendment. Over the years, when deciding *ex post facto* cases,  
7 the United States Supreme Court has referred repeatedly to its ruling in the *Calder v. Bull*,  
8 3 U.S. 386 (1798), in which Justice Chase established four categories of unconstitutional  
9 *ex post facto* laws. The case dealt with Article I, section 10, since it dealt with a  
10 Connecticut state law.

11           Accordingly, neither any Arizona court and/or office and/or officer, nor any federal  
12 court and/or office and/or officer can grant McMurdie judicial authority for his past  
13 indiscretion and/or unlawful Trespassing on the case nor can any such re-instate  
14 McMurdie to the position of judge retroactively.

15           **VI. Summary.**

16           This court need not decide whether McMurdie can claim immunity as immunity  
17 does not apply to imposters. All this court need do is to inspect the certified copy of  
18 McMurdie's invalid Oath issued by the Secretary of State's Office and conclude that  
19 McMurdie was and is not a judge.

20           In fact, since it is incontrovertible, pursuant to McMurdie's invalid Oath, that  
21 McMurdie was not a judge during the case CR2008-106594, it is therefore  
22 incontrovertible that:  
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- 1           **1.**     Defendants did conspire against Plaintiff; and
- 2           **2.**     Case CR2008-106594 and the corresponding charges against Plaintiff
- 3           **MUST** be dismissed with prejudice for the Due Process Speedy Trial Rights violations;
- 4           and
- 5           **3.**     McMurdie **MUST** return all monies paid to him by the State while he was
- 6           impersonating a judge; and
- 7           **4.**     Defendants are liable to Plaintiff for all loses Plaintiff experienced while
- 8           being forced to endure the unlawful and malicious prosecution and persecution of
- 9           Plaintiff; and
- 10           **5.**     Defendants have greatly harmed Plaintiff through their unlawful acts;
- 11           personally, financially, and physically; and
- 12           **6.**     Defendants unlawful conduct and criminal conspiracy lead to Plaintiff’s
- 13           alienation of affection from His wife, two of His children, almost all of His friends; and
- 14           **7.**     Defendants continuous persecution of Plaintiff, even after Defendants
- 15           realized the law demands the incident involving Plaintiff be considered “justified”, has
- 16           permanently destroyed Plaintiff’s reputation and earning ability; and
- 17           **8.**     Defendants have conspired to conceal their illicit activities by:
- 18           destroying/losing/refusing to recover exculpatory evidence, having Plaintiff; falsely
- 19           arrested, wrongfully imprisoned, tortured, and restricted Plaintiff’s Liberty without cause
- 20           and without Right; and
- 21           **9.**     Defendants purposely, and with malice aforethought, Deprived Plaintiff of
- 22           Plaintiff’s Civil Rights under color of state law and color of authority.
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1           **WHEREAS**, It is incontrovertible that McMurdie’s Loyalty Oath of Office is  
2 invalid, and has been throughout the case CR2008-106594.

3           **WHEREAS**, No court can retroactively issue a judge a valid Loyalty Oath of  
4 Office.  
5

6           **WHEREAS**, A valid Loyalty Oath of Office is required for ALL judges in  
7 Arizona.

8           **WHEREAS**, Imposters cannot avail themselves to immunity.

9           **WHEREAS**, No court can entertain immunity of an imposter.  
10

11           **WHEREAS**, Due Process Speedy Trial Rights clock continues to run irrespective  
12 of the state’s errors and/or criminal acts.

13           **THEREFORE**, McMurdie is not now or ever immune from prosecution and/or  
14 liability for his criminal acts irrespective of a valid Oath.  
15

16           **FURTHERMORE**, In the interest of justice, pursuant to the federal and State  
17 constitutions and the laws of the United States and Arizona, this court shall grant summary  
18 judgment in favor of Plaintiff.  
19

20  
21 RESPECTFULLY SUBMITTED: This \_\_\_\_day of February, in the year, our Lord, 2010.  
22

23  
24 BY:[\_\_\_\_\_], agent  
25 John C. Stuart, *sui juris*, Authorized Representative,  
26 *Tertius interveniens, rectus in curia*, for:  
27 JOHN STUART, *ens legis, in propria persona*  
28

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2 purported in’ context to copyrighted case law, statutes, rules of court and court  
3 decision material as found in books published with Federal or state funding  
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laws of the United States.

5 In accordance with Rodriques v Ray Donovan (U.S. Department of Labor), 769 F.  
6 2d 1344, 1348 (1985) “*All codes, rules and regulations are applicable to the*  
7 *government authorities only, not human/Creators in accordance with God’s laws.*  
8 *All codes, rules and regulations are unconstitutional and lacking in due process*  
9 *...*” Plaintiff hereby defines for this document and in perpetuity the term “himself”  
10 when used speaking of the Plaintiff means the *ens legis, a trust*, and a separate  
11 entity from grantor of said trust, as John Stuart is a God created man, *a natural*  
12 *being*, and JOHN STUART is government created fiction, *ens legis*, one is separate  
13 from the other. Any and all uses of the separate entities as being interchangeable  
and/or the same entity is either accidental and/or Plaintiff’s, a “*laymen*”, attempt at  
not confusing the Court and/or defendants and does not abrogate the fact that the  
two entities are different and separate, and said separation shall remain inviolate  
for this document, and in perpetuity, such has not and shall never be abrogated.

### 14 CERTIFICATE OF SERVICE

15 **COPY** of the foregoing delivered/mailed  
16 this \_\_\_\_ day of February 2010 to:

17 Honorable Roslyn O. Silver  
18 United States District Court  
19 Sandra Day O’Connor U.S. Courthouse  
20 401 West Washington Street, Suite 624, SPC 59  
Phoenix, Arizona 85003

21 **COPY** of the foregoing delivered/mailed  
22 this \_\_\_\_ day of February 2010 to:

23 Paul McMurdie  
24 Maricopa County Superior Court  
25 East Court Building 413  
26 101 W. Jefferson  
Phoenix, AZ. 85003-2243

27  
28 By: [ \_\_\_\_\_ ], agent