SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN UNAUTHORIZED PRACTICE OF LAW	
Petitioner: **THE PEOPLE OF THE STATE OF COLORADO** Respondent: **SUZANNE SHELL**	**COURT USE ONLY**
Suzanne Shell 14053 Eastonville Rd. Elbert, CO 80106 Phone number: 719-749-2971 Fax Number: 719-749-2972	Case Number: 01SA136
ANSWER TO CONTEMPT CITATION	

Respondent, Suzanne Shell responds to the CONTEMPT CITATION as follows:

1. Respondent is not required to cooperate in the underlying investigation into whether or not she is engaging in the unauthorized practice of law. Any claims that she has not voluntarily cooperated are irrelevant. If the state desires to make a case against her activities, it must do so by its own efforts. Respondent is fully within her rights to refuse to voluntarily speak with any investigating authority without retaliation, retribution, recrimination or reprisal. This remark was irrelevant and prejudicial.

2. Since this Contempt Citation provides for jail time, and since respondent is indigent, Respondent respectfully requests court appointed counsel to represent her in this matter.

3. Four things must be shown to prove punitive contempt: "(1) the existence of a lawful order of the court; (2) contemnor's knowledge of the order; (3) contemnor's ability to comply with the order; and (4) contemnor's willful refusal to comply with the order." In re Marriage of Nussbeck, 974 P.2d 493, 497 (Colo. 1999).

FIRST ANSWER TO DISOBEDIENCE OF A SUBPOENA TO APPEAR

4. Colorado Rules of Civil Procedure 45 states *(e) Subpoenas for attendance at a deposition. . .shall be issued either by the clerk of the court which the case is docketed, or by one of counsel who appearance has been entered in the particular case in which the subpoena is sought.*

5. C.R.C.P. 233 *(c) In connection with an investigation of the unauthorized practice of law, the Chair of the Committee or the Regulation Counsel may issue subpoenas. . .All such subpoenas shall be subject to the provisions of C.R.C.P 45.*

6. The subpoena attached to the PETITION FOR INJUNCTION AND FOR CONTEMPT CITATION as exhibit B is signed by a Nancy L. Cohen. Respondent has never been advised of a Nancy L. Cohen putting in her appearance on this particular case. Respondent does not know who Nancy L. Cohen is other than under her signature on the subpoena it declares her to be "**Deputy** Regulation Counsel." There is no mention in C.R.C.P 233 of a 'Deputy Regulation Counsel.' In respondent's course of research in her area of expertise, she has come across multiple incidents reported by attorneys where parents have been duped by unethical court personnel and others who fabricate a subpoena. An explanation of the 'fake subpoena routine' is published in her 1997 book *Profane Justice.* In this instance, lacking specific knowledge regarding esoteric vagaries of the rules of civil procedure as it relates to the Unauthorized Practice of Law Committee, and not being an attorney, respondent employed a reasonable standard of interpreting the provisions literally. Her literal interpretation led her to believe this was not a lawfully executed subpoena because it was not issued in accordance with C.R.C.P 45 or 233. Nancy L Cohen was, to the best of her understanding, neither 'the Regulation Counsel' cited in Rule 233 as she was only 'Deputy Regulation Counsel' nor, to the best of respondent's knowledge, was she an attorney who had put in her appearance on this specific case. Respondent consulted with counsel, all of whom came to the same conclusion; that being that this was not a properly issued subpoena. Respondent had the reasonable expectation that the advice offered by attorneys would be accurate.

7. Respondent has been advised in writing that James C. Coyle is the attorney for the petitioner and he has been the attorney to sign all correspondence and notices which have been directed to her. It was respondent's understanding that only Coyle or the clerk of the court, would be the only ones authorized to issue the subpoena. It was the true belief of the respondent that the subpoena issued was invalid on its face, that it did not comply with C.R.C.P. 45 and 233 and was therefore unlawful.

SECOND ANSWER TO DISOBEDIENCE OF A SUBPOENA TO APPEAR

8. In order to gain entry to the El Paso County courthouse, where the deposition was scheduled, Ms. Shell would have to consent to a search of her person by, at the very minimum, passing through a magnetometer/metal detector and consent to having her belongings physically searched. Respondent refuses to consent to search and seizure under the Fourth Amendment of the Bill of Rights as a condition of entering the El Paso County courthouse in response to the subpoena.

9. Respondent asserts that the subpoena ordering her to appear at the El Paso County Courthouse was illegal and unconstitutional under the Fourth and Fourteenth Amendments of the United States Constitution and under Article II Section 7 of the Colorado Constitution for the following reasons:

10. ***Colorado Constitution, Section 7.*** *Security of person and property – searches – seizures – warrants. The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place or seize any person or things shall issue without describing the place to be searched, or the person or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation reduced to writing.* This provision shares a common purpose with the fourth amendment to the United States Constitution: the protection of legitimate expectations of privacy from unreasonable governmental intrusion. Katz v. United States, 389 U.S. 347, 350-52, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967); People v. Sporleder, 666 P.2d 135, 139 (Colo. 1983). Therefore, any governmental action intruding upon an activity or area in which one holds such an expectation of privacy is a "search" that calls into play the protections of the Colorado Constitution.

11. The Colorado Constitution provides at least as much protection from unreasonable searches and seizures as does the Fourth Amendment. University of Colorado v. Derdeyn, 863 P.2d 929

> People v. Rodriguez, 945 P.2d 1351 (Colo. 09/15/1997) "Our law concerning searches and seizures is extensively developed. With respect to the issues raised by this case we view the Colorado and United States Constitutions as co-extensive and therefore follow federal precedent as well as our own."

12. Although the Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on his own initiative, the Amendment protects against such intrusions if the private party acted as an instrument or agent of the Government. Skinner v. Railway Labor Executives. See United States v. Jacobsen, 466 U.S. 109, 113-114

(1984);Coolidge v. New Hampshire, 403 U.S. 443, 487 (1971). See also Burdeau v. McDowell, 256 U.S. 465, 475 (1921). Courthouse searches fall into this category of government intrusions.

13. By its terms, the Fourth Amendment – unlike the Fifth and Sixth -- does not confine its protections to either criminal or civil actions. Instead, it protects generally "the right of the people to be secure." The basic purpose of the Fourth Amendment, as recognized in countless decisions of the Supreme Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials. The Fourth Amendment thus gives concrete expression to a right of the people which "is basic to a free society." Wolf v. Colorado, 338 U.S. 25, 27. As such, the Fourth Amendment is enforceable against the States through the Fourteenth Amendment. Ker v. California, 374 U.S. 23, 30. Camara v. Municipal Court of the City and County of San Francisco, 1967.SCT.1538, 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930. One governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has been authorized by a valid search warrant. See, e. g., Stoner v. California, 376 U.S. 483; United States v. Jeffers, 342 U.S. 48; McDonald v. United States, 335 U.S. 451; Agnello v. United States, 269 U.S. 20. As the Court explained in Johnson v. United States, 333 U.S. 10, 14. With certain carefully defined exceptions, an unconsented warrantless search of private property is "unreasonable."

14. "A search 'occurs' when an expectation of privacy that society is prepared to consider reasonable is infringed. . . Rakas v. Illinois, 439 U.S. 128, 58 L. Ed. 2d 387, 99 S. Ct. 421 (1978); People v. Spies, 200 Colo. 434, 436, 615 P.2d 710, 711 (1980). Because the legitimacy of each individual's expectation of privacy depends upon his relationship to the area searched or items seized, People v. Naranjo, 686 P.2d 1343, 1345 (Colo. 1984) United States v. Jacobsen, 466 U.S. 109,, 80 L. Ed. 2d 85, 104 S. Ct. 1652 (1984)." People v. Oates, 698 P.2d 811 (Colo. 05/06/1985)

15. The crucial invasion of privacy occurs when entry is effected for the purpose of making a search; it is not necessary that the entry produce information in order to violate the sense of security protected by the constitutional proscription against unreasonable searches and seizures. People v. Oates, 698 P.2d 811 (Colo. 05/06/1985)

> The interests in human dignity and privacy which the Fourth Amendment protects forbid any such intrusions on the mere chance that desired evidence might be obtained. Schmerber v. California 384 U.S., at 769-770

16. There is a high expectation of privacy attaching to an individual's person.

> Three conditions must exist before a person may be subjected to some form of intermediate intrusion, such as an investigatory stop or a limited search of his person: (1) there must be an articulable and specific basis in fact for suspecting that criminal activity has or is about to take place; (2) the purpose of the intrusion must be reasonable; and (3) the scope and character of the intrusion must be reasonably related to its purpose. E.g., People v. Johnson, 199 Colo. 68, 605 P.2d 46 (1980); People v. Martineau, 185 Colo. 194, 523 P.2d 126 (1974); People v. Lucero, 182 Colo. 39, 511 P.2d 468 (1973); Stone v. People, 174 Colo. 504, 485 P.2d 495 (1971).

17. There is a high expectation of privacy attaching to an individual's briefcase, purse, luggage or other closed article belonging to an individual, especially where the contents are not visible to the public. The court has repeatedly affirmed that a person possesses a privacy interest in the contents of personal luggage that is protected by the Fourth Amendment. Any attempt by an individual or government agent to gain access and rifle through the contents of those articles would be considered a gross violation of that privacy by any measure of societal norms.

> "Whether an expectation of privacy is reasonable may be tested against the customs, values and common understandings that confer a sense of privacy upon many of our basic social activities." Rakas, 439 U.S. at 133 n.12; People v. Suttles, 685 P.2d 183, 190 (Colo. 1984).

18. A person's clothing is protected from warrantless searches. People v. Casias, 563 P.2d 926, 193 Colo. 66 (Colo. 04/11/1977).

> "Even a limited search of the outer clothing . . . constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience." Terry v. Ohio, 392 U.S. 1, 24-25 (1968).
>
> The pockets of a person's clothing have, likewise, been uniformly recognized as areas to which a justifiable expectation of privacy attaches. See, e.g., People v. Counterman, supra; People v. Taylor, 190 Colo. 144, 544 P.2d 392 (1975); People v. Martineau, 185 Colo. 194, 523 P.2d 126 (1974); People v. Navran, 174 Colo. 222, 483 P.2d 228 (1971); People v. Nefzger, 173 Colo. 199, 476 P.2d 995 (1970) (jerking hand out of pocket); People v. Bueno, 173 Colo. 69, 475 P.2d 702 (1970).

19. In People v. Santistevan, 715 P.2d 792 (Colo 1986) the court held that a person has a

reasonable expectation that police officers will not subject his hands to an ultraviolet lamp examination to discover incriminating evidence not otherwise observable and that requiring a person to submit to an ultraviolet lamp examination constitutes a search. Another court, faced directly with the question of whether the use of an ultraviolet lamp to examine a suspect's hands constituted a search, stated:

> ". . .[t]here can be little doubt that an inspection of one's hands, under an ultraviolet lamp, is the kind of governmental intrusion into one's private domain that is protected by the Fourth Amendment." United States v. Kenaan, 496 F.2d 181, 182 (1st Cir. 1974).

In Cupp v. Murphy, 412 U.S. 291, 36 L. Ed. 2d 900, 93 S. Ct. 2000 (1973), the court held:

> ". . .the search of the respondent's fingernails went beyond mere 'physical characteristics . . . constantly exposed to the public,' . . . and constituted the type of 'severe, though brief, intrusion upon cherished personal security' that is subject to constitutional scrutiny."

Passing through a magnetometer or metal detector goes beyond the type of exposure to which, in the absence of governmental interference, persons are subjected each day in the same manner as an ultraviolet light does and, therefore, constitutes a search.

20. While, warrantless searches are presumptively unconstitutional, one of the recognized exceptions to the warrant requirement is a regulatory search pursuant to a statutory or administrative program. A warrantless search without probable cause or individualized suspicion is constitutional when conducted pursuant to a regulatory program calculated to further a manifestly important governmental interest under circumstances where the program is reasonably tailored to further the governmental interest and where the intrusion on personal privacy or security is relatively slight in comparison to the interest served by the program. People v. Troudt, No. 98CA1287 (Colo.App. 12/09/1999)

However, ***there is no regulatory program exception to the Constitution***, any more than there is a communism exception or a drug exception or an exception for other real or imagined sources of domestic unrest. Coolidge v. New Hampshire, 403 U.S. 443:

> "Thus the most basic constitutional rule in this area is that "searches conducted outside the judicial process, without prior approval by Judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions." The exceptions are "jealously and carefully drawn," and there must be "a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative." "The burden is on those seeking the exemption to show the need for it."In times of unrest, whether caused by crime

> or racial conflict or fear of internal subversion, this basic law and the values that it represents may appear unrealistic or "extravagant" to some. But the values were those of the authors of our fundamental constitutional concepts. In times not altogether unlike our own they won -- by legal and constitutional means in England, and by revolution on this continent -- a right of personal security against arbitrary intrusions by official power. If times have changed, reducing everyman's scope to do as he pleases in an urban and industrial world, the changes have made the values served by the Fourth Amendment more, not less, important."

21. A warrantless regulatory search without probable cause or individualized suspicion pursuant to a statutory or administrative program must be predicated upon the voluntary consent of the individual to be searched.

> "A warrantless search of an individual is generally reasonable under the Fourth Amendment if the individual has **voluntarily consented** to it." Schneckloth v. Bustamonte, 412 U.S. 218, 219, 222 (1973).

22. EXAMPLE: In People v. Thompson, 523 P.2d 128, 185 Colo. 208 (Colo. 06/10/1974) the court recognize that circumstances involving penitentiary visitation and the bringing of contraband into a penitentiary could be a basis for the adoption of strict rules to be properly posted which would include **consent to search as a condition of exercising the privilege of entering** the penal institution to visit a prisoner.

23. EXAMPLE: An airport security search to which a potential passenger voluntarily consents by submitting himself to the screening process, therefore, need not be justified by any showing of probable cause or reasonable suspicion. Airport security screening procedures for potential passengers have consistently been upheld as a form of consensual regulatory search in furtherance of a systematic program directed at ensuring the safety of persons and property traveling in air commerce. When the risk is the jeopardy to hundreds of human lives and millions of dollars of property inherent in the pirating or blowing up of a large airplane, the danger alone meets the test of reasonableness, so long as the search is conducted in good faith for the purpose of preventing hijacking or like damage and with reasonable scope and the passenger has been given **advance notice of his liability to such a search so that he can avoid it by choosing not to travel by air**. People v. Heimel, 812 P.2d 1177 (Colo. 07/09/1991).

24. Defendants, witnesses, petitioners and plaintiffs are not a separate class of people whose Fourth Amendment rights deserve less consideration simply because they are compelled to enter a courthouse and will certainly suffer constitutional deprivations if they refuse to consent to search. It has also been held that:

> ". . .it cannot be said that university students, simply because they are university students, are entitled to less protection than other persons under the Fourth Amendment." and "'it is abundantly clear that there is no basis consistent with established Fourth Amendment doctrine upon which to uphold these [college] searches when made upon less than a full showing of probable cause.'; cf. T.L.O., 469 U.S. at 336-37" University of Colorado v. Derdeyn, 863 P.2d 929

25. Concerning personal items of employees, the court has found that while employees posses a diminished expectation of privacy in of the workplace, the legitimate privacy interests of public employees in the private objects they bring to the workplace is likely to be substantial. The appropriate standard for a warrantless workplace search does not necessarily apply to a piece of closed personal luggage, a handbag, or a briefcase that happens to be within the employer's business address. O'Connor et al. v. Ortega 1987.SCT.1517, 480 U.S. 709, 107 S. Ct. 1492, 94 L. Ed. 2d 714, 55 U.S.L.W. 4405. The employee has options to exercise if he does not want to be subject to search and seizure in the workplace. To avoid unreasonable search and seizure, the employee may avoid exposing personal belongings at work by simply leaving them at home. Alternatively, the employee may choose to work elsewhere.

26. In People v. Troudt[1], No. 98CA1287 (Colo.App. 12/09/1999), the court found that the nature of the courthouse security checkpoint was such that defendant must have been aware that she would be subject to a search for weapons, that the defendant voluntarily consented to such a search of her cigarette case, and that the minimally intrusive search conducted by the guard did not exceed the scope of consent granted by defendant. See State v. Plante, 134 N.H. 585, 594 A.2d 165 (1991), cert. denied, Plante v. New Hampshire, 502 U.S. 984, 112 S.Ct. 590, 116 L.Ed.2d 614 (1991)(sufficient evidence to support trial court's finding that bailiff's search of a small throat lozenge container found in defendant's purse at a courthouse security checkpoint was a reasonable administrative search for tiny weapons or explosives that could have been concealed in a container of that size; defendant consented to such a search by voluntarily relinquishing her purse to the bailiff).

In Woods v. State, 970 S.W.2d 770 (Tex.App. Dist.3 06/25/1998), which the petitioner quoted, the actual findings were:

> "It is clear that appellant was seized when she was stopped and made to re-enter the courthouse, and ***that passing her purse through the X-ray device was a search***. See id. at 722. On original submission, we sustained appellant's first point of error, holding that ***the officers' actions exceeded***

[1] 5 P.2d 349 according to petitioner

the lawful scope of a limited administrative search. Id. at 723. We also sustained her second point of error, holding that ***appellant did not waive her Fourth Amendment rights and consent to the search of her person and belongings when she entered the courthouse***. Id. at 724.

The search was deemed reasonable because the court concluded:

> ". . .that the totality of the circumstances, including appellant's behavior and McCullen's past experience, gave the officer a particularized and objective basis for believing that appellant had a weapon or other contraband in her purse. Because the officer's suspicion was reasonable under the circumstances, the detention was lawful."

Therefore, the appellant's consent to search was not required due to a reasonable suspicion.

27. In each of the above instances, **the individual has the option of participating in the regulatory program by consenting to search or choosing not to participate.** There is no dispute that the affected person would face certain deprivations by choosing not to consent to the search, however, those deprivations would not rise to a constitutional level. Regardless of that, there have been instances were the court has held that even deprivations that do not rise to a constitutional level are similarly protected.

In Troudt, which the petitioner cited, the court did not address the issue of whether the defendant was compelled to consent to that search or what penalties or deprivations she would face for refusing to consent which would result in her being denied entry into the courthouse. In this case, the penalties faced by the respondent for refusing to voluntarily consent to search as a condition of entry into the courthouse are the among the most severe available and rise to the constitutional level. They certainly superscede any deprivations associated with not being allowed to work at a certain place of employment, or not being allowed to participate in collegiate sports, or choosing not to travel via commercial airlines. The consequences of not consenting to search, specific to this instance, infringe on both liberty and property interests; and in general, affect other protected rights such as access to the courts, presumption of innocence, the right to petition the government, and equal protection.

28. Whether an expectation of privacy is "legitimate" is determined by a two-part inquiry: whether one actually expects that the area or activity subjected to governmental intrusion would remain free of such intrusion, and whether "that expectation is one that society is prepared to recognize as reasonable." Sporleder, 666 P.2d at 140; see also Smith v. Maryland, 442 U.S. 735, 61 L. Ed. 2d 220, 99 S. Ct. 2577 (1979) (employing same test under fourth amendment).

We are systematically being conditioned to accept curtailments on our freedoms as being reasonable, especially for issues alleging public safety or for the convenience of government activities. Increasingly, these erosions are based more on government fiscal interests than preserving our hard won individual liberties. Our Fourth Amendment rights

are especially susceptible to this type of erosion. But when these erosions bring the people to conflicting choices regarding which rights to exercise upon pain of a penalty or deprivation that rises to the constitutional level, then the erosion becomes unreasonable. When the courthouses and legislative buildings of the people are no longer accessible to the people unless they waive their Fourth Amendment right, that intrusion becomes unconstitutional. If the people must waive their Fourth Amendment right, do they really, then, possess the right to petition the government for redress of grievances or possess the right of access the courts? [Protect Our Mountain v. District Court, 677 P.2d 1361.] Mr. Justice Bradley's admonition in his opinion for the Court almost a century ago in Boyd v. United States, 116 U.S. 616, 635, is worth repeating here:

> "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."

See also Gouled v. United States, 255 U.S. 298, 303-304 (1921):

> "It would not be possible to add to the emphasis with which the framers of our Constitution and this court . . . have declared the importance to political liberty and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two Amendments [the Fourth and Fifth]. The effect of the decisions cited is: that such rights are declared to be indispensable to the 'full enjoyment of personal security, personal liberty and private property'; that they are to be regarded as of the very essence of constitutional liberty; and that the guaranty of them is as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen, -- the right, to trial by jury, to the writ of and to due process of law. It has been repeatedly decided that these Amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts or by well-intentioned but mistakenly over-zealous executive officers."

29. The search which the respondent must submit to as a condition of entry into the

courthouse is unreasonable.

> "A determination of the standard of reasonableness applicable to a particular class of searches requires 'the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.'" United States v. Place, 462 U.S. 696, 703 (1983)

30. The respondent, acting in the capacity of an ordinary citizen going about her business, possesses the highest expectation of privacy available. She is not acting as an employee where employees ordinarily consent to significant employer-imposed restrictions on their freedom of movement as a condition of that employment, and where certain warrantless workplace searches have been upheld as being reasonable. Indeed, if she were an employee, she would not be required to consent to search as a condition of entering the courthouse. Judges, attorneys, and other court personnel are not required to pass through the magnetometer or have their belongings and persons searched as a condition of entry into the courthouse (see Exhibit 2 - COURTHOUSE SECURITY STATISTICS AND CONCLUSIONS, page 48). The current system allows entry to certain persons without searching them. This amounts to unequal protection under the law.

31. Neither is the respondent participating in an industry subject to pervasive safety regulation by the Federal and State Governments which would reduce **her** expectation of privacy. Skinner v. Railway Labor Executives 989.SCT.1568, 489 U.S. 602, 109 S. Ct. 1402, 103 L. Ed. 2d 639, 57 U.S.L.W. 4324

32. Contrary to previous claims made by the petitioner, respondent asserts that the El Paso County courthouse IS NOT a neutral or safe place for the respondent. It is full of attorneys, judges, caseworkers, and others who are overtly hostile and who have gone to great measures to harm her solely because of her political activism, her family advocacy, her public comments, and her public exposure of illegal and unethical activities by these same persons. Part of this harm is being expressed as the continued harassment under the guise of this UPL investigation. She is under extreme emotional and mental pressure in this building and does not feel safe by any means when she must enter this courthouse or certain other courthouses in Colorado. The nature of the reason under which she was compelled to enter exacerbated this distress. It is unreasonable to inflict this kind of emotional distress upon the respondent by requiring her presence at this specific location when it is not legally mandatory that a deposition be conducted in a courthouse.

33. The respondent offered the petitioner three alternatives: First, the legal option to schedule the location of the deposition where the respondent would not be required to waive her Fourth Amendment right against unreasonable search and seizure as a condition of entering the location. The petitioner refused to honor respondent's asserted right in this

fashion. Alternatively, the petitioner could have made provisions to allow the respondent to enter the courthouse without being searched. The petitioner refused to make those provisions which would have protected the respondent's asserted right. Finally, the petitioner could have sought a warrant or articulated a reasonable suspicion that a crime had occurred or was about to occur which would have fulfilled the requirements under the Fourth Amendment. The petitioner refused to comply with these well established Fourth Amendment requirements. The petitioner's responses to the reasonable requests of the respondent were unreasonable. The fact that the respondent made the assertion against unreasonable search and seizure without citing any case law does not invalidate her assertion or her exercise of her protected rights under the constitutions of the United States and the State of Colorado.

> "The consideration of asserted constitutional rights may not be thwarted by simple recitation that there has not been observance of a procedural rule with which there has been compliance in both substance and form, in every real sense. Davis v. Wechsler, 263 U.S. 22, 24; Staub v. City of Baxley, 355 U.S. 313." NAACP v. Alabama 1964.SCT.1052 , 377 U.S. 288, 84 S. Ct. 1302, 12 L. Ed. 2d 325

The precedents are well established: If a suspect requests an attorney, interrogation must cease. He is not required to cite case law to assert that right. The mere assertion suffices. Likewise, if a person refuses to consent to police entry into his home and demands a warrant, entry to the premises cannot legally occur. If a suspect invokes his right to remain silent, he cannot be compelled to speak against his will. If a person does not consent to search, absent probable cause or a warrant, her purse cannot be snatched by authorities and searched. There is no constitutional mandate requiring the recitation of case law to assert any constitutionally protected right.

34. The level of potential harm to the public or to the occupants of the El Paso County courthouse is minute, and does not justify the compelled wholesale violations of rights under the Fourth Amendment and Article II, Section 7 of the Colorado Constitution under a regulatory scheme. In attached Exhibit 1[2], the statistical information indicates that while over a million persons are estimated to enter the courthouse annually over the past five years, there were between 58 and 17 arrests made annually for actions committed inside the courthouse. While an average of 10,315 weapons were reported as discovered during searches, the number of weapons confiscated ranges from 112 to 29 annually. This indicates that most weapons were legally possessed without intent to cause harm, and were returned upon the individual's exit from the courthouse. This also means barely 1%

[2]This report was provided by Lt. Dennis Eastman who is in charge of Security at the El Paso County Courthouse.

of all weapons contacts had any articulable suspicion attached to them. Furthermore, there were very no reported violent incidents[3] which would justify wholesale searches as a condition of entry into the building. This rate demonstrates an extremely low level of potential harm, especially considering the disproportionately high percentage of 'criminal' elements that make up this particular population. These findings indicate that the security measures in place are excessive given the circumstances. Based on the statistics for 2000, there can be no reasonable justification for compelling 1.1+ million persons to waive their Fourth Amendment rights as a condition of entering the building in order to catch 17 persons who pose a potential threat of violence. Consequently, there is no demonstrable overriding governmental interest to circumvent the Fourth Amendment protection of individuals entering the courthouse as a matter of routine.

> "This Court has repeatedly held that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." NAACP v. Alabama ex rel. Patterson, 357 U.S. 449.

There are less invasive methods to insure the security of the courthouse which will not compromise the safety of the occupants or violate the rights of citizens. The fact is, employing a search upon entry is simply the cheapest and laziest way to insure a degree of safety. The decision to institute entry search procedures rather than another, more expensive, security protocol[4] at the courthouse was based solely on expense.(see Exhibit 2, COURTHOUSE SECURITY STATISTICS AND CONCLUSIONS - page 17-19). While there is a countervailing government interest in keeping costs down, when it comes to infringing individual constitutional rights, the State's fiscal interest is irrelevant. Shapiro v. Thompson, 394 U.S. 618, 633 (1969).

> "To justify the deterrent effect . . . on the free exercise . . . of their constitutionally protected right . . . a '. . . subordinating interest of the State must be compelling.'" NAACP v. Alabama, supra, at 463.

> ". . . Even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." Shelton v. Tucker, 364 U.S. 479, 488.

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[3] "Other Incidents" includes heart attacks, medical emergencies, and anything requiring any kind of response.

[4] This would include such things architectural changes, less intrusive albeit more expensive security equipment and other, more expensive security protocols or lobbying for legislation that would increase penalties for courthouse violence as a deterrant.

35. For 20 months prior to the installation of the metal detector security system, casual logs were kept of potential threats. What is significantly missing from these logs is the volume of individuals who accessed the courthouse. Without that data, the finding pertaining to pre and post-security screening are useless. The report (Exhibit 3, page 48) indicates that the volume of traffic is 'startling.' The greater the flow of traffic, the lower the presented risk for violence. There is no dispute that the threat of violence represented by the public's access to the courthouse does not constitute a great enough of a safety risk to justify the wholesale violations of Fourth Amendment rights as a condition of entering the courthouse.

The pre-security statistics indicate that confiscation of contraband far exceeds the confiscation of weapons, indicating that the process substantially exceeds the scope of any purpose of public safety.

EXHIBIT 2, endnote 22 indicates that a large number of weapons have always been present in the courthouse, without danger to others. This would indicate that the rationale behind instituting searches was not based on actual danger, but on fear.

36. El Paso County courthouse security officer Lt. Eastman states[5] that the purpose of the searches at the courthouse is to "prevent any acts of violence from occurring in the courthouse with the introduction of weapons[6] or contraband." He defined that the purpose of confiscating contraband was to prevent it's transfer to prisoners who were there for a court hearing, which clearly indicates that there is no threat of violence due to contraband (e.g. drugs). Statistically, the confiscation of contraband exceeds the confiscation of weapons by 2 to 5 times. This function is not consistent with the stated purpose of preventing violence. Actions taken with respect to contraband represents substantially more that twice the number of actions taken with weapons and therefore is not substantially consistent with the stated purpose of insuring the safety of the occupants of the courthouse. The purpose of the search at entry is clearly to confiscate, at least temporarily, contraband items that pose a subjective potential threat (see Exhibit 2 - page 62). There is no demonstration that fewer people are harmed due to the search protocols when comparing pre- and post-security entry search screening.

When asked what happens if someone refuses to consent to search as a condition of entering the building, Lt. Eastman stated unequivocally, "Then they can't enter the building."

It is significant to note that, in the respondent's experience, other equally vulnerable government buildings do not require searches as a condition of entry, including

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[5]This conversation is recorded.

[6]According to Lt. Eastman, an item is determined to be a weapon at the discretion of the security officer based on the training he received. It does not necessarily mean that the item is a weapon, but that it has the potential to be used as a weapon. Items designated as weapons include hair combs, pocket knives, scissors, etc.

the El Paso County Building, the State Capitol, Fremont and Elbert County Courthouses. This effectively amounts to a violation of Equal Protection Under the Law, where some courts are more accessible than others, where one does not have to waive a right in order to access those courts. These buildings and their functions belong to the people. They are a critical component in our government of the people, by the people, and for the people. All official activities that occur in them are reputedly open to public observation and participation. This is a fundamental interest guaranteed to all citizens under our constitution. Basic liberties are being undermined by administrative decisions based more on fiscal interests, convenience, and largely unfounded fear than on any demonstrable need.

37. The respondent is not acting voluntarily wherein she can either choose to enter the courthouse conditioned upon consenting to being searched, or decline search as a condition to enter the courthouse without penalty. This entry, and the associated search, is being forced under subpoena. The respondent is essentially being required to choose between which constitutional rights she will waive; her right to be free of unreasonable search and seizure, or her right to remain free of civil or criminal penalty in the exercise of her rights. This position is repugnant to the respondent and to the Constitution.

> "The Supreme Court has acknowledged that though a person has no 'right' to a valuable government benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interest . . . . For if the government could deny a benefit to a person because of his [exercise of] constitutionally protected [rights], his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to produce a result which it could not command directly. Such interference with constitutional rights is impermissible. Perry v. Sindermann, 408 U.S. 583, 597 (1972)." University of Colorado v. Derdeyn, 863 P.2d 929

38. The Derdeyn court found that the consequences of not being able to participate in intercollegiate athletics based on refusal to submit to drug testing must be accorded significant weight. In arriving at this decision, the fact that this was not a criminal matter added nothing to what they must balance at this point in their analysis. Participating in sports pales in significance when compared to constitutional liberties, therefore the constitutional liberties must be accorded even greater, even compelling, weight.

39. There seems to be substantial agreement with respect to the general contours of the

doctrine of unconstitutional conditions:[7] If a state has absolute discretion to grant or deny a privilege or benefit, it cannot grant the privilege subject to conditions that improperly 'coerce,' 'pressure,' or 'induce' the waiver of constitutional rights. Thus, in the context of individual rights, the doctrine provides that on at least some occasions receipt of a benefit to which someone has no constitutional entitlement does not justify making that person abandon some right guaranteed under the Constitution. When a constitutional right (rather than a benefit or privilege) is in play, a person can not be required to abandon another right guaranteed under the Constitution in order to protect the first right.

40. In this instance, where the respondent will not consent to search, the only option she has is to curtail her freedom of action.

> "Government surveillance necessarily reduces this sense of privacy; many citizens may choose to curtail their freedom of action rather than risk exposure of their activities to government scrutiny. 1 LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 2.1 at 231-33 (1978) (hereinafter "LaFave"); Amsterdam, Perspectives on the Fourth Amendment, 58 Minn. L. Rev. 348, 402-03 (1974) (hereinafter "Amsterdam"). Where, as a result of a government surveillance practice, 'the amount of privacy and freedom remaining to citizens would be diminished to a compass inconsistent with the aims of a free and open society,' Amsterdam at 403, a court may require regulation of the government practice by means of a warrant." People v. Oates, 698 P.2d 811 (Colo. 05/06/1985)

This curtailment is resulting in denying her access to the courts, threatening her liberty and, in general, restricting her right to move freely, all which should be based on her constitutional presumption of innocence.

41. The fact that the respondent is under subpoena to enter the courthouse, she is threatened with penalties for refusing to consent to search as a condition of entering the courthouse and by having been denied entry as a result. These penalties are severe, involving fine and imprisonment.

> A voluntary consent to a search is "a consent intelligently and freely given, without any duress, coercion or subtle promises or threats calculated to flaw the free and unconstrained nature of the decision." People v. Carlson, 677 P.2d 310, 318 (Colo. 1984) (citing Bustamonte, 412 U.S. 218, and People v. Helm, 633 P.2d 1071 (Colo. 1981)).

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[7] Kathleen M.Sullivan, Unconstitutional Conditions, 102 Harv. L. Rev. 1415, 1416 (1989)

Under these circumstances, any consent obtained would not be freely given, but would be predicated on the express threat of fine and imprisonment for failure to enter the building and submit to the requisite search. Such a 'consent' does not meet the legal standard required for voluntary consent.

> Whether consent to a search was voluntary "is a question of fact to be determined from all the circumstances . . . ." Bustamonte, 412 U.S. at 248-49; accord United States v. Wright, 932 F.2d 868, 878 (10th Cir. 1991) ("Whether a search was voluntary is a question of fact to be determined by the district court from the totality of the circumstances."); Carlson, 677 P.2d at 318 ("Voluntariness is a question of fact to be determined from the totality of circumstances;").

42. Consent to be searched as a condition of entering a courthouse while under subpeona or other legal device mandating the presence of the respondent is not voluntary.

> "It is quite clear that [the students] are "coerced" for constitutional purposes by the fact that there can be no participation in athletics without a signed consent. As in the cases cited, the "consent" obtained by the University is not voluntary . . . . In Bostic and Feliciano, the trial courts applied the "all the circumstances" test articulated in Bustamonte, 412 U.S. at 248-49, and found as a matter of fact that the respective plaintiffs consent to urinalysis-drug-testing was not voluntary. . .It is clear from the record that a student will be denied the opportunity to participate in CU's intercollegiate athletic program in absence of execution of a signed consent. It is equally clear that no athletic scholarship will be available to a student who does not consent to drug testing. The pressure on a prospective student athlete to sign a consent to random, suspicionless drug testing under such circumstances is obvious." University of Colorado v. Derdeyn, 863 P.2d 929
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> The government has the burden of proving that consent to a search was voluntarily given, Bustamonte, 412 U.S. at 222; People v. Savage, 698 P.2d 1330, 1334 (Colo. 1985); Carlson, 677 P.2d 310, 318 (Colo. 1984)."

43. Having exercised her right to privacy against unreasonable search and seizure under the Fourth Amendment and under Article II, Section 7 of the Colorado Constitution, this court is barred from prosecuting her for her failure to appear for the subpoena.

> "The Fourth Amendment bars prosecution of a person who has refused to permit a warrantless Code-enforcement inspection of his

personal residence." Camara v. Municipal Court of the City and County of San Francisco, 1967.SCT.1538, 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930.

In University of Colorado v. Derdeyn, 863 P.2d 929 the Colorado Supreme Court held that in the absence of voluntary consents, CU's random, suspicionless urinalysis-drug-testing of student athletes violates the Fourth Amendment to the United States Constitution and Article II, Section 7, of the Colorado Constitution.

If a law has "no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it patently unconstitutional." United States v. Jackson, 390 U.S. 570, 581 (1968).

THIRD ANSWER TO DISOBEDIENCE OF A SUBPOENA TO APPEAR AND PRODUCE DOCUMENTS

44. Respondent hereby incorporates previously submitted MOTION TO QUASH AND/OR MODIFY DEMAND TO PRODUCE DOCUMENTS AND OBJECTION TO INSPECTION OR COPYING OF MATERIALS (attached).

45. Respondent owns and/or operates no less than three unrelated enterprises, which may involve the storage of client files and agreements evidencing financial arrangements. Since the petitioner's subpoena to produce documents made no distinction as to which specific files from which specific enterprise(s) were requested, one can only ask, did the petitioner intend to investigate ***all*** files from ***all*** professional and private activities of the respondent, even if those activities are entirely unrelated to the activities described in the subsequent PETITION FOR INJUNCTION AND FOR CONTEMPT CITATION? If so, what would be the authority to enforce that request as it pertains to this investigation? Is it also the desire of the petitioner to inspect all out-of-state activities of the respondent under the authority of the Colorado Supreme Court? Respondent asserts that certain of the requested files, in fact the majority, are irrelevant to the scope of this investigation which renders the demand unreasonable, irrelevant, and oppressive, and lacking good cause. At least, in the following case, the defendant did specify what documents he was seeking:

> We note, however, that the subpoena duces tecum served on DSS by the defendant specifically demanded "any and ***all records and reports of abuse or possible abuse*** " ***concerning A. S. B.*** Records relating to public assistance and welfare are therefore not within the scope of the subpoena. People v. District Court, 743 P.2d 432

The petitioner in this case didn't even do that much.

46. Respondent participates in cases in the United States and Canada as an expert witness/consultant. Consequently, many files maintained by the respondent are protected under work product as part of the development of a case by an attorney, and as such, respondent is compelled to maintain the confidentiality of those files. These files would be irrelevant to the scope of this investigation.

47. The above described files (#45) and many other files contain information that was produced by the respondent under the supervision of and/or at the request of an attorney. These files would be irrelevant to the scope of this investigation.

48. Other files consist of writings[8]: for publication for which the respondent may or may not have received compensation; speeches and presentations at seminars; correspondence with individuals and organizations around the world who were requesting information related to various issues; and discussions of strategies and tactics which were disseminated to other like-minded activists worldwide. These files would be irrelevant to the scope of this investigation.

49. Remaining files may contain information prepared under the authority of a Colorado Statutory Power of Attorney pursuant to Colorado Revised Statutes 15-1-1301 et. seq. which renders them irrelevant to the scope of this investigation.

50. Consequently, the documents sought by the petitioner have nothing to do with activities relating to the unauthorized practice of law.

51. Colorado Revised Statutes expressly prohibits the release of confidential information under the Colorado Children's Code.

> According to the El Paso County Attorney Aubrey Moses, and as enforced by El Paso County Department of Human Services by legal opinion and written policy, the only exception is if **all** parties sign releases of confidentiality. See Exhibits 3 & 4.

Other states have similar provisions. These provisions are based on Federal Statutes. Respondent has no authority to release this information upon pain of criminal and civil penalties and the respondent has been threatened with liability if she violates this provision. (C.R.S. 19-1-307.) Any records, or contents of those records, in the respondent's possession pertaining to any Dependency and Neglect case, regardless of their origin, are covered by this provision.

"The confidentiality provision of the Child Protection Act covers the entire

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[8]Ms. Shell is a published author and writer, a public speaker, an activist, and presents training seminars nationwide.

> contents of a child abuse report and the records related thereto". Gillies v. Schmidt, 556 P.2d 82, 38 Colo. App. 233 (Colo.App. 09/02/1976)
>
> "Under section 19-10-115(2)(f), the party seeking access to the child abuse reports has the initial burden of showing the applicability of an exception to the statute's rule of confidentiality. Judkins v. Carpenter, 189 Colo. 95, 98, 537 P.2d 737, 738 (1975) (burden of proof rests upon party seeking to establish truth of a proposition)." People v. District Court, 743 P.2d 432

52. Before the respondent can release these statutorily protected records, the petitioner must prove they contain material evidence directly related to the respondent's activities which constitute the unauthorized practice of law, and even then, the records can only be released to the court for in camera review. The petitioner has not made any (much less an adequate) offer of proof requesting the court to review the subject records in camera pursuant to C.R.S. 19-1-307.

> "The court is under no obligation to review the record before there has been a sufficient offer of proof and it has made an initial finding of possible necessity. People v. Overton, 759 P.2d 772 (Colo. App. 1988)." People v. Exline, 775 P.2d 48 (Colo.App. 12/01/1988)
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> "We note first that even under Pennsylvania v. Ritchie, supra, a defendant cannot require the trial court to search the record in camera "without first establishing a basis for his claim that it contains material evidence." Pennsylvania v. Ritchie, supra, 480 U.S. at 58, 107 S.Ct. at 1002, 94 L.Ed.2d at 58." People v. Turley, 870 P.2d 498 (Colo.App. 05/20/1993)

53. Respondent respectfully reiterates her previous requests for the court to quash the demand to produce documents.

54. Respondent respectfully requests the court to find that she is not in contempt for reasons consistent with paragraphs 1 to 53 above.

Respectfully submitted June 11, 2001

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Suzanne Shell, Respondent