"In Law or Equity"?

by Alfred Adask

For the past two or three generations, state and federal judges have increasingly ruled against Americans who defend themselves with the principles, rights, and laws mandated by their state or national constitutions. Occasionally, trial court judges even issue a seemingly impossible declaration, "Don't bring that Constitution into my court!" Although the reasons are unclear, there is growing suspicion that our courts are somehow no longer bound to recognize, obey, or enforce the law – and Americans can no longer demand the "unalienable rights" formerly guaranteed by our constitutions.

Some patriot researchers attribute governmental "lawlessness" to the fact that our currency (Federal Reserve Notes) is no longer lawful money (i.e., it's not backed by gold or silver). Others blame the loss of law on the "national emergency" that's effectively suspended the Constitution since 1933 [See "Rising Tides", this issues]. Others trace our loss of rights back to government's use of martial (military) law which was imposed on us "temporarily" during the Civil War (1861-1865) but allegedly continued to this day. While the explanations vary, there is widespread agreement that: 1) Americans no longer enjoy "constitutional Rights"; and 2) virtually all of today's courtroom "trials" are actually administrative hearings.

In 1997 (in *AntiShyster* Vol. 7 Nos. 1 & 4), I published my first speculation that government is using *trusts* (like Social Security, Medicare, and the National Highway Trust) as one of, perhaps *the* principle device to "legally" bypass the Constitution and thereby deprive us of our Rights. A year later, my "trust fever" burns even hotter, supported by a growing body of indirect evidence.

Some of this evidence is seen in the similarity between our court's persistent use of seemingly unconstitutional procedures, and the lawful (though not precisely "constitutional") procedures routinely the practiced in courts of *equity*.

Curiously, controversies involving trusts are 1) virtually always *administered* in courts of equity, not adjudicated in courts of law; 2) there are *no "legal rights"* in courts of equity; and 3) under Article III, Section 2 of the Constitution ("The judicial Power shall extend to all Case, in Law and Equity . . . ."), courts of equity are absolutely *constitutional*.

In other words, if your case were "accidentally" tried in a court of equity rather than a court of law, you would experience the same frustration as "patriots" who see their constitutional rights ignored and their cases *administered* (under some mysterious procedure they can't quite understand) rather than *adjudicated* in law.

If government has truly established legal procedures in which we are tried administratively without constitutional rights, and *if* government is using lawful courts of equity to implement this procedure – then perhaps government has not imposed some bizarre new system of *law* (martial, maritime or admiralty, etc.) upon us, but has instead imposed a new individual *status* upon us which makes us "appear" as "entities" that can be properly tried in equity rather than law. Maybe government changed *us* from real, flesh-and-blood persons (who must be tried in law) to artificial entities (that must be tried in equity). If "trust fever" is valid, our failure to understand and recognize "equity" may be a fatal defect in our forays into the judicial system.

Dad – what's an equity?

Most of us have a dim idea of what "law" means, but few understand the meaning of "equity". However, before we can understand equity, we must first understand law, and to understand law, we must first understand Rights.

The primary purpose of courts of *law* is to determine each litigant's *legal* rights; the primary purpose of courts of *equity* is to determine each litigant's *equitable* rights. Legal rights are based on *legal* (not equitable) title and ultimately believed to be clearly given by God, not man. Equitable rights, on the other hand, are imperfect, imprecise, vague and while sometimes traceable to God, they are more likely to be derived from man.

It appears to me that if your rights are legal (based on legal, not equitable, title), you have "legal standing" and access to courts of law. However, if your "rights" are only equitable, you have *no legal rights and therefore no standing in law or access to courts of law*. If you don't understand the nature of

your rights (legal or equitable) you won't understand whether you are being tried in courts of law or courts of equity. The distinction is crucial since *courts of equity are not legally bound to recognize legal, constitutionally-protected, God-given rights*. Therefore, if you argue legal rights or law in a court of equity, the judge may lawfully dismiss your arguments as "frivolous" and you will lose your case.

Learning from history?

What follows are several definitions from the 1856 edition of *Bouvier's Law Dictionary* which illustrate the relationship and differences between rights, law and equity. For emphasis, I've *italicized* or underlined various words and phrases. Footnotes and [bracketed] comments are my insertions:

RIGHT. . . that quality in a person by which he can do certain actions, or possess certain things which belong to him *by virtue of some title*. . . .

[*Crucial* point: Apparently, rights flow from – and depend on – *title.* Without title, you have *no* rights. With title, your rights will depend on the "quality" of that title: I.e., lessor title generates lessor rights; superior title generates superior rights. Equitable title generates *equitable* rights, but only *legal* title generates *legal* rights.]

2. . . Right is the correlative of duty, for, wherever one has a right due to him, some other must owe him a duty. [I.e, if I have a right, someone else has a duty. But if I have no rights, no one else (not even government) has any correlative duties. This concept is vital to understanding Law.] . . .

9. These latter rights are divided into absolute and relative. The absolute rights of mankind may be reduced to three principal . . . articles: the right of personal security, which consists in a person's *legal* and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation; the right of personal liberty, which consists in the power of locomotion, of changing situation, or removing one's person to whatsoever place one's inclination may direct, without any restraint, unless by due course of law; the right of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, ["acquire" means to secure *legal* title to property; "purchase" means to secure *equitable* title.] without any control or diminution, save only by the laws of the land. . . .

10. The relative rights are public or pr*ivate: the* first are those which subsist between the people and the government, as the right of protection on the part of the people, and the right of allegiance which is due by the people to the government; the second are the reciprocal rights of husband and wife, parent and child, guardian and ward, and master and servant.[1]

11. Rights are also divided into legal and equitable. The former are those where the party has the *legal title* to a thing, and in that case, his remedy for an infringement of it, is by an action in a court of *law*. Although the person holding the legal title may have no actual interest, but hold only as *trustee*, the suit must be in his name, and not in general, in that of the cestui que trust [a trust's *beneficiary*] . . . . Equitable rights are those which may be enforced in a court of equity by the cestui que trust.[2]

LAW. . . law denotes the rule . . . of human action or conduct. In the civil code of Louisiana . . . it is defined to be "a solemn expression of the legislative will."[3] . . .

2. Law is generally divided into four principle *classes*, namely; Natural law, the law of nations, public law, and private or civil law. When considered in relation to its origin, it is statute law or common law. When examined as to its different *systems* it is divided into civil law, common law, canon law. When applied to objects, it is civil, criminal, or penal. It is also divided into *natural* law and *positive* law[4] . . . Into law merchant, martial law, municipal law, and foreign law[5]. . . .

EQUITY. In the early history of the law, the sense affixed to this word was exceedingly vague and uncertain. . . It was then asserted that equity was bounded by no certain limits or rules, and that it was alone controlled by conscience[6] and natural justice. . . .

3. . . The *remedies* for the redress of wrongs, and for the enforcement of rights, are distinguished into *two classes*, first, those which are administered in courts of common *law*; and,

secondly, those which are administered in courts of *equity*. Rights which are recognized and protected, and wrongs which are redressed by the former courts [of law], are called *legal* rights and legal injuries. Rights which are recognized and protected, and wrongs which are redressed by the latter [equity] courts *only*, are called *equitable* rights and equitable injuries. The former are said to be rights and wrongs at common law, and the remedies, therefore, are remedies at common law; the latter are said to be rights and wrongs in equity, and the remedies, therefore, are remedies in equity. Equity jurisprudence may, therefore, properly be said to be that portion of remedial justice which is exclusively administered by a court of equity, as contradistinguished from that remedial justice, which is exclusively administered by a court of law.[7]

EQUITABLE ESTATE. An equitable estate is a right or interest in land, which, not having the properties of a legal estate, but being merely a right of which courts of equity will take notice, *requires the aid of such court to make it available*.[8]

2. These estates consist of uses, *trusts*, and powers. . . .

EQUITY, COURT OF. . . . one which administers justice, where there are no legal rights, . . . but [is used when] courts of law do not afford a complete, remedy, and where the complainant has also an equitable right. [see] Chancery.

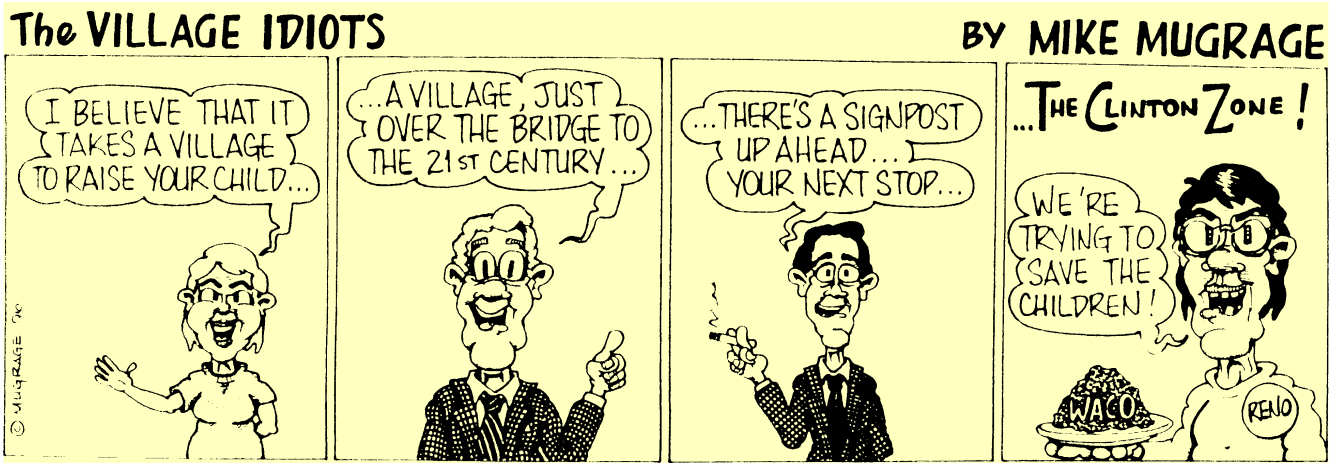
CHANCERY. The name of a court exercising jurisdiction *at* law, but mainly *in* equity.

2. It is not easy to determine how courts of equity originally obtained the jurisdiction they now exercise.[9] Their authority, and the extent of it, have been subjects of much question, but time has firmly established them . . . .

3. . . . "American courts of equity are, in some instances, distinct from those of law; in others, the same tribunals exercise the jurisdiction *both* of courts of law and equity, though their *forms* of proceeding are different in their two capacities.[10] The supreme court of the United States, and the circuit courts, are invested with general equity powers, and act *either* as courts of law or equity, according to the *form* of the process and the *subject* of adjudication. . . . In most of the states, the two jurisdictions centre in the *same* judicial officers, as in the courts of the United States; [In other words, both state and federal judges can hear cases in *both* law *and* equity.] . . . .

4. The jurisdiction of a court of equity differs essentially from that of a court of law. The remedies for wrongs, or for the enforcement of rights, may be distinguished into two classes those which are administered in courts of law, and those which are administered in courts of equity. . . .

In . . . America, courts of common law proceed by certain prescribed f*orms*, [not precisely true since 1982] and give a general judgment for or against the defendant. They entertain jurisdiction *only* in certain actions, and give remedies according to the particular exigency of such actions. But there are many cases in which a simple judgment for either party, without qualifications and conditions, and particular arrangements, will not do entire justice . . . to either party. Some *modification of the rights* of both parties is required; some *restraints* on one side or the other; and some *peculiar adjustments*, either present or future, temporary or perpetual. In all these cases, courts of common law have no methods of proceeding, which can accomplish such objects. Their *forms* of actions and judgment are not adapted to them. The proper rem-



edy cannot be found, or cannot be administered to the full extent of the *relative* rights of all parties. . . . In such cases, where the courts of common law cannot grant the proper remedy or relief, the law . . . of the United States . . . authorizes an application to the courts of equity or chancery, which are *not confined* or limited in their modes of relief by such narrow [legal] regulations, but which grant relief to all parties, in cases where they have rights . . . and modify and fashion that relief according to *circumstances*[11]. . . .

The jurisdiction of a court of equity is sometimes concurrent with that of courts of law and sometimes exclusive. It exercises concurrent jurisdiction[12] in cases where the rights are purely of a legal nature, but [exercises exclusive jurisdiction] where other and more efficient aid is required than a court of law can afford to meet the difficulties of the case, and ensure full redress.

. . . The remedy [in equity] is often more complete and effectual than it can be at law. . . . [E]specially in some cases of fraud, mistake and *accident*,[13] courts of law cannot and do not afford any redress; in others they do, but not always in so perfect a manner. A court of equity . . . . will remove *legal impediments* to the fair decision of a question depending at law.[14] It will prevent a party from improperly setting up, at a trial, some title or claim, which [might be *legal*, but] would be inequitable. It will compel [the party] to *discover*, on his own oath, facts which he knows are material to the rights of the other party, but which a court of law cannot compel the party to discover.[15] It will perpetuate [record] the testimony of witnesses to rights and titles, which are in danger of being lost, *before* the matter can be tried [at law].[16]

It will counteract and control, or set aside fraudulent judgments. It will provide for the safety of property in *dispute* pending litigation.[17]

It will exercise . . . an exclusive jurisdiction . . . in all cases of merely equitable rights, that is, such rights as are *not recognized in courts of law.* [I.e., if you lack *legal* title to the subject of litigation, your case must be heard in equity; i.e., you have no access to *law*.] Most cases of *trust* and confidence fall under this head.[18] Its exclusive jurisdiction is also extensively exercised in granting special relief *beyond* the reach of the common *law*. . . . it will restrain any *undue exercise of a legal right*, against conscience and equity [Courts of equity can "legally" overrule legal rights, but probably only on a case-by-case basis. I.e., an equity judge is "legally" empowered to ignore the litigants' legal rights and the law.]; . . . it will, in many cases, supply the imperfect execution of instruments, and reform and alter them according to the real *intention* of the parties;[19] . . . and, in all cases in which its interference is asked, its general rule is, that he who asks equity must do equity. If a party, therefore, should ask to have a bond for a usurious debt given up, equity could not decree it, unless he could bring into court the money honestly due without usury.

. . . [I]n matters within its exclusive jurisdiction, where substantial justice entitles the party to relief, but the positive law is silent, it is *impossible to define the boundaries* of [equitable] jurisdiction, or to enumerate, with precision, its various principles."

Unbridled power

If Bouvier is correct and equity has no "defined boundaries" or limited "enumeration of its various principles," there is truly *no* "law" in a court of equity. In a sense, a court of equity is absolutely contrary to the constitutional mandate for a limited government. The judge (or other government official acting as a trustee) can do virtually anything he deems proper that is consistent with "public policy" so long as his actions can be justified as "reasonable" or at least not "shocking to the conscience". This is consistent with allegations that courts (of equity) now "legislate from the bench" to create "judge-made law" by exercising the unbridled power that the Constitution was intended to prevent.

I suspect that the fundamental flaw in our Constitution may be the legitimization of courts of equity where litigants had no rights and judges have no law. This may be the fundamental constitutional "crack" that allowed the entrance of big, non-constitutional government, bureaucracies et. al.

Ha. Ha. Ha. It is to laugh.

At first, it sounds kinda nuts, but "by law," courts of equity can't recog-

nize "law". That is, according to Bouvier's definitions, courts of equity can't normally recognize legal arguments or determine legal issues. As a result, if you try to defend yourself in a court of equity with legal arguments based on positive law and constitutionally-protected Rights, you'd probably lose since the judge can't "legally" recognize legal arguments. You'd be as absurd as a man arguing baseball rules at a football game, and the judge would properly dismiss your arguments as "frivolous".

But stranger still, even though you used "frivolous" legal arguments in a court of equity, if the judge merely liked you, or felt capricious, or particularly disliked your opponent, the judge could rule in your favor – for no discernible legal reason! As a result, one man could make a legal argument in a court of equity and win, while another man could make the same legal argument under identical circumstances, and not only lose but wind up in jail. Because the equity court judge has virtually unlimited discretion/ power, the "law" would become a complete crapshoot, where the only way to win would be to suck up to the judge, and the only thing a judge might fear would be public exposure. That's a fairly accurate description of today's judicial system. (This also signals that the "magic words" for court watchers' affidavits might be the judge's ruling "shocked my conscience" or was "unreasonable".)

Further, the resultant confusion and misunderstanding might be enormous and even intentional. Suppose a particular "patriot" reached the erroneous conclusion that the traffic courts were acting under admiralty law. Suppose he defended against a speeding ticket with (erroneous) admiralty arguments, but the judge still knowingly ruled in his favor. Next thing you know, that patriot could be out on the seminar circuit, charging $100 a head to hear him explain how to beat traffic tickets with admiralty law. Then, hundreds of his students would start jamming the traffic courts with admiralty arguments, and virtually all of 'em would be quickly wisked off to jail before the judge burst out giggling at their lunacy.

In theory, I can even imagine a group of judges, sitting around a bar, holding their sides with gleeful laughter as they swapped stories of the last irrational decisions they made in court. "Admiralty?!" gasps one. "Hell, that's nothin' – I just ruled in favor of a kid who argued the cop was a *space alien!* You wait six months, and every fool patriot in the country will be arguing the cops are all 'greys' from *Jupiter!*"

OK, maybe the hypothetical judges didn't really meet to snicker over the latest irrationality they "seeded" into the patriots' "understanding" of law. But what about the lawyers? Wouldn't they also be frustrated and driven half nuts by the unbridled discretion of equity court judges and the resultant judicial caprice? How long would it take the average lawyer to realize that (for whatever reason), there's no point to studying or arguing *law* because *law* no longer works. If you want to win, you kiss the judge's butt, join the same country club, be a Mason, make huge financial contributions to the judge's political campaign fund (even if he has no opponent in the election), and in really important cases, bribe the old s.o.b. Does this sound a like a fairly accurate representation of current judicial reality? Yes.

My point is that a judicial system that relied almost entirely on equity would soon deteriorate into a chaos reminiscent of Alice In Wonderland. Every time you turned around, there'd be some "Red Judge" hollering "Off with his head!" A judicial system that recognizes no legal rights or positive law is destined to degenerate into a raw power struggle, a kind of feeding frenzy between lawyers, litigants and judges.

America cannot survive without legal rights, positive laws, and courts that recognize them.

Lose your form, lose your substance

One reason for the confusion between law and equity goes back to 1982 when the federal courts in their infinite wisdom *combined* the procedural "forms" of law and equity into a single, uniform procedure. The usual explanation for unification of legal and eq-

uitable procedures was that it "simplified" the practice of law so attorneys and litigants would only have to learn one complex set of forms and procedures rather than two.

Nice theory, but unified procedure creates at least one adverse consequence. Once law and equity procedures appear identical in form, litigants and lawyers could no longer automatically tell from the form of a court's documents and procedures whether their case was being tried in law or administered in equity. Attorneys compensated for this uncertainty by adding boilerplate to their pleadings to "pray the court" for all awards and remedies that might be due their clients "in *both* law and equity". That way, if the court was operating in law – fine, the client could win in law. If equity – the client could also win.

But once it became difficult to distinguish between the procedural *forms* of law and equity, the need to distinguish between their *substance* was also diminished. Cases were won or lost, not on law, but on *procedure*. Again and again, the courts, law schools and lawyers chanted their mantra "procedure, procedure, procedures."

If the judge said you won, hooray! If he said you lost, too bad, you could always appeal (and pay more money to your lawyer). But the judge was always viewed as solely responsible for his decision, and the lawyers were implicitly relieved from liability for failing to argue only law in a court of law, or only equity in a court of equity. The client, of course, never had a clue. Moreover, he seldom realized that his lawyers didn't have a clue, either, in this "brave new world" of unified procedure.

However, there might be an even greater danger in "unifying" the procedures of law and equity: deception. To illustrate, suppose a trustee was in charge of two bank accounts; one for your senile grandmother and another for your aging grandfather. And suppose that while the trustee faithfully managed your grandfather's account, he systematically embezzled money from grandma's until she was virtually penniless. Suppose grandma and grandpa died, causing the trustee to provide a full accounting to the heirs for all the money he'd been administering in the two accounts. Since grandma's account was empty, an accounting would reveal the embezzlement. How could the trustee conceal the empty, embezzled account?

What if the trustee told the heirs that, in order to "simplify" the procedural problems inherent in probating *two* bank accounts, he "combined" all the money from grandma's and grandpa's two bank accounts into a single "family" account? The heirs, assuming the trustee was helping them to easily inherit a single fat bank account, would approve. But, in fact, by *combining* the two bank accounts into one, the trustee could conceal the fact that Grandma's account was empty.

Similarly, I suspect the real purpose behind "unifying" law and equity procedures may have been to conceal the fact that Americans no longer have easy access to *law*. Like Grandma's embezzled bank account, our law is now mostly missing. So long as the procedural *forms* of law and equity were different, if law "disappeared", its loss would be instantly obvious when someone tried to sue using the traditional procedure associated with law. The courts would reject the "legal" procedure, the litigant would ask Why? and the courts would have to admit he no longer had any legal rights or legal standing. That admission would be truly "politically incorrect".

But by combining the procedural forms that previously distinguished law from equity, the judicial system could very nearly conceal the fact that law virtually disappeared. A person could sue using the new-and-improved "unified" procedural forms, and think he was operating in law – when he was in fact operating in *equity*. The courts could accept his procedure and then rule either for or against him (their discretion is nearly unbounded in equity) and, if he lost, never bother to explain that his "legal" arguments were truly "frivolous" since there is no law in a court of equity.

Of course, this hypothesis sounds preposterous – and it may be. Nevertheless, until I find proof to the contrary, this equity-passing-as-law hypothesis "fits" with otherwise inexplicable but verified observations of judicial "lawlessness". Further, even if our law has not been "replaced" by equity, I still suspect that 90% or more of our current court cases are being administered in equity rather than adjudicated in law. If that's true, then we must understand equity so we can effectively present our cases in court.

Arraigned in law – or equity?

Here's another definition from *Bouvier's Law Dictionary* (1856) that may help "signal" whether a "criminal" trial is taking place in equity rather than law.

ARRAIGNED, crim. law practice. Signifies the calling of the defendant to the bar of the court, to answer

the accusation contained in the indictment. It consists of three parts.

1. Calling the defendant to the bar by his name, and commanding him to hold up his hand; this is done for the purpose of completely identifying the prisoner, as the person named in the indictment; the holding up his hand is not, however, indispensable, for if the prisoner should refuse to do so, he may be identified by any admission that he is the person intended. 1 Bl. Rep. 3.

2. The reading of the indictment to enable him fully to understand, the charge to be produced against him; The mode in which it is read is, after saying, "A B, hold up your hand," to proceed, "you stand indicted by the name of A B, late of, &c., for that you on, &c." and then go through the whole of the indictment.

3. After this is concluded, the clerk proceeds to the third part, by adding, "How say you, A B, are you guilty or not guilty?" Upon this, if the prisoner, confesses the charge, the confession is recorded, and nothing further is done till judgment. If, on the contrary, he answers "not guilty", that plea is entered for him, and the clerk or attorney general [prosecutor], replies that he is guilty; then an issue is formed. . . . .

Vewwy intewesting

The previous definition implies:

1) Arraignments take place in criminal *law* – but it says nothing about "arraignments" in alternative legal arenas like *equity*. (Can you be truly "arraigned" in *equity*?)

2) Your *name* is the first, crucial element to proceeding with the arraignment. Apparently, if you are not properly named and identified, the court cannot proceed.

3) *Any* indication that a "person" in court is the same "person" being arraigned is sufficient to allow the court to proceed with the arraignment, indictment, etc.

At first glance, the identification requirement seems unremarkable, but there could be some unexpected confusion since, today, the term "person" includes both "real" and "artificial" entities. A "real" entity is a natural, living, flesh-and-blood man or woman. An "artificial" entity includes imaginary, man-made "creations" like corporations and trusts.

As explained in "My Evil Twin" (this issue of the *AntiShyster*), it appears that the *capitalized* name "Alfred Norman Adask" identifies the real, flesh and blood "person" who – as a member of We The People – is generally superior to government's administrative authority. However, the "same" name written in *upper-case* letters "ALFRED N. ADASK" may identify an *artificial entity* which is completely subject to government control. As a result, although the two names sound alike, if they identify two entirely different legal entities, they are not really the "same".

Unfortunately, while the distinction between the two name forms can be seen in print, it can't be heard in speech. This may be important since a *real* defendant (Alfred) has constitutionally-protected, God-given legal rights which must be tried in *law*, an artificial entity (ALFRED) being "tried" (actually "administered") in "equity", has no legal rights whatever.

So what would happen if the judge called out the name "ALFRED N. ADASK" (artificial entity) and "Alfred Norman Adask" (real) heard the sound of a name similar to his own, assumed the judge was talking to him, and mistakenly raised his hand to signal he (Alfred) was ALFRED? Could the court be so blind (or deceptive) as to allow "Alfred N. Adask" to be arraigned in the stead of "ALFRED N. ADASK"? I think the answer is Yes.

If so, it seems probable that if you were able to properly notify the court that you are John B. Doe (real) rather than JOHN B. DOE (artificial), you might be able to avoid administrative hearings whenever the government's paperwork identified and sought to "arraign" or "administer" JOHN B. DOE (a creature of the state).[20]

4) Now, here's the good part: Note that according to *Bouvier's* definition, after the proper person is identified, and the charge read to him: ". . . the clerk proceeds to the third part, by adding, 'How say you, A B, are you guilty or not guilty?'"

If the defendant pleads "guilty", the trial moves directly to the judgment phase where the judge pronounces punishment.

But, if the defendant "answers 'not guilty' . . . *and* the clerk or attorney general [prosecutor], replies that he *is* guilty; *then* an *issue* is formed."

See it?!

The definition implies that – in *law* – it's not enough that you merely respond "not guilty" to the government's charges. After you plead "not guilty," someone from the government's side (either the clerk or prosecutor) *must contradict* your "not guilty" plea by "replying" that you *are* guilty. Why? Just like the definition says, to "form" an "*issue*".[21]

What's an "issue"? It's a controversy that seeks settlement by the court of *law*. For example, if I say you stole my money, and you must say you didn't. One of us argues Yes, the other No. Now we have an "issue" which allows the court to use it's various procedures to determine which of us has sufficient evidence to "prove" his argument. But without an "issue", the court

of *law* has nothing to determine, nothing to decide, no evidence to compare and weigh – nothing to adjudicate. And that probably means no *legal* jurisdiction.

In my experience of alleged arraignments and apparent trials, the prosecutor reads the charges and the judge asks the defendant, "How do you plead? Guilty or Not Guilty?" The defendant (typically) says "Not Guilty", and the judge says, something like, "OK, Mr. Prosecutor, bring on your first witness." But no one *contradicts* the defendant's "not guilty" plea. The prosecutor does not "reply" (as *Bouvier* requires) that "Oh, yessss he is, Your Honor! He is guilty as Hell!" (or words to that effect).

Therefore, if you are charged with an apparent crime and the court asks for your pleas ("Not guilty"), but the prosecutor offers no contrary response to your plea, could it be that you are being "tried" in equity rather than law? If so, it might follow that a "charge" in a court of equity is not a question waiting for a preliminary answer from the defendant, but an administrative statement of fact that is already presumed to be true. In other words, in equity, there might not be a presumption of innocence for the defendant/beneficiary. However, if there is any presumption of "innocence" or honesty in courts of equity, that presumption favors the plaintiff/prosecutor/trustee.

If a charge in equity is really just a statement of administrative fact presumed to be true – where is the controversy? Without a presumption of innocence, a declaration of innocence, and the prosecution's contradictory reply, where is the "issue" for the court to adjudicate in *law*? And if there's no issue but the court still proceeds – what can that mean, except maybe it's not a court of *law*? Maybe it's some other kind of court that does not require a bona fide "issue" to proceed. Maybe it's a court of equity.

Of course, perhaps arraignment procedure in law has fundamentally changed since Bouvier defined "arraignment" in 1856. But I'll bet it hasn't. I'll bet that over time we've been deceived into assuming that an "issue" for the court to adjudicate in law (not administer in equity) is created when 1) the prosecutor first reads the charge, and 2) the defendant denies the charge by pleading "not guilty". We have *assumed* the defendant's reply ("not guilty") contradicted the prosecutor's charge and thereby created an issue empowering the court to proceed in law.

Maybe so. After all, what difference does it make if I deny the prosecutor's charges, or if the prosecutor denies my "not guilty" plea? Maybe none, but if it doesn't matter, why did the procedure change? Why has government decided that it no longer needs to contradict a defendant's "not guilty" plea?

As usual, I don't know. But I suspect that lack of contradiction by the government signals the case is not an "issue" to be adjudicated in *law* – it's a "dispute" to be administered in *equity*. If so, the average defendant could argue endlessly about his "constitutional rights" (which clearly exist in *law*) and still be found guilty when the judge rules his arguments are "frivolous".

The presumed defendant (who *assumes* he's being tried in *law*) would be incensed that the judge ignored his "constitutional arguments". But if the case were actually being heard in *equity*, 1) the "defendant" would probably have the legal status of a "beneficiary"; and 2) the *only* relevant "law" (the "law of the case") would be the contract or trust indenture under which the defendant/beneficiary was being "tried". Until the defendant/beneficiary identified that underlying contract or trust indenture and rendered it void (perhaps for fraud), the defendant/beneficiary would remain in *equity* where "constitutional rights" are irrelevant and only government "policy" may (or may not) be honored according to the judge's conscience and personal discretion.

Again, all of this is conjectural. Nevertheless, it appears that since a modern "arraignment" does not follow the 1856 procedure for creating an "issue" in law, the modern arraignment does not, in fact, take place in *law*, but rather in *equity*. If so, anyone who argues law in an equitable, administrative hearing is as foolish as a man arguing football rules at a baseball game, and therefore bound to lose.

However, where previously, the

foolish man was the defendant arguing law, it might be that by understanding and arguing (or challenging) equity, we might be able to expose the prosecutor or plaintiff as the fool, since I doubt that any of 'em are prepared to concede the deception and admit that almost all of their trials are in equity.

Summary

Historically, courts of *equity* have had four important characteristics that allow them to operate in ways that would appear illegal or unconstitutional in courts of *law*. First, courts of equity have no obligation to recognize *legal rights* or *legal arguments*. Second, they function almost entirely according to the alleged "conscience" and personal discretion (*unbridled power)* of the judge on a case-by-case basis. Third, they are the natural court to hear cases based on *trusts*. Fourth, they are primarily available to hear the pleas of trust *beneficiaries* who, by definition, have *no legal title* and therefore *no legal rights* to property.

Today, our courts routinely behave in ways that seem unpredictable and contrary to *law*. There are several hypotheses to explain these apparent contradictions. This article explored the possibility that, for reasons yet to be fully understood, our courts of *law* have virtually disappeared and our preexisting courts of equity have surreptitiously "expanded" to fill the void. If so, when we assume we are being tried in law, we are actually being administered in equity. Failure to recognize this hypothetical distinction guarantees a judicial loss.

This hypothesis is unproven, but there is indirect evidence that suggests our cases are routinely administered in courts of equity rather than tried in courts of law. This indirect evidence is seen primarily in the similarities between the apparently unconstitutional powers of today's courts and the legitimate powers that could be exercised by courts of equity. In other words, our current complaints about our *presumed* courts of *law* might be explained if our *presumption* was false and, in fact, our courts were courts of *equity*.

The research (and conjecture) continues.

[1] How 'bout the reciprocal rights of the *trustees* and *beneficiaries* of trusts? Are those "private" and therefore "relative", vague and undefined?

[2] This implies that only *beneficiaries* (who, by definition, have only *equitable* title to trust property) can sue in courts of equity. More importantly, anyone defined as a "beneficiary" has no legal standing and may therefore be "lawfully" denied access to courts of *law*. Perhaps only trustees (who retain legal title to trust property) have automatic access to courts of law.

[3] Law describes the *correlative* relationship between rights and duties. In this sense, law is first an exercise in logic: If A, then B. If one person has a right (A), then by "law", another person must have a correlative duty (B). For example, if I paid for and have a right to a property, the previous owner has a duty to give me that property. However, some people do not obey this "natural" logical law. Therefore, governments are instituted to pass *positive* laws which declare in no uncertain terms, "If A, then B – or else C". Now, if the former owner of the property refuses to surrender it to me, government has a duty to *enforce* my right by compelling the person to give me the property and may even punish the person for failing to do so voluntarily. But if I have no right, no person has a correlative duty, and government has no duty of enforcement. More importantly, without

rights, there can be no "logical equation" – there is *no law*.

[4] If law is either "positive" or "natural" (equitable), then perhaps the Congressional statutes codified in "non-positive" federal Titles (like Title 26; the IRS laws) have been passed as *equity* rather than law.

[5] "Equity" is not listed as a "class" or "system" of law – but as you'll see in subsequent definitions of "equity" and "equitable" – *natural* law and equity may be synonymous.

[6] Whose "conscience"? The *judge's* conscience. This is consistent with modern observations of unbridled judicial power.

[7] I.e., "law" and "equity" are exclusive and separate. Therefore legal arguments and remedies that may be compelling in courts of law have no force (they are "frivolous") in a court of equity.

[8] This implies that unlike our intrinsic, unalienable, legal rights (given us by God), equitable rights are virtually nonexistent without a *court's* declaration. While litigants can *demand* their legal rights from other people, they can only can only ask, plead, and "pray" that their equitable rights be enforced by a court of equity. Your vague, imperfect equitable rights do not exist without a government/ court's declaration.

[9] The probable explanation is obvious; they resulted from the usurpation of power by government officials who were frustrated by legal impediments imposed by the God-given rights of "uppity" common litigants.

[10] In 1856, by their procedural "forms" you could know them. However, since the 1930's and later federal laws passed in 1982, the procedural "forms" of law and equity have been "combined", are now virtually indistinguishable and give no prima facie clue to their substance.

[11] "Circumstances" – not *law*. I.e., the court of equity judge has virtually unlimited discretion/ power. Although we falsely believe all our "rights" are immutable, courts of equity exist, in part, to "modify", "restrain", or "adjust" our rights! Unfortunately, few of us understand the difference between legal and equitable rights. I suspect courts of equity can only "modify" our *equitable* rights – but may not be able to even *recognize* our *legal* rights!

[12] "Concurrent jurisdiction" is consistent with "patriot" complaints that judges exercise "dual" jurisdictions and/ or extralegal powers.

[13] Does this mean that all traffic "accidents" and insurance cases must be administered in courts of equity?

[14] This implies that a fundamental purpose for equity is to *ignore* on a case-by-case basis those laws which are seen as "unfair" or "politically incorrect" and allow decisions according to "public policy" or even public *opinion* rather than positive law.

[15] This sounds much like the current judicial system's emphasis on "discovery".

[16] Based on the "testimony" in a court of equity, could a litigant appeal to a real court of *law* in a subsequent "trial de novo"?

[17] This implies that courts of equity may hear "disputes" presented by "disputants" (if there are such things), while courts of law hear "controverseys" presented by "litigants".

[18] I.e., trust-based cases are usually heard in equity. If government is using trusts to (usually) place us in the status of beneficiaries, then our cases might always be *administered* in courts of equity.

[19] This might mean equity courts can reinterpret contracts according to the "real" intentions of the parties. If so, this power could be easily mistaken for making ex post facto laws.

[20] I've only seen one court case in my life wherein the defendants were identified in the case title by their Capitalized Names rather than their UPPER CASE NAMES. It was a criminal trial of three *judges*. I'm not sure why the Judges used their Capitalized Names, but perhaps doing so served notice on the face of the court documents that they were real persons (not artificial), possibly members of We The People (the court's creator) and therefore not automatically subject to the court's jurisdiction.

[21] This implies that a "charge" in law may not be a statement so much as a question, as in, "According to this piece of paper (not a real man) Bill Smith says you killed Bob Jones – true or false?" If you, a real person, answer False (not guilty), some other real person must stand up and contradict your answer. Real persons are presumed innocent. That is, real persons are presumed to have answered truthfully. Therefore, it's up to the opposing party to present enough evidence to prove you are lying and therefore guilty of the alleged crime.