

[example]

and its relevance to:
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“FREE FROM ALL RESTRAINT OR INTERFERENCE OF OTHERS”³

**UNION PACIFIC RAILWAY CO.
V. BOTSFORD 141 U. S. 250 (1891)**

[U.S. Supreme Court]

AN ESSAY: REFUSE COURT EXAMINATION ORDER

FREEDOM FROM INTERFERENCE

A judicial hearing to determine the capacity of a person to live free from the influence of others is an adversarial process. One method to determine the incapacity of another begins with a formal petition by a plaintiff* to a court of proper jurisdiction. The alleged incapacitated person, the defendant, may have no idea that a plaintiff contemplated such a petition. He or she may have no reason to believe that their personal life is in need of outside control, have not caused the plaintiff any loss, and may not be a threat to their person or a threat to others, or worthy of confinement. In some cases a plaintiff's motivation is for personal profit; simply to acquire the assets of the alleged incapacitated person for the plaintiff's personal gain. Similarly, personal profit can motivate others to associate with the plaintiff to help realize success.

- **Imminent danger to the alleged incapacitated person, who is criminally and civilly innocent, begins with a court ordered pre-trial examination by an examining committee.**

Court ordered examinations, and examining committee members, are controlled by statute.

If indicated, the committee's examination must be comprehensive and include: ¹

1. **A physical examination;** ¹
2. **A mental health examination;** ¹
3. **A functional assessment;** ¹
4. **A diagnosis, prognosis, and recommended course of treatment.** ¹

Court ordered comprehensive examinations of such innocent persons' minds and bodies may be unlawful.

“No right is held more sacred or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others unless by clear and unquestionable authority of law.” ^{2,6}

“...anyone may expose his body, if he chooses, with a due regard to decency and with the permission of the court, but that he cannot be compelled to do so in a civil action without his consent.” ³

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” ⁴

The plaintiff creates the allegations by which an alleged incapacitated person presents to an examining committee. Any pre-trial examination of an alleged incapacitated person in a trial at law provides the plaintiff or plaintiff's counsel with an unjust intrusion for information that the plaintiff may use against the defendant.

“It is not according to common usage to call a party in advance of the trial at law and subject him to all the skill of opposing counsel to extract something which he may use or not as it suits his purpose....” ⁵

Nine years after *Botsford*, a U.S. Supreme Court ruling allowed examination of a **plaintiff**, but was silent regarding a defendant. **CAMDEN AND SUBURBAN RY. CO. v. STETSON 177 U.S. 172 (1900)**

“This court has taken another view of the subject, in the decision of *Botsford's case*, above cited. But by reason of the statute of New Jersey, in which State this action was brought, there being no law of Congress in conflict therewith, we hold that the courts of the United States therein sitting have the power under the statute and by virtue of section 721 of the Revised Statutes of the United States to order the examination of the person of the plaintiff, and we, therefore, answer the third question of the court below in the affirmative, and *It will be so certified.*” ⁶

Potentially, an examination order against an alleged incapacitated and innocent person, to benefit a plaintiff, is beyond the court's authority. The court itself may well step beyond impartiality when it creates a court

appointed examining committee when the committee's findings assist the plaintiff in the process of discovering evidence. Such an order may only pretend to legitimize the examination that ultimately determines the defendant's ability to retain his or her civil rights. The examination is customarily presented or perceived as being beyond refusal of the person to be examined; however,

"The right to one's person may be said to be a right of complete immunity; to be let alone." ²

The right(s) to one's person that may be lost, without limitation, include the rights to consent to medical treatment; make decisions affecting his or her social environment; manage or dispose of property; determine his or her residence; marry; contract; vote; and have a driver's license.¹ In the alternative, if the examining committee cannot submit a completed examination, it must submit a reason for its "omission" to address the above issues.¹ "Omission" should be the defendant's refusal to submit to a court ordered examination.

An alleged incapacitated person may unknowingly provide statements to questions posed by a court ordered examining committee that can then be used against them in a court of law. Answers can directly result in a loss of the above mentioned individual's previously held rights and freedoms. The alleged incapacitated person should remain silent to the examining committee's questions:

MIRANDA V. ARIZONA, 384 U. S. 436 (1966)

Page 384 U. S. 467

III "Today, then, there can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings, and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves." ⁷

<http://dictionary.reference.com/browse/incriminate>

in-crim-i-nate verb

1. to accuse of or present proof of a crime or fault.

2. to involve in an accusation; cause to be or appear to be guilty; implicate.

3. to charge with responsibility for all or part of an undesirable situation, harmful effect, etc.

- **In order for the alleged incapacitated person to take full advantage of the adversarial process, cooperation with a court appointed examining committee's mission must be questioned. The alleged incapacitated person must take every opportunity to insure the report is one of "omission".**

Personal rights and freedoms that are treasured and lost, that an alleged incapacitated person may lose as a result of their cooperating with an examining committee's mission, are staggering and egregious if lost as a result of error, mistake, or fraud. It must be noted that an incapacitated person under a plenary (full) guardianship may well have fewer rights than any convicted felon. Once a plaintiff's petition alleging incapacity has begun, there is little to cause its termination, except for lack of evidence. The alleged incapacitated person might, at the very most, avail the court only of a positive examination that is self-initiated; however, any defendant's submission might then allow the plaintiff to raise legitimate challenges.

- **For the legal representative of any alleged incapacitated person to provide the court more than a positive self-initiated examination, if anything at all, must be considered not in their client's best interest.**

In the normal course of a court's expediency, a court may very well perceive as an act of contempt an alleged incapacitated person's refusal to cooperate with a court appointed examining committee. But refusing such an examination may be the most effective means to preserve individual freedoms while at the same time preserving the adversarial process. A court, compromised by an incapacitated person's refusal to submit to a court appointed examining committee, may exact its frustration upon the defendant by threat of charging contempt of court. The alleged incapacitated person should consider the following: While under contempt of court, 1) the alleged incapacitated person's assets should remain beyond the reach of the plaintiff; 2) the alleged incapacitated person will potentially retain more rights than if subjected to a plenary guardianship; and 3) the process of adjudicating a contempt of court charge will allow further scrutiny of judicial conduct and the adversarial process initiated by the plaintiff.

- **The potential judicial havoc created by an "omission" of a court appointed examining committee's report may well spur efforts to reform guardianship processes while protecting individual rights. Additionally, any incapacity trial should be a trial by jury.**

To date, little productive effort results from state or federal legislators investigating reports of abuse within the guardianship industry. It is more likely that a relatively simple challenge to the process, i.e., thwarting the examining committee's mission by refusing to submit, may result in more immediate attention to what is quickly becoming an abusive and exploitive industry.

It remains a wonder why the guardianship industry does not become plaintiff against those without assets; they can be easily located in the many public areas throughout this county. But, be prepared for the day when someone petitions a judge claiming that they are not happy with the way you have chosen to live your life. As with any legal matter, consult a professional for specific legal advice.

By:

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For the text of UNION PACIFIC RAILWAY CO. V. BOTSFORD 141 U. S. 250 (1891) &
CAMDEN AND SUBURBAN RY. CO. v. STETSON 177 U.S. 177 visit www.MarkedForDestruction.com .

* **plaintiff** - *noun*. the party who initiates a lawsuit by filing a complaint with the clerk of the court against the defendant(s) demanding damages, performance and/or court determination of rights. <http://legal-dictionary.thefreedictionary.com/plaintiff>

¹ 2010 FLORIDA STATE STATUTE 744.331(3)

² UNION PACIFIC RAILWAY CO. V. BOTSFORD 141 U. S. 251

³ UNION PACIFIC RAILWAY CO. V. BOTSFORD 141 U. S. 255

⁴ UNITED STATES CONSTITUTION FOURTH AMENDMENT

⁵ UNION PACIFIC RAILWAY CO. V. BOTSFORD 141 U. S. 257

⁶ CAMDEN AND SUBURBAN RY. CO. v. STETSON 177 U.S. 177

⁷ MIRANDA V. ARIZONA, 384 U. S. 436 (1966)

Essay – *noun*

1. a short literary composition on a particular theme or subject, usually in prose and generally analytic, speculative, or interpretative.
<http://dictionary.reference.com/browse/essay>