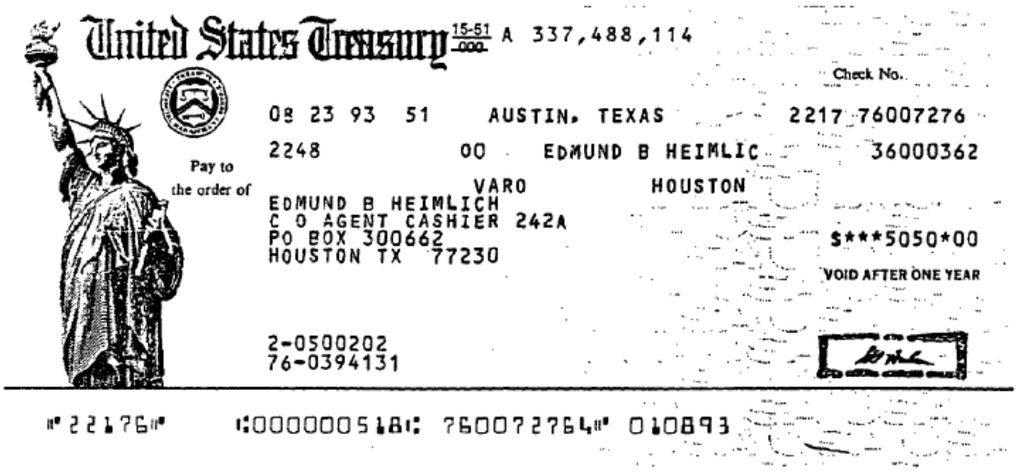
2-20-09

This is undisputable Fact Evidence of Justice Robert Pemberton's willful disregard for the TRUTH.

DNA; **this is DNA evidence as valid as any from any lab**


United States Treasury 15-61 A 337,488,114

Check No.

08 23 93 51 AUSTIN, TEXAS 2217 76007276

2248 00 EDMUND B HEIMLIC 36000362

Pay to the order of VARO HOUSTON

EDMUND B HEIMLICH
C O AGENT CASHIER 242A
PO BOX 300662
HOUSTON TX 77230

$***5050*00

VOID AFTER ONE YEAR

2-0500202
76-0394131

On this DNA, as well as other exonerating evidence including a valid lawful contract, and statutory law, that vest ownership of all commission with Heimlich as Broker proves a lack of probable cause or the existence of any crime. The complainant, as Agent, under contract and with a license sponsored by Heimlich, leave NO QUESTION. Heimlich ***obtained relief from the conviction on the basis of actual innocence***. §103.001(a)(2)(B) CPRC. He innocence could not be anything other than actual by any objective standard.

But **Robert Pemberton,** 3rd COA (Crt of Appeal in 2008) misrepresents the Law and the Facts to deprive Heimlich of Justice. Here are his words in the memorandum opinion he authored. From paragraph 4 of his opinion:

However, it [14th COA and CCA] ***concluded that the evidence was legally insufficient to demonstrate Heimlich appropriated property "owned" by the salesperson, an essential element of theft. Id. at 384. The majority reasoned that the sole evidence of any property "owned" by the salesperson that Heimlich had appropriated was the commission check itself, and "[w]hile the complainant may have actually possessed the piece of paper called a 'check,' Heimlich remained the only person with a legal ownership interest in the thing of value the check signified--the order to pay $5050.***

Pemberton then CONTRADICTS the foregoing in paragraph 22:

Contrary to Heimlich's understanding, the Fourteenth Court of Appeals did not decide that Heimlich owned these funds, as opposed to the "piece of paper called [the commission] 'check.'"

A US Treasury Check is well know to be the equivalent of cash. By contrast a check is not and does not convey ownership of cash. Or, if you prefer, 'funds'. This is particularly true of a post-dated check! Pemberton knew, or had a duty to know this, before publishing his misunderstanding and using it to imply the agent had ownership of what Heimlich was accused of taking. See Texas Business and Commerce Code.

He has revealed a lack of judicial temperament. He is unquestionably biased against the people and against the pro se in favor of Attorneys employed at public expense as prosecutors or in the Office of the Attorney General. Possibly because his is more concerned with political favor than with his duty to the public and to the law.