

## Merrill, Hannah

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**From:** pearl hewett [REDACTED]  
**Sent:** Thursday, November 10, 2011 4:19 PM  
**To:** zSMP; Lois Perry; Sue Forde  
**Cc:** earnest spees; Sandy Collins; Marv Chastain  
**Subject:** THE DUE PROCESS OF LAW

TO WHOM IT SHALL CONCERN

I submit this as my comment  
On the SMP Update  
Pearl Rains Hewett Trustee  
George C. Rains Sr. Estate  
Member SMP Advisory Committee

## THE LITTLE WORD "DUE"

Andrew T. Hyman \*

### I. INTRODUCTION

(this is taken out of context the complete document is available on line)

The Fifth [\[1\]](#) and Fourteenth [\[2\]](#) Amendments bar the government from depriving anyone of "life, liberty, or property, without due process of law."

Justice Joseph Bradley once said that **"we are entitled, under the fourteenth amendment, not only to see that there is some process of law, but 'due process of law,' provided by the State law when a citizen is deprived...."** [\[72\]](#) Justice Bradley was correct, in the sense that a mere portion of legal process will not be allowed, when more is required by positive law. Failure to provide all process that is due may not normally be treated as harmless error, according to the Due Process Clause, and statutes may not normally treat it as such.

**With regard to Clallam County SMP Update.**

**While WAC'S are NOT laws, they become enforceable LAW if they are written into Clallam County SMP Update.**

This is on the DOE Public Trust Doctrine web site (88 pages)

"Finally, **SMP'S, unlike other comprehensive plans,** are **adopted as WAC'S** and become part of the state's Shoreline Master Program. As such, all local SMP rules, regulations, designations and guidelines **BECOME STATE LAW AND ARE ENFORCEABLE.** in this manner, protection of public trust resources and uses becomes binding."

(this is taken out of context the complete document is available on line)

The Supreme Court has in recent decades added increasingly **stringent due process restraints on Congress and the states**, pursuant to its mistakes in *Hurtado*. With regard to procedural law, the Court has developed a test for determining what process is "due" by balancing three factors:

- (1) **the nature and weight of the private interest affected**, [page 31]
- (2) **the risk of an erroneous deprivation of this interest using existing procedures compared with alternative or additional procedures**, and
- (3) **the government's concern with both the interest involved and the procedures used to regulate it.**

[73] Unfortunately, the rationale of a majority (or supermajority) of the people's representatives is not even a factor here, much less a determinative factor of what procedure is "due." Likewise for substantive law,

**the general position of the Court is now that when a fundamental interest is at stake involving life, liberty, or property, then the state must have a "compelling" objective, and its statute must be narrowly tailored to achieve that objective.**

In cases involving non-fundamental interests, the state must have a "legitimate" objective, and a statute must be rationally related to achieving that objective. The Court thus determines what powers of state government are legitimate or compelling, regardless of the enumeration of powers in a state's constitution. The Court also determines what rights are fundamental, notwithstanding rights that may be enumerated in a state's constitution. In this way, the Court now decides what laws are due or undue, and what the law of the land should be.

**I am searching for TRUTH with regard to the legality and taking of Constitutional and private property rights.**

**I submit this as my constitutional right to Freedom of speech.**

**Pearl Rains Hewett**