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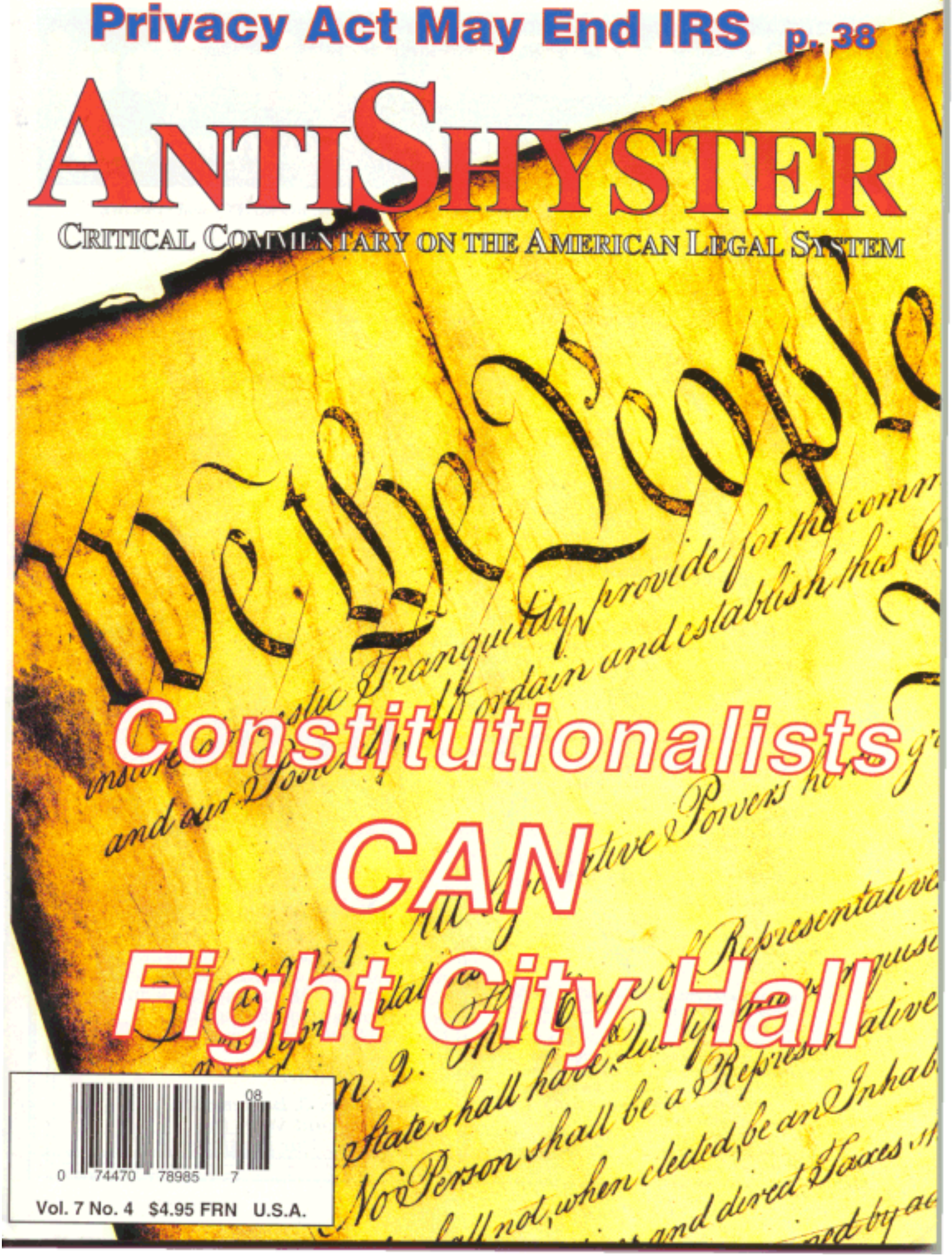
AntiShyster

Critical Commentary on the American Legal System



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Creator, Editor & Publisher
Alfred Norman Adask, TTEE

"... it does not require a majority to prevail, but rather an irate, tireless minority keen to set brush fires in people's minds."
– **Samuel Adams**

"AntiShyster" defined:

Black's Law Dictionary defines "shyster" as "one who carries on any business, especially a legal business, in a dishonest way. An unscrupulous practitioner who disgraces his profession by doing mean work, and resorts to sharp practice to do it." Webster's Ninth New Collegiate Dictionary defines "shyster" as "one who is professionally unscrupulous esp. in the practice of law or politics." For the purposes of this publication, a "shyster" is a dishonest attorney or politician, i.e., one who lies. An "AntiShyster", therefore, is a person, an institution, or in this case, a news magazine that stands in sharp opposition to lies and to professional liars, especially in the arenas of law and politics.

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The ONLY legal advice this publication offers is this:
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Our Unconstitutional Congress

by Stephen Moore

Mr. Moore is Director of Fiscal Policy Studies, Cato Institute. His remarks were delivered at the March 1997 seminar, "Between Power and Liberty," on the Hillsdale College campus at Hillsdale, Michigan.

His speech reveals the essential nature of "constitutionalists". Simply put, constitutionalists are people who believe in an independent and self-reliant lifestyle, and the necessary correlatives: limited government and respect for the Federal Constitution, which exists primarily to a limit government size and power. Constitutionalists are not antisocial and recognize the need for essential government activities like providing police, roads, postal service and military defense, but prefer personal freedom to any collectivist system. Most of all, constitutionalists believe even government must obey the rule of law. Government, of course, rejects this insistence on obeying the Constitution as naive or even seditious — hence, today's conflict between those who advocate the "benefits" of big and bigger government and the constitutionalists who advocate personal responsibility and freedom.

In 1800, when the nation's capital was moved from Philadelphia to Washington, D.C., all of the paperwork and records of the United States government were packed into twelve boxes and then transported the one hundred and fifty miles to Washington in a horse and buggy. That was truly an era of lean and efficient government

In the early years of the Republic, government bore no resemblance to the colossal empire it has evolved into today In 1800, the federal government employed three thousand people and had a budget of less than $1 million ($100 million in today's dollars). That's a far cry from today's federal budget of $1.6 trillion and total government workforce of eighteen million.

Since its frugal beginnings, the U.S. federal government has come to subsidize everything from Belgian endive research to maple syrup production to the advertising of commercial brand names in Europe and Japan. In a recent moment of high drama before the Supreme Court, during oral arguments involving the application of the Constitution's interstate commerce clause, a bewildered Justice Antonin Scalia pressed the solicitor general to name a single activity or program that our modern-day Congress might undertake that would fall outside the bounds of the Constitution. The stunned Clinton appointee could not think of one.

During the debate in Congress over the controversial 1994 Crime Bill, not a single Republican or Democrat challenged the $10 billion in social spending on the grounds that it was meant to pay for programs that were not the proper responsibility of the federal government. No one asked, for example, where is the authority under the Constitution for Congress to spend money on midnight basketball, modern dance classes, self-esteem training, and the construction of swimming pools? Certainly, there was plenty of concern about "wasteful spending," but none about unconstitutional spending.

Most federal spending today falls in this latter category because it lies outside Congress's spending powers under the Constitution and it represents a radical departure from the past. For the first one hundred years of our nation's history, proponents of limited government in Congress and the White House routinely argued — with great success — a philosophical and legal case against the creation and expansion of federal social welfare programs.

A rulebook for government

The U.S. Constitution is fundamentally a rulebook for government. Its guiding principle is the idea that the state is a source of corruptive power and ultimate tyranny Washington's responsibilities were confined to a few enumerated powers, involving mainly national security and public safety. In the realm of domestic affairs, the Founders sought to guarantee that federal interference in the daily lives of citizens would be strictly limited. They also wanted to make sure that the minimal government role in the domestic economy would be financed and delivered at the state and local levels.

The enumerated powers of the federal govemment to spend money are defined in the Constitution under Article

I, Section 8. These powers include the right to "establish Post Offices and post roads; raise and support Armies; provide and maintain a Navy; declare War..." and to conduct a few other activities related mostly to national defense. No matter how long one searches, it is impossible to find in the Constitution any language that authorizes at least 90 percent of the civilian programs that Congress crams into the federal budget today.

The federal government has no authority to pay money to farmers, run the health care industry, impose wage and price controls, give welfare to the poor and unemployed, provide job training, subsidize electricity and telephone service, lend money to businesses and foreign governments, or build parking garages, tennis courts, and swimming pools. The Founders did not create a Department of Commerce, a Department of Education, or a Department of Housing and Urban Development. This was no oversight: They did not believe that government was authorized to establish such agencies.

Recognizing the propensity of governments to expand, and, as Thomas Jefferson put it, for "liberty to yield," the Founders added the Bill of Rights to the Constitution as an extra layer of protection. The government was never supposed to grow so large that it could trample on the liberties of American citizens. The Tenth Amendment to the Constitution states clearly and unambiguously:

"The powers not delegated to the United States by the Constitution... are reserved to the States respectively, or to the people." In other words, if the Constitution doesn't specifically permit the federal government to do something, then it doesn't have the right to do it.

The original budget of the U.S. government abided by this rule. The very first appropriations bill passed by Congress consisted of one hundred and eleven words — not pages, mind you, *words*. The main expenditures were for the military, including $137,000 for "defraying the expenses" of the Department of War; $190,000 for retiring the debt from the Revolutionary War, and $95,000 for "paying the pensions to invalids." As for domestic activities, $216,000 was appropriated. This is roughly what federal agencies spend today in fifteen seconds.

As constitutional scholar Roger Pilon documented, even expenditures for the most charitable of purposes were routinely spurned as illegitimate. In 1794, James Madison wrote disapprovingly of a $15,000 appropriation for French refugees: "I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents." This view that Congress should follow the original intent of the Constitution was restated even more forcefully on the floor of the House of Representatives two years later by William Giles of Virginia. Giles condemned a relief measure for fire victims and insisted that it was not the purpose nor right of Congress to "attend to what generosity and humanity require, but to what the Constitution and their duty require."

In 1827, the famous Davy Crockett was elected to the House of Representatives. During his first term of office, a $10,000 relief bill was proposedfor the widow of a naval officer. Colonel Crockett rose in stern opposition and gave the following eloquent and successful rebuttal:

"We must not permit our respect for the dead or our sympathy for the living to lead us into an act of injustice to the balance of the living. I will not attempt to prove that Congress has no power to appropriate this money as an act of charity. Every member upon this floor knows it. We have the right as individuals to give away as much of our own money as we please in charity; but as members of Congress we have no right to appropriate a dollar of the public money."

In a famous incident in 1854, President Franklin Pierce courageously vetoed an extremely popular bill intended to help the mentally ill, saying: "I cannot find any authority in the Constitution for public charity." To approve such spending, he argued, "would be contrary to the letter and the spirit of the Constitution and subversive to the whole theory upon which the Union of these States is founded." Grover Cleveland, the king of the veto, rejected hundreds of congressional spending bills during his two terms as president in the

late 1805, because, as he often wrote: "I can find no warrant for such an appropriation in the Constitution."

Were Jefferson, Madison, Crockett, Pierce, and Cleveland merely hardhearted and uncaring penny pinchers, as their critics have often charged? Were they unsympathetic toward fire victims, the mentally ill, widows, or impoverished refugees? Of course not. They were honor bound to uphold the Constitution. They perceived — we now know correctly — that once the government genie was out of the bottle, it would be impossible to get it back in.

With a few notable exceptions during the nineteenth century, Congress, the president, and the courts remained faithful to the letter and spirit of the Constitution with regard to government spending. As economic historian Robert Higgs noted in *Crisis and Leviathan*, until the twentieth century, "government did little of much consequence or expense" other than running the military. The total expenditures for the federal budget confirm this assessment. Even as late as 1925, the federal government was still spending just 4 percent of national output.

Abandoning constitutional protections

Several major turning points in American history mark the reversal of this ethic. The first was the passage in 1913 of the Sixteenth Amendment, which permitted a federal income tax. This was the first major tax that was not levied on a proportional or uniform basis. Hence, it allowed Congress a political free ride: It could provide government benefits to many by imposing a disproportionately heavy tax burden on the wealthy Prior to enactment of the income tax, Congress's power to spend was held in check by its limited power to tax. Most federal revenues came from tariffs and land sales. Neither source yielded huge sums. The income tax, however soon became a cash cow for a Congress needing only the feeblest of excuses to spend money

The second major event that weakened constitutional protections against big government was the ascendancy of Franklin Roosevelt and his New Deal agenda to the White House during the Great Depression. One after another, constitutional safeguards against excessive government were ignored or misinterpreted. Most notable and tragic was the perversion of the "general welfare" clause. Article 1, Section 8 of the Constitution says: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts, provide for the common defense, and promote the *general welfare* of the United States." Since the 1930s, the courts have interpreted this phrase to mean that Congress may spend money for any purpose, whether there is an enumerated power of government or not, as long as legislators deem it to be in the "general welfare" of certain identifiable groups of citizens like minorities, the needy, or the disabled. This *carte blanche* is exactly the opposite of what the Founders intended. The general welfare clause was supposed to limit government's taxing and spending powers to purposes that are in the national interest.

Jefferson had every reason to be concerned that the general welfare clause might be perverted. To clarify its meaning, he wrote in 1798: "Congress has not unlimited powers to provide for the general welfare but only those specifically enumerated." In fact, when some early lawmakers suggested that the general welfare clause gave Congress a generalized spending authority, they were always forcefully rebuked. In 1828, for example, South Carolina Senator William Drayton reminded his peers, "If Congress can determine what constitutes the general welfare and can appropriate money for its advancement, where is the limitation to carrying into execution whatever can be effected by money?"

Exactly.

Nonetheless, by the late nineteenth century, Congress had adopted the occasional practice of enacting spending bills for public charity in the name of "promoting the general welfare." These laws often made a mockery of this clause. In 1884, Senator John Morgan of Alabama stormed to the Senate floor to describe the impact of a relief bill approved by Congress to provide $400,000 of funds for victims of a

flood on the Tombigbee River. Morgan lamented:

"The overflow had passed away before the bill passed Congress, and new crops were already growing upon the lands. The funds were distributed in the next October and November elections upon the highest points of the sand mountains throughout a large region where the people wanted what was called "overflow bacon." I cannot get the picture out of my mind. There was the General Welfare of the people invoked and with success, to justify this political fraud; the money was voted and the bacon was bought, and the politicians went around with their greasy hands distributing it to men who cast greasy ballots. And in that way the General Welfare was promoted!"

But the real avalanche of such special interest spending did not start until some fifty years after in the midst of the Depression. In their urgency to spend public relief funds to combat hard times, politicians showed their contempt for constitutional restraints designed to prevent raids on the public purse. "I have no patience whatever with any individual who tries to hide behind the Constitution, when it comes to providing foodstuffs for our citizens," argued New York Representative Hamilton Fish in support of a 1931 hunger relief bill. James O'Conner, a Congressman from Louisiana, opined, "I am going to give the Constitution the flexibility . . . as will enable me to vote for any measure I deem of value to the flesh and bloods of my day."

Porkbarrel spending began in earnest. In the same year, for instance, Congress introduced an act to provide flood relief to farmers in six affected states. By the time the bill made its way through Congress, farmers in fifteen states became its beneficiaries. One Oklahoma congressman succinctly summarized the new beggar-thy-neighbor spending ethic that had overtaken Capitol Hill: "I do not believe in this pie business, but if we are making a great big pie here . . . then I want to cut it into enough pieces so that Oklahoma will have its piece."

In 1932, Charles Warren, a former assistant attorney general, wrote a popular book titled *Congress* as *Santa Claus*. He argued, "If a law to donate aid to any farmer or cattleman who has had poor crops or lost his cattle comes within the meaning of the phrase 'to provide for the General Welfare of the United States, why should not similar gifts be made to grocers, shopkeepers, miners, and other businessmen who have made losses through financial depression, or to wage earners out of employment? Why is not their prosperity equally within the purview of the General Welfare?"

Of course, we now know Congress's answer: All of these things are in the ""general welfare." This is why we now have unemployment compensation, the Small Business Administration, the Department of Commerce, food stamps, and so on. Of course, all this special interest spending could have been-no, should have been-summarily struck down as unconstitutional. However, the courts have served as a willing coconspirator in congressional spending schemes.

In a landmark 1936 decision, the Supreme Court inflicted a mortal blow to the Constitution by ruling that the Agricultural Adjustment Act was constitutional. The Court's interpretation of the spending authority of Congress was frightful and fateful. Its ruling read: ""The power of Congress to authorize appropriations of public money for public purposes is not limited by the grants of legislative power founds in the Constitution."

James M. Beck, a great American legal scholar and former solicitor general, likened this astounding assault on the Constitution to the *Titanic's* tragic collision with the iceberg. "After the collision," wrote Beck, "which was hardly felt by the steamer at the time, the great liner seemed to be intact and unhurt, and continued to move. But a death wound had been inflicted under the surface of the water, which poured into the holds of the steamer so swiftly that in a few hours the great ship was sunk."

The New Deal Court essentially told Congress: It doesn't matter what the Constitution says or what limits on government it establishes, you are empowered to spends money on whatever you

please. And so Congress does, even though its profligacy has placed the nation in great economic peril.

Other than the Great Depression, by far the most important events that have fostered the growth of government in this century have been the two World Wars. Periods of national crisis tend to be times in which normal constitutional restraints are suspended and the nation willingly bands together under government for a national purpose of fighting a common enemy. Yet the recurring lesson of history is that once government has seized new powers, it seldom gives them back after the crisis ends. Surely enough, this phenomenon is one of Parkinson's famous laws of the public sector:

"Taxes (and spending) become heavier in times of war and should diminish, by rights, when the war is over. This is not, however, what happens. Taxes regain their pre-war level. That is because the level of expenditure rises to meet the wartime level of taxation."

In the five years prior to World War I, total federal outlays averaged 2 percent of GDP In the five years after the war, they averaged 5 percent of GDP In the years prior to that war the top income tax rate was 7 percent. During the war the tax rate shot up to 70 percent, which was reduced afterward, but only to 24 percent-or more than three times higher than it had originally been.

Government regulations of the private economy also proliferate during times of war and often remain in force afterward. Robert Higgs notes that during World War I, the federal government nationalized the railroads and the telephone lines, requisitioned all ships over 2,500 tons, and regulated food and commodity prices. The lever Act of 1917 empowered government to regulate price and production of food, fuel, beverages and distilled spirits. It is entirely plausible that, without the war, America would never have suffered the failed experiment of Prohibition.

World War II was also the genesis of many modern-day government intrusions-which were and still are of dubious constitutionality. These include wage and price controls, conscription (which lasted until the 197Os), rent control in large cities, and, worst of all, federal income tax withholding. In the post-World War II era, Congress has often relied on a war theme to extend its authority into domestic life. Lyndon Johnson launched the modern welfare state in the 1960s when he declared a ""war on poverty." In the early 1970s, Richard Nixon imposed across-the-board wage and price controls — the ultimate in government command and control-as a means of winning the ""inflation war." In the late 1970s, Jimmy Carter sought to enact a national energy policy with gas rationing and other draconian measures by pleading that the oil crisis had become the ""moral equivalent of war."

While government has been the principal beneficiary of national emergency, the principal casualty has been liberty. As Madison warned, ""Crisis is the rallying cry of the tyrant." This should give us pause as Congress now sets out to solve the health care crisis, the education crisis, and the crime crisis. To Congress, a crisis is an excuse to expand its domain.

Turning back the clock

Shortly before his death, Benjamin Franklin was asked how well the Constitution would survive the test of time. He responded optimistically that, "Everything appears to promise it will last." Then he added his famous warning, "But in this world nothing is certain but death and taxes." Ironically, the mortal wounds of the Constitution have been inflicted by precisely those who insist that they want to make it "a living document." Yet to argue that we return to the spirit and the true meaning of this living document is to invite scorn, malice, or outright disbelief from modern-day intellectuals.

Those few brave souls (mainly outside the Beltway) who urge that government should be guided by the original intent of the Constitution are always accused of trying to '"turn back the clock." But turning back the clock in order to right a grievous wrong is precisely what we ought to do. There is nothing reactionary or backward-looking about dedicating ourselves to the ideas and principles that guided our Founders and formed the bedrock of our free society.

By all means, let's turn back the clock. Who knows? In the process we might even encourage a few Jeffersons and Madisons to run for Congress.

Mr. Moore has identified the problem we have – unconstitutional government – but hasn't explained how it happened. In a sense, he's just as bewildered by our federal government as the rest of us. We know they're doin' it to us, but we don't know how. Subsequent articles in this issue will seek to illuminate government's unconstitutional behavior and offer alternative explanations for how seemingly unlawful behavior became "legal".

Mr. Moore's article is reprinted by permission from IMPRIMIS, the monthly journal of Hillsdale College, 33 E. College St., Hillsdale, Michigan 49242. Subscription free upon request. ■

Memorial Day 1997

by David Witts

The genius of the American Constitution is that it is the first and only truly "anti-government" constitution. The reason our Constitution guarantees three separate branches of government, elections every two years, the rights to speak, publish and bear arms is to minimize government powers and maximize the People's ability to control over government. Unlike virtually every other constitution in the world, our Constitution does not enshrine the government as superior to the people, but instead enshrines the People as collective sovereigns superior to the government. Of course, anyone who espouses this truth is both a "constitutionalist" and persona non grata in the eyes of the government that inevitably seeks to reverse the constitutional relationship of People superior to government.

Therefore, government dismisses most constitutionalist criticism as the ignorant ravings of the "great unwashed". Those dismissals are frustrating, infuriating, and drive some of us to depression, others to violence, and a few even to publish magazines. Still, I can comprehend some of government's contempt for our complaints because — even though we intuitively understand and reject justice — as "average Americans" we are, by definition, under-educated and when stressed, sometimes prone to hysteria.

The author of this article is not a "average American". He is a distinguished attorney from a distinguished law firm who has practiced for nearly half a century. Mr. Witts is neither ignorant nor prone to hysteria, but he is nevertheless screaming about a injustice just like the "crazy" constitutionalists. His story illustrates what can happen to a single individual — even if that individual enjoys the benefits of wealth, education, and social position — who offends a government unbridled by constitutional limits.

Memorial Day, with all its tragedies and memories, seemed the right time to say thanks to our friends for their kind support. It's important to us that you know the grim story of our family's persecution, its corrupt and vicious motivation, and its tragic consequence.

The Justice Department motto is: "The United States wins its point in court when justice is done. Our historic aim is fairness, not prosecution at any cost."

I thought I understood prosecution. Much of my career was prosecuting criminals. In the 1950's I was Special Counsel to U.S. Senate McClellan Committee when Bobby Kennedy, its Chief Counsel, was cracking down on Teamsters and Mobsters. For 10 years I was Chief Counsel to the Texas Legislature General Investigating Committee. We prosecuted crooked law enforcement, bribery, prostitution, slant-hole oil drilling, and fixing S.W. Conference basketball games. I was on both the Mayor's and Governor's Crime Commissions. That the innocent could be prosecuted by the guilty, was never within my comprehension or experience!

Here is how and why the Justice Department persecuted us.

How

Three years ago I caught two government agents in gross misconduct. I was there. I saw what I saw. I reported it, naively assuming federal government would prosecute wrongdoing. I prepared three volumes of documentary evidence supported by statements, canceled checks, photographs and affidavits exposing criminal conduct. December 9, 1993, I wrote U.S. Attorney Paul Coggins for the Northern District in Dallas requesting a meeting.

December 20, 1993, I met in U.S. Attorney Coggins' office with Assistant U.S. Attorney Linda Groves and FBI Agent Thomas Tierney. I delivered this evidence to and was interviewed by them. They said: "We know we have some problems in the Eastern District." U.S. Attorney Groves wrote me:

"Again, thank you for bringing these matters to my attention. I have discussed these materials with Paul Coggins and Special Agent Tierney. We agree that further investigation and/or prosecution should be handled by the U.S. Attorney's Office for the Eastern District where venue for a criminal case lies. . . If you have no objection, I propose to forward the materials you have given us to Special Agent Larry Davis in the Eastern District. I'm certain that Agent Davis will find this information enlightening."

1993-1995. As instructed, for two years I provided hard evidence of official misconduct to two FBI Agents and to the Assistant U.S. Attorney of the Eastern District. I offered to be interviewed any time or place. Hearing noth-

ing, I then sent this evidence to the Executive Office of U.S. Trustees in Washington, and to a Congressional Committee.

Warning. Thereafter I was told: "They are going to punish you." Why, I asked, for telling the truth? "What you don't understood is you kicked a hornet's nest. They intend to make an example of you for exposing them. I've never seen such secrecy in a U.S. Attorney's office before."

Why

- To attack my credibility for exposing corrupt government trustees.
- To cover up government's refusal to investigate its own misconduct.

Retaliatory Justice

The Smoking Gun. Two unexpected events occurred in December 1995.

- An appellate court, on its own motion, reversed a decision by an Eastern District judge. The higher court's ruling that "constitutional rights of the parties had been violated," confirmed some of my revelations.
- The Executive Office of U.S. Trustees in Washington made an FOIA release of documents signed by officials I had identified. Here was documentary proof of misconduct, conspiracy, bribery, and cover-up. Revealed also was their request to have me "investigated."

These two undeniable events, lit a fire behind their stone wall. Government moved with desperate swiftness during the normally somnolent Christmas season. Within a week, a Target Letter was sent to me. Persecution had begun. The chronology is chilling.

On December 20, 1995, two years after I first exposed this misconduct, the first and only response to my dogged insistence for an investigation came from an Assistant U.S. Attorney: "This is to advise David Witts is target of a federal grand jury in the Eastern District. We are now preparing an indictment."

Thunderstruck, I felt this must be a mistake. That a man whose 76 years had been dedicated to service of country, professional integrity, law enforcement, and civic accomplishment would be punished for reporting wrongdoing, was, and still is, inconceivable.

Nevertheless, my exposures created a vendetta. Government had two choices: Investigate itself — or indict me. Government does not investigate itself. An indictment would undermine my credibility, thereby closing the circle of corruption. Grand juries were established to shield citizens from unjust prosecution. Government has so eroded this protection that grand juries are now a rubber stamp for federal prosecutors – 99% of all cases presented are indicted!

State Terrorism. This syndrome was identified by Judge Abraham Sofaer, former State Department Counsel. "Lack of accountability has become endemic in federal government, which covers up its own misconduct with unconscionable zeal." Federal prosecutors are the most powerful people in America. Unelected and unaccountable, they enjoy categorical immunity for their acts. Such absolute immunity has allowed some U.S. Attorneys to use their office for personal gain.

Major Corruption in a Minor Key

The Eastern District of Texas is a judicial venue largely isolated from public scrutiny. The Clinton administration's first act was the unprecedented firing of all U.S. Attorneys. Former Attorney General Edwin Meese called this a calculated plan to destroy the independence of the Justice Department. This was accomplished so successfully that it is now called the Just Us Department. It's corrupt at the top and out of control at the bottom. The repugnant litany:

- One Assistant U.S. Attorney is dead and another in prison.
- Five White House Counsels resigned under fire or quit in disgrace.
- The Attorney General is beleaguered in office and ill in body.
- One FBI Director was fired. Another twists in the wind in conflict with both Congress and the White House.
- FBI Director Freeh admits it is the most dangerous agency in the country if not scrutinized carefully.
- At Ruby Ridge, the FBI shot Vicki Weaver's face off, in her home, while holding her baby. No discipline.

No report. The Agent in Charge was promoted to Deputy FBI Director.

- At Waco, FBI sprayed poison gas on and burned 80 men, women, and children. No discipline. No report.
- In Atlanta a security guard was tricked by the FBI, and then demonized for months. The Atlanta Constitution acknowledged its mistake with $500,000. Justice Department mute.
- Travelgate. Every employee of the White House Travel office was fired. Then they were hounded by the FBI to justify the firing. Billy Dale, head of the office, was indicted, and tried. He was acquitted in an hour.
- Filegate. A bouncer is made Director of Security. He turns over 1000 FBI files on political opponents. Two career FBI Agents who objected were fired.
- Donorgate. U.S. Government for sale. Lincoln's bedroom and Air Force One for lease. Sale of Long Beach Naval Base stopped at checkout counter.
- FBI Crime Lab becomes "FIB Lab".
- FBI General Counsel Shapiro commits "serious misjudgments." No discipline.
- Unabomber is sought for 17 years. His brother introduces him to FBI.
- Supreme Court authorizes Paula Jones to introduce Exhibit One.

A Justice Department manipulated at the top to protect corruption and prosecute innocents, suffers corrosive trickle down.

Escalating Persecution

January 1996. Government informs me "if I would plea to a one count information, this will all go away." Naturally, I refused.

February through November 1996. FBI Agents came to our home. Teams of FBI agents hit our *daughter's* home. They went to homes and offices of friends and employees. People told me: "They have no idea what they're doing, except trying to dig up dirt on you."

- Fifteen people were hauled to the U.S. Attorney's office for "questioning." Then they were subpoenaed to the grand jury, and again questioned for hours. One young Missile Officer was brought in from Vandenberg AF Base in California and questioned under unnerving circumstances.
- Our phone calls were boring and our garbage uninteresting.
- Our granddaughter was subpoenaed in her playpen.
- Break-in. Our accounting firm has been in existence 40 years, during which they never had a break-in. February 15, 1996 they responded to a massive FBI subpoena to produce all our family tax records back to 1988. One week later, their office was broken into. No property was taken. It was not determined which files were pilfered since there were no fingerprints. Exactly two months later, April 23, they received a second FBI subpoena, identical to the previous one. When they protested this harassment, they were hit with an IRS audit.
- July 1996. My personal physician took affidavits from my cardiologist and another doctor to Beaumont, accompanied by my counsel. They personally informed the U.S. Attorney that this harassment was creating a "life threatening situation." The U.S. Attorney rejected their evaluations, saying: "They are worthless, because they are all from his friends!" Government challenged me to go to an "independent" doctor. I did. A Professor of Internal Medicine at the University of Texas Southwestern Medical School confirmed the diagnoses. Ignored.

The Alleged "Crime"

After two years wearing out shoe leather, no crime was discovered, no vic-

tim found, and no loss discovered. (FBI's concurrent failure to locate Amber Hagerman's murderer, or the $50,000 filched from the Dallas Police Department were legitimate failures).

However, in 1992, a controversy with a deposed business partner caused litigation which concluded in April 1994 with a court-approved "Full and Complete Release and Discharge of All Claims past, present, or future, whether known or unknown, whether asserted or unasserted, whether arising under federal, state or bankruptcy laws, are forever released against David Witts, [wife] Jean Witts, and [daughter] Elane Witts Hansen." This controversy included my Box at the Dallas Cowboy football stadium

Despite the 1994 "Final and Complete Release," government's last resort was to seize on the 1989 gift of our Dallas Cowboy Box to daughter Elane as a "crime." What seven years before had been a gift was born again as a "concealed asset." How? In 1990 the Cowboy Office received a Registered letter from me, requesting my certificate be reissued to Elane. They issued the certificate back to me, by mistake. This went unnoticed until 1992, at which time the Cowboys corrected their mistake.

Concealment or Conspiracy?

Zero Evidence. The U.S. Attorney was informed: "There is zero evidence that anyone but Elane ever owned the box after 1989. A 1989 gift tax return was filed and the tax paid. Elane paid taxes and insurance on the box from 1990 through 1996. The suite telephone and the Stadium Club membership were listed in her name. Tickets and catering charges were billed to Elane. She leased her box to Professional Sports Marketing. Lease income was paid to and reported by her.

To claim "concealment", government had to disregard:

1) October 5, 1989 written memo from Estate Planner David Kerr suggesting gift of Box to Elane.

2) December 1989, Box transferred. 1989 Gift Tax Return filed and paid.

3) February 23, 1990, reminder from David Kerr to file gift tax return.

4) August 23, 1990 certified letter to Cowboys: "Please issue new certificate in the name of my daughter, Elane Witts. Enclosed is check for $7.00. Signature guaranteed by Patricia McNutt, Senior Vice President, FNB, Dallas."

5) September 1, 1990 certified letter signed for by Cowboys.

6) September 26, 1990 certificate re-issued by Cowboys, mistakenly in my name. My office filed it without noticing the mistake.

7) December 31, 1990 IRS approves 1989 gift tax return (exhibit).

8) 1991 Cowboy Suite Telephone Directory lists owner as Elane Witts.

9) January 29, 1992. Mistake discovered and Cowboys again requested to issue certificate in Elane's name.

10) May 10, 1993, Carol Padgett, Manager of Cowboy Ticket Office testified: "We had on file a letter dated August 23, 1990 from Mr. Witts requesting his certificate be issued to his daughter. By mistake, we issued it back to him. That's why the certificate was still in his name."

- October 8, 1996. Government ran through the 1994 "Full Release" as though it didn't exist. Government again attacked my wife Jean's separate property. She was dragged through a brutal trial, at the end of which the Judge ruled: "The testimony of Mrs. Witts as to her property is unequivocal, undisputed and unrebutted. Government's motion is denied."
- October 17, 1996. My daughter Elane is threatened! Faced with my refusal to plead, coming up with dry subpoenas, and defeated in their attempt to seize my wife's property, government then threatened to indict my daughter for "conspiracy." She refused to plea, saying she would sell her home and mortgage her husband John, to fight what by now everybody recognized as a "very strange and obviously senseless prosecution." She was subpoenaed to the grand jury. Her attorney told her: "This is the same tactic this U.S. Attorney has used against other people to make them plea. I do not like the tactic, but it is effective."
- The Trump Card. After my daughter and I both continued to fight, government played its trump card. My wife, Jean, was subpoenaed to the grand jury!

That broke our resolve.

- November 13, 1996. We give up. The U.S. Attorney is notified: "Based on your representation that you intend to pursue a multiple felony indictment against Mr. Witts and his family, Mr. Witts will negotiate a plea."
- November 13, 1996. U.S. Attorney instantly replies: "We accept your offer to plea to a one count information, contingent upon government's forbearance of prosecution against his wife and daughter. Government will forbear prosecution of Mr. Witts' wife and daughter if he will enter a guilty plea."

Alleged "Loss"

Sentencing Guidelines. In order to get jail time under federal Sentencing Guidelines, a loss must exceed $250,000. But there was no loss! The pre-sentence report confirmed: "No restitution is recommended, since there was no loss."

There being no actual loss, government imputed "an *intended* loss," based on the Box's value by alleging that I "*intended*" to inflict a loss and covered it up. The U.S. Attorney repeated twice in open court: "David Witts deliberately concealed ownership of the Box, and then lied about it." The Court departed from sentencing Guidelines, denied government's prison request and offered probation.

Nevertheless, though I avoided incarceration, my prosecution brought me face to face with my own "Final Solution," Hitler's term for exterminating innocent people. Should honor be sacrificed and career ruined by pleading? Or do I subject my wife and my daughter to the terrible cost and torment of a criminal trial, knowing full well there was no way government could ever show I intended to commit a crime against my own country? In life's journey, when one road leads to self-destruction and the other to family destruction, this Ancient Rhyme charts the course:

"Wouldst thou learn the secret of the sea? Only those who brave its danger, comprehend the mystery."

Requiem

Three generations of a proud and patriotic family were punished because we had the moral courage to recognize gross misconduct, report it, and stand up against it.

I've led a long and eventful life, now in its twilight. The single worst moment of that life was hearing the words: "The United States of America vs. David Witts." Those words crush the very soul. Standing before the bench I served with pride for half a century, beneath the Great Seal of the country I love, beside the flag for which I fought . . . with burning memories of all those gallant young men who defended that flag . . . who never had a life . . . who gave away all their tomorrows so we could have ours . . . is a lifetime sentence from which there is neither pardon nor parole. It is worse than dying, which at least leaves accomplishments intact and reputation untarnished. The horror of betrayal by my own government, of which I was once so proud, is an unbearable burden that I now carry to the grave.

From the *Book of Virtues:*

The ages come and go,
The mountains weep along, the stars retire.
Destruction lays earth's mighty cities low
And empires, states and dynasties expire.
But caught and handed onward by the wise,

Truth never dies! ■

The Kessler Legacy at the FDA

by Dr. Robert Goldberg

Unlimited (unconstitutional) government not only ruins the lives of selected individuals, it even destroy the lives of entire classes of individuals. For example, consider the Food and Drug Administration — an unconstitutional but beneficent government organization that's always here to help us.

"If members of our society were empowered to make their own decisions . . . then the whole rationale of the [FDA] would cease to exist . . . . To argue that people ought to be able to choose their own risks, that govemment should not intervene . . . is to impose an unrealistic burden on people." – David Kessler, Director of the Food and Drug Administration (FDA) as quoted in *New England Journal of Medicine*, June 1992

None reading this statement can accuse Dr. Kessler of not having an agenda. Because Kessler realized that a free flow of information would empower consumers and thus weaken the FDA, the FDA under Kessler engaged in a consistent pattern of suppressing information.

The FDA's goal — protecting Americans from unsafe and ineffective drugs and devices — sounds pure and wholesome. But evidence suggests that the FDA's efforts to control products and information actually harm the public health. Let's look at a couple of specifics: squelching information about "off-label" usage, and an inexcusable delay in keeping a home-based HIV test off the market.

The use of a drug or device in a manner not approved by the FDA and not detailed in the product's labeling materials is called "off-label" usage. Increasingly, the FDA goes beyond simply protecting the public from unsafe products, and tells people and doctors which drugs to take and for which purposes. While the FDA regards off-label uses as unsafe, useless and potentially deadly, nearly 60 percent of all drugs on the market have been found to be effective when used off-label. As a result, many of the treatments the FDA would consider unsafe and ineffective are now considered essential to controlling (among other things) depression, heart disease, and cancer.

The FDA, however, wants to suppress information about off-label usage until they approve the use. This can take a while. Research suggests that if patients and doctors were to wait until the FDA approved off-label uses, Americans would be waiting years to obtain new medical information. A Tufts Center analysis of the FDA review times of off-label uses found that between 1989 and 1994, the usual review time was 28.3 months.

For instance, if you didn't know that aspirin can prevent heart attacks, you can thank the FDA and David Kessler. In 1988, after scientists discovered the connection and published it in scholarly journals, aspirin makers wanted to publicize the discovery. In 1989, the FDA called them in and told them they couldn't advertise the good news because the agency hadn't approved aspirin as a heart medicine. Under Kessler, they couldn't mention the study in any advertising or meetings. They couldn't even pass out copies of the journal articles. The only way the companies could make the public aware of the benefits of aspirin was to spend millions of dollars and several years duplicating results already published in the journal articles that the FDA forbade them to use.

The companies complied. As Kessler himself dryly observed: "Companies interested in maintaining positive relationships with the FDA usually agree to the FDA's remedy [in advertising matters]." Finally, though much research has shown that aspirin can reduce the rate of first heart attacks and also ease their severity and the long term damage they cause, the FDA bans dissemination of these findings because it would be an off-label promotion. Not surprisingly, a

recent study found that primary care physicians are less likely to put patients at-risk for heart attacks on an aspirin regimen. Harlan M. Krumholz, MD, assistant professor of medicine and epidemiology at Yale University, says, "Despite its proven effectiveness in preventing or postponing second heart attacks, aspirin is not prescribed for nearly a quarter of elderly heart attack survivors upon leaving the hospital."

In the case of off-label use of aspirin, the deaths and suffering of many Americans can be laid directly on Kessler's doorstep. The *British Medical Journal* estimates that 10,000 Americans die each year because they don't know about aspirin's value in reducing the incidence of heart attacks.

In spite of these and other needless deaths, under Kessler, the FDA sought to expand its power over what information the public can have concerning the use and effectiveness of drugs. The FDA banned companies from giving doctors textbooks that mention off-label uses. It shut down cancer newsletters and nearly brought cancer conferences to a halt for the same reason. It told the creator of Prozac®, Eli Lilly & Co., that it will regard any discussion of Prozac® in the popular press as potentially false and misleading advertising. Merck was told that it couldn't give doctors copies of National Institute of Health studies showing that its heart drug Vasotec® reduced death in people with congestive heart failure. Even though the FDA had no formal record of adverse events due to off-label prescribing, Kessler wanted to control the exchange of information about off label uses concluding that ". . . clinicians should not base prescribing decisions on drugs that have not been adequately studied . . . and therefore should not be exposed to any information about such a product".

It's bad enough that Kessler and the FDA wanted to halt the free flow of information to people about effective ways to treat medical conditions, but it is unthinkable that they also wanted to shield people from easily accessible information about their actual medical conditions. But this is exactly what happened when the FDA needlessly delayed approval of a safe, accurate, and inexpensive home HIV test.

When the HIV virus was identified as an infectious disease without a cure or enduring treatment and therefore fatal, it was clear that a key element to limiting its spread would be prevention. Testing to determine if one was infected with HIV had been both intrusive and expensive. As a result, it found limited use as a means of preventing AIDS.

In 1990, a subsidiary of the Johnson & Johnson Company began development of a test for HIV that would allow people to painlessly and safely extract blood, place the sample on sanitary absorbent paper and send it to a lab. The test, which would allow individuals to obtain the results over the phone or at a doctors office, cost $38 dollars compared to the $300 cost for tests administered at clinics. The safety and accuracy of the take home test were clearly demonstrated. The FDA even acknowledged that it was safe. *Yet the FDA refused to allow the test on the market for over five years.*

The reasons for the FDA embargo changed over time. None of them had to do with what the FDA is supposed to monitor — the product's safety. Each time the FDA requested more information and raised more questions, the company provided the data and answered the concerns. Each time the FDA promised to approve the test for sale to the public. And each time it did, new questions and new concerns requiring more data and more testing arose.

Behind the scenes, the home HIV test was considered to be a threat and a nuisance to a powerful alliance of HIV activists who wanted to emphasize treatment over prevention. HIV clinics that conducted the more expensive tests worried about the impact of the take home test on their bottom lines. FDA bureaucrats and congressmen became irritated with the earnest and at times confrontational approach of the president of the Johnson & Johnson subsidiary. And in an even more disturbing development, a memo from the Centers for Disease Control to the FDA demonstrated that the CDC was lobbying against approval of the test because it

would lead to "HIV positive individuals flooding public health clinics."

The FDA engaged in stalling tactics because it could not find any scientific evidence that the test was unsafe and unreliable. In short, the FDA simply ignored the science and simply gave a set of special interest groups and agencies what they wanted. As a result, thousands of people who would have found out if they and their partners had HIV failed to do so. It is estimated that because of the embargo, more than 10,000 people — nearly 10 percent of all HIV cases — contracted HIV because of a lack of knowledge.

The FDA sacrificed science for a politically correct solution to controlling the spread of HIV. Widespread testing and knowledge of who has HIV is surely a sturdier prophylactic than condoms, yet the FDA perpetuated the myth that condoms and sporadic testing protected the public health. The reality was that the FDA's response to an array of proprietary and political interests weakened prevention efforts by keeping a broad section of the American people ignorant of their own medical condition. Because of this, many have unknowingly contributed to the spread and mutation of a fatal disease for which there is no known cure and only the bare beginnings of effective treatment.

Under David Kessler, the FDA successfully expanded the range of important medical decisions that are made by the FDA instead of being made by patients and their doctors. Kessler certainly did his part in relieving the American people of his so-called "unrealistic burden" of making their own decisions. One of the most successful methods they used in snatching away this piece of American liberty was attempting to shut down the free flow of information. Thus, their triumph came at the expense of individual choice and in many ways harmed public health.

Some constitutionalists, patriots and militiamen believe our government is intentionally trying to kill us. The people who believe that are dismissed by government and mainstream media as crazies.

Yet, "The British Medical Journal estimates that 10,000 Americans die each year" due to seemingly inexplicable negligence by the FDA. Another estimate traces 10,000 cases of AIDS to the FDA's intentional neglect. These claims are made by reputable scientific sources – not "crazy" constitutionalists.

For perspective, consider that there were just 311 deaths caused by terrorists worldwide *in 1996. Based on this trivial threat, FBI Director Louis Freeh encouraged the passage of several draconian laws that imperil both a handful of terrorists and the majority of Americans who are legitimately critical of our government. In passing these laws, Congress is arguably subverting the Constitution.*

But if terrorists cause a few hundred deaths each year and the FDA is responsible for over 10,000 deaths each year, why doesn't the FBI investigate the FDA? Given that the FDA may be thirty times as lethal as terrorists, why won't Congress pass laws to protect us from FDA bureaucrats rather than Islamic terrorists?

The constitutionalists – and the British Medical Journal – generally agree that elements of our government are causing (or at least allowing) over 10,000 Americans to die each a year. The FBI is going after terrorists who kill a relative handful of Americans each year. Now, who's crazy? Constitutionalists or bureaucrats?

This article was abstracted from an IPI Policy Study by Dr. Robert Goldberg, a Senior Research Fellow with the Center for Neuroscience, Medical Progress and Society at George Washington University. Reprinted with permission from the Institute for Policy Innovation 250 South Stemmons, Suite 306 Lewisville, TX 75067 (972) 219-0811. ipi@ipi.org or www.ipi.org ■

Serious as a Heart Attack

by John Shull

Until recently, constitutionalists have overlooked the significance of elections and election laws. However, elections are the critical, almost sacred, keys to political power and maintenance of the Constitution. Unfortunately, Americans are so confident that our "sacred" democratic elections are honest that not one man in 10,000 feels an urge to study election law. Our collective confidence and consequent ignorance renders us extraordinarily vulnerable to vote fraud.

According to Louisiana attorney, M. Dale Peacock, vote fraud, "negates the good citizens' rights to vote. It strikes at the most fundamental American right: not to be taxed without duly elected representation. What our forefathers fought for — free elections — is lost when select precincts do not, at least, guarantee that voters are lawful. It is a total destruction of the right to vote." How serious is vote fraud? As you'll see, one judge apparently thought the issue so serious, he succumbed to a heart attack – hence this article's title.

Moreover, vote fraud may be more common than most Americans suppose. For example, a year after the 1996 elections, two Congressional seats are still contested based on voter fraud.

In the House, Republican Bob Dornan challenged the voting in the 46th congressional district of California by showing that more than 300 voters (out of his opponent's winning margin of 984) were illegal. This case may go to court and the 46th district's seat may not be determined before the 1998 elections.

In Louisiana, the U.S. Senate is investigating Mary Landrieu's narrow (5,788 vote) victory over Woody Jenkins for the Senate. Jenkins' allegations illustrate the variety of vote fraud tactics: individual voters casting up to fifteen votes; voting machines not registering votes for Jenkins; 3,169 voters addresses listed as abandoned public housing; and in one precinct, there were 7,500 more "phantom votes" cast than there were voters. (According to Congressman Billy Tauzin, "Although the nationwide voter turnout was a paltry 49%, in New Orleans, it was a robust 107%.") Based on Jenkins' allegations, sixty-eight people have been indicted. If vote fraud is proved, the Senate Rules Committee may declare the Senate seat vacant.

Are these 1996 vote fraud allegations unique? Hardly.

In 1984, the Indiana Secretary of State declared that Republican Congressional candidate, Richard McIntyre, won by thirty-four votes over his Democratic opponent. Nevertheless, the Democrat-controlled US House awarded the seat to the Democrat Frank McCloskey in what Rep. Bill Thomas (R-CA), described as "nothing short of rape."

In the 1960 Presidential election, John F. Kennedy defeated Richard Nixon by just 113,000 votes, due in part to Chicago Mayor Richard Daley's ability to "deliver the vote" from a number of voters who were registered but dead.

Point: Although the mainstream media doesn't talk about it too much, vote fraud is common in American politics.

Here's the story of one man who's personally experienced vote fraud, fought back, and proved once again that just one determined man can make a big difference. In 1996, John Shull entered the Republican primary election in San Antonio, Texas, to run for congressional office in the 20th district and was defeated fairly. Or so it seemed, until he launched a personal investigation into election law and procedures. As a result, Shull uncovered a systemic vote fraud problem in San Antonio that could be happening anywhere in the United States.

Mr. Shull's investigation into vote fraud started in 1996 when he 1) bought a mailing list of registered voters from his county election office; 2) sent campaign fliers to all those registered voters by First Class mail; and 3) received a substantial number of his campaign fliers back in the mail, marked "addressee unknown", "no such address" or some such. Rather than simply discard the returned fliers, he counted them, analyzed them, and realized the voters registration list he'd bought contained substantial errors.

At first, Mr. Shull assumed that the voter registration errors (and other problems he'd seen in the election pro-

cess) were largely "innocent" and caused by government incompetence rather than intentional vote fraud. He sued Bexar County for damages he'd experienced due to the inaccurate voter list and other regularities. In court-ordered mediation, Mr. Shull agreed to settle with the County for repayment of his court costs and a job working as an election consultant to help the County eliminate the voting irregularities he'd uncovered. Note that Mr. Shull wasn't simply suing for "quick" monetary damages — he sued for a job in which he would work to help correct the problems he'd seen and suffered. This settlement would've cost Bexar County about $50,000.

The local District Attorney agreed to the settlement, but seventy-two days later, reneged for reasons unknown. At this point, Mr. Shull began to suspect the voting irregularities he'd discovered might not be so "innocent", and began a serious, determined investigation into Bexar County voting procedures. To date, Bexar County has done virtually nothing to investigate Mr. Shull's allegations of vote fraud, but has now spent almost $500,000—with no end in sight — trying to stop Shull from prosecuting his case.

Here's Mr. Shull's introduction to his story:

"I filed my election contest case on April 19,1996 – almost two weeks after the Republican primary election. My suit involves outright voter fraud, official refusals to provide public information concerning the election, and public accountability. My suit establishes direct liability for the officials involved and is headed for a jury trial.

"**Voter fraud:** In my primary election contest, over 1000 valid voters weren't counted (apparently including my own family) with over 40 of the 267 voting precincts not even recording one vote. 150 "voters" decided to vote from invalid or nonexistent addresses.

"**Public information:** since filing my case, I've made continuous attempts to obtain public record information on the Republican Primary election for the 20th US Congressional seat held on 9 April 1996. However, due to strenuous efforts by the local DA's office, almost no information has been made available through either court discovery or the Texas Open Records Act. There have been over ten court hearings on discovery alone (a "conspiracy of concealment," one might say). Some believe many of the statutorily required records can't be provided because they don't exist.

"**Public accountability:** Local election officials have not complied with or enforced the state election code. I estimate that almost 40% of the state election code has been ignored. Noncompliance with state election code requirements constitutes fraud. Examples:

"1) **Tax Assessor Sylvia Romo** (custodian of the voter registration file and heart of voter authorizations) can't eliminate the "dead people" from the file.

"2) **County Judge Cyndi Krier** sat on the County Commissioners Court and oversaw the allocation of resources for elections. She also sat on the County Election Commission — the only audit mechanism for this same process. Although a State District Court has already ruled that Bexar County is liable, Judge Krier (top Bexar County official) says she is not in charge nor responsible.

"3) **County Clerk Gerry Rickhoff** denied an Open Records Act request for election information with a "school news media" exception. Like Judge Krier, Rickhoff sat on the County Election Commission and was responsible to enforce state election code requirements.

"4) **County District Attorney, Steve Hilbig** is largely responsible for the integrity of the election process. Nevertheless, he hasn't prosecuted one person for vote fraud—including the "duplicate" voters easily identified in the voter registration records. However, without investigating my allegations, he vigorously resists prosecution of my case. For example, despite a court order, he is directly responsible for preventing my case from going before a jury on October 14,1996 – less than one month before the general election.

"Judging from our public officials' denials of personal responsibility,

our election process runs itself and is independent from the officials we elect or appoint to oversee it. But if they are not accountable for violations of election laws, who is?"

Deceptive trade practices?

According to Texas law, in a vote fraud suit, the only parties who can sue or be sued are the actual candidates. In other words, if Mr. Shull alleges vote fraud, he can normally sue only whichever candidate he believes is responsible.

Nevertheless, Mr. Shull filed his suit under Texas consumer-protection legislation called the "Deceptive Trade Practices Act". This Act was designed to help consumers settle problems with businesses without having to go to court. Businesses are "encouraged" to reach an out-of-court settlement with dissatisfied customers because— if they "stonewall" and force the customer to sue in court— the consumer must only present enough evidence to overcome a very low standard of proof to win his case. If (when) the customer wins, the businessman will be ordered to pay all attorney fees plus TRIPLE whatever monetary damages the customer suffered.

For example, suppose you paid $500 for some plumbing that you later realized was shoddy, and threatened to sue the plumber under Deceptive Trade Practices. If the plumber's smart, he'll either correct the problem at no cost or refund all or part of the $500. If he doesn't settle and the case goes to court, the plumber will almost certainly lose and wind up paying his attorney's fees, your attorney's fees, plus $1,500 (three times his original fee) to you.

Mr. Shull's use of Deceptive Trade Practices to sue for election fraud is an exciting application of the law. As you'll see, his suit is based on the idea that consumer's are protected against not only shoddy products or services, but also "processes". In Mr. Shull's case, he is suing over defective election processes, but I can't help wondering if this same consumer protection argument might also work on the regulatory and judicial "processes" used by traffic police and municipal courts which enforce traffic law. This possibility might hold true in any state that has comparable consumer protection legislation.

Here's an edited excerpt from Rick Donaldson's and Alfred Adask's June 2, 1997, interview of John Shull on KPBC radio (Mr. Shull's comments are in normal text; mine and Rick's are italicized):

Why did you use Deceptive Trade Practices as part of your legal strategy?

Because — in an exclusively election-based case — the election code invests the sole power in a district judge to be the finder of law and fact.

Exclusively?

Yes. No juries. To get around that barrier, I had to add some other claims.

So you filed your case under the Texas consumer-protection law called the Deceptive Trade Practices Act . . . who did you file against?

They've argued that, as implied in the election code, the only proper party to the suit was my opponent in the primary. However, there is an "out" since the court permitted me to add any other major person that had something to do with the contest. So I sued Bexar County Elections, its administrator, Ed Navarro, Bexar County (this is the first time a *county* has been sued in an election controversy), and the candidate that I ran against in the Republican primary, James Walker.

Bexar County Elections was an administrative agency created to supervise elections by consolidating voter registration and actual conduct of the election into one office. However, as a result of my suit, and an ensuing FBI investigation, that agency has been dissolved.

So your suit has already caused one county agency to disappear?

It seems so.

You sued because they sold you a defective voter registration list?

There are two causes of action under Deceptive Trade Practices Act (DTPA): First, if someone misrepresents the attributes of a product, service, or *process* — they're subject to DTPA. There is legal precedent that the output from a computer has been construed by Texas law as being a "tangible product" from, for instance, a county and is therefore compensible under DTPA. The data

that the Bexar County computers generated is therefore a "tangible product" with the "attribute" of supposedly listing *all* eligible voters.

Many candidates buy mailing lists and send their political fliers by inexpensive Bulk Mail. Bulk mail saves money, but if the address is invalid, the flier is not returned to the sender – it's simply destroyed by the Post Office. However, I sent my postcards soliciting votes by First Class mail, so any that were not properly addressed were returned to me, giving me third-party verification that the Bexar County voter list did not include "all" and "only" eligible voters.

The second part of the DTPA is the "process". In this case, *election* "process". I'm alleging that as a candidate, I was induced into running for a public office by a guarantee and implicit contract with Bexar County (which administered the election) that they'd conduct an election process that was fair, consistent, standardized and with a predictable results.

That's a powerful strategy that might apply in any State that has a Deceptive Trade Practices Act or some similar variety of consumer protection legislation.

It sure could. Under other provisions of the election law you don't have to be a candidate, but can even file suit as a *voter*. For instance, in the Texas election code there's a proviso that says, "any person *without exclusion*" who feels he's been harmed or will be harmed by the system, can seek injunctive relief. That means that you or anybody can go into court and say, "Hey wait a minute, let's shut this election process down."

You're saying anyone — even if he's not registered to vote — who thought he'd be adversely affected by the election process, could seek an injunction to stop the election? That opens a lot of doors.

Seems so, but remember, this has not yet been tested in court.

However, I did test the injunctive relief portion on 28 October, 1996. I sought to enjoin the November general election because the number of "questionable" votes in my election contest exceeded the number of votes by which I lost, by over 100% (in fact, I've got 2,000 votes that could be thrown out). Therefore, since I was sure to prevail, I reasoned that the court would be forced to enjoin the general election in Bexar County. However, State Judge Andy Morales ruled against my motion, and refused to provide any reason for doing so on the record.

If you should have been the Republican nominee from the 1996 primary election, is the election of the Democrat Henry Gonzales in the November, '96 general election invalid? Does your suit compromise the validity of the votes Gonzales cast in Congress?

Yes! And guess what? I've had two judges refuse to make decisions. They've abated; they're trying to dismiss the primary election contest issues of this case as "moot". Normally, once the November general election has been held, the previous primary election is legally "moot" and no longer subject to challenge.

However, the judge has a problem. In the election code there are 14 provisions — including injunctive relief — which allow the court *without time constraints* to still adjudicate in law. And the number one exception in Texas to "mootness" is "public interest". And guess what the Texas Constitution says about voting rights? "*Utmost* public interest." It's the number one exception, guys.

I'll bet you've got a lot of people's attention down there.

Believe it or not, everyone's running for cover. Nobody wants to talk to me. Nobody wants to do anything. I've already had one judge have a heart attack. State Judge Andy Morales. It's only conjecture, but the word is that when he got my writ of mandamus to overturn his previous denial of my motion for injunctive relief, he had a heart attack.

How's he doing?

Very well, and I wish him the best.

Vote fraud is easy

In my election, I could've taken my 41 workers on early voting and had every one of those guys vote at each one of 47 voting places and "created" over 1500 votes. So if vote fraud is intended,

vote fraud can be committed.

In fact, Texas Secretary of State Tony Garza sent me a letter that implied "vote early and vote often" was an established Texas tradition. Because effective govemment oversight is minimal, the legitimacy of the election process depends entirely on each voter's personal integrity.

For example, the election code requires voters who show up at a polling places without their voter registration cards to make written statements of their identify and eligibility to vote.

But guess what? We're still looking for those statements. Apparently, the election judges just said, "OK, if you say you're 'John Doe', that's who you must be – go ahead and vote."

Another thing; there were 6,081 votes recorded at the time of election, but 96 days later, the County's voter registration list for that same election, indicated that 7,113 people voted. That means over a thousand voters—about 15%—just disappeared from the original vote total. There's never been a recount in Texas that's caused the same result.

How many recounts were there?

The Secretary Of State indicates over 100. If y'all recall, in 1994 we had the Judge Littlejohn versus Judge Spears race where they announced the winner, and she went on a cruise. Then they had a recount and when the other guy won, he went on a cruise. Then there was another recount, and it turned back to Littlejohn again.

I honestly think that today's elections are being stolen — and I stress the word "stolen" — by design or by ignorance before you actually cast a vote.

How widespread is vote fraud?

My experience is limited to Texas and Bexar County, but we've found *systemic* problems, including mail-in ballots, retirement home ballots and (because the only requirement for getting on the voter registration list is a postcard) inflated voter registration lists that include "valid" voters who don't even exist.

Didn't your discover that San Antonio sent voter registrations to over 600 nonexistent streets? The registrations can't possibly be mailed back to these "streetless" applicants.

They blame it on the National Voter Registration Act (the "motor voter" law) which requires anyone who has a non-deliverable address to stay on the registration list for two federal election cycles.

Even nonexistent voters must be kept on the voter registration lists for a minimum of two elections?

Unless a specific name is challenged and they can't verify it, Yes. There've been almost no challenges of voters in Bexar County since 1976.

Because there are so few election challenges, everyone assumes voting is one of the few governmental processes that are still essentially legitimate. But, in theory, Republicans could "pack" a voter registration list with phantom Republicans, and the Democrats could counter by packing the list with phantom Democrats, and entire elections might be decided by nonexistent voters. The "silent majority" might be outvoted by a computerized "nonexistent majority" reminiscent of elections in the former USSR.

The real scary thing is the relationship between voter registration and jury summons. Down here in Bexar County, jurors are summoned from a combined list of registered voters and licensed drivers, but the County wastes nearly $5,000 a year serving and enforcing undeliverable jury summons.

Have any of the phantom voters who "live" on the 600 nonexistent streets showed up for jury duty? All these fictitious names might be used to "pack" particular juries as well as elections.

I don't know; we haven't tested that out. But see, first they have to get the summons to you, and if it's not deliverable since the address is bogus . . . .

What I'm leading up to — suppose certain elements in government wanted to "insure" a particular verdict was reached in a particular trial. Wouldn't it be possible to "summon" some phantom jurors (who were sure to support the "right" verdict) just as they may now count their phantom election votes?

You're right.

Another problem involves voter turnout statistics that are computed from the total number of votes divided by the

total number of registered voters. If the list of registered voters is inflated with phantom voters, the calculated voter turnout might appear to grow smaller and smaller.

Caller: There's an article called "Statistical Evidence In Law" in Volume 7 No. 1 of the AntiShyster that says the US Supreme Court opened the door to statistical proof in 1971 in *Griggs v. Duke Power Co., 401 US 424, 432.* What's interesting is that any probability of reoccurrence greater than 5% can be used as evidence in law.

Good point. In a sense, a statistical analysis can create sufficient "probable cause" for a court to consider an issue – and what is more easily analyzed than the various recorded numbers of voters and registered voters? A good statistician examining the simple totals of just ten elections might easily draw some astonishing and legally significant conclusions.

Dear diary

Here's some closing notes and updates from John Shull on the progress of his case. Although he's still getting serious legal resistance, pay close attention to the impact he's already had.

15 August 1997: State District Judge David Pebbles ruled: 1) that Bexar County, the election administration agency, and the DA had violated mandatory requirements of the Texas Election Code; and 2) all District Judges residing or presiding within Bexar County are disqualified from hearing my case.

This means that Bexar County and the DA are — for the first time — being held accountable for the application of the state election code. This is a major setback for the DA and a victory for me, after months of solitary battle against what many first called "insurmountable odds".

8 September 1997: Ballot counting begins in the *Alanis v Flores* case that's derived from my case. A second derivative case *(Vodojick)* involves local Sheriff calling on talk radio KTSA for all of those contesting elections to form a group to solve problems. County Judge Krier and key personnel in Bexar County election administration followed for fifteen minutes of radio time to sidetrack the Sheriff's proposal while claiming *others* are responsible and, besides, no one has told Judge Krier what's wrong. (Perhaps she can't read the court petition I filed that details the problems.) Attorney General candidate in 1998 elections announces that voter fraud in Bexar County will be an issue. Bexar County officials are increasingly running for cover from the Shull case.

10 September 1997: School bond issue suit is filed based in part on polling site irregularities and election process fraud in Western District Federal Court. Shull case issues now expanding in application and concern. Public rally held at Federal Court.

11 September 1997 - State Attorney General (elected by the same system I am contesting – talk about the fox in the hen house) is trying to figure out how to avoid conducting a criminal investigation (as requested by Governor George Bush Jr.) into voter irregularities in Bexar County. It's been almost a month and no apparent action known. Calls to AG's office result in "We're working on it" and "It's been assigned". The Governor's office claims "No knowledge". The Texas Secretary of State is assembling a task force to address future Bexar County election problems – I believe they want to "take over" county election administration but no statutory authority exists to do so.

Meanwhile, the local Bexar County government has yet to investigate anything while it spends more time and tax money concealing things that shouldn't have been done and other things that should've been done, but weren't. Is an "investigation" unnecessary because those charged with investigating my allegations are participants in the alleged offenses and therefore already "know" all the evidence?

12 September 1997: Election suit enters 17th month. The following letter was sent to a San Antonio tabloid magazine – the *Current* – based on their September 4th article "Shull Game". In that article, they stated my case was over, that I was costing the taxpayers a lot of money, and I should just go away. The article contained more than twenty major factual discrepancies but they refused to print what follows. The gist of their article can be inferred from my response. This gives an idea of what I've been up against as they attempt to create a "taxpayer revolt" against the continuing court costs of my case without ever dealing with its merits:

"I take exception to your latest article on my election case suit for the following reasons:

"1. Me: If I did not have something to say as a non-attorney, individually pursuing this case for 30+ hearings and 17 months, why have the legal wizards of our DA's office been unable to stop me? Why has Governor Bush requested a criminal investigation? Why have four other, derivative lawsuits been filed? Maybe you all have the wrong picture.

"2. Mediation: For whatever reason, your article made no mention of my attempt to settle and the DA's bad faith efforts. I offered to come in as a county employee to correct the election process defects I'd discovered and train those other county employees involved in the election process. Initially, the DA said yes and then 72 days later refused to do what they told the Court they were going to do – provide me with a job with responsibility to clean up the system.

"3. Taxpayer costs: The DA has alleged spending a 1/4 million dollars fighting an estimated 15 hours of legal testimony so our election officials need not later resort to "memory loss" in court. That's almost 1/2 million dollars spent so far on my case with no end in sight. But I originally asked for about 1/10th of that in the form of a job to correct the election process problems I'd discovered plus my court costs. Bexar County originally agreed to this settlement but then reneged, 72 days later. So who is really wasting tax money and misleading the taxpayers?

"4. Concealment conspiracy: if the DA, all election officials, and the court were repeatedly preventing *you* from getting public information, what conclusion would you draw? Especially when you consider that the election process is supposed to be open, accessible, and explainable to all. Is it possible that such acts are a direct attempt to avoid liability for their collective and individual acts? A reasonable person would think so.

"In summary, we all win or lose in this case because it is about our ability to influence our destiny — whether it be schools, representatives, or the like. Such activities must be open to the public and our officials must pay if they do not do what they are supposed to . . . The days of political scandals, when taxpayers pay the bill but never jail the person(s) responsible, should be gone.

"Thanks for this opportunity,

"John Shull"

This case is far from over, but it's astonishing how much Mr. Shull has already achieved. Constitutionalists can fight city hall.

Mr. Shull has caused or inspired: an FBI investigation; dissolution of a county agency; a criminal investigation by the Texas Attorney General; all Bexar County judges to be recused from hearing his case; $500,000 in legal costs to defend against his allegations; three additional lawsuits against Bexar County; and a public rally at the County court house. Who says, "You can't fight city hall"? Constitutionalists CAN.

Mr. Shull's impact is proof that just one individual, any individual — maybe you – can make an enormous difference in this nation if you're willing to do your homework and "get involved". Just pick up a copy of your state's election code and start reading; with a little study, you'll probably be one of only a handful of people in your state who really know election law. Then get involved as a candidate or precinct election judge, keep your eyes open, start gathering information, and then do whatever's right. Y'know, it's quite possible that a hundred men like John Shull could change this whole country by simply insisting the government obey the law in general and the Constitution in particular.

You can reach John Shull at 1115 Old Lake Rd, San Antonio, Tx 78245; Tel: 210-670-1418; fax: 210-670-8060; "People For John Shull" accepts donations to defray expenses at POB 764444, San Antonio, Tx 78245. Email: jshull1@juno.com. or voterfraud@juno.com.

Early History of U.S. Drug Laws (1898-1933)

by Bob Ramsey

The roads to Hell and unlimited (unconstitutional) government are paved with good intentions. Every so often, folks just like your and me decide they are so smart and self-righteous, that they can solve "problems" with unconstitutional laws.

Drug laws are a good example. Constitutional crimes consist of damage to another person or another person's property. Use of marijuana or cocaine may harm the individual user, but don't normally damage another person or property. Hence consensual drug use is not a constitutional crime. Nevertheless, some self-righteous individuals decided to save us from ourselves and instituted a series of unconstitutional drug laws and penalties. But after two generations of our "holy drug war", do we have less drugs or more police?

We can debate whether the original motivations to pass our drug laws were benign or cynical. But one thing's sure: no matter why a law was passed — even if that law is soon seen to be impractical, unreasonable, or even irrational — government will expend endless taxpayer energy, wealth, resources and individual liberties to, somehow, someway prove the law "works" rather than admit that law was stupid, destructive and call for its repeal.

Why is it so difficult repeal stupid laws? Because most modern laws serve special interests (a limited constituency) rather than the General Welfare of the American People. As a result, most modern laws aren't mere expressions of moral right and wrong. They are charters for private interests and government bureaucracies who profit from the law's existence. This article illustrates that unconstitutional laws have self-serving constituencies who fiercely and effectively defend the laws that feed them at their neighbors' expense.

I believe it is impossible to enforce a law that attempts to control any private behavior in which a significant portion of the population chooses to participate. I don't plan to discuss the reasons why this is so, but to describe how each failed attempt to enforce Prohibition laws has led to further erosion of individual liberties. The bottom-line? For over eighty years we've attempted to give an ever-expanding number of police agencies enough power to do the impossible. In the process, we've come dangerously close to destroying America.

I will describe a historical thread of U.S. government attempts to improve society by controlling the inside of people's bodies. Trying (or pretending to try) to extinguish a market for certain agricultural products has created counterbalancing incentives for criminal activity in both the private sector and government. Each failure to achieve the stated goal of "national purity" has fueled cries for more intrusive government powers and caused some very alarming trends.

In the beginning

The first federal law that regulated consumable products was the Pure Food and Drugs Act of 1906. But the first time Congress involved itself in drug laws was after the ten-week Spanish-American War in April - July of 1898. After winning this war, Congress became responsible for the first time for a colonial empire that included the Philippines. Instead of being mere servants of a self-sufficient American people, Congress suddenly became the paternal master of millions of "ignorant savages" who were virtual wards of the state.[1]

And so for the first time, Congress was forced to deal with a "drug policy". The former Spanish government of the Philippines had a two-part drug policy: 1) government controlled the sale of all opium; and 2) you could only buy opium if you were Chinese. Obviously, the U.S. should have continued, modified, replaced or abandoned that policy. Instead, America simply ignored this curious situation until the Filipinos rebelled in February 1899, causing us to take colonialism more seriously. Few Americans realize that there was a 28-

month Philippine war involving 50,000 U.S. troops, who killed 200,000 to 600,000 people before we convinced the Filipinos we were their best friends.[2]

The McKinley administration sent the Republican Party's rising star, Howard Taft, to the Philippines to straighten out the mess. Taft was an energetic and able administrator who established civil rule and began economic development. His experience in tackling public problems both in the Philippines and as President from 1909-13 is of special interest, since he later became Chief Justice of the Supreme Court from 1921-30, where he served through most of Alcohol Prohibition.

In 1902, Taft established a commission to study the opium policy inherited from the Spanish.[3] The commission's leader was Reverend Charles Henry Brent, a missionary in the new U.S. possession. Brent was soon named Episcopal Bishop of the Philippines and ministered to its newly appointed American rulers. He thus became one of the first Americans in this century to discover that expanding government made for some very exciting career advancement opportunities. Brent studied the situation and came up with a plan to continue the Spanish policy, except with a three-year phase-out period to humanely wean the Chinese of their habit. But when Taft asked Congress to pass an implementing law, reformers heard about it. They were outraged that the US government would promote this horrible habit in a helpless population, and persuaded Congress to insist on total opium prohibition.

In trying to stop opium imports, Rev. Brent learned that most of the opium came from Hong Kong, some 350 miles away, and quickly surmised that opium traffic was international and could only be addressed internationally. So he began advocating an international conference on opium, which won acceptance largely because other nations also wanted to break British dominance of opium trade with China.

In 1909, a small international commission met in Shanghai, attended by the countries most active in Far East trade. It settled little, but gave reformers a picture of each participant's motives. The British and Dutch were making money; the French didn't care. Indeed the British stated that opium smoking was the Chinese equivalent of drinking liquor or beer, and they had no problem with it. The Chinese wanted to show they were not to be taken lightly, and the Americans were seeking their place as an international power. A larger convention was scheduled in the Netherlands at The Hague for 1910, and was to include all the major world powers. But nations like Italy, Turkey, Germany and Switzerland dragged their feet, and the next conference was delayed.

Assumptions in the early 1900s

Things have changed so much since 1900 that today it's difficult to comprehend what a free market used to be like. In the late 1800s and early 1900s, a uniformed federal agent might bring heroin to your door that you had ordered from Sears Roebuck . . . along with the rest of your mail.

Even the wording of the Food and Drugs Act of 1906 (the first Congressional attempt to regulate consumable products) is telling. Its literal intent was to "assure the customer of the identity of the product purchased, not of its usefulness." In those days Congress didn't consider its place was to judge for the American people what was useful or not. Knowing just the components of a product was a major step in helping the people make informed decisions.

The law called a product "misbranded . . . if the package fails to bear a statement of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis, chloral hydrate, or acetanilide."

Obviously, back in 1906, Congress took for granted the legality of a free market in all drugs.[4] In fact, when the Food and Drugs Act was passed in 1906, it was estimated that 3-5 percent of the adult U.S. population used opiates regularly, mostly in patent medicines whose contents were a trade secret. When people were informed as to the contents of their favorite remedies, many people quit using them. The percentage of Americans habitually using opiates fell to about one percent – virtually the same as it is today if you include users of both illegal and medically

prescribed opiates – but without a police state. And this was in a socio-political climate where just about everyone had some kind of opium preparation in their medicine cabinet, used it at least occasionally for headaches or diarrhea . . . and must have known feeling of an opium "high".

The pause that refreshes

Spanish Conquistadors found the Peruvian natives chewing coca leaves when they arrived in 1530. The Spanish encouraged the practice since it made the Indians work longer in the silver mines with less food.

Refined cocaine became generally available to Americans in the early 1880's. At first, it was greeted with great enthusiasm. Pure and cheap, it was at often given to workers in Southern cotton fields to increase productivity. A Pope and a US president endorsed coca products. The original 6.5 ounce bottles of Coca-Cola contained about one grain of cocaine (an aspirin tablet is five grains.)

Although Sigmund Freud wrote enthusiastically about the benefits of coca use, after two years he decided it was better left alone. By 1905 it was considered to be a social problem. Cocaine seemed to make people feel "worthy". One New York politician complained "It makes working men feel like millionaires — which they're not!" Especially alarming to Southerners was that it seemed to make a Black man feel just as good as a White man. When Southern politicians instinctively objected to federal drug legislation on State's Rights grounds, they were quickly brought around by sensational stories about cocaine-crazed Negroes raping White women.[5]

Transition time - 1913-1920

In the early 19-teens, the US's new role as a colonial and world power made Americans think of themselves more as a nation than a collection of states. An example of the new "national" thinking came in 1911, when a certain War-of-1898 Naval-hero-turned-Congressman named Richmond P. Hobson whipped up enthusiasm among the Anti-Saloon League (ASL) for National Alcohol Prohibition via a Constitutional Amendment.[6] Until then, Prohibitionists had worked one state at a time — but sometimes states repealed liquor laws the ASL had worked very hard to pass. And it drove the Prohibitionists nuts that anyone could order liquor from out-of-state through the U.S. Mail or the Railway Express Agency. A constitutional amendment was very appealing. It would be impossible to repeal, and would cover the whole country at once.

In 1913, our form of government was changed fundamentally in at least three ways, all of which were centralizing influences: We instituted a central bank called the Federal Reserve. We changed the mode of electing Senators. Formerly Senators were elected by a State's legislature; the loss of this power not only eliminated federal accountability to State governments, but also made State legislatures less relevant. And then there's the big one, something the original Constitution had specifically forbidden: the Income Tax.

The income tax did many things, but one of its immediate effects was to break the power of the liquor industry. Through the 1800s, liquor taxes had provided as much as half of all federal revenues. Now, thanks to the income tax, government could do without the alcohol tax. Congress could afford morality without worrying about the arithmetic. And there was another wonderful feature. For the first time it became practical to enact a "tax" law that didn't generate revenue.

Remember that international Opium conference that didn't happen in 1910? Well, America pressed the issue, and Hague conventions on opium were held in 1911, 1913, and 1914, slowly making progress toward a treaty whereby signatories would "endeavor" to control their own traffic in opium and cocaine. Delegates from forty-four nations signed the treaty, which would take effect when ratified back home, supposedly by the end of December, 1914.[7] However, few nations ratified because three days after the convention adjourned in June of 1914, Archduke Ferdinand was assassinated in Sarajevo, kicking off World War One.

But the US didn't enter the war for almost three years. In 1914, alcohol – not war — was the big issue. Narcotics was an afterthought. In May of 1914,

the House of Representatives scheduled a debate on a Constitutional amendment prohibiting alcohol for the following December, seven months away.

The December 22nd, 1914, alcohol debate may not have been the social event of the season, but it was close. The House was almost evenly divided for and against, as were both parties. Everyone knew the amendment wouldn't pass because a 2/3 majority is required. Both sides allotted tickets to the house gallery, which was jammed and noisy. Attendees draped the chamber with banners like at a football game. The Women's Christian Temperance Union and the Anti-Saloon League marched down Pennsylvania Avenue to the House Chamber carrying a petition with six million signatures and piled it on the Speaker's desk. The debate lasted over thirteen hours, and fills 125 pages of fine print in the Congressional Record.[8] All the good and bad arguments for and against prohibition are in there, and they are well stated, as you might expect when seasoned debaters have seven months to prepare.

Compare all this grand activity with the vote eight days earlier on the Harrison Narcotic Law: it passed by voice vote after announcement that the committee had referred it favorably as a fulfillment of treaty obligations. At the time it was considered a record-keeping act, not a prohibition law. It took the form of a nominal tax, supposedly generating just enough revenue to support its own administration, on commerce in the specified drugs, with detailed record keeping. Its passage didn't even make the newspapers. The *New York Times* first mentioned the law in a legislative summary three weeks later.

But the Treasury Department seems to have thought it was a prohibition law. I don't know when they started arresting people, but they must have jumped on it like a chicken on a June bug. The law took effect on March 1st, 1915, and the first court judgement was handed down in May. The US District judge in Pittsburgh held the prosecution of addicts invalid,[9] saying an addict was not required to *register* under the law, so he could hardly be held to *possess* narcotics illegally. Another case in Memphis found it was acceptable to prescribe unlimited quantities of narcotics as long as the required records were kept.[10] The Supreme Court virtually struck down the law in June, 1916, saying Congress certainly did not intend "to make the probably very large proportion of citizens who have some preparation of opium in their possession criminal."[11]

Treasury agents backed off until the nation entered the Great War in 1917.

In August of 1917, Congress passed a wartime act giving the President power to control all "necessaries" for national defense.[12] This power was immediately used to shut off grain and sugar supplies to brewers and distillers, giving us de facto alcohol prohibition throughout the war. Since a wartime prohibition was already in place, Congress was on a roll and sent an official Prohibition amendment to the State Legislatures in December. The required 37 states ratified it in just over a year. The 18th Amendment was declared ratified on January 16th, 1919, to take effect in one year.

Within days, anxious to avoid driving boozers to switch to narcotics, Congress modified the 1914 Harrison Act to close loopholes. This time the Supreme Court agreed. Less than three years earlier, the court had said Congress never intended to make criminals out of any American who happened to possess some form of opium. Since it had just required a Constitutional amendment to ban alcohol, you might imagine the court would tell Congress to go get another amendment if it wanted to ban something else. But now it gave the opium user short shrift in handing down twin 5-4 decisions on March 3rd, 1919.[13]

First the court answered a complaint out of Memphis that the tax was not really a "tax" but a "prohibition", which was unconstitutional. It was decided the Harrison Act *was* a "tax" (and therefore constitutional) even though it had purposes *other than raising revenue*.

In the second case, a doctor was charged with prescribing opiates to an addict with no intention of curing him. The justices now said prescribing maintenance doses of morphine was "so plain a perversion of meaning that no discussion of the subject is required". (Curi-

ously, while the court asserted that "no discussion of the subject was required", the court was nevertheless split 5-4 in its decision.)

Although Alcohol Prohibition soon commanded the nation's attention, it was during the four-year transition from 1919-1923 when Americans lost the right to control their own medical treatment.

The revised Harrison law allowed only physicians (not pharmacists) to prescribe narcotics "in the course of their professional practice only." For the first time, druggists could only dispense on a *doctor's* prescription. Treasury agents immediately began harassing doctors who did not adhere to the Internal Revenue Bureau's strict definition of what constituted "professional practice". During the early 1920s, doctors were targeted for intimidation. Each year, about 200 doctors were convicted, and "charges were dropped" against about 30,000 more when they agreed to "cooperate". I don't know how many U.S. doctors and pharmacists there were in the early 1920s, but when 177,000 of them were threatened with jail, the word got around that prescribing narcotics could be hazardous to their health.[14]

With the AMA leading the charge, doctors fought bitterly to preserve their freedom to treat patients as they thought best. The question was finally settled by a Supreme Court case about alcohol prescriptions. A group of New York doctors led by the Dean Emeritus of the College of Physicians and Surgeons of Columbia University[15] sued the government over the federal maximum prescription of medicinal alcohol, which was one pint in 10 days regardless of the ailment. The doctors claimed the rule was arbitrary, hence unconstitutional. The court ruled that the 1.6 ounce-per-day figure was based on a survey of doctors, hence not arbitrary, and further declared that "the practice of medicine is always subject to the police power of the state." Here the word "state" referred to the federal government. After that, most doctors became politically docile, compliant, and "correct".

Thus, in the ten-year period from 1914 to 1924, Americans went from being in absolute command of their own medical treatment, with doctors and pharmacists among their *options*, to a condition where medical doctors controlled the people, and the federal government controlled the doctors.

Alcohol Prohibition - 1920-1933

Alcohol prohibition began with great expectations at midnight, January 16th, 1920. New York City's Park Avenue Hotel held an elaborate mock funeral for John Barleycorn with comical eulogies and painted-on tears. But elsewhere that Friday, in churches across the nation, people stayed up past their bedtimes to celebrate their final victory in a struggle begun by their grandparents.[16]

Alcohol was scarce for a while, but entrepreneurs soon stepped up to the plate. Americans were not used to sneaking around, and law enforcers had not learned to suspect them. One early smuggler was a cab driver who simply drove his clearly marked New York City taxi 350 miles north to Canada, loaded up all the whiskey it could hold, and drove back to New York with cases of whiskey plainly visible through the windows. (Smuggling and govemment suspicions have come a long way since 1920.)

But suppliers quickly became more sophisticated. George Remus was a criminal defense lawyer in Chicago who knew how to work the law.[17] He moved to Cincinnati because of its proximity to established distilleries in Kentucky and Tennessee, and bought up most of America's best-known whiskey brands. Then he bribed officials to get "medical" permits to ship from his warehouses. By the end of 1922 – in just 35 months – Remus made $40 million ($700-800 million in current dollars). His network of bribes included $500,000 to the U.S. Attorney General. Once a detective in Cincinnati recorded him passing out bribe money to forty-four public officials in one afternoon, but for some reason the Cincinnati DA refused to indict.

Millions of people were violating the law discreetly. But hundreds of thousands of people were thumbing their noses at the law, which outraged those who had worked to create it. They demanded enforcement to "git tuff", and soon *serious* enforcers appeared.

With Prohibition an embarrassing failure, law enforcers soon began crying for stronger laws to accomplish their impossible task. And lots of them made very creative interpretations of existing laws in their attempts to keep up with bootleggers. The Supreme Court quickly became involved in constitutional issues. President Harding appointed William Howard Taft (who learned the "drug policy" business in the Philippines in the early 1900's) as Chief Justice. Taft had opposed the 18th (Prohibition) Amendment, but was committed to making it work. As the former Governor General of the Philippines, and as President, he understood the importance of having the tools to do the job.

In 1922, the court decided a case where the state of Washington had convicted a bootlegger; then Seattle's federal prosecutor convicted him again for the same acts.[19] The court decided that since the Prohibition Amendment says "The Congress and the several states shall have concurrent power to enforce this article," obviously each is independent of the other. They found unanimously that this did not violate the Fifth Amendment's guarantee against double jeopardy. Under this same legal concept, the Los Angeles police who were acquitted of beating Rodney King while he was down . . . were later convicted for violating his civil rights by beating him while he was down.

A 1921 case dealing with searches worked its way to the Supreme Court in early 1925. Two federal agents in Michigan saw some guys driving by from whom they had previously, though unsuccessfully, tried to buy liquor. Without a warrant, they stopped and searched the car, and — lo and behold — found sixty-eight bottles of liquor.[20] The justices found, 7-2, that the 4th Amendment only forbids "unreasonable" searches and seizures, and that these officers had acted "reasonably".

This illustrates an important aspect of Prohibition violations, and "consensual" crimes in general. Before Prohibition, police fought the kind of crime where people would like to pay them for hanging around. After Prohibition passed, they were trying to stop the kind of crime where people would like to pay them to stay away.

Police discovered that, when the supposed "victim" willingly (even eagerly) participates in the "crime", he didn't call the cops, so normal (constitutional) law enforcement procedures simply didn't work. To have any chance of success, the definition of "reasonable" police action had to change drastically. Though the word did not exist at the time, police became "proactive" -- they'd catch criminals *before* they were known to have committed a crime.

And police became very proactive. Another landmark case also came out of Seattle in 1925. Roy Olmstead and seventy-four codefendants were convicted of running a major operation smuggling Canadian liquor.[21] The evidence was obtained by tapping their phones, which was against Washington State law. The defense complained the evidence was illegally obtained, and should be thrown out. Indeed, Prohibition agents did not deny they had knowingly broken the law hundreds of times over a period of months. The Supreme Court Justices nearly came to blows over this one, but the conviction was upheld by a five-to-four vote.

All four dissenting justices contributed to the dissenting opinion. This happens to be the case that contains the Louis Brandeis quote Timothy McVeigh cited at his sentencing hearing. Since McVeigh didn't get it quite right, I'll repeat it here:

"In a government of law, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

In 1932, another Supreme Court decision was handed down regarding an accused bootlegger from Eureka, California. James Dunne[22] was accused of possessing liquor, selling liquor, and possessing liquor for sale. He was acquitted of the first two charges, but found guilty of the third. His lawyers appealed, saying — wait a minute, the evidence is the same on all charges, how can he be not guilty of possession, not guilty of selling, but guilty of possession for sale?

Taft was gone. This was Justice Holmes' last case before retiring, and he delivered the 8-1 decision. The court decided that each count must be considered separately, and "Consistency in the verdict is not necessary."

Up to that time, it was unusual to bring multiple charges against a defendant. However, this decision gave prosecutors the green light to pile on as many charges as they could think of, in hopes something would "stick". In the decades since, this has become a fine art. Last year I read of a case where one county official in south Texas was acquitted of bid-rigging charges. He allegedly arranged $25,000 in bribes on several contracts with a total value of one million dollars. The newspaper said, "if convicted on all charges, he faced up to 570 years in prison and millions of dollars in fines." The possibility of sentencing a man to five *centuries* longer than he could possibly live illustrates the potential abuse and absurdity of "multiple

charges" – but, perhaps he'd get a few centuries off for good behavior.

Prohibition's repeal

Everyone knows Prohibition was repealed, but not many people realize that repeal was an extraordinary event. No other Constitutional amendment has come close to being repealed. Why did so many people change their minds?

There had always been a vocal minority who opposed Prohibition "for reasons other than their own thirst." The most influential, the Association Against the Prohibition Amendment, or AAPA, was formed a few weeks before the 18th Amendment was ratified, by Captain William H. Stayton a 58 year old lawyer, businessman and former Navy officer. He plugged along for several years, writing letters and making speeches, with little effect.

But events slowly added members to the "Repealer" ranks. Henry Joy, the president of Packard Motor Company, who had been very active in the Anti-Saloon League, lost enthusiasm for the "Dry" cause the second time Treasury agents came onto his property and broke down his elderly watchman's door to look for beer. However, he rejoined the Repealers after a duck hunter in a small boat was killed near Joy's riverfront mansion. A federal agent on the shore hailed the hunter to stop and be searched for booze. The hunter's outboard motor prevented him from hearing, and the officer picked him off with his rifle as he put-putted by.[23]

Wealthy industrialists had worked for Prohibition expecting to profit from a sober workforce. But as Prohibition wore on, they not only found drunkenness increasing but bullets flying. By 1926, Captain Stayton found influential people asking what they could do to help. He reported meeting some "serious businessmen" in Detroit who nodded agreement when one of them declared:

"The people are not very much interested in the question of wet and dry, but they are very much interested in the question of the form of government under which they shall live. They realize that Prohibition is not a real disease, but merely a symptom of a very great and deep-seated disease – the disease of . . . centralization of government from Washington . . . that extends now into our home and to the dinner table. . . . If we have five more years of this curse, there will be fighting in the streets of American cities."[24]

But they were just shouting at the wind. Although repealers' numbers were growing, the Dry's weren't worried. Four years later (1931), a Dry Texas senator boasted: "There is as much chance of repealing the 18th Amendment as there is for a hummingbird to fly to the planet Mars with the Washington Monument tied to its tail."[25] Many people considered Prohibition to be a natural by-product of Women's Suffrage, and this senator was confident America's Mothers were on his side.

But many mothers were seeing the same things as those men in Detroit. Mrs. Pauline Sabin was active in Republican politics, and had just about decided National prohibition was a disaster.[26] Police records showed drunkenness among children and teenagers had increased tenfold. The Salvation Army reported young girls were coming into their rescue homes 8-10 years younger than before.[27] Sabin saw Prohibition was breeding corruption and hypocrisy, undermining American youth, and destroying the cherished principles of personal liberty and decentralized government. She later recalled the moment she decided to fight Prohibition. She was sitting in a congressional hearing when the president of the WCTU shouted "I represent the women of America!" Sabin thought to herself, "Well, lady, here's one woman you *don't* represent."

She worked hard to elect Herbert Hoover, but then in his inauguration speech he vowed to fight harder to stop liquor. In May 1929, she resigned from the Republican National Committee and rounded up two dozen of her society friends to form the Women's Organization for National Prohibition Reform.

Miss Sabin was a veteran of charity work and the society pages, and quickly made it fashionable to oppose Prohibition. In three years her organization grew to 1.5 million members and finally did Prohibition in. When the *women* rebelled, and Republican women at that, Prohibition was doomed.

Nevertheless, there was still the problem of incumbent politicians who had (between drinks) strongly supported Prohibition for many years, and who had voted in 1929 to "get tough" by increasing penalties by a factor of ten. Somebody had to protect them from the political consequences of changing their minds.

Their problem was solved when someone actually read the Constitution and discovered it provides *two* ways to propose amendments and *two* ways to ratify them. Amendments can be ratified either by state legislatures or by special state ratification conventions. By using the option of state *conventions*, every Congressman was able to stand up proud and righteous, and vote — not to repeal Prohibition — but to "let the people decide" this issue once and for all. State legislators were off the hook too, since special elections were held where communities voted by secret ballot to send either a wet or dry delegate.

The 21st (Repeal) Amendment was sent to the States in February of 1933. It wasn't ratified until December 5th, but Congress passed the 'Beer Bill' in April,

declaring that 3.2 beer was not intoxicating, hence not illegal. So the end of Alcohol Prohibition is generally seen as April 4th, 1933.

Laws repealed, powers remain

As a result of a misguided attempt to establish both alcohol and drug prohibitions, there were several important cases – especially during WWI — in which the supreme court abandoned previous stands for liberty and affirmed very strong police and prosecution practices. If the court had not felt compelled by WWI and other political pressures to support Prohibition, these cases might have been decided differently.

It might have been advisable for the 21st (Repeal) Amendment to reaffirm some of the previous assumptions about state and federal roles in government. For example Congress was careful to frame the Harrison Act as a tax, something Congress had Constitutional authority to do. The "concurrent power" clause of the 18th Prohibition Amendment even gave Congress, for the first time, reason to pass criminal laws.

But repealers were just trying to stop a juggernaut, and they couldn't risk failure by trying to pass an amendment with a laundry list restating basic rights. As a result, although Alcohol Prohibition ended, the increased police powers it spawned remained in place.

Prohibition showed dramatically how well-meaning people can make a bad situation worse when they try to use the law to control human nature. While alcohol Prohibition has been repealed, its powers live on in the current drug laws. The biggest difference in the two regimes is that other drugs are a minor problem compared to alcohol. It has been possible to manipulate what people believe about "controlled substances" because so few have nearly as much first hand experience with them as with alcohol. And unlike our grandparents in the 1920s, today's people have no pre-prohibition experience of freedom for comparison.

Drug prohibition has grown slowly enough that we are like the frog in water that is heated slowly. We could have jumped out easily if we noticed soon enough, back in the 1930s, but now it will be more difficult to escape the cumulative oppression. If it's not too late, perhaps we will again experience the greatest blessing of Prohibitions — the process of ending them, since all prohibitions ultimately cause Americans to re-examine the fundamental purposes of law and government, and to stop pushing them so far past the point of diminishing returns.

The roads to Hell and big government may be paved with good, even dreamy, intentions. But the road to freedom and prosperity is maintained by the hard work of folks who study and apply the Constitution. The problem with a pavement of "good intentions" is that it's almost always a one-way street and once on it, it's extremely difficult to get off or change direction.

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Oregon Suspends the Writ of Habeas Corpus

by Yvonne L. Heinrichs

Here's another example of the "slippery slope" of unconstitutional laws. To cope with the "unforeseen" consequences of one unconstitutional law (like those in our "war on drugs"), government is inevitably forced to embrace additional unconstitutional acts. When government decided to "git tuff" on drug use, it filled our prisons to overflowing but then found itself unable or unwilling to allow constitutional remedies to protect the people against unconstitutional incarceration. As a result, even the U.S. Congress has proposed additional laws to neuter the Writ of Habeas Corpus — the cornerstone of individual liberty since the Magna Charta was signed in 1215 AD.

Written in March, 1997, this article expresses one side of the growing controversy over the Writ of Habeas Corpus. Government contends that the Writ is being overused, even abused by prisoners and jailhouse lawyers. For example, one federal prisoner has allegedly filed a Habeas Corpus because his Rice Crispies didn't "snap, crackle, and pop". Prisoners, on the other hand, contend that the growing use of Habeas Corpus is based on 1) increasing and unlawful abuse of government's power to arrest and incarcerate, and 2) a growing understanding among Americans that we have no rights unless we fight for them.

I have nothing but contempt for the lamebrain convict who files Writs based on soggy cereal; his arrogance helps compromise the claims of individuals truly abused by the system. On the other hand, no matter how offensive a convict's abuse of process may be, it is finally trivial when compared to unlawful and unconstitutional acts knowingly committed by judges who are trusted to serve and protect — not abuse — the American people. The convict who clogs the courts with mindless paperwork and the judge who clogs the jails with innocent men are spiritual equals. Neither is fit for society. Both belong in prison. But the judge is worse.

We jail a greater percentage of our "free" people than any other nation on Earth. It follows that our courts can't maintain our world-record rate of incarceration without cutting constitutional corners and routinely jailing both innocent and guilty without due process. Therefore, it also follows that the use of Habeas Corpus to escape unlawful incarceration should also be increasing. Nevertheless, it's hard to find evidence that any element of our government is truly concerned with the violations of individual liberty that inevitably occur in any system of mass incarceration. Instead, we are left to wonder if the purpose of our criminal justice system is to enforce the law and punish the guilty — or maintain high occupancy rates for the world's biggest prison system?

Although circumstances and details presented in this article may have changed for the better (or worse) since it was first written, the article illustrates that judicial abuse is becoming increasingly overt, obvious and even shameless.

The Writ of Habeas Corpus has been variously described as "The Most Sacred Right" and "The Great Writ". It dates back to the Magna Charta is arguably the cornerstone of Western govemment and personal liberty. According to Black's Law Dictionary, the purpose of the Writ, "is not to determine a prisoner's guilt or innocence, [but only] whether the prisoner is restrained of his liberty by due process." Its sole function is, "to release from unlawful imprisonment." The Writ of Habeas Corpus applies primarily to persons held in custody by the government. In ancient times and today, the Writ is designed to prevent government from unlawfully and indefinitely incarcerating innocent persons and isolating them in circumstances from which they can't possibly escape.

Article I, Section 9, Clause 2 of the Constitution for the United States of America declares, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." A similar guarantee for this Writ is found in Article I, Section 23 of the Oregon State Constitution. Nevertheless, Marion County, Oregon, has effectively suspended the Writ of Habeas Corpus in direct violation of both the United States and Oregon constitutions.

Today, if a prisoner in Oregon files this Writ, the courts should quickly answer just one question: was the prisoner denied Due Process rights under either

the United States or Oregon constitutions? In other words, did the government imprison the individual without following all the prescribed, lawful procedures designed to insure that no innocent person remains in jail? If due process rights were denied, the court must order the person be released from unlawful imprisonment.

However, the courts of Marion County, Oregon, receive 85 to 90 Writs of Habeas Corpus a month – some waiting to be considered go back to 1995, which also violates our right guaranteed by the constitutions of the United States [Art. VI] and Oregon [Art. I Sec. 10] to obtain justice *without delay*. After all, if a person were illegally incarcerated, what good would the Writ do if it didn't have to be considered for several weeks, months, or years while an innocent man languished in jail? Therefore, the Writ of Habeas Corpus requires a quick, virtually *immediate* decision by the courts.

Article I, Section 10 of the Oregon State Constitution: "No court shall be secret, but justice shall be administered openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury." Nevertheless, Marion County appointed two Circuit Court Judges (Joseph Ochoa and Paul Lipscomb) to *prejudge* the *suspended* "Writs" by 1) dividing all of the pending (i.e., "suspended) Writs into four categories; 2) pre-selecting just *one* case from each category for oral arguments in open court by a lawyer representing the particular case; and 3) ruling on *all* the Writs in each category based on the decisions made for the single, pre-selected Writ from each category.

This process is in total violation of both Federal and State Constitution's since it allows manipulation by the Judge's to pre-select the weakest cases, or the one's with the most inept lawyers. This process also allows the Judges to make the law in secret based on the "categories" *they choose* to put each case in, then apply to all other cases the decisions made in the four cases. For example, suppose the judge mis-classified your Writ of Habeas Corpus into an improper "category", and then issued a blanket denial of all the Writs in that entire category. Your Writ would be denied without ever having a proper or public hearing, based solely on a judge's "classification" made in secret, behind closed doors. This secret judicial process circumvents the exclusive right of the Legislature to make the law, and the Supreme Courts to set the precedents. The predetermined "classifications" made by two judges amount to secret judgements, and violate the Constitutional right of the people/prisoners to have a judicial remedy administered quickly, openly and completely.

There are multiple causes for this judicial chaos: politics, govemment corruption, public hysteria created by angry, undereducated, disenfranchised citizens who violate the law — and cynical politicians who exploit the actions of those lawbreakers to increase the hysteria and gain votes. The last cause is Judicial games played by inept lawyers who fail to represent their clients' Constitutional rights and Judges afraid to rule based on law and the Constitution.

The political responsibility lies at Governor Kitzhauber's feet and reflects the fact that prisons are Oregon's largest industry. The great number of people employed by the prison industry keep the unemployment rate low and makes the Governor's administration look good. Gov. Kitzhauber endorses prison expansion to help absorb the growing population, either through imprisonment or through prison employment. This creates a false "win-win" public perception.

Many of the Writs are suspended due to State-ordered psychological evaluations of prisoners prior to release on parole. These evaluations effectively create an *ex-post facto* release requirement not included in the prisoner's original sentence. In other words, depending on the evaluation of some state-employed psychologist, a prisoner can be held in prison indefinitely after his court-ordered release date. This surrender of the power to incarcerate to psychologists doesn't merely violate — it abandons — the concept of due process.

Government corruption can be traced from the Department of Corrections, to the Judiciary, to the Legislature, and to the Govemor. A significant per-

centage of the suspended Writs of Habeas Corpus are due to:

1. The Judiciary, itself, creates the need for "Writ's of Habeas Corpus" with inept decisions based on prosecutorial inference, instead of factual evidence, while denying defendants exonerating evidence and witnesses at trial.

2. The Governor will not challenge or defy the faulty decisions of his own Administrative State Agency's because he needs their political support and will not admit he erred in appointing them.

3. The Legislature has failed to provide effective sanctions for lawyers and Judges who deny citizens their Constitutional rights. The Legislature authorizes the member lawyers and judges of the Oregon State Bar to "judge" themselves. The Oregon State Bar not only judges itself but also provides it's own insurance, making it much like the proverbial fox empowered to guard a hen house. An independent commission of non-lawyers is needed to evaluate complaints against lawyers and judges.

4. Bogus psychological and psychiatric evaluations by full time State Department of Corrections employees who fear losing their jobs if they don't declare any prisoner qualified for parole a "threat to society". The reasoning appears to be that a person — especially an innocent one — who has been imprisoned for years may be considered dangerous, or pose a threat to those that denied him justice and imprisoned him unlawfully. Evaluations by private psychologists or psychiatrists who determine a person is not a threat to society, are ignored. As a result, people who are incarcerated under questionable or unlawful circumstances can be held indefinitely if they are "crazy enough" to believe they are entitled to justice and redress of grievances after they are released.

There is no reasonable excuse for Marion County's growing, monthly backlog of 85 to 90 Writs of Habeas Corpus. The Writ of Habeas Corpus requires the courts to quickly answer to just one question: was a person placed in custody denied Due Process rights under either the United States or Oregon constitutions. If rights were denied, the person *must* be released from unlawful imprisonment. Any Judge who's been to law school should know and understand the clear language of the Federal and State Constitution's and be able to make that determination based on the facts.

If all illegally held prisoners were released, the Oregon prison industry might falter, but Oregon taxpayers wouldn't need to spend more money to build more new prisons. Perhaps it's time for Oregon's own "Bastille Day!"

America's Private Gulag

by Ken Silverstein

Although the national rate of violent crime has dropped for fourteen years, the United States already jails a higher percentage of its people than any other nation on Earth and continues to build prisons at a record pace. Recently, Texas Attorney General Morales underscored the idiocy of this prison construction program when he noted that we are currently spending billions of dollars to design and build more prisons which will become operational in time to jail anticipated criminals who are currently in fourth grade. *That's not only crazy, it's an indictment of a government and society that would rather build prisons than schools, and is willing to simply "write off" rather than help many of today's children.*

To conceal some of this social lunacy, government relies increasingly on privately-owned prisons to carry the financial and political load. But the growth of private prisons threatens our political system. To fully appreciate this threat, consider that "Fascism" denotes a form of government embraced by Mussolini's Italians and Hitler's Nazis during WWII. The essence of those fascist governments was a ruling alliance of government and wealthy corporate businesses.

Black's Law Dictionary defines "Fascism" and "Fascist", in part, as: "the principles and organization of the patriotic and anticommunist movement in Italy started during [WWI] . . . culminating in the virtual dictatorship of Signor Mussolini . . . a believer in the corporate state; one opposed to the exercise of democratic methods or of civil liberties . . . ." Note:

- *Corporations are chartered by, and therefore "creatures of", government. As such, corporations (especially the largest) can be viewed as extensions of government into the private sector, and the private sector into government. While Communism — and to a lessor extent, English Socialism and American "Liberalism" — are at least superficial alliances between big government and big labor, fascism is an alliance between big government and big corporate business.*
- *Historically, Italian fascism (*business*-based government) was a reaction to communism (*labor*-based government).*
- *America's post-depression "Liberalism" was based largely on an alliance of government and labor unions. If Italian history is any guide, the predictable American reaction to a perceived excess of Democrat "Liberalism" should be an attempt to realign big government with labor's principle adversary, big "bidness" (big corporations) – exactly what we've seen over the past twenty years with the Republican push for "privatizing" government. Prison industries are a prime example of "privatized" government.*

Since the working definition of fascism is an alliance between big government and big corporations, what are the political implications of "privatization"?

Mr. Silverstein offers some answers:

What is the most profitable industry in America? Weapons, oil and computers all offer high rates of return, but there is probably no sector of the economy so abloom with money as the privately run prison industry.

Consider the growth of the Corrections Corporation of America, the industry leader whose stock price has climbed from $8 a share in 1992 to about $30 today and whose revenue rose by 81 per cent in 1995 alone. Investors in Wackenhut Corrections Corp. have enjoyed an average return of 18% during the past five years and *Forbes* rated the company as one of America's top 200 small businesses. At Esmor, another big private prison contractor, revenues have soared from $4.6 million in 1990 to over $25 million in 1995.

Ten years ago there were just five privately run prisons in the country, housing a population of 2,000. Today nearly a score of private firms run more than 100 prisons with about 62,000 beds. That's still less than five per cent of the total market but the industry is expanding fast, with the number of private prison beds expected to grow to 360,000 during the next decade.

The exhilaration among leaders and observers of the private prison sector was cheerfully summed up by a headline in *USA Today*: "Everybody's doin' the jailhouse stock". An equally upbeat mood imbued a conference on private prisons held last December at the Four Seasons Resort in Dallas. The brochure for the conference (organized by

the World Research Group, a New York-based investment firm) called the corporate takeover of correctional facilities the "newest trend in the area of privatizing previously government-run programs . . . *While arrests and convictions are steadily on the rise*, profits are to be made — profits from crime. Get in on the ground floor of this booming industry now!" [Emph. add.]

One hundred years ago private prisons were a familiar feature of American life — with disastrous consequences. Prisoners were farmed out as slave labor. They were routinely beaten and abused, fed slop and kept in horribly overcrowded cells. Conditions were so wretched that by 1900, private prisons were outlawed in most states.

During the past decade, private prisons have made a comeback. Already 28 states have passed legislation making it legal for private contractors to run correctional facilities and many more states are expected to follow suit.

The reasons for the rapid expansion include the post-1980s free-market ideological fervor, large budget deficits for the federal and state governments and the discovery and creation of vast new reserves of "raw materials" — prisoners. The rate for most serious crimes has been dropping or stagnant for the past 15 years, but during the same period severe repeat offender provisions and a racist "get-tough" policy on drugs have helped push the US prison population up from 300,000 to around 1.5 million during the same period. This has produced a corresponding boom in prison construction and costs with the federal government's annual expenditures in the area now $17 billion. In California, passage of the infamous "three strikes" bill will cause construction of 20 additional prisons during the next few years.

The private prison business is most entrenched at the state level but is expanding into the federal prison system as well. Last year Attorney General Janet Reno announced that five of seven new federal prisons being built will be run by the private sector. Almost all of the prisons run by private firms are low or medium security, but the companies are trying to break into the high-security field. They have also begun taking charge of management at INS detention centers, boot camps for juvenile offenders and substance abuse programs.

The Nashville-based Corrections Corporation of America (CCA) runs 46 penal institutions in 11 states and controls roughly half of the prison industry. It took ten years for CCA to reach 10,000 beds; it now grows by that same number every year.

CCA's chief competitor is Wackenhut, which was founded in 1954 by George Wackenhut, a former FBI official. Over the years its board and staff have included such veterans of the US national security state as Frank Carlucci, Bobby Ray Inman and William Casey, as well as Jorge Mas Canosa, leader of the Cuban American National Foundation.

Wackenhut also provides security services to private corporations. It has provided strikebreakers at the Pittston mine strike in Kentucky, hired unlicensed investigators to ferret out whistle blowers at Alyeska, the company that controls the Alaskan oil pipeline, and beaten antinuclear demonstrators at facilities it guards for the Department of Energy. Wackenhut has a third of the private prison market with 24 contracts, nine of which were signed during the past two years. In a major coup, the company was chosen to run a 2,200 capacity prison in Hobbs, New Mexico, which will become the largest private prison in the US when it opens in late 1997.

Esmor, the No. 3 firm in the field, was founded only a few years ago and already operates ten corrections or detention facilities. The company's board includes William Barrett, a director of Frederick's of Hollywood, and company CEO James Slattery, whose previous experience was investing in and managing hotels.

US companies also have been expanding abroad. The big three have facilities in Australia, England and Puerto Rico and are now looking at opportunities in Europe, Canada, Brazil, Mexico and China.

The companies that dominate the private prison business claim that they offer the taxpayers a bargain because they operate far more cheaply than do state firms. As one industry report put it, "CEOs of privatized compa-

nies. . . are leaner and more motivated than their public-sector counterparts."

But even if privatization does save money — and the evidence is contradictory — there is, in the words of Jenni Gainsborough of the ACLU's National Prison Project, "a basic philosophical problem when you begin turning over administration of prisons to people who have an interest in keeping people locked up."

To be profitable, private prison firms must ensure that prisons are not only built but also filled. Industry experts say a 90 to 95 per cent occupancy rate is needed to guarantee the hefty rates of return needed to lure investors. Prudential Securities issued a wildly bullish report on CCA a few years ago but cautioned, "It takes time to bring inmate population levels up to where they cover costs. Low occupancy is a drag on profits." Still, said the report, company earnings would be strong if CCA succeeded in "ramp[ing] up population levels in its new facilities at an acceptable rate . . . ."

A 1993 report from the State Department of Corrections in New Mexico found that CCA prisons issued more disciplinary reports — with harsher sanctions imposed, including the loss of time off for good behavior — than did those run by the state. A prisoner at a CCA prison said, "State run facilities are overcrowded and there's no incentive to keep inmates as long as possible . . . . CCA, on the other hand, reluctantly awards good time. They give it because they have to but take it every opportunity they get. . . Parole packets are constantly getting lost or misfiled. Many of us are stuck here beyond our release dates."

Private prison companies have also begun to push, even if discretely, for the type of get-tough political policies needed to ensure their continued growth. All the major firms in the field have hired big-time lobbyists. When it was seeking a contract to run a halfway house in New York City, Esmor hired a onetime aide to state Rep. Edolphus Towns to lobby on its behalf. The aide succeeded in winning the contract and also the vote of his former boss, who had been an opponent of the project. In 1995, Wackenhut Chairman Tim Cole testified before the Senate Judiciary Committee to urge support for amendments to the Violent Crime Control Act — which subsequently passed — that authorized the expenditure of $10 billion to construct and repair state prisons.

CCA has been especially adept at expansion via political payoffs. The first prison the company managed was the Silverdale Workhouse in Hamilton County, Tennessee. After Commissioner Bob Long voted to accept CCA's bid for the project, the company awarded Long's pest control firm a lucrative contract. When Long decided the time was right to quit public life, CCA hired him to lobby on its behalf CCA has been a major financial supporter of Lamar Alexander, the former Tennessee governor and failed presidential candidate. In one of a number of sweetheart deals, Lamar's wife, Honey Alexander, made more than $130,000 on a $5,000 investment in CCA. Tennessee Governor Ned McWherter is another CCA stockholder and is quoted in the company's 1995 annual report as saying, "the federal government would be well served to privatize all of their corrections."

In another ominous development, the revolving door between the public and private sector has led to the type of company boards that are typical of those found in the military-industrial complex. CCA cofounders were T. Don Hutto, an ex-corrections commissioner in Virginia, and Tom Beasley, a former chairman of the Tennessee Republican Party. A top company official is Michael Quinlan, once director of the Federal Bureau of Prisons. The board of Wackenhut is graced by a former Marine Corps commander, two retired Air Force generals and a former under secretary of the Air Force, as well as by James Thompson, ex-governor of Illinois, Stuart Gerson, a former assistant US attorney general and Richard Staley, who previously worked with the INS.

Because they are private firms that answer to shareholders, prison companies have been predictably vigorous in seeking ways to cut costs. In 1985, a private firm tried to site a prison *on a toxic waste dump* in Pennsylvania, which it had bought at the bargain rate of $1. Fortunately, that plan was rejected.

Many states pay private contractors a per diem rate, as low as $31 a prisoner in Texas. A federal investigation traced a 1994 riot at an Esmor immigration detention center to the company's having skimped on food, building repairs and guard salaries. To ratchet up profit margins, companies have cut corners on drug rehabilitation, counseling and literacy programs. In 1995, Wackenhut was investigated for diverting $700,000 intended for drug treatment programs at a Texas prison. In Florida, the US Corrections Corporation was found to be in violation of a provision in its state contract that requires prisoners to be placed in meaningful work or educational assignments. The company had assigned 235 prisoners as "dorm orderlies" when no more than 48 were needed and enrollment in education programs was well below what the contract called for. Such incidents led a prisoner at a CCA facility in Tennessee to conclude, "There is something inherently sinister about making money from the incarceration of prisoners, and in putting CCA's bottom-line (money) before society's bottom line (rehabilitation)."

The companies try to cut costs by offering less training and pay to staff. Almost all workers at state prisons get union-scale pay but salaries for private prison guards range from about $7 to $10 per hour. Of course the companies are anti-union. When workers attempted to organize at Tennessee's South Central prison, CCA sent officials down from Nashville to quash the effort. Poor pay and work conditions have led to huge turnover rates at private prisons. A report by the Florida auditor's office found that turnover at the Gadsden Correctional Facility for women, run by the US Corrections Corporation, was 200 per cent, ten times the rate at state prisons.

Private companies also try to nickel and dime prisoners in the effort to boost revenue. A number of prisoners complain about exorbitant prices. "Canteen prices are outrageous," wrote a prisoner at the Gadsden facility in Florida. Neither do private firms provide prisoners with soap, toothpaste, toothbrushes or writing paper. One female prisoner at a CCA prison in New Mexico said: "CCA rarely buys new clothing and inmates are often issued tattered and stained clothing. Same goes for linens. Also ration toilet paper and paper towels. If you run out, too bad — 3 rolls every two weeks." Another Florida prisoner sued CCA for charging a $2.50 fee per phone call and 50 cents per minute thereafter. The lawsuit also charges that it can take a prisoner more than a month to see a doctor.

General conditions at private prisons appear, in some respects, to be somewhat better than those found at state institutions. A fact possibly linked to the negative business impact that a prison disturbance can cause private firms. For example, the price of stock in Esmor plunged from $20 to $7 after a 1994 revolt at the company's Elizabeth, New Jersey detention center for immigrants.

Nevertheless, a number of serious problems at prisons run by private interests still exist. Back in the mid-1980s, a visiting group of professional guards from England toured the CCA's 360-bed state prison in Chattanooga, Tennessee, and reported that inmates were "cruelly treated" and "problem" prisoners had been gagged with sticky tape. The warden regaled his guests with graphic descriptions of strip shows performed by female inmates for male guards.

Investigators at a CCA jail in New Mexico found that guards had inflicted injuries on prisoners ranging from cuts and scrapes to broken bones. Riots have erupted at various private facilities. In one of the worst, guards at CCA's West Tennessee Detention Center fired pepper gas canisters into two dormitories to quell a riot after prisoners shipped from North Carolina revolted over being sent far from their families.

In addition to the companies that directly manage America's prisons, many other firms are getting a piece of the private prison action. American Express has invested millions of dollars in private prison construction in Oklahoma and General Electric has helped finance construction in Tennessee. Goldman Sachs & Co., Merrill Lynch, Smith Barney, among other Wall Street firms, have made huge sums by underwriting prison construction with the sale of tax-exempt bonds, this now a thriving $2.3 billion industry. Phone companies such as AT&T chase after the enormously lucrative prison business.

About three-quarters of new admissions to American jails and prisons are now African-American and Hispanic men. This trend, combined with an increasingly privatized and profitable prison system run largely by whites, makes for what Jerome Miller, a former youth corrections officer in Pennsylvania and Massachusetts, calls the "emerging Gulag State".

Miller predicts that the Gulag State will be in place within 15 years. He expects three to five million people to be behind bars, including an absolute majority of African-American men. He says it's comparable to the post-Civil War period, when authorities came to view the prison system as a cheaper, more efficient substitute for slavery. Of the state's current approach to crime and law enforcement, Miller says, "The race card has changed the whole playing field. Because the prison system doesn't affect a significant percentage of young white men, we'll increasingly see pris-

oners treated as commodities. For now the situation is a bit more benign than it was back in the nineteenth century but I'm not sure it will stay that way for long."

Private prison companies have been predictably enthusiastic about the booming market for convict labor. Between 1980 and 1994, the value of goods produced by prisoners rose from $392 million to $1.31 billion. Prisoners now make articles such as clothes, car parts, computer components, shoes, golf balls, soap, furniture and mattresses, in addition to staffing jailhouse telemarketing, data entry and print shop operations. Some states have even begun assigning prisoners to institutions after matching up their job skills with a prison's labor needs.

Prisoners at state-run institutions generally receive the minimum wage, though in some states, such as Colorado, wages fall to as low as $2 per hour (workers receive only about 20 per cent of that amount, with the rest going to pay room and board, victims compensation programs and other fees). As an added bonus, companies that employ prison labor have no need to offer benefits, vacation days or sick time to employees and many states offer such firms tax breaks and other advantages as well.

Lured by such enticements, many big firms have moved eagerly into the prison-industrial complex. TransWorld Airlines pays prison workers $5 per hour to book reservations by phone, less than a third of the rate it previously paid to its own employees. The EAU succeeded in shutting down a program at an Ohio prison where the Waste corporation was paying prisoners $2.05 per hour to assemble parts for Honda cars.

For businesses, the deal is even sweeter at private prisons where pay rates as low as *17 cents per hour* for a six-hour maximum day translate into a *monthly* paychecks of about $20. The maximum pay scale at a CCA prison in Tennessee is 50 cents an hour for "highly skilled positions."

Thanks to prison labor, America is again attracting the sort of jobs that were formerly available only to workers of the Third World. One US company operating in Mexico's maquiladora zone shut down its data processing shop and moved it to the San Question State Prison in California. A Texas factory booted 150 workers and set up shop at a privately run prison in Lockhart, Texas, where worker/inmates assemble circuit boards for companies including IBM and Compaq. Oregon State Rep. Kevin Mannix has even encouraged Nike to shift production from Indonesia to his home state, saying the shoemaker should "take a look at transportation and labor costs. We could offer competitive prison labor [here]."

Can anyone doubt that we are sliding toward fascism? Former President Dwight Eisenhower hinted at this condition in his farewell address when he warned of the "military-industrial complex". More recently, a substantial threat to our liberties has come from a "corporate-government complex". Today, the "multi-national corporate-government complex" may be our greatest concern. Government of the people, by the lawyers, and for the highest bidders.

If America is sliding into fascism (corporate-government), what's to be done? Support unions? Return to the Democrat Liberalism of the 1950's and 1960's? Perhaps.

But the common denominator behind most of our concerns (fears) isn't corporations or unions or special interests, but big, unconstitutional government. *Liberalism is no more the "solution" to American fascism than Italian fascism of the 1930s (which led to dictatorship and national ruin) was the solution to communism. The "solution" to oppressive government will not be found among conservatives, liberals, fascists, communists, Republicans, Democrats, or "New World Order-ists". The solution will be found in personal responsibility and an aversion to big government no matter how "beneficial" it claims to be.*

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2nd Amendment Quotes You Need To Know

Constitutionalists tend to be primarily interested in the peaceful study and obedience of law. Government, on the other hand, is always more interested in unbridled power. Therefore, the conflict between constitutionalists and government is inevitable. It is an unfortunate reality that the final shield for freedom and the Constitution is the People's right to keep and bear arms to be used against unconstitutional government. I have no doubt that the right to arms is the hallmark of sovereignty. Once disarmed, we are nothing but serfs and subject to absolute government power and abuse.

Court decisions vary from state to state. The following quotes are offered for information only, courtesy of the New Jersey Militia Newsletter, POB 10176, Trenton, N.J 08650:

■ "One who interferes with another's liberty does so at his peril." *University of Pennsylvania Law Review,* Vol.75, p.491, April 1927.

■ "Anyone who assists or participates in an unlawful arrest or imprisonment is equally liable for the damage caused." *Cook V Hastings,* 150 Mich, 289, 114 N.W. 71, 72 (1907).

■ ". . . any seizure or arrest of a citizen is not reasonable, or 'due process' merely because a Legislature has attempted to authorize it. These phrases (due process provisions) are limitations upon the power of the Legislature as well as upon that of the other departments of the government, or their officers." *Ex parte Rhodes,* 202 Ala. 68,79 So. 462,464(1918).

■ "The carrying of arms in a quiet, peaceable, and orderly manner, concealed on or about the person, is not a breach of the peace. Nor does such an act, of itself, tend to a breach of the peace." *Wharton's Criminal and Procedure,* 12th. Ed., vol.2, "Breach of the Peace", 803, p.660 (1957); *Judy v. Lashley,* 50 W. Va. 628, 41 S.E. 197, 200 (1902).

■ "As is the case of illegal arrest, the officer is bound to know these fundamental rights and privileges, and must keep within the law at his peril." *Thiede v. Town of Scandia,* 217 Minn. 218,231, 14 N.W. 2d 400(1944).

■ "Though the police are honest and their aims worthy, history shows they are not appropriate guardians of the privacy which the Fourth Amendment protects." *Jones v. U.S.* 362 U.S. 257, 273 (1959).

■ "A sheriff who acts without process, or under a process void on its face, in doing such act, he is to be considered but a personal trespasser." *Roberts v. Dean,* 187 So. 571, 575 Fla. (1939).

■ "One may come to the aid of another being unlawfully arrested, just as he may where one is being assaulted, molested, raped or kidnapped. Thus it is not an offense to liberate one from the unlawful custody of an officer, even though he may have submitted to such custody without resistance." *Adams v. State,* 121 Ga. 163,48 S.E. 910 (1904).

■ "An illegal arrest is an assault and battery. The person so attempted to be restrained of his liberty has the same right, and only the same right, to use force in defending himself as he would have in repelling any other assault and battery." *State v. Robinson* 145 Me. 77, 72 Atl. 260, 262 (1950).

■ "The offense of resisting arrest, both at common law and under statute, presupposes a lawful arrest. It is axiomatic that every person has the right to resist an unlawful arrest. In such case the person attempting the arrest stands in the position of a wrongdoer and may be resisted by the use of force, as In self-defense. " *State v. Mobley* 240 N.C. 476, 83 S.E. 2d 100, 102(1954).

■ "There is no justification for the taking of fingerprints, photographs and other measurements in advance of conviction." *McGovern v. Van Riper,* 43 A 2(1514,137 N.J. Eq. 24(1945).

■ "It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest," *Henry v. U.S.,* 361 U.S. 98, 104 (1959).

What's the point? To show the legal foundation necessary for private citizens to challenge – even violently – government authority? In part, Yes. But more importantly, these quotes also serve to remind government authorities *that this nation has long recognized the inevitable conflict between citizens and government, and frequently ruled on the side of the citizen. The vast majority of folks who challenge government are not mentally ill or prone to criminal behavior. Although they may be mistaken, they pose no real threat to this nation and may, in fact, provide the great service of vigilance. A secure and lawful government will listen to their complaints and patiently explain where they are wrong or, if right, support their petitions.*

The danger to all of us comes from government authorities who are so sure they're right or so desperate to avoid exposure, they refuse to even listen to the common man's complaint. The road to chaos and shooting revolutions is paved with government's contempt for the constitutional limits officials have sworn to honor and lust to evade. ■

Air Travel and FAA Guidelines

by D'vorah Yaffah, Batya, daCosta

Do constitutionalists merely whine, cry, and inevitably lose in their misguided attempts to challenge government? Increasingly, the answer is No. Here's an article which demonstrates small, even tentative victory of simply learning enough constitutional law to challenge the Federal Aviation Administration's (FAA) new "guidelines" for airline passenger identification. On one hand, this "small victory" is nothing to get excited about. On the other hand, this victory was engineered by one or two people against the seemingly irresistible power of government — and that is cause for excitement. The tide's turning. Constitutionalists are beginning to win and even government is beginning to pay them a bit of respect.

D'vorah Yaffah is a senior management consultant and educator for Fortune 500 companies with over 25 years of experience in the workplace. She travels frequently by air and has personal experience with new FAA guidelines for Airport Security and how they are being implemented by some airlines. Her story offers another indication that constitutionalists willing to study and stand up for their rights can fight "city hall", the airlines, and even the FAA.

Have Americans lost the freedom to travel by air without intrusive, unreasonable, and even unconstitutional forms of "heightened security measures"? Are these new security measures being used to protect us from significant terrorist threats or just another excuse for government to overregulate America?

Part of the answer may be glimpsed in the fact that, worldwide, air safety is only barely threatened by terrorists. Air terrorist attacks are so statistically rare they would be almost unknown except for the media's endless reports of the few real occurrences. In fact, we have far more fatalities due to other causes and air travel is one of the safest and most secure forms of travel.

I won't delineate the statistics that show air terrorism is unlikely. But it's important to ask whether there might be ulterior reasons for government agencies and airlines to impose more intrusive and unconstitutional restrictions on our freedom to travel.

So are we being protected by "heightened security measures"? Or merely "conditioned" to believe the threat of air terrorism is so great as to warrant serious intrusions into our private lives and liberty? These interesting questions are being considered and investigated by a broad cross-section of Americans.

My own investigation started one day in an airport when I overheard an argument between an airline gate agent and a passenger. The agent demanded a Federal or State photo ID, but the young man could only show them a photo ID that was not Federal/State. I guessed he didn't have a state-issued drivers license, but was probably showing them a college student ID. He was refused a seat on the plane and became considerably upset since he was flying to another city for a job interview he couldn't afford to miss. The agent was unaffected by his pleas, and simply repeated that "government regulations" required an acceptable form of State or Federal ID to board the plane.

I came up to the counter and asked to speak with the young man privately. We walked away and I asked if he really wanted to get on this flight. He said Yes, so I explained that according to his constitutional 1st Amendment rights, the airline would have to "accommodate" him if he insisted on *religious* grounds that they accept an alternative ID or search procedure.

I explained that identification is

only required so the agent at the gate (or ticket counter) can check the name on the ID and the face in the photo with the name on the ticket and the face of the human being using the ticket. But forms of ID other than Federal and State can also serve this purpose. So if an airline insists on only Federal and State IDs — many of which require a Social Security Number (SSN) and/or fingerprints — they might expose themselves to lawsuits for religious discrimination.

For example, some perfectly nonviolent Americans regard the SSN as the "mark of the beast" discussed in Revelations and, under their 1st Amendment right of religious freedom, refuse to accept *all* personal IDs using that "satanic" number. Can airlines refuse to seat passengers who reject SSN-based IDs for religious reasons? Probably not.

However, the young man didn't want to debate the airline about religion or the Constitution, so we went back to gate — he, begging to board his prepaid flight — and I, asking the gate agent to produce the "Federal Regulations" that require *only* Federal or State ID to board a plane.

The ticket agent seemed annoyed when first intervened on behalf of this young man, but became visibly distressed when I asked to see the "Federal Regulations" (generally a sign that something is up). She replied that I'd have to get the regulations from the FAA (curious answer). The young man missed his flight and I boarded mine determined to discover these so-called "Federal Regulations".

Identification vs. accommodation

A few weeks later, I called Washington and spoke to a very helpful FAA employee (who asked to remain nameless) who explained that the FAA identification "guidelines" are not "regulations and therefore merely "encourage" airline companies to improve security by asking for identification of their passengers. These FAA guidelines recommend several "levels" of identification and procedures for handling ID problems — *none* of which suggest that individuals should be denied their seats.

The first level is asking for Federal or State photo ID, which is believed to be the safest and most accurate. If a passenger presents this type of ID the agent is supposed to allow them to board (provided the security questions are properly answered).

The second level is a form of photo-ID that is *not* Federal or State, plus one other piece of identification that *is* Federal or State and may not have a photo but still identifies the passenger to be who they say they are. (Surprisingly, this non-photo ID could be a court-filed document. Some folks have used a combination of photo ID — not Fed/State — and a "Revocation of Power of Attorney" filed at the County Court. This would probably qualify under FAA guidelines as an acceptable ID; I've heard that this is in fact being accepted at airports around the country.)

The third level is any other kind of ID or *no ID at all*. FAA guidelines say that the airlines may, at this point, subject the "would be" passenger to *additional security measures* like searching their luggage and carry-on baggage or holding their luggage back until they actually board the plane. But note that the FAA recommends that persons lacking "appropriate" ID be subjected to *additional security measures* rather than summarily denied access to board the plane.

For example, when the young man was denied his seat he was *not* told that if he had arrived at the gate with more advance notice to the airline of his identification situation, they would have had more choices and options to solve the problem. Yet this is what the man at the FAA suggested for those folks who have legitimate (i.e. constitutional) reasons for not owning Federal or State (or other acceptable) forms of identification.

For "security reasons", of course, FAA guidelines are "restricted information" relative to the public. However, a rather feisty lady named "Betsy Ross" (not her real name) uncovered these guidelines (Security Directive 96-05) because a particular airline hassled her. She demanded to be shown these "government regulations" when she was at risk of losing her paid-for airline seat and the agent at the gate showed her just the first page of a ten-page document.

"Betsy Ross" has written a wonderful resource article about the FAA identification issue and her experiences in traveling with "nonstandard" (other than Federal/State) ID and she's keep-

ing tabs on the airlines and their "misbehavior" for interested groups. For more information about which airlines are being "reasonable" about the identification issue (and which are not) you can contact Alaska Liberty House (800) 544-2548. It will be important for folks to "vote with their feet" and purchase tickets from those companies who are dealing with this phenomenon in a reasonable manner.

Even the ACLU expressed concern over violations of people's rights by the "profiling system" and made a presentation at the Commission of Air Safety and Security headed up by Vice President Gore (the presentation can be downloaded from *www.aviationcommission.dot.gov*).

Based on research by Betsy Ross and the ACLU, it appears that denying a passenger his seat is not part of government *regulations*, but is instead airline company *policy*. In other words, some airline passengers may lose their right to fly because either the *airline's* policy refuses to accept any ID besides Federal or State, and because the airline doesn't want to absorb the additional costs necessary to implement reliable security measures.

Profile system

The next level of heightened security is the computerized "Profile System" which will record worldwide terrorist activity. However, rather than merely warn airlines of *individual* terrorists, the computer will generate a "generic" description of terrorists to identify a *class* of people who *might* be terrorists. If a potential passenger resembles the terrorist "profile", he can be denied his seat. At first blush, this system appears racist in nature, since the obvious "profiles" will describe people of Middle Eastern origin with swarthy complexions, accents and possible ties to Iran, Iraq or Palestine.

Regardless of hype, the Profile System does *not* assure security, since terrorists are too smart to "fit" the profile and can find individuals without the "profile" to carry bombs onto plane. If public safety is the real concern, it's more effective (and also more expensive) to thoroughly search (or electronically screen) all airline luggage for the newer plastic explosives which don't show up on current airport metal detectors.

Manifest destiny?

The third level of heightened security measures is the proposed "Passenger Manifest System" which will record each passenger's name, residential address and phone number, emergency contact, their address and phone number, and a social security number. Under this computerized system, the airlines will ask for required ID information at the point of sale, including travel agencies. This information will be reconfirmed at the airport with forms of identification that substantiate the passenger is the person who ordered/purchased his ticket.

The Passenger Manifest System is in the proposal stage but will be justified as necessary to decrease airline vulnerability to terrorist attack and increase the ability to notify relatives of casualties in the event of a downed aircraft. However, it seems like an unreasonable violation of people's civil liberties to require all of this information (especially SSNs) of every airline passenger based on only a handful of possible terrorist attacks.

Further, the FAA doesn't appear to be considering an alternative to the SSN — as if individuals with religious objections have no right to avoid being "marked" by a government-issued number and also travel by air. So it might be a good idea for air travelers who care about the continued erosion of their religious freedoms to work in advance to teach airlines and government agencies that they will not allow their constitutional rights and immunities to be further diminished.

In fact, the gentleman I talked to at the FAA assured me that the government has no intention of consciously and purposely violating people's rights. Nevertheless, he suggested that people who object to new or proposed security measures should: 1) band together as a group; and 2) petition the FAA while this

new Passenger Manifest System is in the "draft and review" stages to provide an exception process (an "accommodation") for those who wish to preserve their constitutional rights.

I think America should take him up on his suggestion. For example, it might be a good idea to request "accommodations" for folks with "religious objections" through the Jural Societies that are forming around the country. We'll see if the FAA is as open to this feedback as their agent suggested. It's important to ask for the accommodation, since the alternative is certainly unpleasant and probably unconstitutional.

Reality vs. "virtual reality"

Our current and proposed "heightened airport security" creates an inexpensive, computer-based illusion or "virtual reality" of increased safety but not the tangible reality. This will be obvious the first time a plane explodes from a real (not "virtual") bomb despite the airlines' "heightened security measures".

In the meantime, the primary threat to American airline passengers may be posed by airlines that prefer inexpensive computer-based illusions (that necessarily violate people's rights) to the more costly screening equipment and/or physical searches that are currently routine in many foreign airports. In Israel, for example, passengers must be at the airport two hours before a flight leaves, and expect long delays in getting through security. Everyone goes through this process and no one is immune. It is fairer and safer because it's more thorough.

The interesting point in this article is that the corporate airlines — not the government — may be the "bad guy" responsible for restricting our freedoms. Judging from this article, I'd bet the airlines "influenced" the FAA to pass the new, quasi-secret "guidelines" in order to provide the airlines with an excuse to impose inexpensive, computerized ID requirements rather than the implement more expensive physicial security procedures. If those new ID requirements were designed by corporate executives rather than politicians and bureaucrats (who, at least, have some knowledge of the Constitution), it shouldn't be surprising if those requirements are unconstitutional and easily defeated in court.

Further, this article again demonstrates the computer-dependent mentality of most big businesses and big governments. Have a terrorist problem? No sweat! Just build a bigger and badder database. Ignore the fact that (according to one computer security expert) any semiskilled computer hacker can crack into the White House computer, and that hacker assaults on Pentagon and CIA computers are commonplace. If so, what's to stop a determined terrorist organization from hacking into the airline computers housing the terrorist data and adjusting it any way they want? After all, the Passenger Manifest System will apparently take input from every travel agency in the USA! It will be about as permeable as a Swiss cheese.

Besides, if we had a database with John Hinckley's name, address, SSN and emergency contact, would that have stopped him from shooting President Reagan? Would a super-data base have prevented the bombing in Oklahoma City? O'course not. So how will an airline computer system stop terrorist bombers? It won't.

Any terrorist that can't bypass a security system designed to quickly "check" hundreds of thousands of people daily is probably too dumb to light a match. On the other hand, any high school dropout with a little brains and determination can probably penetrate the existing and proposed "heightened security measures".

The simple truth is this: No computerized list of millions of names and addresses will have the least impact on any serious terrorist. Reliance on computer-based security systems is based on a corporate desire for illusion rather than security, and a need to cut costs to the bare minimum — even if the Constitution must be scrapped as a "business expense". Ultimately, effective airline security will increase the costs and overhead in air travel to a degree that will dissuade some Americans from flying and further strain already thin airline company profits. On the other hand, inexpensive computer-based airline security may cost some people's lives but will certainly reduce airline costs.

For more information, write to D'vorah Yaffah at 660 Preston Forest, Suite #139, Dallas, Texas 75230. ■

The Privacy Act, FOIA & the IRS

by Eddie Kahn & Larry Maxwell

Here's a pair of constitutionalists and an extraordinary example of the kinds of challenges and even defeats they can impose on unlimited, unconstitutional government. (Kick 'em where it hurts, guys — right in the taxes).

The Freedom of Information Act (FOIA) and the Privacy Act are federal laws that establish the federal government's duty to provide information to the American people, as well as the proper procedures for requesting that information. The fact that both Acts seemed to accomplish the same purpose seemed unremarkable until Eddie Kahn and Larry Maxwell discovered that FOIA only provides information about "artificial entities" (like partnerships, corporations, and trusts) while the Privacy Act only provides information about real people.

If this discovery is born out, the implications are huge. For example, if a government agency can provide records under FOIA but not under the Privacy Act, it implies that agency only has records and authority to deal with "artificial entities" but not real people.

Preliminary research indicates the IRS cannot provide records under the Privacy Act and therefore may only have authority to tax artificial entities, but not real, flesh-and-blood human beings. If so, the IRS might have little or no authority to lien, levy, or prosecute real people.

This article is an edited transcript of two interviews – one with Eddie Kahn, the other with Larry Maxwell – conducted by Alfred Adask and Rick Donaldson on the Christian-Patriot Connection radio program (KPBC 770 AM, Dallas, Texas) in August, 1997. Adask, Donaldson, or a telephone caller made the italicized comments; Eddie Kahn, and later, Larry Maxwell made the comments in normal text:

As editor of the AntiShyster, I hear a lot about various "tax-resistor" advocates and their strategies and get a subjective impression of which strategies are good, bad, or even a scam.

One of the most dangerous strategies is to confront the IRS in court – especially criminal court – as a defendant since the judges are usually members of the IRS prosecution team. Although the IRS only files about 900 criminal cases a year, if you are one of those "chosen 900", the odds are about 100 to 1 that your "constitutional" arguments will be ignored and you'll be convicted and jailed. Therefore, the most sensible strategy for stopping the IRS has been based on administrative procedures *used before the IRS files a civil or criminal case against you.*

Eddie Kahn developed an administrative strategy. I've known Eddie for three years. He's a former Dallas police officer who was jailed for willful failure to file. Upon release, he continued to dig into the tax code and is probably the only person I know who's confronted the IRS without causing anyone to complain to me about his strategies. Further, while some people sell "tax-resistor" programs for $2,000 or more, Eddie's materials have always been priced between $25 and $50, but seem to have provided the most effective administrative procedure for thwarting the IRS.

Eddie's strategy involved having a face-to-face meeting with the IRS. This strategy worked well for about 18 or 24 months and then the IRS — in order to combat his strategy — started refusing to hold meetings when they were requested by the alleged "taxpayers".

Eddie Kahn: That's true, Al. At first, they were happy to meet with us. But when they couldn't answer our questions, they changed. Now it's almost impossible to get a meeting with the IRS anywhere in the country.

I've watched various strategies evolve to confront the IRS. They seem to work for 18 to 24 months until the IRS devises a counter-strategy. Then the constitutionalist community has to develop a newer strategy to deal with the IRS's latest defense. So when the IRS stopped meeting with alleged taxpayers, what was your next step, Eddie?

Well, we reminded them that the Privacy Act notice in the 1040 booklet says if we have any questions concerning the rules for filing returns and getting information, we can call or visit any IRS office — but the agents still refused to meet us. Then we'd write a complaint to the district director that this agent is

violating our right to due process. We'd also give them their ten days written notice that we were going to "make our own meeting" by just going down to the IRS office at a particular date and time, with witnesses and tape recorders — and if they had any problem with this meeting, let us know before this date.

Do they show up?

Oh, yes, they're always there. But our strategy evolved to just asking two questions: 1) "What *particular tax* do I owe?" and 2) "What particular *form* am I required to file for that tax?" You know what they're saying now? They say, "That's a legal question, I can't answer."

But if they can't tell you what tax you owe or what form you should use, what can the IRS tell you? Further, if they can't tell you *what tax you owe, how can they determine for* themselves *what tax you owe and therefore what tax to enforce? Does their refusal to answer these basic questions eliminate your liability for "willful failure to file"?*

Their refusal to respond pretty much knocks out willful failure since you're trying to resolve the issue and they're avoiding your questions. So far, I don't know anyone that's used this strategy that's been challenged on willful failure to file.

I understand you've hired some professional employees.

We have one attorney and one CPA and we're looking for others.

But you only represent people at the administrative level?

Yes, but the IRS even tries to ignore our attorney and CPA when they write questions of law — because they can't answer them. So we're developing a writ of mandamus for the appellate courts which essentially states, "Your honor, these IRS agents say our client owes money but they won't tell him which tax he's liable for and they won't tell him which form he's required to file — so we want the courts to order them to tell us." I don't see how they'll get around it.

They can't tell you what tax or what form. It seems absurd but is that why the tax is "voluntary"?

Yes, but volunteer for *which* tax? I counted the various kinds of taxes in the Internal Revenue Code (IRC) the other day, and found 53 different taxes and 49 different forms. So a person should naturally want to know *which* tax he's liable for since it could be any one of over 50.

Or research indicates that the IRS lets you *assume* they're trying to collect "income tax" from you — but they're not. They're collecting employment taxes.

Recently, you and Larry Maxwell discovered that while the IRS provides information under the Freedom of Information Act (FOIA), it refuses to provide the same information under the Privacy Act. Why?

The difference between these Acts is significant because FOIA requests are only for "entities". Privacy Act requests are strictly for *human beings*. An "entity" is a fictitious thing, as in "artificial entity", like a corporation. It's not real. But human beings, of course, are real.

If FOIA only provides information about entities, does using FOIA create the presumption that the person using FOIA is also an "artificial entity"?

You bet.

What happens if I use the Privacy Act to request information from the IRS?

You won't get it. We've made a number of Privacy Act requests since we made this discovery and, while they still send us information, they'll say it was supplied *under FOIA — as if* we asked for it under FOIA.

When Larry Maxwell analyzed the Code of Federal Regulations concerning the IRS, the Privacy Act and FOIA, he found over 200 IRS regulations referencing FOIA but none for Privacy— which tells you what they regulate. They regulate "entities," but not human beings.

If they send me a tax document but spell my name in all capital letters (ALFRED N. ADASK), are they really sending that tax document to an artificial entity?

That's right.

And although they send it to my artificial "alter entity", I — Alfred Norman Adask, the natural human being — somehow get tangled up in that mess and become liable as if I were ALFRED N. ADASK, the artificial entity?

That's what our research indicates.

How's the IRS reacted?

So far, when we ask for information under the Privacy Act, they'll reject our request, saying, "You didn't give

us the proper system of records." Well, they have over 100 "systems of records" and if everyone who used the Privacy Act had to know all those systems, the Privacy Act would be impossible to use. As Larry Maxwell discovered, the IRS has no regulations or relating to the Privacy Act, and apparently, has nothing to do with real people.

This implies that a real, flesh and blood person won't usually owe income tax.

All you have to do, Al, is count how many times the word "human being" occurs in the Internal Revenue Code (IRC).

Only a few?

Once. We did a word search on a CD-ROM for Title 26 (IRC). That one occurrence was in "taxable vaccine." It said, "when a human being is injected with this vaccine . . . ." That was the only time the term "human being" occurred in the entire IRC. Otherwise, we are called "individuals" and "persons" — but those terms are ambiguous since they can also describe corporations, partnerships, trusts, etc. which are all "artificial entities".

The critical word is not "individual" or "person" — it's "human being." Government understands that word very well as seen in Title 15 (I believe it's Section 12) where they declare labor unions are exempt from antitrust laws because, "the labor of a human being is not an article of commerce or a commodity." That's why you never see "human being" in the IRC.

A few years ago, anyone who confronted the IRS was generally at a huge disadvantage. IRS attorneys understood the law and procedure so much better than Constitutionalists, that it was very difficult for Constitutionalists to win. But today, folks like you have a greater understanding of tax law than the IRS attorneys.

There's a lot of us out here digging for truth and there's so much good communication nowadays that we're finding it and spreading it. The amount of knowledge and wisdom that we've gotten over the last couple years is amazing.

Larry Maxwell's recently showed his tax research materials to a number of government attorneys. He said in some instances, government attorneys are beginning to shake, or even become visibly sick. For the first time in their lives, they are seeing the LAW, the weakness of their legal arguments, and also the consequences of their ignorance – they've ruined innocent lives with "laws" that don't exist. One lawyer said, "Look, if what you're telling me is true, I'm looking for another job. I'm not going to stay here." Have you seen that sort of thing yourself, Eddie?

Yes. My CPA and I went to Tampa to meet a lady in the IRS audit department who'd been there at least ten years. I read IRC Section 6065 (under "verification by oath") to her. In the Historical Notes it says, "any document that is required to be filed must be filed under penalty of perjury." But then it says, "The exception to this rule is an income tax return filed by an *individual*." She was so shocked, she made copies to show to everyone in that office.

You're saying an "individual" need not sign under penalty of perjury?

That's what their book says. That means signing the 1040, for example, is entirely voluntary.

So why are people going to jail for willful failure to file and all that?

Because they didn't read the IRC. If they don't know, they perish for lack of knowledge – it's always been that way.

If you don't know your rights, you don't have any.

Nevertheless, I think the pendulum is turning in our favor. For example, there's a Sheriff Mattis in Wyoming who understands his role and power and that the sheriff is the highest-ranking officer in a county. *He won't even allow IRS officers into his county.* It only takes one or two people like that to stand up and all the sudden other sheriffs will start standing up too.

Evidence is mounting that our government and the IRS have intentionally defrauded Americans for several generations. Although most government employees don't understand what's happening, we are witnessing an extraordinary example of the "big lie" strategy used by the Nazi's during World War II.

People are skeptical of small lies, but tell a big one, and people will believe.

Today, it is incomprehensible to virtually everyone — including me — that the IRS and our entire income tax system could be based on government fraud and deceit. Anyone who first hears this argument has got to dismiss it as preposterous, even crazy. How could our government run a scam like this for over 40 years? How could such monstrous fraud be possible in the Land of the Free?

But then, it doesn't seem possible that the IRS would refuse to tell you what tax you owe, and what form you use to pay your tax. Impossible things are happening daily.

For further information, call Eddie Kahn at 352-735-5668 for educational materials, or at 352-383-9100 (American Rights Litigators) to hire an attorney or CPA to battle the IRS.

While Eddie Kahn uses the dif-ference between FOIA and the Privacy Act to achieve an administrative solution to IRS problems, Larry Maxwell argues that the only reliable way to stop the IRS is through litigation. Larry's strategy is to sue the IRS as a plaintiff rather than wait to be sued a defendant, since only defendants can

be jailed. Good point.

While the administrative procedure strategy is safer, in the end it may also be less effective since it only saves one "taxpayer" at a time. Litigation, on the other hand, sometimes results in those rare victories that lay a case law foundation for freeing hundreds, thousands, even millions of other American from future IRS oppression. If you win administratively, you save yourself. If you win in court, you might save the nation.

Here, Larry Maxwell (a former high school teacher) explains his opinions on litigating with the IRS:

Larry Maxwell: You can play "correspondence ping pong" with the IRS till you fall over dead, but you'll never get anywhere. We don't need to determine what documents they have, or argue various interpretations of the IRC, or even try to fathom the absurdities found in district court opinions – the issue is simply *does the tax law apply to ME*?

The Privacy Act and FOIA are completely different animals. FOIA applies to every federal agency and is codified at 5 USC 552 as the Freedom of Information Under Administrative Procedures Act. Now, there are some stringent burdens that must be met to get documents under FOIA. You have to cite the proper "system of records", the proper "custodian of the records", etc. With regard to the IRS, most people don't know how to do this since the IRS has 124 separate "systems of records". Nevertheless, any document that I can retrieve under FOIA, Al Adask can also retrieve under FOIA because it's a *public* document.

However, the Privacy Act talks about voiceprints, fingerprints, psychological evaluations, health history, medical history, and is subtitled "Records Maintained on *Individuals*". The Privacy Act defines "individual" so that it's clear that each record has something to do with a *living, breathing human being* — not an artificial "entity" like corporations, partnerships, trusts or other legal fictions.

Under the Privacy Act, federal agencies must maintain a system of records that 1) include "*only* such information about an *individual* as is relevant and necessary to accomplish a *purpose* of the agency required to be accomplished by statute or by executive order of the President." What records could the Department of the Treasury have on me – a specific individual that are "relevant and necessary" to a "purpose" that was legally mandated for the U.S. Department of Treasury by Act of Congress or an order of the President?

Are you implying that, under the Privacy Act, government must specify your individual name in the "purpose" for keeping various records? Or can the purpose merely identify a class of people like "citizens" or "taxpayers" that might include Larry Maxwell?

No, I'm not saying Congress must specifically identify "Lawrence Steven Maxwell" in its various laws. However, under the Privacy Act, my fingerprints, voiceprint and medical records comprise part of a record that matches up with the person known as "Lawrence Steven Maxwell" born on my birthday in 1954. Under the Privacy Act, this is not *public* information and so no one can obtain those records except me or my duly appointed legal representative.

Further, there's a second Privacy Act restriction: "To the extent practicable, collect all information from the subject individual such that any adverse termination with regard to rights, benefits or privileges from the individual will not be in question." In other words, if I applied for some Social Security benefits, the Social Security Administration is charged by Congress to collect information on me in a manner so clear and concise that there could be no question about whatever rights, benefits or privileges I might lose or gain. This manner of collection has to be on a form promulgated by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

There are also 17 separate requirements listed in the Federal Register concerning each "system of records". I went through each one of those requirements relative to the IRS to determine what can be in the IRS's 124 "systems of records" that is "relevant or necessary" to accomplish a legally required "purpose" relative to a *human being*. I learned the IRS does not maintain *a single record* on real, human beings that is legally required to satisfy a government-imposed purpose.

Instead, in every one of their records, the IRS refers to "taxpayer entities" rather than individuals. Some IRS manuals refer to taxpayers as "entities". There's a specific "entity transcript" for each tax year, and the Individual Master Files (IMF) is called an "entity module".

In the body of the IMF "entity module" there's a "name line" and they'll put that person's proper Christian name ("Alfred Norman Adask"; upper *and* lower case, just like you normally spell it) with his address. That natural person is the one who, for whatever reason, filed a 1040 form that shows up on the IMF with the Transaction Code "150". This Transaction Code cross-references in their 6209 manual to three phrases: "return filed", "liability assessed", and "entity module *created*."

If the IRS ever comes clean on these Privacy Act requests, they'll have to admit they don't maintain any records on human beings that are required by

law to accomplish a purpose. It's all done based on *self*-assessment. If an individual files a 1040, government *presumes* he was obligated to do so and also presumes that individual has agreed to pay the particular tax.

If the IRS sends me a letter saying, "Al, you owe us some money," are they trying to trick me (the natural man) into volunteering to pay a tax for some artificial "entity" whose name is similar to my own?

That's exactly what they're doing. Here's how: For Al Adask, the first four letters of your last name spelled all uppercase (" ADAS") in conjunction with your Social Security "tax ID number" create and identify the "entity". That entity's "name" will appear on all IRS liens, levies, and correspondence. Unless rebutted, the IRS will allege that Al Adask is the surety for that artificial entity's tax liability.

In other words, when you file a 1040, you're contracting to pay taxes for an "entity" that's not you and isn't even real?

I prefer to use the term "ratification". Whether you first filed under threat, duress, coercion, or just plain ignorance – by filing, *you* created the "entity module". From that point forward, you're *presumed* to have some taxable liability that's supposed to be reported on a form 1040.

However, there's no such thing as a "1040" tax. We've had an attorney send the IRS letters asking, "On the levy, you put 'Kind Of Tax' as '1040'; please tell me what that '1040 Tax' is." We've tape-recorded phone conversations asking they tell us what kind of tax is the "1040". So far, no answer. That answer is important because there are 106 specifically enumerated taxes in the IRC.

Then if the IRS says "Rick, you owe some tax money," Rick should ask, "Which one of the 106 possible taxes do I owe?"

That's exactly what our first letter to the IRS says. "You say there are 106 taxes? Then *which tax* are you referring to? Please cite the specific code section that is applicable to that tax."

Our next question is, "Once you've told me *which* tax I owe, would you please tell me which of several *forms* I should use to file my return?"

Then, "Please identify the specific *regulation* that applies to the taxable activity and has been promulgated on the standard Form 83 that was filed with the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 that shows which regulation cross-references with the OMB-numbered form that I'm supposed to use to collect the relevant information and file with you."

Can they understand that? That's a very complex statement.

It really isn't. More importantly, an *attorney* writes our request, but the IRS agent responding to our request is *not* an attorney. In fact, if we get a letter back from a revenue officer who attempts to cite code sections etc., we immediately reply: "It is clear that you are not an attorney, yet you're making legal arguments in written correspondence in violation of state law, and in essence practicing law without a license. If you believe that our legal arguments are inapplicable or off point, then please have your general counsel respond."

We won't argue law with revenue officers. It's that simple. It's time that we take all the hogwash they'd fed us for years and feed it back to them. But our process is not meant to play "correspondence ping-pong" or argue; it's meant to preserve the entire process for our day in court.

Still, while "correspondence ping-pong" may not achieve a final solution with the IRS, a lot of people would be pleased to play this game if it slowed or stopped the IRS administratively. Administrative arguments can be endless and frustrating, but litigation can be hazardous to your health.

Except the IRS won't play a game where a letter gets sent every 90 days. Today, it's going to be every three weeks. And if an individual's letters are based on various "patriot" publications, the second the IRS sees that "patriot" argument, the individual is coded a "tax protester" on the IMF, and the computer accelerates the administrative enforcement process. We counter by using attorneys and laying a legal foundation to litigate.

Currently, the courts only recognize licensed attorneys. Pro se litigants file suits to stop the IRS collection process, but they're not going to get a federal court to issue an injunction against the IRS. However, an experienced, knowledgeable attorney who properly files for an injunction will be heard and usually prevail.

Are many new attorneys coming over to the "constitutionalist" side?

I don't know. We're working with five right now. I send them a flip chart containing all our information and arguments. Then we go through it page by page – sometimes over the phone. After the presentation, the lawyers just sit there, stunned.

The three lawyers I've talked to last week understood our arguments in just a couple hours and now believe their judges will move for acquittal as soon as they finish cross-examining the government's witness.

The Privacy Act has a hammer in subsection E which specifies the only records the government agencies can maintain. Then subsection 5 says, "Maintain all records used by the agency in making any determination about any *individual*." Under subsection 5, the IRS should include information on what *tax* and *form* a particular individual should pay and file. We ask for that information.

If they don't produce those records within ten days, they ask for an automatic ten-day extension. We give them the whole 20 days to answer our Privacy Act request. Then the IRS has two options: 1) Produce the records (which we don't believe exist), or 2) respond that there are "no records responsive to your request." If there are no records concerning a particular individual, his attorney should ask the IRS why is there a $50,000 levy on this individual? If there's no record on the individual, how can the individual be assessed as owing a tax?

Subsection F of the Privacy Act says if they don't produce the records, you file a civil action. 31 USC Section 301 says that the Dept. of the Treasury is attached to the "seat of government" as an agency under the Executive branch of government. 4 USC Section 72 says all offices attached to the "seat of government" shall exercise the authority of their office *in* the District of Columbia and *not elsewhere*.

Therefore, we know the place to sue the Secretary of the Treasury (also specified in 31 USC 301) is in the District of Columbia. So we file suit in a civil action as per subsection F, sue the United States, name the respondent agency (Treasury) and seek an injunction through a civil action to enjoin them from withholding the records.

My only burden is to show the court that 1) I properly requested those records pursuant to the Privacy Act, and 2) the agency refused to produce the records. I state that the refusal was intentional and purposeful, and my attorney is *guaranteed* attorney's fees and costs – it's not optional. I should get an injunction enjoining the IRS from withholding my records and the *minimum* $1,000 fine.

At that point, the U.S. attorney assigned to defend this case will probably tell the IRS agent, "Heck, why not just give him the silly records? Look, the judge already issued the Temporary Injunction and a Show Cause order. In ten days we'll have a hearing and he'll upgrade the preliminary injunction. You'll have to take the stand and tell him there's good cause why you don't produce these records. So why not give him the records?"

The IRS guy might reply, "We have a problem — there aren't any records."

In court, my attorney says, "If there aren't any records, what is this $50,000 levy?" If the IRS agent admits the records don't exist, he also admits to an Unlawful Collection Activity — a *felony* for which he and the U.S. government are liable for compensatory and punitive damages. Any IRS agents involved in that Unlawful Collection Activity may face a felony conviction, five years in jail, and a $10,000 fine per act. It's a heavy penalty. And you can prosecute it both civilly and criminally.

OK, how can they get out of this? My understanding of the legal system is if you can really corner these guys, you'll still have to give them an escape hatch or else the courts won't rule in your favor.

The only "out" you ever have to leave is for the judge — not the defendants. The judge is the one that wants the out, and it's there. The law is patently clear. We want an injunction against the collection activity so your attorney might say something like:

"Judge, we request that you immediately issue a preliminary injunction pending final adjudication of this case and a permanent injunction enjoining the IRS from ever again contacting my client, having anything to do with him, and from maintaining any liens and levies against him. The injunction should order the expungement of all relevant liens and levies filed by the IRS in any county whatsoever.

"Alternatively, we will amend our suit to include an Unlawful Collection Activity for all actual damages. These damages include everything the IRS has ever taken, all the compensatory damages for emotional distress and mental anguish, and punitive damages to send them a message that what they did was wrong. We'll also amend our complaint

to prosecute the IRS agents under Title 18 to obtain a felony conviction."

Faced with the alternative, the judge should grant our injunction.

Caller: Have you successfully prosecuted a Privacy Act suit against the IRS?

We haven't yet filed our first Privacy Act suit. We just started this process in June and watched their reactions. We learned to alter our initial Privacy Act requests so when we went to court, we didn't have to argue all the unimportant details — we hone in on whether they did or did not produce the records. Several of what we believe are perfected Privacy Act requests went out about two weeks ago. We got our first responses today and believe that we will file the suits within the next week to ten days. Injunctive actions move quickly. Once we file suit we expect the court to issue an injunction within 48 hours.

Caller: Do you have any problem with the Anti-injunction Act?

No. The Anti-Injunction Act only applies when there is no authorization for suit or injunctions. The Privacy Act itself authorizes the requester to file a civil action in U.S. district court seeking an injunction to enjoin withholding of the records whenever an agency fails to produce the records,

Caller: So the purpose of your suit would be to get a record or admission by the IRS.

The purpose is to get them to admit that the records don't exist. Without records, what basis can there be for a levy?

Caller: You seem to believe the IRS can't assess a tax unless you file a return.

Lawfully, they cannot. If you read the code carefully, it specifically says the Secretary can assess the tax assessed by the *taxpayer*. In other words, the assessment is made by *you* and if you file it, the secretary can confirm or deny *your* assessment. If you go to the regulation on that section, it says the Secretary has the authority to assess "penalties, additions to tax and interest". What's missing from that definition? There's no authority to assess the tax itself.

Caller: I think you're misreading that statute. Why can't the IRS do a deficiency assessment and let you challenge it if it's incorrect?

There's no authority for it.

Caller: I believe there is; I think this is your fatal flaw.

I won't argue with you. We've researched it. If there was authority, why won't the IRS tell us what that authority is? But let me clarify one point: The IRS does have authority to issue deficiency notices for a legal purpose to *entities* which are subject to a particular tax that the IRS has authority to collect. So we never argue that the IRC is unconstitutional — it certainly is constitutional and it is law. However, they don't have authority to assess a tax against a *real human being* who lives in Texas and is not subject to the U.S. Department of Treasury.

Caller: Maybe we'll find the truth in your suits.

Exactly. Time will tell. Every theory, argument and court case exposes a little more truth. It's like going through a maze. Even when we're wrong, we can learn and become more nearly right.

Larry Maxwell and Family Advocates are ministering to people oppressed by government and believe they can provide some relief from the IRS. For further information, call 713-472-4010. ■

Exposing & Prosecuting Judicial Corruption thru Common Law Discovery

by Marvin Bryer

Here's another edited transcript in which Rick Donaldson and Alfred Adask interviewed Marvin Bryer on KPBC on June 9, 1997. As usual, Donaldson and Adask's comments are italicized and Mr. Bryer's comments are in normal text.

In essence, this story again illustrates how the swaggering arrogant abuse of power by judges can cause common, seemingly inconsequential individuals to launch constitutional attacks on the judicial system that are almost amazing in their effectiveness. Based on the work by folks like Marvin Bryer, the judges in the country may soon have to admit they are smart enough to abuse their power and ignore the Constitution with impunity.

Marvin Bryer's discoveries started when his daughter became involved in custody battle for her child. The judge apparently accepted a bribe to rule against Mr. Bryer's daughter and, as a result, Mr. Bryer wound discovering a judicial slush fund bank account and a common law strategy for overcoming judicial immunity.

How'd your case get started, Mr. Bryer?

My daughter and son-in-law and were co-defendants in a paternity/custody dispute where the son-in-law is conclusively presumed to be the father of the child under law. However, an outsider filed for paternity and custody when the child was nearly two years old.

Someone outside *the marriage – not the husband or the wife?*

That's the part where a lot of people don't understand. But it's not my daughter's case that's so unique here, it's what we uncovered involving a judicial slush fund and the Continuing Legal Education for lawyers program (which I believe is nationwide).

In other words, if there's a scheme in California where a group of Los Angeles judges extort money from the public in return for favorable verdicts, then there's a strong probability that a similar scheme may exist in other cities and states across the nation. Then, your story is significant because it may provide evidence of systemic *judicial corruption across the USA. And more importantly, you seem to have found a strategy to overcome judicial immunity.*

I'm investigating an area where they have absolutely no immunity – their associations. They can't claim immunity because an *association* can be sued.

In other words, if a single judge commits unlawful acts from the bench, he can easily hide behind his personal immunity. But if it can be shown that that judge is working in association *with other judges, then just like a conspiracy, there is not only no collective immunity, there's no personal immunity either?*

Exactly. They have immunity for what they do individually inside a court, but what they do outside — taking bribes and collectively setting up cases *in their associations* they have no immunity whatsoever because their "corporations" or associations have no immunity. That's an exciting insight and I'd like everyone in the USA to join me in a crusade to get our country back.

There's the old cliche', "All power corrupts, absolute power corrupts absolutely." But "absolute power" is the working definition of judicial immunity. If you can't try me for anything I do, then I have virtually absolute power — I can do virtually anything I want and get away with it.

Fortunately I think we are going to crack that immunity. And that's why I'm excited. That's why I was actually threatened with imprisonment in Orange County, to prevent me from doing any more discovery. Can you understand why?

Sure. But the court issued an order preventing you from doing more discovery?

That's right. My daughter was actually taken into court and they actually

closed the courtroom doors, put cardboard on the windows, locked the doors, and tried to coerce her into accepting illegal evidence against herself. When she refused, they terminated her as a legal custodial parent of her child. These kinds of crimes by people who take bribes is phenomenal; the entire USA should be outraged.

There was an order to show cause to sanction my daughter $1500 because she objected to the judge on the grounds that he is a *witness* in the case. In California under Evidence Code 703, a judge can't be a witness and a judge in the same case. She has all her facts so they tried to hold her in contempt. They lost. But in order to prevent us from hearing, they evacuated the court, locked the doors and put cardboard on the windows. They didn't want anyone in court to hear what transpired since it involved the judges themselves and custody evaluators and psychiatrists. We have a whole *network* of abuse that is so incredible that they don't want anyone else to know this is going on.

See, this wasn't a juvenile abuse hearing of any type. This was a civil matter, not in juvenile court, which makes the loss of parental rights even more unusual.

They weren't in juvenile court, the issue wasn't custody, and yet the judge terminated your daughter's parental rights for not going along with their program regarding other concerns?

Exactly. There's a document they tried to get my daughter to sign and no criminal would sign a document like this. They wanted her to stipulate to allow *hearsay* to be entered against her to allow evidence without foundation of fact and to raise no objection. They actually tried to force her to sign that document. They also tried to force her to stipulate to a custody evaluator that they'd obtain. Because she refused to sign, they terminated her parental rights. She was devastated.

I hope she takes that judge for everything he every intended to have, his house and car and all the money he's giving his mistress or his boyfriend.

We have something called the Judicial Commission on Performance of Judges — I really got a major following behind me — and they've told me they believe that the judges will be found guilty in that performance.

What other support have you had? Any success reaching the media or local prosecutors?

We have a L.A. district attorney — Joe Garsetti — of the OJ Simpson trial. He had a prosecutor named Christopher Darden. Have you heard of him?

He's the African-American gentleman who helped Marsha Clark try to prosecute OJ Simpson.

Yes. Right before Nicole Simpson was killed, I contacted the DA's office and guess who I got – Christopher Darden. I have a letter from him saying, "L.A. doesn't have enough money to investigate my allegations concerning the judges." So I went out on my own, hired private investigators, and did all my own research — didn't charge the county a penny. But now, if one of my defendants (like the finance department of the Superior Court) is "raided" by the DA's office, that raid is a disguise, because they confiscate evidence for my case. There's actually a folder, a file on me in court that they don't want the public to see so they're actually involved in a conspiracy.

You're alleging that they're grabbing and concealing evidence?

Absolutely. There are documents inside that court involving the assistant presiding judge and one of the money launderers which were in my file. It's total damaging evidence so they actually confiscated it. Under law they have actually have the right to *conceal* everything they confiscated. They did it by "sealed" search warrants so you can't even find out what they took or why they went in there. It's a very clever scheme.

Don't they have an obligation to reveal all information to any defendant that might tend to exonerate them from guilt?

I'm not a crime suspect; the suspect is my defendant and they haven't filed criminal charges against him. But they are hiding that evidence. They selectively decided on what to review. They don't want to review evidence involving the money-laundering scheme. In fact, there are boxes of checks back to *1962* involving the judges and the court that the district attorney doesn't dare touch because once he touches

them, he has to investigate.

This reminds me of the JFK assassination; after he was shot, his brain disappeared. And then there's front door at Waco, which also disappeared as part of the investigation. And of course, up in Oklahoma City, the whole bombed-out federal building "disappeared" a couple of weeks after the first bombing when it was bombed again, knocked to the ground, and all the debris was hauled away and buried where no one can get at it. So it's hardly surprising if we see another example of boxes of evidence in government custody that just happen to "disappear".

I actually have copies of checks *from a district attorney* into the slush fund. That would certainly be a conflict of interest plus I have one of the lawyers actually donating $2500 to Gil Garcetti.

What do they do with this slush fund?

Oh boy. They make checks out to cash, to a jewelry company, restaurants, country clubs, florists, and custody evaluators – there's almost no end to it. They're running all kinds of scams in L.A. and the public is not aware of this and I'll bet if I go into Texas I'll find the same thing there. I'm already finding it in Orange County. And as you know, in San Diego they finally prosecuted some of their judges down there.

Didn't they put some of them behind bars?

Yes they did.

That's excellent.

It took the federal authorities to step in because local authorities wouldn't act.

What happens to all those cases that the judge heard prior to going to jail? Do they get re-heard?

That's a fascinating possibility. In cases of police commit misconduct, those cases may have to be re-heard. My goal is to actually get these cases re-heard – and I'm talking thousands of cases.

Government will do everything it can to resist this — just from an administrative point of view — since they don't want to hear all these cases a second or a third time. To do so, they'd have to admit that they've committed fraud against the people. But it's got to be done because the government has to play by the law.

We believe in absolute power too. Power to the people.

I was looking through copies of three years of bank statements you sent. Most of them are from the Bank of America for the "LA Superior Court Judges' Association". How did you get hold of the documentation?

That's a heck of a story and a lot of people are still shaking their heads on how I did it. The courts can't even believe it. I used *common law*. A case called *Copley Press v. Superior Court* from San Diego around 1992.

Do you have a cite on that? Is it only a California case?

No, it's common law, so I'd say it's applicable across the USA and that's why it's such a phenomenal discovery. Once you invent the wheel — I think I have a wheel here for everyone. By using common law to argue the public has a right to know — certain information cannot be kept confidential. When you deal with the court you can't file a Freedom Of Information Act or even certain kinds of public record act requests. But under common law you certainly can make those requests and that's exactly what I've done.

With no cost to me, I first asked the bank for a list of the donations from the county bar to the Superior Court of Los Angeles. They got a little shook up and battled me for one month but finally

gave it to me. However, they only gave me the *fronts* of checks. So I subpoenaed the *backs* of the checks deposited into the American International Bank — from there I followed the money trail (which is what we all have to do whether we're dealing with the Democratic National Party, the GOP, or anything where there's illegal money).

What's the significance of the back of the check compared to the front? For example, if the front of a check says it's going to the "L.A. Judges' Association," why do we want to see the check's back?

Fraud. What they've done is created aliases on the *fronts* of the checks where the checks are made out to a fund which does not even exist (it appears to be a court of law). Some of the checks I have are made out to "Family Court Services Special Fund" — but there is no such fund. But the *backs* of the checks show the money in one instance deposited to the "Judges' Miscellaneous Expense Fund".

We have a state law called State Penal Code 530 — when you take money under assumed character it's a felony and any money over $400 is tantamount to grand theft larceny — State Penal Code 487. We're looking at major crime.

You're doing outstanding work.

Thank you so much. I appreciate the right to come on your show because I'm having a hard time in California getting my word out to the public.

I want people to march with me to Washington and, believe me, I am going to go to the Department of Justice. These are federal crimes; they've taken our Constitutional rights. When you take a person's child because they won't acquiesce to bribery we have a very sick system.

It's not just sick. People can make a legitimate argument that it's satanic and it certainly qualifies as fascist. This is no different from Nazi Germany. It is unconscionable that our government intentionally takes children, makes war on children, because their parents are politically incorrect. These officials should be thrown in the deepest hole we've got in the darkest American prison.

On the bank statements for October 1, 1996, we have five deposits: $343.00; $440.00, $468.00, $784.00, and $1,870. Then on 10/9 we've got three deposits and two deposits on 10/18. I find this curious since, whenever I make a bank deposit – if I have six checks to deposit, I list them all on one deposit slip and make a single deposit on one particular day reflecting the sum of the six checks. One day, one deposit. Why does the judges' bank account repeatedly include as many as five separate deposits on a single day?

I'll have to look at what you're saying because I haven't yet analyzed every piece of information.

There's another series of eight deposits for February 9, 1996. I find it curious that those deposits are first $935, then $935, another $935, another $935 and guess how much the last four deposits are?

Are they each $935.00?

Yep, which implies they're trying to hide something.

I'm fascinated with your discovery. I believe that under RICO, USC Title 18 — racketeering — if you have $5,000 or more transactions in a given day, that is racketeering. I have witnesses and checks to indicate that the sheriff's department is involved in a custody monitoring scam where they illegally license people to be "custody monitors" and they actually extort people into paying to see their own children after the court appoints the same monitors.

One problem with corruption is you can't start a scam and make some money without other people seeing who want "in". Next thing you know, you've got everybody down to the guy who tunes the cars for the sheriff's department getting a cut.

That's a fabulous point. I think it started where they had so much immunity they didn't think too much about it and it just kept getting bigger and bigger. They're actually lying in court right now and that happens to be perjury in our state, state penal code 118. It's also a federal violation if you're in federal court. I think they "gotta lotta 'splaining to do" but boy I can't wait to get into those $935 checks.

It costs me hundreds of dollars just to get Bank of America to be a witness

under consumer law as "custodian of the records" (checks) and give me the judges' checks. Now they don't want any more discovery. They told me I'm going to jail if I dare defy the judge and try to demand more discovery.

Caller: *There's a case called US v. Prudden that refers to fraud. Headnote no. 7 in this case which is 424 F.2d 1021 says "violence can be equated with fraud only where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading." That's the law.*

What's the significance?

Caller: *The significance is you've got a government that won't tell you the truth. You've got bureaucrats that are hiding behind lies, deceit, fraud and trickery.*

You're saying when there is a moral or legal obligation to speak up, if they refuse to reveal evidence and/or speak on this subject, it constitutes fraud?

Caller: *I think most of those judges, no matter how rotten they are, take an oath of office don't they?*

That's the theory.

Caller: *You got it. Either 4 USC 101 or the state constitution, either one.*

The oath creates moral obligation?

Caller: *Yes, and perjury of oath of office is another felony.*

What year was that case?

Caller: *April 10, 1970. U.S. Circuit Court of Appeals, Fifth Circuit.*

OK, I'm going for it.

Caller 2: *We have powers as a people to arrest these officials and take them to task. I think Marvin should think more about — if he's got the guts and he's got the people — he should go in and arrest these judges because, as citizens, we're classified as "peace officers" in the criminal code and have the same powers as any other "peace officer".*

That's fascinating because I was contemplating arresting the judge outside the courts. The Orange County marshals actually come out after me, every judge in L.A. is disqualified from my case, and they're harassing me down in Orange County. The judge is actually involved in a felony. He got my case files without jurisdiction under government code section 6200 in our state and our state penal code 134 and I actually considered arresting the judge. Whether I have the guts or not to do that I haven't decided yet.

Before you "get the guts" to do that, you'd better get a lot of public support because I'll guarantee you do not want to arrest a judge all by yourself.

I'm a peaceful man.

If I were trying to arrest a judge, I'd want 50 or 100 people as witnesses.

I paid the Orange County sheriff to actually throw the summons at the judge. He refused so I used the California code of Civil Procedure 415.30 and I served the judge through the mail. That made him furious. So, believe me, they don't like me down there. I'm not sure I'm going to try to arrest them yet.

Another man you'll want to talk to is Roger Weidner, a former attorney up in Oregon. He's been fighting the courts for twelve or fourteen years on a dirty probate deal that included a couple of dead bodies. He's been disbarred. However, he's generated enough public support so when he

goes to court 50 or 100 people go with him. On one instance the judge ordered everyone to leave the court while Weidner was in there but Weidner told everybody, "Sit tight, this is our court and we run this place!" The people stayed and the judge and the prosecuting attorney ran out of the courtroom. They just turned tail and ran. I'll put you in touch with Roger Weidner, if you give me a call tomorrow.

That's great. But I don't want to go for 12 or 14 years. I want to do this fast, and I do need help.

I understand. But I'll tell you how it works. It took Weidner 12 or 14 years because he was one of the first people to stick out his neck. The next guy after him will get it done in 5 or 6 years, and pretty soon we'll see it done in 6 months. You've been at this for how many years now?

I started to discover the fraud back in 1993 but the judges were able to conceal their information. I've spent $100,000 of my money to save my daughter's child – and I'll tell you, if there's anything I'd ever cry about, it's my daughter's child.

I understand. They expect that. One of the reasons they'll go after the children is to destabilize people emotionally. It's not only that it will exhaust you financially. Once they destabilize you emotionally, you become unfit to handle your own case. They can even drive you into depression. They can get you screaming and shouting so even your supporters abandon you because you're too crazy to deal with.

You understand it perfectly. They bankrupt you. They take your property. They take your children. They really don't leave you with much of anything.

And they won't leave you with half. If they target you they'll take it all because, after they've gutted you, they don't want you to have any resources left to hire professional help to launch a counter-attack.

All the evidence I got, I got on my own without the help of any attorney.

It's a common story. You mentioned one case, I think you said "Copley Press v. Superior Court."

I think this is an exciting thing that I'd like to spread across the nation. Under common law we can basically go into these courts where they have these "continuing education" seminars where they're raising money and nobody knows where the money is going – and under common law ask them where the money went? We're going to find out who took the bribes and I don't think they can stop us. Imagine everybody in the United States that has the guts to simply ask, "Where did you go with this money that was from your seminars?" They're actually charging money to hold seminars in *our court*. I assume that you have the same thing in other states.

In other words they have a Continuing Legal Education seminar?

Right. In California they call it MCLE – Mandatory Continuing Legal Education. It was formed by the California Judges' *Association* which includes *every* judge in California, along with *judicial counsel*. They orchestrated an educational ruse to set up a method of collecting money. But they don't tell you where the money goes. It's funded by the state legislation, we're tracking that money and it's driving them nuts. I see evidence of this across the United States, so I'm asking all Americans to start looking at their *county bar associations*. Check out their publications, and examine your city charity solicitation ordinances. For example, in L.A., no person shall solicit charitable contributions without first filing a notice of intent to do so. The county bar has filed no such notice. You follow all new trails, and you'd be amazed what you're going to find.

I'm getting after some very high profile cases where judges were actually involved in money laundering. I'm getting some really interesting support. I think you're going to hear about me.

One of the things that interested me about your bank statements is that the judges' bank account doesn't pay any interest.

Actually, I believe it does.

There's no evidence of interest on the bank statements I've seen. Do you know what that means? If it doesn't pay interest there's no reporting requirement to the federal government. There will be no 1099 on that account.

Well, I did see a taxpayer ID up in the right-hand side.

Could be, but if you don't receive any interest the bank has nothing to report.

We're trying to get the IRS to look

into this since they are not a 501(c)(3) non-profit organization under the income tax. They even wrote a check to a country club. Do you think the divorce court judges keep their mind on children and justice while they're playing golf?

They were probably keeping an eye on the caddies or something like that. In the "best interest of the caddies" they were contributing money to the country club.

They also had checks to restaurants, etc.. It's just an amazing issue and everybody who looks at it is astounded.

The point is not just where they spent the money but where did it come from?

I have two checks from the county bar association, one for $3,848 that was deposited on August 2, 1991 — four days before my daughter's trial. How do you like that? And the money came from the plaintiff's mother.

I understand that but she wrote it out to a trust.

Yeah, but that trust does not exist.

The point is that she writes this check to a trust, hands it over to the state bar and someone at the state bar deposits the check into the judge association's bank account.

According to the county bar there's a difference between the state bar and the county bar in every state. The state bar is a licensing agency for attorneys, but the *county bar* has no immunity whatsoever, they have no ability to license, they're not part of the government and under California constitution Article 6 they have no immunity whatsoever.

That certainly gives them some legal liability.

Did the lady write the check to a charitable trust? If so, could she even deduct this from her income tax?

I haven't seen her income tax but I have the tax reports from the Los Angles County Bar Association – but it's not a legitimate donation.

It would be interesting if you could write a check for a bribe and deduct it from your income tax. A cost of doing business: bribing a judge. We just write bribe-checks as if they're going to some charitable trust fund, hand 'em over to our lawyers, and Presto! the judges get 'em, instead.

OK. We're trying to start some advocacy here. We want all the USA behind us.

There are plenty of people that have the guts to conduct investigations like yours, but they just don't know how to go about it. Only a few people like you learn how to get through the labyrinth and start finding some serious information. If we can propagate the "how" there's plenty of people that have the guts to "do".

That's our goal: to teach the "how" and to get everybody across this nation to save our children and to put these judges behind prison bars where they belong.

Absolutely right. Give us a contact phone number before the program ends.

My friend, Dave Silva is handling calls on this issue at 818-897-7767.

Marv Bryer's story represents at least another "near" victory by seemingly powerless common people over seemingly "almighty" judges. Constitutionalists – folks who study the law and are determined to make government obey it . . . even if it means acting alone — are placing corrupt judges in jeopardy and laying a foundation for restoring a government that obeys the laws and protects rather than diminishes our freedoms.

Constitutionalists CAN! ■

Lawsuit for Liberty

by Devvy Kidd

Big corporations and wealthy special interests routinely use their financial clout to "encourage" legislators and judges to grant them special privileges at the expense of We the People. Average Americans, with limited financial resources, have little opportunity to be heard by politicians or litigate successfully in the courts.

Therefore, a "patriot" lawsuit supported by the donations of numerous common Americans may be more than a means to overcome the financial limits common to most "constitutionalists"– it might be a very important political strategy. In a sense, a broadly supported lawsuit can be a "populist" effort to "lobby" on behalf of the People, and overcome the financial advantages enjoyed by the rich, corporations, our own bureaucracies, and even foreign governments like Red China or the UN. Properly supported, populist lawsuits might generate not only financial clout (which special interests always enjoy) but also the broad political clout of millions of common Americans (which "special interests" never enjoy).

The following article illustrates an attempt at "populist" litigation intended to level the playing field between the relatively few, but extremely wealthy special interests and the enormous numbers of common Americans whose individual financial resources have previously been too modest to engage in effective political action.

The fourth of July is for spending time with your loved ones, eating hotdogs and eagerly awaiting the fireworks display after dark. It's a day little kids can stay up late and revel in all the excitement in anticipation of the grand finale . . . watching "the bombs bursting in air . . ." It's also a time of reflection, as we remember those brave men and women who put their lives on the line to ensure that we, their progeny, would live free and unencumbered by oppression.

The Unanimous Declaration of the Thirteen United States of America reads:

". . . We hold these truths to be self evident that all men are created equal, that they are *endowed by their Creator* with certain *unalienable Rights,* that among these are Life, Liberty, and the pursuit of Happiness. That to secure these Rights, Governments are instituted among Men, *deriving their just powers from the consent of the governed . .*"

How then, in the preceding two-hundred and twenty-one years, did things get so turned around as to allow the abuses of power that today occur on a daily basis? The answer? Ignorance and laziness. The solution? Education and a rekindling of pride in being an American. For as Thomas Jefferson once said,

"If a nation expects to be ignorant and free, it expects something that cannot be."

He also said,

"Enlighten the people generally, and tyranny and oppressions of body and mind will vanish like evil spirits at the dawn of day."

The good news is that there's something each of us can do to make a difference this very moment!

Since 1992, my efforts to educate and motivate the people have traveled a long and arduous road. At that time, the ratio of those who would lend me a serious ear was about one in ten. Today, despite establishment media-sponsored views to the contrary, the ratio has exploded to seven out of ten. This tells me that more and more people are becoming disillusioned with the spin-doctors and talking heads on the television telling us that, "everything is okay and now we will return to regular programming." I have run for Congress twice, been a guest on more than 620 talk radio shows, and have sold *1.125 million* copies of my booklet *Why a Bankrupt America?* My newest booklet, *Blind Loyalty*, has nearly sold 80,000 copies since coming out in print less than a year ago! I've witnessed a lot along the way and it is my belief that perhaps the time has come for the people to take a *Stand for Liberty* once and for all!

Many people have told me their stories of abuse concerning one or more govemment agencies. In 1994, my husband and I had our go-around with the IRS in federal court. We simply filed an *Order to Show Cause* requesting the IRS to come forth, stand before a judge, and

explain their reasoning for not answering two simple questions: 1.) Where does it state in the IRS codes that we are liable for the "income tax" and required to file a "1040 form"? and 2.) Where is your delegation of authority from the Secretary of the Treasury forcing us to surrender our Fifth Amendment Rights?

We never received an answer because the judge decided, in her ultimate wisdom, to have the case dismissed. (I knew then, coupled with the *Horne v. Federal Reserve Bank*, 1965,CA8 Minn; 344 F2nd 725, decision, that the money issue and the IRS were dead in the federal courts.) How many other people have endured the abuses of the IRS, with outcomes that were not as benign as simply having their case dismissed?

How would you like to do something about it? How would you like to have your voice heard, coupled with millions of others — *like a great roar in the wilderness?!*

Back in 1993, I met Richard Bellon — an extraordinary young man who authored three outstanding books including *IRS Under Indictment*.

One of the issues Richard and I ardently agree upon is education – not only for the people, but also for our elected officials. Throughout the years, Rich has had occasion to interface with people from all walks of life in his mission to become an expert in common law and, in turn, to teach those who will listen. To his credit, Rich has won over police officers, sheriffs, U.S. attorneys, judges, federal defenders and congressmen, not to mention many a radio talk show host, to the truth regarding the difference between the public and private sectors and the application of the law to each. Now there are police officers who no longer write tickets for speeding and not wearing seat belts, because they *know* these are not "crimes". Now there are bank presidents who no longer accept phony IRS administrative summons because they *know* they lack the authority they claim. Here is *proof* that Rich not only knows the law, but knows how to apply it!

Combining the legal expertise and research facilities available to him, he has composed a lawsuit documenting the way government agencies have overstepped the bounds established by the Constitution. As Abraham Lincoln stated in the Gettysburg Address, *". . . ours is a government of the people, and for the people."* Strictly speaking, ours is a government by the consent of the people . . . a government *agreed to* by the people through a written *contract* called a constitution. It must be enforced or it becomes meaningless. By utilizing the law in a responsible manner, *you* can stand up and be counted as one of the people who put the teeth back in our contract!

Richard Bellon is filing a *Stand for Liberty* lawsuit to address the following issues:

The Federal Reserve

is privately owned and operated by domestic and *international, foreign* bankers. Congress states that the American people owe over *5 trillion dollars* to the Federal Reserve Bank, every hour of which an excess of *30 million* is accrued in interest to this "national debt." However, Congress has purposely "forgotten" to tell the American people to *whom* they owe it and *why* they owe it.

The Internal Revenue Service

is an agency that was never enacted by an act of Congress to carry out any of the functions they are enforcing today! Through the ignorance of the people, they have buffaloed their way into stealing millions in people's hard earned compensation for labor, not to mention houses, businesses, etc., etc., ad nauseum. The people have been defrauded into believing their "income tax" goes to run the various functions of government. It does not — *not one penny!* Instead, it just makes the private bankers richer while bankrupting our Republic. Without the private Reserve Banking System, there would be no need for the IRS and Americans would be free from this vile obscene tyranny.

Social Security

It's hard for many people to believe, but this system is entirely voluntary, just like the "income tax." But, did you know that there has never been an account set up in your name for your retirement? The social security system is bankrupt, leaving literally *pennies* for retirees to scrimp by on each month! If you or I were to perpetrate a fraud such as this, *we would be spending our life behind bars!*

Treaties

To date, NAFTA and GATT have cost Americans a *$25 billion* trade deficit with Canada and a *$16 billion* trade deficit with Mexico! *Not to mention the $20 billion it cost us to bail out the Mexican peso in 1995!* In addition, our sovereign Republic's borders have been compromised and continue to erode. And what about all the war veterans who have unknowingly fought in U.N. sponsored wars, (i.e. Vietnam, Gulf War, etc.), who are now *ex-patriots* because of it and not covered under the Geneva Convention and, therefore, are being denied their rightful access to health care and other assistance?

Infringements against the Second Amendment

Thomas Jefferson said,

" The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against the tyranny in government."

The good news is, there are godly crusaders out there like former sheriff, Richard Mack, who are assisting this cause in a big way; but it's not over yet! A right given by God cannot be magically turned into a government privilege overnight. The created (govemment) can never be greater than the creator (the People.)

Infringements against the Right to travel

The Bill of Rights contains guarantees to protect people in the private sector from unlawful detainer in their day to day comings and goings on the highways and byways of this country. The "laws" being enforced today have degenerated into nothing more that tax generating operations! In California alone last year, *$3 billion* was collected in Motor Vehicle Fuel Taxes and another *$5.7 billion* in Motor Vehicle Registration fees. Yet only *$500 million* was needed to maintain the highways (which is what these taxes were meant to ad-

dress.) *That means there was in excess of $8.2 billion that was illegally collected to create bigger bureaucracies!*

The Federal Department of Education

Since the federal takeover of public school system within the states of the union, America has undergone the most *massive failure in the history of our nation* with regard to the level of education our children are receiving at school! The program known as Outcome Based Education/ Goals 2000 are not only destructive in theory and concept, but are *exact duplicates* of programs implemented in *communist countries!* Moreover, those parents who are fed up with the public school system and are exercising their right to home-school are being unlawfully harassed by federal agencies that claim their only concern is "the children's welfare."

There are heroes all through out this great land of ours, some of which may be reading this article right now. Look at the great men and women who have devoted their lives to making a difference: Joyce Riley and The American Gulf War Veterans Assoc., Larry Becraft and Gerry Spence, constitutional attorneys, former Sheriff Richard Mack and Officer Jack McLamb, fighting for our right to keep and bear arms. Now, there's the *Stand for Liberty* lawsuit.

This lawsuit will be filed in a jurisdiction where the judges still believe in the Constitution and have the moral fortitude to stand up for what they believe in. I believe that a very important victory can be achieved by uniting our efforts and pooling our financial resources. For that reason, I have become a co-plaintiff in the *Stand for Liberty* lawsuit and I encourage each and every one of you to do the same. Either named, or anonymously, standing together as one voice, *One People*, we *can* make a difference.

As Patrick Henry stated to the Virginia Convention in March 1776,

"Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty or give me death!"

If the Stand for Liberty lawsuit succeeds at generating financial and political support, it may set an example that inspires scores of additional "constitutionalist" lawsuits supported by the donations of common Americans. Once it's obvious that money can be made off these "populist" lawsuits, more professional attorneys will begin to represent constitutional issues, and the positive impact on the courts and our political system may be substantial. In theory, a series of "populist" lawsuits might offset the political advantages currently enjoyed by corporations and PACs, and compel politicians to reconsider and perhaps even serve the interests of common Americans. Constitutionalists CAN!

Those interested in joining or supporting the Stand for Liberty lawsuit can call (916) 365-0158. For further info, you can also visit their web page at www.advantagepublishing.com.

Today's War on Property

by R. W. Bradford

Most people assume that property rights and individual rights are entirely separate issues, and the loss of one has no bearing on the other. However, as you'll begin to see in this and the following two articles, property rights may be the foundation for our individual rights and constitutionally guaranteed freedoms.

Although I am skeptical of this author's explanation for property seizures ("deodands"), I fully agree with his overall assessment of the growing national problem of unconstitutional seizures by government.

What is the status of property rights in the United States today? Consider the following true story.

When Hurricane Hugo devastated the Carolina coast in 1992, it wasn't long before local lumberyards began to run out of building supplies. So Selena Washington decided to drive to Florida to buy the construction materials she needed to repair her home. She took $10,000 cash with her, since she believed the lumberyards in Florida would not accept her South Carolina check. In Volusia County, Florida, a sheriff's deputy stopped Mrs. Washington's car and searched her handbag, in which he found her money. He took the cash and drove away without taking down her name, refusing to give her a receipt or an explanation.

The indignant Mrs. Washington followed the officer to the police station, where she protested what had happened. The police refused to give her back any of her money, so she hired an attorney. He negotiated an agreement: the sheriff could keep $4,000, the attorney would get $1,200, and Mrs. Washington could have the remainder of her money back. She took the deal. What else could she do? In 1990s America, this trampling of private property rights is perfectly legal.[1]

Private property is the foundation of a free society. The collectivist left, intent on destroying free-market economies, has long recognized this fact. A century and a half ago, Karl Marx and Friedrich Engels announced, "The theory of the communists may be summed up in a single sentence: Abolition of private property," and counseled that "the first step in the revolution . . . cannot be effected except by means of despotic inroads on the rights of property." Under relentless attack from the left, property rights have been in retreat ever since.

But it is a measure of property's precarious status that in recent years property rights have been assailed as much by political conservatives as by leftists. Selena Washington's property rights were taken by laws proposed by conservative Republican presidents, enacted by conservatives in Congress, and validated by conservatives on the Supreme Court.

Of course, those on the political right do not proclaim themselves opposed to private property. Instead, they subvert property rights by means of their war on drugs.

The war on drugs was declared by Richard Nixon in 1969, and expanded during the Ford, Reagan, and Bush administrations. By virtually any measurement but one, it is a failure. Since it began, the number of people who use drugs has risen dramatically, as has the number of people killed in drug-related violence. The war on drugs is a success only for its soldiers, who are allowed to take the property of those it suspects of violating drug laws. Consider the following cases:

- In 1987, when Frances Lopes of Maui, Hawaii, discovered that her

adult son, who had a history of mental illness, was growing marijuana in her backyard, she asked him to stop. He responded by threatening to commit suicide. So when police arrested her son and removed the plants, she was relieved: as a first offender, her son was sentenced to probation and given psychiatric help. Four years later, when a detective in Maui was reviewing old files, he noted that Mrs. Lopes had admitted she had known about the marijuana plants. Mrs. Lopes was in her carport when the police arrived. "We're taking the house," they said. And they did.[2]

• On April 9, 1989, Customs officials searched a new boat, just purchased by Craig Klein, a university professor. The 17-hour search was conducted with axes, power drills and crowbars, and involved dismantling the engine, rupturing the fuel tank, and drilling over 30 holes in the boat's hull. The effort turned up no evidence of illegal drugs. It did, however, destroy the boat. When Mr. Klein asked for compensation, Customs refused.[3]

• On February 2, 1991, forty police officers gathered outside Randy Brown's metal shop in Sacramento. Not bothering to knock, they shattered the locks on his front door with a hail of bullets, then rushed in, handcuffed the bewildered Brown, and began tagging items of his personal property for their own use. They found a coffee can with $4,600 in cash, which they claimed as evidence, along with $313 that Brown had in his wallet.

The police had obtained a search warrant on the grounds that Brown had legally purchased chemicals that *could* be employed in manufacturing amphetamines. But they found no evidence that Brown possessed any of the other chemicals needed for the process, or that he had ever engaged in the manufacture of illegal drugs.

Indeed, Brown had no criminal record. Prosecutors dropped the case. But they refused to return his money, insisting that Brown prove it was legitimately acquired. When Brown produced records accounting for the cash, they agreed to return $2,000, provided he would sign an agreement that their seizure had been justified.[4]

• In 1984, Rosa Montoya was grabbed by Customs as she attempted to enter the United States. When a thorough search failed to turn up any evidence of smuggling, Customs locked her in a room with instructions to defecate into a wastebasket. When she had failed to do so after nearly 24 hours, Customs handcuffed her and took her to a hospital, where she was forcibly given a rectal examination.[5]

• In 1990, a 12-member police SWAT team broke into the home of Robert Brewer of Irwin, Idaho, and discovered a half-pound of marijuana, and eight marijuana plants growing in his basement. Brewer was dying of prostate cancer, he explained, and used the marijuana to relieve the pain and nausea. The police seized Brewer's home and van, which he used for transport to his cancer treatment center, some 270 miles away.[6]

While I chose these cases for their dramatic effect, they are not entirely atypical: in four out of five cases of civil forfeiture (summary government confiscation of property without legal process) the person whose property is taken is not charged with any crime.

And all these actions were legal.

The law authorizing civil forfeiture was sponsored by Senator Strom Thurmond of South Carolina and enacted by Congress without debate. The law that authorizes Customs officials to search individuals and vehicles on waterways that connect to international bodies of water (i.e., all lakes, rivers, and coastal waters of the United States except a few bodies of water in the basins of the West) was drafted by the Reagan White House.

The Sixth Amendment to the Constitution guarantees an individual accused of offenses punishable by fine or imprisonment the right "to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defense."

Each and every one of these guarantees is routinely and legally violated by police engaged in the war on drugs. People are routinely fined and imprisoned with no trial at all, with no jury except an arresting policeman (who is sometimes allowed to keep a portion of the fine he imposes on the spot), without being informed of the charges against them, without being allowed to obtain witnesses, without being allowed the assistance of counsel. In order to justify the absolute destruction of these property rights, conservative legal scholars came up with a legal theory hoary with age and bereft of logic.

The legal doctrine on which these laws are based is the ancient concept of "deodands," derived from the Latin phrase *deo dandum*,

meaning "given to God." In ancient and medieval times, when a piece of property caused an accidental death, it was deemed to be possessed by demons and was forfeited to the state for destruction. Not surprisingly, deodand theory fell into disuse as belief in demonic possession declined, and as people began to realize that it was absurd to hold an object guilty of a crime and manifestly unjust to punish the object's owner for an accidental death.

Britain abolished deodands in 1846, but they lived on in America to form the basis of the legal theory of civil forfeiture. Robert Brewer was not being punished when police confiscated his house-his house was punished, and his house, unlike his person, has no legal rights and thus is not entitled to a jury trial or any other constitutional protection. It can simply be confiscated. Nor was Selena Washington punished when a sheriff's deputy took all her money; it was her money that was punished.

This rationale, I believe, is as specious as the legal theories propounded by the left when it advances confiscatory taxes, land use control, and other restrictions on economic freedom. And it is just as subversive of the institution of private property.

When proponents of the drug wars argue that entire businesses should be forfeited after a single legal infraction, they not only endorse the socialist view of capital goods, but also extend their willingness to subvert property into areas unimagined by the most ardent socialist.

In Rosa Montoya's case, Justice William Rehnquist, a conservative appointed to the Supreme Court by Nixon and elevated to chief justice by Reagan, argued that her treatment was justified because of "the veritable national crisis in law enforcement caused by the smuggling of illegal narcotics."[7] This is as clear a restatement of the argument that "the ends justify the means" as any collectivist ever made in defense of any communist dictatorship.

Sadly, only a few prominent conservatives, notably William F. Buckley and Henry Hyde, have spoken out against these violations of property rights. Most politicians who call themselves conservative appear willing to subvert private property on a grand scale to pursue their notion of protecting people from the harm they may cause themselves. It's time for defenders of private property to stand up and be counted.

[1] Henry J. Hyde, *Forfeiting Our Property Rights: Is Your Property Safe from Seizure?* (Washington, D.C.: Cato Institute, 1995), pp. 39-4O. Also, Leonard W. *Levy, A License to Steal: The Forfeiture of Property* (University of North Carolina Press, 1996), pp.2-3. Hyde says the attorney received $1,000; Levy says $1,200.

[2] Dan Baum, *Smoke and Mirrors* (Little, Brown and Co., 1996), pp. 313-314. Also Hyde, pp.34-35.

[3] Hyde, pp. 11-12.

[4] Baum, pp. 311-312.

[5] Baum, p. 215.

[6] Levy, pp. 5-6.

[7] *U.S. v. Montoya de IIernandez,* 473 U.S. 531, 105 S.Ct. 3304, 87 L.Ed. 2nd 381(1985).

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Credit Loan$ & Void Contracts

by Del Cannon

On October 27, 1997 the U.S. stockmarket suffered the largest single daily loss ever — 550 points. Secretary of the Treasury Robert Rubin and other government officials quickly assured America there was no need to panic since the "fundamentals" (unemployment, inflation, etc) of our economy were strong. Curiously, none of the government officials bothered to mention money as one of our economy's "fundamentals". And yet, what could be more "fundamental" to our economic health than the condition of our money?

If there's one section of the Constitution that's almost universally ignored, it's the Article I, Section 10, Clause 1 mandate that our money be backed by gold or silver. Constitutionalists have agitated over the money issue since we lost our gold to government in 1933. The public has ignored the constitutionalists since, after all, we can still "buy" whatever we want with paper money or electronic bank credits, right? So what's the problem?

As you'll read in this and the following article, the "problem" is that We the People are not only going broke for lack of real (constitutional) money, we may be slipping into personal bondage on a slide of paper money. That sort of claim may seem irrational to most Americans, but it's entirely possible because, as one banking "legend" correctly observed, "Not one man in ten thousand understands the money system." That ignorance makes us vulnerable.

In fact, money is just as essential – and "invisible" — to the economic "life" of our society as oxygen is to the biological life of our bodies. Turn off the oxygen and you'll die in minutes; turn off the money supply and your society will also quickly collapse. Why are we so collectively ignorant concerning a subject so critical to our survival and prosperity? Whatever the answer, our ignorance lays a foundation for what may be America's most subtle and extensive form of oppression: credit.

By law, money is defined as a physical mass *of silver. Credit (bookkeeping entries and promises) is* not *lawful money. Banks, by law, cannot loan credit, only money. But given that there is virtually no lawful money (gold or silver coin) in circulation, banks are, in fact, loaning credit.*

Who cares? What difference does it make if you buy a house, car, or Jetski with "lawful money," credit, or buffalo chips, so long as you get what you want?

It makes a lot of differences too numerous to describe here. But consider this: Before the bank will loan you any credit (which has no tangible *reality and is created essentially out of thin air), they typically demand that you put up some* tangible *property (your land or car) as collateral. If you fail to repay the loan of* intangible *credit, the bank will seize your* tangible *collateral.*

For example, to secure a loan to plant crops, some farmers risk the land that's been in their family for generations as collateral, but the bank risks virtually nothing other than a few scraps of paper and bookkeeping entries. If the weather is bad and the crop fails, the bank winds up owning the real, physical *farmland without ever paying a dime in real,* physical *money (silver). This is literally "something (the farm) for nothing (credit)".*

Given that the weather is bound to go bad sooner or later, any farmer who borrows regularly is playing Russian roulette. It's only a question of time before the bank gets the farmland without really "paying" for it, sells it to some "creditworthy" corporate agri-businesses, and the price of your groceries skyrockets.

Consider another consequence of the banking business: failure to create the interest *necessary to repay the loan guarantees mass bankruptcies. Our collective need for interest money is as critical as oxygen but just as invisible in a nation of 260 million credi-holics.*

To illustrate, imagine you live on an island with a total population of ten, each of which owns 10% of the island's land. Your island is a tropical paradise so benign that you and your neighbors survive by simply plucking food off the trees on your land.

Along comes a banker and offers to loan you $1,000 to build a grass shack on your land. Sounds good (with a grass shack, you could impress that cute little redhead and maybe get her to marry you). Of course, to get the $1,000 loan

(and the shack and the girl) you must agree to repay the banker $1,100 a year from now ($1,000 for the loan plus $100 in interest). And – you have to put up your 10% of the island paradise as collateral.

You sign, they loan, you build the shack, and the redhead starts flirting. Great.

Except your muscle-bound neighbor also likes the redhead, and therefore also borrows $1,000 from the banker, agrees to repay $1,100 a year from now, and puts up his land as collateral. Suddenly, the redhead isn't flirting with you — she's flirting with Mr. Macho.

Soon, all ten island inhabitants (even the cute redhead) have each borrowed $1,000, put their 10% of the land up as collateral, and agreed to repay $1,100 in one year. Collectively, the ten of you borrowed $10,000 ($1,000 each) and agreed to repay $11,000 (including 10% interest).

The banker comes back a year later wanting his money (or your collateral), and guess what? Some of you can't repay the loan and therefore must surrender your land to the bank. Well, bidness is bidness, right? Some folks are lazy. Some unlucky. Some simply lack the personal discipline or smarts to handle credit wisely, right? Or so we suppose, but it's not that simple.

When the banker loaned $1,000 to each of you, he placed $10,000 total into circulation on your island. That money allowed you to buy sticks from one neighbor, thatch from another and labor from a third to build your shack. But the banker didn't loan (create) the additional $100 to each of you ($1,000 total) that would later be due as interest. *Collectively, you ten islanders owed $11,000 but there was only $10,000 total in circulation on your island. Which means no matter how hard you islanders worked, it was* mathematically impossible *for all of you to repay your loans. Therefore, some of you were* guaranteed *to lose your land to the bank. The game was rigged.*

For you to have $1,100 to repay your loan, you'd have to squeeze the extra $100 in interest out of one or more of your neighbors. Suppose you overcharged for the sticks you sold to build your neighbor's shacks. Then you could get an extra $50 from the muscle man (HA!) and another $50 from the redhead (hey, babe, life is tough). Then, at best, they could each only pay back $1,050 on their loans, and both would lose their 10% of tangible *paradise for lacking $50 in* non-tangible *credit. All ten islanders would face the same stressful choice: either overcharge and exploit your neighbors or lose your land. Once infected with credit, your island paradise becomes more immoral, unethical, and unfriendly.*

The great irony in all this is that you islanders were living in near paradise. If you wanted to work cooperatively, you had all the sticks, grass, and labor you needed to build your shacks. Instead, you decided to do it the "easy way", with credit. The bank offered you a something-for-nothing deal, and you took it. You just didn't understand that the "something" was your land and the "nothing" was the bank's credit. Net result: at the end of the year, two to five of your neighbors could be homeless, and the bank (which risked virtually nothing) might easily own 50% of the tangible *island based on loans of* non-tangible *credit. I believe that constitutes government-sanctioned oppression.*

Real life is more complex and the fundamental impact of credit is harder to see but every bit as unjust. The mathematics of a credit-based economy guarantee that some of us – no matter how hard we work – are bound to go bankrupt and lose our tangible property to a bank. (The annual number of U.S. bankruptcies has risen steadily from 483,750 in 1987 to an estimated 1.06 million in 1997.)

Like the hypothetical islanders, Del Cannon borrowed credit from a bank and wound up in bankruptcy, unable to repay the credit and facing the loss of his real property. He became a student of banking and money. Ultimately, using the following "Memorandum of Law on Credit Money," he filed a Federal Rules of Civil Procedure (F.R.C.P.) Rule 52 Motion for a ruling on whether some of the loan contracts which led to his bankruptcy were "wholly void". Under the F.R.C.P, the Court had *to rule Yes or No. Instead, the Judge reportedly said on the record:*

"Mr. Cannon, I will not rule on your Motion because I am not going to bring down this country's banking system."

Of course, just because one Judge was impressed by this Memorandum does not mean its contents are absolutely accurate or sure to be equally impressive to another judge (yours, perhaps). Nevertheless, those of you interested in learning the concepts of money or how to defend yourself against economic oppression should find this Memorandum interesting: Its fundamental argument seems to be that, without lawful money (gold and silver), our entire banking industry is based on fraud.

The first third of this Memorandum is a little difficult to understand. Stick with it. The last two-thirds are more easily understood and contain enough information to help you become the "one man in ten thousand who understands money."

UNITED STATES BANKRUPTCY COURT
FOR EASTERN DISTRICT OF TEXAS
PLANO DIVISION

DELANORE LEE CANNON &
ROSE ANN HOOPER CANNON,
PLAINTIFFS
VS.
TEXAS INDEPENDENT BANK, DEFENDANT
Case No. 96-41 347-DRS Chapter 7
Adversary Proceeding No. A-96-4147-DRS

PLAINTIFFS' MEMORANDUM OF LAW ON CREDIT LOANS AND VOID CONTRACTS

To the Honorable Judge of Said Court:

This Memorandum with authorities, law and cases in support will establish the following facts: 1. Defendant and privately owned banks are making loans of "credit" with the intended purpose of circulating "credit" as "money". 2. Other financial institutions and individuals may "launder" bank credit that they receive directly or indirectly from privately owned banks. 3. This collective activity is unconstitutional, unlawful, in violation of common law, U.S. Code and the principles of equity. 4. Such activity and underlying contracts have long been held *void* by State Courts, Federal Courts and the U.S. Supreme Court.

This Memorandum will show through authorities and established common law that credit "money creation" by privately owned bank corporations is not really "money creation" at all, but the trade specialty and artful illusion of law merchants who use old-time trade secrets of the Goldsmiths to entrap the borrower and unjustly enrich the lender through usury and other unlawful techniques. Issues based on law and the principles of equity, which are within the jurisdiction of this Court, will be addressed.

The Goldsmiths

In his book, *Money and Banking* (8th Edition, 1984), Professor David R. Kamerschen writes on pages 56 - 63: "The first bankers in the modern sense were the goldsmiths, who frequently accepted bullion and coins for storage . . . One result was that the goldsmiths temporarily could lend part of the gold left with them . . . These loans of their customers' gold were soon replaced by a revolutionary technique . . . When people brought in gold, the goldsmiths gave them notes promising to pay that amount of gold on demand. The notes, first made payable to the order of the individual, were later changed to bearer obligations. In the previous form, a note payable to the order of Perry Reeves would be paid to no one else unless Reeves had first endorsed the note . . . But notes were soon being used in an unforeseen way. The note holders found that, when they wanted to buy something, they could use the note itself in payment more conveniently and let the other person go after the gold, which the person rarely did . . . The specie, then tended to remain in the goldsmiths' vaults . . . The goldsmiths began to realize that they might profit handsomely by issuing somewhat more notes than the amount of specie they held . . . These additional notes would cost the goldsmiths nothing except the negligible cost of printing them, yet the notes provided the goldsmiths with funds to lend at interest . . . And they were to find that the profitability of their lending operations would exceed the profit from their original trade. The goldsmiths became bankers as their interest in manufacture of gold items to sell was replaced by their concern with credit policies and lending activities . . . They discovered early that, although an unlimited note issue would be unwise, they could issue notes up to several times the amount of specie they held. The key to the whole operation lay in the public's willingness to leave gold and silver in the bank's vaults and use the bank's notes. This discovery is the basis of modem banking."

On page 74, Professor Kamerschen further explains the evolution of the credit system: "Later the goldsmiths learned a more efficient way to put their credit money into circulation. They lent by issuing additional notes, rather than by paying out in gold. In exchange for the interest-bearing note received from their customer (in effect, the loan contract), they gave their own noninterest-bearing note. Each was actually borrowing from the other . . . The advantage of the later procedure of lending notes rather than gold was that . . . more notes could be issued if the gold remained in the vaults . . . Thus, through the principle of bank note issuance *banks learned to create money in the form of their own liability*."

[Emphasis Added]

Another publication which explains modern banking as learned from the Goldsmiths is *Modern Money Mechanics* (5th edition 1992), published by the Federal Reserve Bank of Chicago which states beginning on page 3: "It started with the goldsmiths . . ." At one time, bankers were merely middlemen. They made a profit by accepting gold and coins brought to them for safekeeping and lending the gold and coins to borrowers. But the goldsmiths soon found that the *receipts* they issued to depositors were being used as a means of payment. "Then, bankers discovered that they could make loans merely by giving borrowers their *promises* to pay, or bank notes . . . In this way, banks began to *create* money . . . Demand deposits are the modern counterpart of bank notes . . . It was a small step from printing notes to making *book entries* to the credit of borrowers which the borrowers, in turn, could 'spend' by writing checks, thereby printing *their own* money." [Emphasis added]

How Banks Create Money

In the modern sense, banks create money by creating "demand deposits." Demand deposits are merely "book entries" that reflect how much lawful money the bank owes its customers. Thus, all deposits are called demand deposits and are the bank's liabilities. The bank's assets are the vault cash plus all the "IOUs" or promissory notes that borrowers sign when they borrow either money or credit. When a bank lends its cash (legal money), it loans its assets, but when a bank lends its "credit," it lends its *liabilities*. The lending of credit is, therefore, the exact opposite of the lending of cash (legal money).

At this point, we need to define the meaning of certain words like "lawful money," "legal tender," "other money" and "dollars."

The terms "Money" and "Tender" had their origins in Article 1, Sec. 8 and Article 1, Sec. 10 of the *Constitution of the United States*. 12 U.S.C. 152 refers to "gold and silver coin as lawful money of the United States" and was repealed in 1994. The term "legal tender" was originally cited in 31 U.S.C.A. 392 and is now recodified in 31 U.S.C.A. 5103 which states: "United States coins and currency . . . are legal tender for all debts, public charges, taxes, and dues." The common denominator in both "lawful money" and "legal tender money" is that both are issued by the United States Government.

With Bankers, however, we find that there are two forms of money — one is government-issued and the other is issued by privately owned banks such as Defendant, Texas Independent Bank. As we have already discussed government issued forms of money, we need to look at privately issued forms of money.

All privately issued forms of money today are based upon the *liabilities* of the issuer. There are three common terms used to describe this privately created money. They are "credit," "demand deposits" and "checkbook money." In the Fifth edition of *Blacks Law Dictionary*, p.331, under the term "Credit," the term "Bank credit" is described as: "Money bank owes or will lend individual or person." It is clear from this definition that "Bank credit" which is the "money bank owes" is the bank's *liability*. The term "checkbook money" is described in the book *I Bet You Thought*, published by the privately owned Federal Reserve Bank of New York, as follows: "Commercial banks

create checkbook money whenever they grant a loan, simply by adding deposit dollars to accounts on their books to exchange for the borrower's IOU . . . ."

The word "deposit" and "demand deposit" both mean the same thing in bank terminology and refer to the bank's liabilities. For example, the Chicago Federal Reserve's book, *Modern Money Mechanics* says: "Deposits are merely book entries . . . Banks can build up deposits by increasing loans . . . Demand deposits are the modern counterpart of bank notes. It was a small step from printing notes to making book entries to the credit of borrowers which the borrowers, in turn, could 'spend' by writing checks." Thus, it is demonstrated in *Modern Money Mechanics* how, under the practice of fractional reserve banking, a deposit of $5,000 in cash could result in a loan of credit/checkbook money/demand deposits of $100,000 if reserve ratios set by the Federal Reserve are 5% (instead of 10%).

In a practical application, here is how it works. If a bank has ten people who each deposit $5,000 (totaling $50,000) in cash (legal money) and the bank's reserve ratio is 5%, then the bank will lend twenty times this amount, or $1,000,000 in "credit" money. What the bank has actually done, however, is to write a check or loan its credit with the intended purpose of circulating credit as "money." Banks know that if all the people who receive a check or credit loan come to the bank and demand cash, the bank will have to close its doors because it doesn't have the cash to back up its check or loan. The bank's check or loan will, however, pass as money as long as people have confidence in the illusion and don't demand cash. Panics are created when people line up at the bank and demand cash (legal money), causing banks to fold as history records in several time periods.

The process of passing checks or credit as money is done quite simply. A deposit of $5,000 in cash by one person results in a loan of $100,000 to another person at 5% reserves. The person receiving the check or loan of credit for $100,000 usually deposits it in the same bank or another bank in the Federal Reserve system. The check or loan is sent to the bookkeeping department of the lending bank where a book entry of $100,000 is credited to the borrower's account. The lending bank's check that created the borrower's loan is then stamped "Paid" when the account of the borrower is *credited* a "dollar" amount. The borrower may then "spend" these book entries (demand deposits) by writing checks to others, who in turn deposit their checks and have book entries transferred to their account from the borrower's checking account.

However, two highly questionable and unlawful acts have now occurred. The first was when the bank wrote the check or made the loan with *insufficient funds* to back them up. The second is when the bank stamps its own NSF check "paid" or posts a loan by merely crediting the borrower's account with book entries the bank calls "dollars." Ironically, the check or loan seems good and passes as money — unless an emergency occurs via demands for cash — or a Court challenge — and the artful illusion bubble bursts.

Different Kinds of Money

The book, *I Bet You Thought*, published by the Federal Reserve Bank of New York, says:

"Money is any generally accepted medium of exchange, not simply coin and currency. Money *doesn't* have to be intrinsically valuable, *be issued by a government* or be in any special form." [Emphasis added] Thus we see that privately issued forms of money only require public confidence in order to pass as money. Counterfeit money also passes as money as long as nobody discovers it's counterfeit. Likewise, "bad" checks and "credit" loans pass as money so long as no one finds out they are unlawful. Yet, once the fraud is discovered, the value of such "bank money," like bad checks, ceases to exist. There are, therefore, two kinds of money — govemment issued legal money and privately issued unlawful money.

Different Kinds of Dollars

The dollar once represented something intrinsically valuable made from gold or silver. For example, in 1792, Congress defined the silver dollar as a silver coin containing 371.25 grains of pure silver. The legal dollar is now known as "United States coins and cur-

rency." However, the *Banker's* dollar has become a unit of measure of a different kind of money. Therefore, with Bankers there is a "dollar" of coins and a dollar of cash (legal money), a "dollar" of debt, a "dollar" of credit, a "dollar" of checkbook money or a "dollar" of checks. When one refers to a dollar spent or a dollar loaned, he should now indicate what *kind* of "dollar" he is talking about, since Bankers have created so many different kinds.

A dollar of bank "credit money" is the exact *opposite* of a dollar of "legal money." The former is a liability while the latter is an asset. Thus, it can be seen from the earlier statement quoted from *I Bet You Thought*, that money can be privately issued as: "Money doesn't have to . . . be issued by a govemment or be in any special form." It should be carefully noted that banks that issue and lend privately created money demand to be paid with government issued money. However, payment in like kind under natural equity would seem to indicate that a debt created by a loan of privately created money can be paid with other privately created money, without regard for "any special form," as there are no statutory laws to dictate how either private citizens or banks may create money.

By What Authority??

By what authority do state and national banks, as privately owned corporations, create money by lending *their credit* — or more simply put – by writing and passing "bad" checks and "credit" loans as "money"? Nowhere can a law be found that gives banks the authority to create money by lending their liabilities.

Therefore, the next question is: if banks are creating money by passing bad checks and lending their credit, where is their authority to do so? From their literature, banks claim these techniques were learned from the trade secrets of the Goldsmiths. It is evident, however, that money creation by private banks is not the result of powers conferred upon them by government, but rather the artful use of long held "trade secrets." Thus, unlawful money creation is not being done by banks as corporations, but unlawfully by *bankers*.

Article I, Section 10, para. 1 of the *Constitution of the United States* specifically states that no state shall ". . . coin money, *emit bills of credit*, make any Thing but gold and silver coin a Tender in Payment of Debts, pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligations of Contracts . . ." [Emphasis added] The states which grant the Charters of state banks also prohibit the emitting of bills of credit by not granting such authority in bank charters.

It is obvious that "We the people" never delegated to Congress, state government, or agencies of the state the power to create and issue money in the form of checks, credit, or other "bills of credit." The Federal Government today does not authorize banks to emit, write, create, issue and pass checks and credit as money. But banks do, and get away with it!! Banks call their privately created money nicer names, like "credit", "demand deposits", or "checkbook money". However, the true nature of "credit money" and "checks" does not change regardless of the nice terminology used to describe them. Such money in common use by privately owned banks is illegal under Art. 1, Sec. 10, para. I of the *Constitution of the United States* as well as unlawful under the laws of the United States.

Void "Ultra Vires" Contracts

The courts have long held that when a corporation executes a contract beyond the scope of its charter or granted corporate powers, the contract is void or "ultra vires".

1. In *Central Transp. Co. v. Pullman*, 139 U.S. 60, 11 S. Ct. 478, 35 L. Ed. 55, the court said: "A contract *ultra vires* being unlawful and void, not because it is in itself immoral, but because the corporation, by the law of its creation, is incapable of making it, the courts, while refusing to maintain any action upon the unlawful contract, have always striven to do justice between the parties, so far as could be done consistently with adherence to law, by permitting property or money, parted with on the faith of the unlawful contract, to be recovered back, or compensation to be made for it. In such case, however, the action is not maintained upon the unlawful contract, nor according to its terms; but on an implied contract of the defendant to return, or, failing to do that, to make compensation for, property or money which it has no right to retain. To maintain such an action is not to af-

firm, but to disaffirm, the unlawful contract."

2. "When a contract is once declared ultra vires, the fact that it is executed does not validate it, nor can it be ratified, so as to make it the basis of suit or action, nor does the doctrine of estoppel apply." *F& PR v. Richmond*, 133 SE 898; 151 Va 195.

3. "A national bank . . . cannot lend its credit to another by becoming surety, indorser, or guarantor for him, such an act is ultra vires . . ." *Merchants' Bank v. Baird*, 160 F 642. (Additional cases are cited as footnotes at the end of this Memorandum.)

The Question of Lawful Consideration

The issue of whether the lender who writes and passes a "bad" check or makes a "credit" loan has a claim for relief against the borrower is easy to answer, providing the lender can prove that he gave a *lawful consideration*, based upon lawful acts. But did the lender give a lawful consideration? To give a lawful consideration, the lender must prove that he gave the borrower lawful money such as coins or currency. Failing that, he can have no claim for relief in a court at law against the borrower as the lender's actions were Ultra vires or *void from the beginning of the transaction.*

It can be argued that "bad" checks or "credit" loans that pass as money are valuable; but so are counterfeit coins and currency that pass as money. It seems unconscionable that a bank would ask homeowners to put up a homestead as collateral for a "credit loan" that the bank created out of thin air. Would a court of law or equity allow a counterfeiter to foreclose against a person's home because the borrower was late in payments on an unlawful loan? If the court were to do so, it would be contrary to all principles of law.

The question of valuable consideration does not depend on any value imparted by the lender, but by false confidence instilled in the "bad" check or "credit" loan by the lender. In a court at law or equity, the lender has no claim for relief. The argument that because the borrower received property for the lender's "bad" check or "credit" loan gives the lender a claim for relief is not valid, unless the lender can prove that he gave lawful value. The seller in some cases who may be holding the "bad" check or "credit" loan has a claim for relief against the lender or the borrower or both.

Borrower Relief

Since we have established that the lender of unlawful or counterfeit money has no claim for relief under a void contract, the last question is *does the borrower have a claim for relief against the lender*?

First, if it is established that the borrower has made no payments to the lender, then the borrower has no claim for relief against the lender for money damages. But the borrower has a claim for relief to void the debt he owes the lender for notes or obligations unlawfully created by an Ultra vires contract for lending "credit" money.

The borrower, the Courts have long held, has a claim for relief against the lender to have the note, security agreement, or mortgage note the borrower signed declared null and void.

The borrower may also have claims for relief for breach of contract by the lender for not lending "lawful money" and for usury for charging an interest rate several times greater than the amount agreed to in the contract for any lawful money actually risked by the lender. For example, if on a $100,000 loan it can be established that the lender actually risked only $5,000 (5% Federal Reserve ratio) with a contract interest rate of 10%, the lender has then loaned $95,000 of "credit" and $5,000 of "lawful money" while charging 10% interest ($10,000) on the entire $100,000. The true interest rate on the $5,000 of "lawful money" actually risked by the lender is 200% which violates Usury laws. If *no* "lawful money" was loaned, then the interest rate is an *infinite* percentage. Such techniques the bankers say were learned from the trade secrets of the Goldsmiths.

The Courts say that such contracts with borrowers are wholly void from the beginning of the transaction because banks are not granted powers to enter into such contracts by either state or national charters.

Additional Borrower Relief

In District Court the borrower may have additional claims for relief

under "Civil RICO" Federal Racketeering laws (18 U.S.C. 1964), as the lender may have established a "pattern of racketeering activity" by using the U.S. Mail more than twice to collect an unlawful debt and the lender may be in violation of 18 U.S.C. 1341, 1343, 1961 and 1962. The borrower may have other claims for relief if he can prove there was or is a conspiracy to deprive him of property without due process of law under 42 U.S.C. 1983 (Constitutional Injury), 1985 (Conspiracy) and 1986 ("Knowledge" and "Neglect to Prevent" a U.S. Constitutional Wrong). Under 18 U.S.C.A. 241 (Conspiracy) violators, "shall be fined not more than $10,000 or imprisoned not more than ten (10) years or both."

Continuation of case cites in support

The following case cites also support this Memorandum on credit loans and void contracts:

4. "In the federal courts, it is well established that a national bank has not power to lend its credit to another by becoming surety, indorser, or guarantor for him." *Farmers and Miners Bank v. Bluefield Nat 'l Bank,* 11 F 2d 83, 271 U.S. 669.

5. "A national bank has no power to lend its credit to any person or corporation . . ." *Bowen v. Needles Nat. Bank,* 94 F 925, 36 CCA 553, certiorari denied in 20 S.Ct 1024, 176 US 682, 44 LED 637.

6. "Mr. Justice Marshall said: The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and to punish them for violations of their corporate charters, and it probably is not invoked too often . . . *Zinc Carbonate Co. v. First National Bank,* 103 Wis 125, 79 NW 229." *American Express Co. v. Citizens State Bank,* 194 NW 430.

7. "A bank may not lend its credit to another, even though such a transaction turns out to have been of benefit to the bank, and in support of this a list of cases might be cited, which would *look like a catalog of ships*." [Emphasis added] *Norton Grocery Co. v. Peoples Nat. Bank,* 144 SE *505,* 151 Va 195.

8. "It has been settled beyond controversy that a national bank, under federal law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires . . ." *Howard & Foster Co. v. Citizens Nat'l Bank of Union,* 133 SC 202, 130 SE 759(1926).

9. ". . . checks, drafts, money orders, and bank notes are not lawful money of the United States . . ." *State v. Neilon,* 73 Pac 324, 43 Ore 168.

10. "Neither, as included in its powers not incidental to them, is it a part of a bank's business to lend its credit. If a bank could lend its credit as well as its money, it might, if it received compensation and was careful to put its name only to solid paper, make a great deal more than any lawful interest on its money would amount to. If not careful, the power would be the mother of panics, . . . Indeed, lending credit is the exact opposite of lending money, which is the real business of a bank, for while the latter creates a liability in favor of the bank, the former gives rise to a liability of the bank to another. *1 Morse, Banks and Banking,* 5th Ed. Sec 65; *Magee, Banks and Banking,* 3rd Ed. Sec 248." *American Express Co. v. Citizens State Bank,* 194 NW 429.

11. "It is not within those statutory powers for a national bank, even though solvent, to lend its credit to another in any of the various ways in which that might be done." *Federal Intermediate Credit Bank v. L 'Herrison,* 33 F 2d 841, 842 (1929).

12. "There is no doubt but what the law is that a national bank cannot lend its credit or become an accommodation endorser." *National Bank of Commerce* **v.** *Atkinson, 55* F. 471.

13. "A bank can lend its money, but not its credit." *First Nat 'I Bank of Tallapoosa v. Monroe,* 135 Ga 614, 69 SE 1124, 32 LRA (NS) 550.

14. ". . . the bank is allowed to lend money upon personal security; but it must be money that it loans, not its credit." *Seligman v. Charlottesville Nat. Bank,* 3 Hughes 647, Fed Case No.12, 642, 1039.

15. "A loan may be defined as the delivery by one party to, and the receipt by another party of, a sum of money upon an agreement, express or implied, to repay the sum with or without interest." *Parsons v. Fox,* 179 Ga 605, 176 SE 644. Also see *Kirkland v. Bailey, 155* SE 2d 701 and *United States v. Neifert white Co.,* 247 Fed Supp 878, 879.

"The word 'money' in its usual and ordinary acceptation means gold, silver, or paper money used as a circulating medium of exchange . . ." L*ane v. Railey,* 280 Ky 319, 133 SW 2d 75.

16. "A promise to pay cannot, by argument, however ingenious, be made the equivalent of actual payment . . ." *Christensen v. Beebe,* 91 P 133, 32 Utah *406.*

17. "A bank is not the holder in due course upon merely crediting the depositors account." *Bankers Trust v. Nagler,* 229 NYS 2d 142, 143.

18. "A check is merely an order on a bank to pay money." *Young v. Hembree,* 73 P2d 393.

19. "Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud,' and entitles party deceived to avoid contract or recover damages." *Barnsdall Refining Corn. v. Birnam wood Oil Co.,* 92 F 2d 817.

20. "Any conduct capable of being tumed into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." *Leonard v. Springer,* 197 Ill 532, 64 NE 301.

21. "If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." *Menominee River Co. v. Augustus Spies L & C Co.,* 147 Wis *559,* 572; 132 NW 1122.

"The contract is void if it is only in part connected with the illegal transaction and the promise single or entire." *Guardian Agency v. Guardian Mut. Savings Bank,* 227 Wis 550, 279 NW 83.

22. "It is not necessary for recision of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations." *Whipp v. Iverson,* 43 Wis 2d 166.

23. "Each Federal Reserve bank is a separate corporation owned by commercial banks in its region . . ." *Lewis v. United States,* 680 F 2d 1239 (1982).

24. In a Debtor's RICO action against its creditor, alleging that the creditor had collected an unlawful debt, an interest rate (where all loan charges were added together) that exceeded, in the language of the RICO Statute, "twice the enforceable rate." The Court found no reason to impose a requirement that the Plaintiff show that the Defendant had been convicted of collecting an unlawful debt, running a "loan sharking" operation. The debt included the fact that exaction of a usurious interest rate rendered the debt unlawful and that is all that is necessary to support the Civil RICO action. *Durante Bros. & Sons, Inc. v. Flushing Nat '1 Bank,* 755 F2d 239, Cert. denied, 473 US 906 (1985).

25. The Supreme Court found that the Plaintiff in a civil RICO action need establish only a criminal "violation" and not a criminal conviction. Further, the Court held that the Defendant need only have caused harm to the Plaintiff by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the Plaintiff need not demonstrate that the Defendant is an organized crime figure, a mobster in the popular sense, or that the Plaintiff has suffered some type of special Racketeering injury; all that the Plaintiff must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to effect the Congressional purpose as broadly formulated in the Statute. *Sedima, SPRL V. Imrex Co.,* 473 US 479 (1985).

Respectfully submitted,
Delanore Lee Cannon,
Debtor/Plaintiff
In Person
and wife,
Rose Ann Hooper Cannon,
Debtor/Plaintiff
In Person

Can you *prepare a "Memorandum" of such force that at least one Federal Judge believes it might destroy the existing, debt-based banking system? Constitutionalists CAN!* ■

Divide and Conquer

by Alfred Adask

One place constitutionalists get into trouble is in their personal speculations on what various laws or excerpts from case law may mean or imply. We have a tendency to leap to "logical conclusions" that are dramatic but often based more on emotion than facts and study. It's a dangerous, addictive sport but far more exciting than hang-gliding.

I happen to be a master at constitutionalist speculation. I won't argue that I've ever leapt to a correct conclusion, but my "logical leaps" have nevertheless been interesting, sometimes even fascinating.

In "Trust Fever" (AntiShyster Vol. 7 No. 1) I began to speculate on the possibility that Trusts *are one of — perhaps* the *— fundamental mechanism by which our government "legally" exceeds its constitutional limits and reverses the status of the American people from sovereigns to subjects. In fact, I have a hunch our modern "welfare state" might be more accurately described as a "trust state".*

As with that first dose of "Trust Fever," this article is also based on little evidence and much speculation. It is therefore dangerous and meant for consideration, not belief. I don't doubt that elements of this article will be refined or rejected in the future. Nevertheless, I remain convinced that I'm exploring a fundamental insight into government's favorite mechanism for using "benefits" to oppress the American people.

When used by government, trusts have five characteristics that make them ideal for evading the Constitution and subverting our Rights:

Divided Title

The fundamental feature of any trust is the division of "full title" (real ownership) to a particular property into "legal title" (technical ownership) and "equitable title" (the beneficial right to possess and use the particular property).

The relationship between a father, teenage son and family car can broadly illustrate the essential trust feature of divided title. Dad functions somewhat like a "trustee" since he "owns" title to the car and is responsible to see that it is operated according to certain rules like insurance, drivers licenses, and safety. The son is the "beneficiary" who doesn't *own* the car, but has the "equitable title" to *possess and use* it on his Saturday night dates.

"Trustees" retain "legal title" to the property within the trust and are responsible for administering and enforcing all trust rules. "Beneficiaries" receive "equitable title" to use trust property they don't own – provided they *obey all the trust's rules.*

For example, if Dad (the "trustee"/ administrator) says the car must be back in the garage by midnight with a full tank of gas, then Junior (the beneficiary) is bound to have the car back in time as specified, or Junior will lose his "equitable title" to use the car next Saturday and wind up dating his girl on a bike. In this way, Dad (the trustee) can use trust benefits (driving the car) to control his son's behavior. In fact, the Dad/ trustee can even impose a dress code on any beneficiary who wants to drive the car. If Junior doesn't cut his hair to a "trust-approved" length, his "equitable right" to use the car can be terminated.

Whenever I see evidence of a *divided title* (one party has legal title/ administrative *control* over a particular property, while a second party has equitable title/ beneficial *use* of that property), I generally assume I am looking at a trust.

Minimal Liability

Historically, the purpose of subdividing full title into legal and equitable titles was to minimize personal liability for both use and ownership of trust property. For example, if you own "full title" to your car outside of a trust, you can use your car whenever you like, but you are also personally liable for any damages caused by your car. If your son has an accident driving your car, you (as the owner) are liable and can be sued to the limit of your resources.

But if you place (grant) your car into a trust, you can designate yourself as the "trustee" (and retain legal title and administrative control to the car) and designate your son as the "beneficiary" who will receive "equitable title" to possess and use the car. Now, if your son has an accident, you (as trustee) are virtually immune from any legal liability. As a practical matter, your son/ benefi-

ciary also can't be sued because he owns nothing (all his assets are in trust) and there's no point to suing a legal pauper — even if he lives in a mansion. The only entity that can be successfully sued is the trust itself, and then only for whatever property it contains. Even if your son caused $1 million in damages, the most the injured party could recover was whatever property remained in the trust that held the car. If the trust only contained the now-wrecked car, that's all the injured party could legally collect; there would be no recourse against your home, bank account, or business.

Legal Superiority

Article 1, Section 10 of our Federal Constitution declares, "No State shall . . . pass any . . . Law impairing the Obligation of *Contracts*." The rules of an explicit trust are established by a contract (or charter) called the trust "indenture". Therefore, if created by contract (not statute) and without fraud, trusts can be superior to any State law. In other words, if I create a lawful trust by voluntarily *contracting* with someone, the State can't pass a law which later "impairs" (compromises or voids) any obligation imposed by my trust's "indenture" (contract). Therefore, trust rules can not only be superior to state constitutional law, they can even "legally" operate in opposition to constitutional precepts.

For example, the state may be prohibited from passing a law that violates my "unalienable right" to free speech. However, if I voluntarily contract to become a beneficiary of a trust which has indenture rules prohibiting free speech on certain trust-related subjects, I will have legally relinquished at least part of my First Amendment right to free speech. This ability to legally evade most constitutional prohibitions makes trusts used by government an extraordinarily dangerous strategy.

Compulsory Performance

According to a number of Supreme Court cases, any person who is merely in a position to receive "benefits" is obligated to obey the rules of the organization dispensing those benefits. In other words, even if you've never received a dime from Social Security (a trust), if you *could* receive benefits, you are obligated to obey the rules of the Social Security trust indenture.

If one of those rules was "You must pay income tax" — whether you knew it or not – you'd have no constitutional or statutory defense against paying income taxes. As a result, you could easily be an unwitting "beneficiary" and thereby obligated to obey the rules of a trust you've never even heard of. You could be legally bound to obey an unknown series of administrative rules that were perplexedly unconstitutional but nevertheless legal. (Sounds a lot like our modern legal system, doesn't it?)

Moreover, depending on the trust indenture, even trustees can be *bound* to *enforce* the rules without compassion or discretion. Did Junior get home late with Dad's car because he stopped to render first aid at an accident and saved someone's life? No matter. If the trust indenture's rules are uncompromising about returning the car on time, the father/trustee will be *forced* to terminate the boy's use of the car. (Does the Judge believe a particular individual, though convicted, deserves a lenient sentence? No matter, sentencing guidelines in a trust indenture might force the judge to impose the harshest penalty.)

Both trustees and beneficiaries can be bound by trust rules to levels of performance that, at first glance, seem absurd or even unconstitutional.

Law of the Case

Every legal controversy is based on a particular body of law. I.e., you can't use probate laws to argue against a speeding ticket; you must base your legal defense on the traffic code — since it's the "law of the case".

In a trust, the "law of the case" is the trust indenture and rules therein. If those rules require a teenage boy to have his Dad's car back by midnight, and Junior shows up at 12:01, he is in technical violation of trust rules and has no constitutional or statutory foundation to challenge the trustee's decision to terminate his beneficial interest (use of the car).

This "law of the case" requirement stands even if you've never read the trust indenture (ever read all the rules of your Social Security Trust Fund?) or worse yet, *even if you don't realize you're "trapped" as a beneficiary in trust law*. The court presumes you know the relevant law, will not inform you of your ignorance, and will rule accordingly.

For example, suppose the Federal government created a lawful trust (like Social Security) and lured you into voluntarily entering that trust (perhaps, as an "applicant" for "benefits"). Later, if you realized that your new performance obligations were "unconstitutional", you could not normally use constitutional arguments to escape those trust obligations. In fact, if you only argued your "constitutional rights", you'd be as ridiculous as a man arguing football rules in a baseball game, and allow the judge to truthfully declare, "the Constitution has no place in my court." Instead, the only "law of the case" that you could effectively argue would be the Social Security trust indenture (you might argue you were fraudulently lured into contracting with the Trust, or otherwise challenge trust rules).

If we don't understand that the "law" in our particular case is some trust indenture, we can contest paying income tax forever since the 16th Amendment was never properly ratified. But if the "law of the case" (the rule that requires you to pay income tax) is contained in a trust, your constitutional arguments are irrelevant, even if that trust is virtually unknown to you. Because you are *presumed* to know the "law of the case," the court will assume you're incompetent, and rule inevitably and (seemingly) inexplicably against you.

Government can't take our Rights, but we can "voluntarily" (though ignorantly) contract them away. Therefore, trusts can be used by government to impose an endless series of obligations on Americans that would be unconstitutional if mandated by statute, but quite legal if "offered" as considerations for "benefits" which we *voluntarily* "applied" (contracted) to receive.

Trusts and political structure

For most of England's history, the King (or Queen) was *the* Sovereign and therefore "owned" legal title to all English land. English "subjects" were "entitled" to use/ possess the land, but the Queen always owned it (sovereign ownership of all land is probably the fundamental characteristic of all monarchies). Apparently, England's law, Monarchy, and political system have been based for centuries on the concept of *divided title* to land — the King had "legal title," the citizens had "equitable title" and possession.

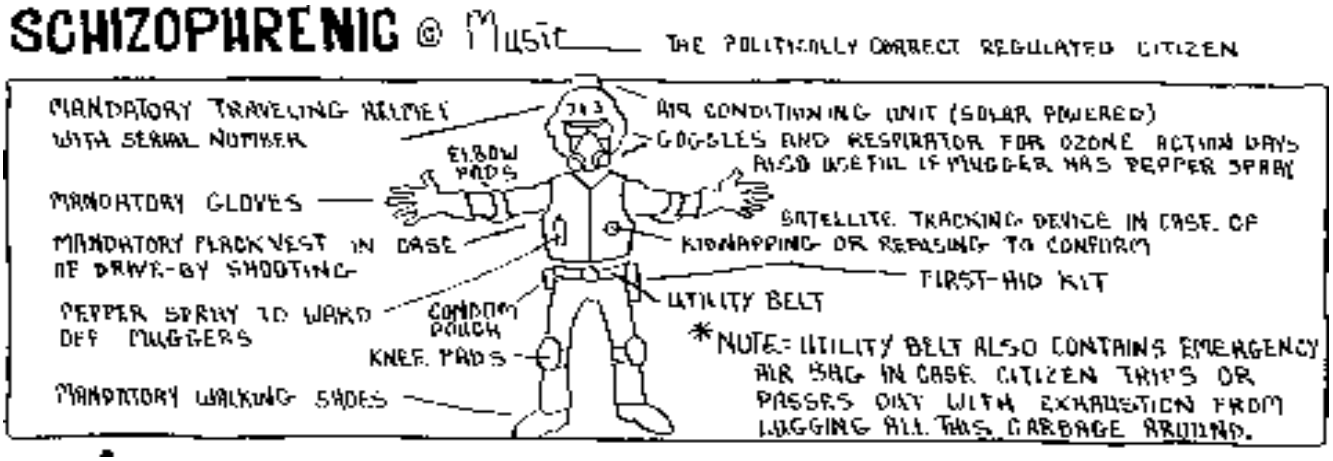
Given the English system's use of divided title to property, was the English Monarchy a "trust"? Maybe, but in any case, *title* to all land was *divided*. Because "commoners" only possessed equitable title to their land, they were virtual beneficiaries (subjects; serfs?) of the King (trustee) and therefore obligated to obey all the King's Laws (indenture). Since the King "owned" legal title to the commoners' land, they were obligated to pay whatever tax (rent) the King demanded or be summarily forced to forfeit their possession of "his" land *without legal recourse*.

In movies about Robin Hood, Prince John's ability to violently remove commoners from their homes looks like the worst form of tyranny. But if the Prince held legal title to land and the commoners held only equitable title and failed to pay their tax/rent, eviction without legal recourse was not only lawful but mandatory.

Today, we see a similar situation when you buy a car with a bank loan. In a sense, although you get to drive and "possess" your new car, the bank "owns" it until you repay the loan. Anyone who doubts the bank "owns" your car need only stop making car payments. Just like Prince John, the bank will quickly "repossess" the car *without going to court*. Lacking *title* to "your" car, you (like the English commoner) had no *legal* recourse against "repossession".

Of course, because you had some equity (but not title) in the car, you still had an "administrative remedy" against repossession (you might produce cancelled checks proving you'd made timely payments). However, since you lacked "legal title", you would only have recourse to a court of "equity" (which determines equitable titles and *beneficial* interests in administrative hearings). Lacking *legal* title, you had no recourse in *Law* (the determination of *legal* title).

The rallying cry of the American Revolution was "No Taxation Without Representation". This implies that King George was charging Americans a tax on land or other property (like tea) without their consent.[1] But if the King owned "legal title" to all the property in his realm (including the Thirteen Colonies), the colonists were virtual "beneficiaries" enjoying the equitable use of the King's property. *If* the comparison between Colonists and trust beneficiaries is valid, Colonists might have had no legal right to "representation" since beneficiaries are prevented by law from



having legal or administrative control over the trust rules or property.

This possibility implies that the driving force behind the American Revolution was not to achieve the generic "Freedom" we like to talk about, but more precisely to allow common Americans to have *full title to their property*. I suspect that Americans of the 1780's were the first people in modern history to hold both legal and equitable title to their private property. As such, they were "sovereigns". Their homes truly were their "castles" (protected by walls of legal title rather than moats) and the American government could not tax or regulate that land or property to which it lacked legal title except by the consent of the People as expressed by their Representatives in Congress.[2]

Return to bondage

If divided title to land and property was the fundamental characteristic of the English Monarchy (and probably all other totalitarian, socialist and communist governments), and if every man's right to "full title" to his property was the fundamental purpose for the American Revolution and our Constitution — then what shall we make of our current government's apparent inclination to create and administer trusts which divide title to property? By reestablishing a trust-based, divided-title political and legal system, our government is arguably changing this nation back from a post-constitutional Republic (where people have full title to their property) into a pre-constitutional colony.

In this emerging "U.S. colony" the people, at best, have equitable title to property and function as beneficiaries subject to the "divine rights" of government. I'll even bet the fundamental principle behind the New World Order (NWO) will be "divided title" to all land (and later, all property and probably persons) into "legal title" (held by the NWO) and "equitable title" (mere possession) held by the world's people.

Any attempt by our government to diminish our right to full title ownership of our property must be viewed with alarm as un-American, treacherous, and even treasonous. As such, I have a hunch that any government (or government agency) based on trusts (divided titles) might be challenged as "communistic" and contrary to our constitutional guarantee of a "Republican [full title to property] form of government".

That which is Caesar's

If govemment trusts (like Social Security and the National Highway Trust) pose serious problems, they're nothing compared to the possibility that our "money" may also be a trust instrument.

If there's one Biblical passage that's bewildered me, it's *Luke* 20:20-25 where the Pharisee's tried to trap Jesus by asking, "Is it right for us to pay taxes to Caesar or not?" Jesus replied, "Show me a denarius [a Roman coin]. Whose portrait and inscription are on it?" "Caesar's," they answered. "Then render unto Caesar that which is Caesar's, and unto God that which is God's." According to the Bible, "astonished by his answer, they became silent."

Maybe everyone else understands that passage, but until now I just didn't get it. But now I begin to suspect that what Jesus meant was, "He who owns the money, owns the property which was bought with the money." Sounds so obvious as to be irrelevant, hmm? Maybe not. Maybe Jesus hinted at a subtle aspect of money that's gone largely unnoticed for thousands of years.

Again, the usual process for purchasing a new car includes your contract with a bank for a loan. Although you "possess" (use and drive) the car, under the terms of your contract, the bank "owns" the car until you've repaid the *entire* loan and can therefore "repossess" it if you fall behind in the payments. If you actually "owned" (had title) to the car, the bank could not take it from you without a court hearing. Point: in a sense, the bank owns "your" car until you *repay* the entire loan.

In the U.S., the "creation of money" is somewhat like purchasing a new car:

1. New Federal Reserve Notes (FRNs) are printed (created) by the Federal government's Bureau of Printing and Engraving. Each note has a particular serial number.

2. The new FRNs are reportedly sold at their printing cost (approximately $0.03 each, regardless of their denomination) to the Federal Reserve System

(a trust administered by Alan Greenspan and his board of trustees). The government's bill of sale presumably identifies the serial number of each FRN sold to the Federal Reserve System.[3]

3. The Federal Reserve System ("FR System") then loans the paper FRNs at full face value to the various Federal Reserve Banks ("FR Banks"). Each loan presumably identifies the serial number of each FRN passed from the FR System to the FR Banks.

4. The FR Banks then issue the FRNs to local banks which in turn disperse them to the general public.

5. The general public uses the FRNs as a medium of exchange to *purchase* various services and products.

6. Over time, the FRNs age, wear out, and are removed from circulation by the Banks and burned. (Reportedly, the serial numbers of "worn out" FRNs are recorded before they are destroyed.)

If my understanding of the creation of money is fundamentally correct, this process raises two intriguing questions:

First, if the FR System really *buys* the physical FRNs from the Bureau of Printing and Engraving, *how does it pay for them*?

It's inconceivable that our government allows the FR System to pay for FRNs with FRNs – especially at the rate of $0.03 for each new FRN of any denomination. Imagine if you had just $1 – at $0.03 each, you could buy over *thirty* $100 bills. And once you had thirty $100 bills, you could use them to buy another *one hundred thousand* $100 bills (at $0.03 each). And then you could buy . . . well, obviously, this scenario is so absurd, it's impossible. Which implies the FR System must pay for FRNs with a form of money other than FRNs. What form? I don't know, but probably some form of *real* "dollars" (a physical mass) of gold or silver.

As you'll see, it may be extremely important to identify the "nature" of money used by the FR System to "buy" FRNs from the Federal government. But before we discuss the "nature" of money, let's consider a more central observation:

If the FR System truly buys FRNs from the Federal government, then at least initially, the FR System must own those green, physical pieces of paper we call "Federal Reserve Notes".

This leads to my second question (and the foundation for this entire hypothesis about FRNs):

When does the FR System cease to own those green, physical pieces of paper we carry in our wallets?

Remember how you purchase a new car? You get to drive it, but you don't really "own" it until you've *repaid the loan*. Likewise, it follows that the FR System continues to *own* FRNs until the FR Banks repay the particular loan that placed each particular FRN in circulation. This implies that the FR System may still hold *legal title* to all those green FRNs in your wallet!

But how can you continue to purchase products and services with someone else's money? Wouldn't that be illegal? Yes — unless FRNs are another example of *divided title*. If the FR System still owns legal title to "your" FRNs, then you, by virtue of possessing and legally using them, must be presumed to have their "equitable title" (beneficial interest and use). And clearly, using FRNs *is* a "benefit". After all, by using these virtually worthless pieces of paper, you can purchase real, tangible property like computers, cars, and homes. What could be more beneficial than getting "something" (tangible property) "for nothing" (FRNs)? Or so it seems.

But as I said before, whenever I see a "divided title", I suspect I'm seeing a trust (and possibly a trust indenture that increases my obligations or diminishes my rights). If FRNs have divided title, the FR System is a trust, Alan Greenspan and his board of directors are the Trustees, the FRNs are the "corpus" (property) of the trust, and anyone who uses FRNs to *purchase* (not "buy") products or services is a "beneficiary" – obligated to obey whatever mysterious rules might be included in the FR System's indenture.

Note that the difference between "buy" and "purchase" is huge. According to *Black's Law Dictionary* (4th Rev.) "buy" means, "To acquire the *ownership* of property . . . ." but "purchase" means "*Transmission* of property from one person to another . . . ." [emph. add.] One who "buys" acquires *ownership* (legal title) to property while one who "purchases" merely "transmits" (changes the possession or equitable title) of that property from one person to another. Further, it's entirely possible for a property to be "purchased" by a series of persons who each, in turn, hold its equitable title, while the original owner remains unchanged since no one has actually "bought" the property.

Seizing FRNs

If the FR System owns "legal title" to the FRNs in your wallet, this might explain why government agencies like the DEA or local police regularly seize large quantities of cash from innocent people without court order or apparent legal recourse for the "victim". Government isn't "stealing" your cash, because you don't really own it; you only get to possess/ use "your" cash according to indenture rules established by the real owner (the FR System). Since you don't "own" legal title to your cash, if you violate a rule of the FR System's indenture, it's as legal for government to "repossess" that cash as it is for the banks to repossess your car if you stop repaying your loan.[4]

If your FRNs can be seized because (unknown to you) their "legal title" belongs to the FR System, then it might follow that "anti-hoarding" laws would only apply to those products in which you have equitable title and some other entity has legal title. For example, food bought in a grocery store is almost always produced with government "subsidies" — which, according to one Federal judge makes anyone who buys food a government "beneficiary" and subject. If that Judge is right, I'll bet the subsidy somehow grants government "legal title" to the food, while the farmer, all the middle men, and finally you, only get equitable title to your food. Therefore, if government subsidized raising the beef that became the steak on your grill, government still owns legal title to that steak, and can therefore tell all you beneficiaries how much steak you can legally store. Exceed the limit, and "Big Trusty" will repossess your t-bones.

Conversely, if divided title to property is the legal foundation for forfeiture laws, you might *not* be subject to repossession for "hoarding," if you grew your own food in your own garden, canned it yourself, and stored it in any quantity you liked. Since government provided no obvious subsidy to grow your food, it couldn't easily claim legal title to that food, and therefore couldn't regulate the quantity that you might store, nor subject you to food seizures for "hoarding". Instead, if you "grew your own", you'd be engaging in an act of "creation", and as *creator* would enjoy *full title* (legal and equitable) to your product/creation.[5]

Intrinsic value

If FRNs are some sort of trust instruments characterized by a divided title, it's also true that FRNs haven't always been here and therefore, it's probable that some forms of money (especially those prior to FRNs) may not have had divided title. I.e., some forms of money might have had the "intrinsic" value of "full title" (both equitable and *legal* titles).

Most people believe that when the Constitution granted Congress the power "To coin Money" (Art I, Sect. 8 Cl. 5) and prohibited the States from making "any Thing but gold and silver Coin a Tender in Payment of Debts" (Art. I, Sect. 10, Cl. 1), the Federal government received the exclusive right to "create" money. Not so.

First, any legal definition of "money" used for *payment* specifies a certain physical *mass* of gold or silver. In other words, while wooden nickels, "clad" quarters, and even FRNs can be used as *kinds* of money, they aren't necessarily "constitutional money". Constitutional money must contain a certain intrinsic physical mass of gold or silver. However, there may be an even more important "intrinsic" value that turns mere disks of metal into real money: legal title.

Who created (and therefore *owns*) gold? Who created (and therefore *owns*) silver? Depending on your point of view, either God, or the miners and prospectors digging in the Earth, "created" each batch of physical gold, and as creators, "own" the first legal title to that gold. In either case, gold and silver are not created and necessarily *owned* by government.

Historically, when a prospector found some gold ore, he'd bring it to a U.S. Mint which refined the ore, divided the physical mass of "pure" gold into individual metal disks of a certified weight and purity, and then (after deducting a reasonable charge for making the coins) gave the gold coins to their proper owner – the prospector. When government "coined" money, it didn't create (and therefore *own*) the money; it merely *certified* that a particular metal disk had certain intrinsic attributes (like weight and purity of gold), much like a meat inspector stamps "USDA Prime" on the side of some cuts of beef. The USDA stamp doesn't give government legal title to the meat, it merely *certifies* the meat has certain intrinsic attributes.

But what intrinsic attributes did the U.S. Mint certify when it "coined" a $20 gold piece? Obviously, the Mint coined/ certified there was a particular weight and purity of gold in the coin, but is that all? Maybe not. Since the newly coined money was still owned by the prospector who found/ created it, it's clear that government did not claim legal title to the gold coins.

But if the prospector owned the new coins, why wasn't his name or serial number printed on them? How could they be identified as his? They couldn't. And more, no one would want to identify a coin as the prospector's, including the prospector since he'd have a very difficult using it to buy something. After all, would you accept a gold coin that was clearly marked as someone else's property? If you did, what's to prevent some unscrupulous prospector from coming back to your store tomorrow with the police and claiming you stole "his" coins. If you didn't have a receipt signed by the prospector that verified he traded his specific coins for your products, you could incur a lot of legal trouble by accepting a coin that identified as belonging to someone else. (The same is still true with FRNs)

The only way the silver and gold coins could work efficiently was if ownership (legal title) was implied by possession (equitable title) of the coin. If you held it, you owned it (unless a court of law ruled otherwise). Legal title had to be *intrinsic* in the gold and silver U.S.-minted coins if only because a divided title was too impractical to be workable among a free people.

Moreover, if the only issue were weight and purity of intrinsic gold, why couldn't we use Mexican or English gold coins as payment? Could it be that the definition of "payment" involves more than mere physical gold or silver? Does "payment" involve the money's intrinsic *legal title*? I suspect it does.

The nature of money

Earlier in this article we mentioned the "nature" of money. I suspect that "nature" includes not only intrinsic *physical* attributes (*mass* of gold or silver), but also intrinsic *legal* attributes. For example, whenever the U.S. Mint certified a coin, it not only declared there was a inherent quantity of gold or silver, but also that the coin could be used as "Tender in *Payment* of Debt" (Const., Art. I, Sect. 10, Cl. 1).

Black's Law Dictionary (4th Rev.) defines "Tender" as an "*offer* of money" that may be *voluntarily* accepted, but "legal tender" means a "*kind* of money" that creditors are *compelled by law* to accept.

But why would the law *compel* creditors to accept "legal tender"? Because it's an inferior "kind" of money that sensible creditors normally shun? Since FRNs are designated as "legal tender", are they an inferior "kind" of money? If so, what is the nature of that inferiority? Divided title?

It's easy to see that FRNs might have divided title and an easily identifiable "owner" – after all, just as cars have a unique serial number on their engines and bodies to prove ownership, each FRN also carries a unique serial number. Clearly, FRN serial numbers are no deterrent to counterfeiting. So what other explanation remains for FRN serial numbers, except (like automobile engines) to prove something about their legal ownership?

I suspect that, if the FR System owns legal title to our FRNs, its claim could be verified by doing a "title search" of each FRN's serial number to see when the particular FRN was loaned into circulation and if the particular loan had been repaid. If the loan was still unpaid, the FR System owned the FRN; if the loan had been repaid, the FR System's claim of ownership (legal title) was extinguished.

But how could you divide the title to a U.S.-minted $20 gold coin? How could you prove each coin had an extrinsic legal title and owner other than the man who possessed it? Since there's no serial number on gold coins, there's no obvious means to distinguish the owner of one coin from the owner of another. While it's apparent that whoever possesses a gold coin has equitable title (he can use the coin to purchase property), who has legal title to each coin? I suspect that with gold "coined" by the U.S. Mint, legal title to the coin must intrinsic in the coin itself and be presumed by mere possession. ("Possession is 9/10th of the Law"?)

In other words, unless disproved in a court of Law — if you *possess* a U.S.-minted gold coin, you are presumed to own it. Therefore, unlike FRNs, U.S.-minted gold coins may "contain" *full title* (equitable and *legal* titles) as an *intrinsic* value. If so, the most critical intrinsic value of a U.S.-minted coin is not the coin's gold, it's the coin's intrinsic "full title" — including both equitable and *legal* titles.

Something for something?

OK, why is legal title to our money so important? Suppose you run a business, and give one of your employees some petty cash to go to the office supply store to purchase some envelopes. Obviously, although your employee "possessed" the FRNs used to buy the envelopes, he was only functioning as your agent and therefore does not "own" the envelopes. Presumably, *you* "own" the envelopes.

Point: mere *possession* of money does not automatically signal *ownership* of whatever was purchased with FRNs.

That sounds obvious, but consider the more subtle example of a kid going to college. To ensure the kid has enough spending money, Dad gives him Dad's own Master Card to use at school. In a sense, Dad has "legal title" to that credit card (he receives and pays the bills) and his son has "equitable title" (possession and beneficial use of property purchased with the credit card). The distinction between "legal" and "equitable" titles may not mean much to the boy since he can merrily use Dad's credit card to purchase a new computer for himself or beer for his buddies. But if he purchases too much beer and Dad gets mad — since

the computer was purchased with *Dad's* credit card — Dad has "legal title" to the computer and can legally "repossess" it.

Point: Because the boy only had "equitable title" in the credit card, he could only purchase "equitable title" in the computer. Because Dad had *"legal title"* to the credit card, Dad also got *"legal title"* to whatever was purchased with his credit card.

This principle implies that *legal title to all property belongs to the person or entity that held legal title to the particular money used to buy (or purchase) the particular property*. Therefore, *the intrinsic "nature" of the money used in a transaction determines whether each individual's rights to the particular property are "legal", "equitable", or "full".*

Perhaps Jesus realized that the coin he was shown was "owned" by the Roman Emperor, whatever was bought with that coin was also owned by the Emperor and therefore, taxable. Could that be why he answered, "Render unto Caesar that which is Caesar's (paid for with Caesar's money). Render unto God that which is God's (paid for with God's "money"; i.e. his gift to you of life and ability to labor)." If you purchased something with a Denarius, pay tax on it to Rome. If you bought something with your labor, pay a tithe to the church.

Have a mint?

If the only intrinsic value of money is its physical content, why couldn't we use gold coins from Mexico or England to buy property in the USA? They carry a fixed and measurable mass of gold, so why are they "different" from U.S.-minted gold coins? The only answer I can imagine is that while the U.S. Mint can coin/ certify that a particular metal disk contains *intrinsic legal title*, the Mint lacks the information or authority to certify that foreign gold coins also contain legal title. Maybe they do, maybe they don't. While the gold coins of Mexico may contain intrinsic legal title, you can almost bet that legal title to the gold "Sovereigns" of England are owned by the Queen and, if so, users only get equitable title to whatever is purchased with an English Sovereign.

In any case, the U.S. Mint neither knows, cares nor has authority to declare whether a particular foreign coin contains intrinsic legal title. And so they only certify that U.S. minted (not foreign) coins have intrinsic legal title and are therefore guaranteed usable as "tender in payment". This doesn't necessarily mean that you can't "buy" full title to a new Cadillac with Mexican gold coins; it merely means the U.S. Mint will not certify Mexican gold coins contain legal title. Maybe they do, maybe they don't – let the courts decide.[6]

For several years I've heard a strange, persistent notion in the Constitutionalist community that whatever you "buy" with FRNs actually belong to the FR System. Oh, yes, you could still "possess" whatever you purchased with FRNs, but it was technically *owned* by the FR System. Although that notion was variously explained with claims that FRNs were really "military scrip" or "worthless insurance scrip", I couldn't understand the explanations.

But the idea that the FR System owns whatever is purchased with their FRNs makes sense if FRNs are trust instruments characterized by *divided title*. Like the boy using his Dad's credit card, whether you know it or not, legal title to "your" property belongs to whoever had *legal title* to the money you used to purchase that property. I.e., if you only have *equitable title* to the FRNs in your pocket, you can only purchase *equitable title* to whatever property is exchanged for those FRNs.

More importantly, if legal title to a car purchased with FRNs goes to the FR System, then that car (or any other property purchased with FRNs) becomes property of the FR System trust – just like the FRNs. Now, if the FR System trust owns legal title to "your" car, it is well within its power to administer their trust's property (your car) any way it likes. Just like the father who demands his son have the car back by midnight with a full tank of gas, the FR System can impose similar rules (license, registration, insurance, seat belts) on the beneficiaries who purchased cars with FRNs.

And if the FR System owns legal title to your car (or boat, home, farm or business) purchased with FRNs, what's to stop them from seizing "your" prop-

erty (just like Prince John seized the property of English subjects) whenever you violate the smallest, most idiotic rule in the FR System indenture? Nothing.

For example, suppose the FR System indenture said that any of its property (like a house or car) found to contain a "controlled substance" was subject to forfeiture (repossession). Suppose the police catch a boy with a little marijuana in his grandma's home. Can the cops seize grandma's house? They can and do. Is the foundation for that seizure the fact that Grandma purchased her home with FRNs that left legal title to the FR System? I don't know, but it sure sounds plausible.

On the other hand, if Grandma had *bought* (not "purchased") her home with gold coins certified/ coined by the U.S. Mint to contain the intrinsic value of legal title, could the cops seize her home because her grandson's getting high? If my theory is correct, No. Or at least not without first going to a court of Law, exercising due process, and getting a lawful court order.

Light at the end of the bank vault?

What happens if the FR System surrenders legal title to the FRNs? After all, sooner or later, the loan that placed each FRN in circulation will be repaid extinguishing the FR System's claim of legal title to that FRN. Presumably, if there is no remaining claim to the FRN's legal title, whoever is left holding the FRN will have both equitable *and* legal title.

Then what? Well, if the critical "intrinsic" value of money isn't gold, but legal title, and you had "full title" (legal and equitable) to your paper FRNs, it follows that you might actually "own" full title to whatever you *bought* (not "purchased") with them. In theory, an *old* FRN might truly be "as good as gold" if you could prove that the loan that placed it in circulation had been repaid, the FR System no longer held legal title, and therefore "possession was 9/10th of the law". In other words, if no one else could claim legal title to the FRN in your pocket, you'd have full title by default, by virtue of mere possession.

Suppose you used $20,000 in old FRNs to buy a new car. Suppose you carefully listed every FRN's series and serial number (which identify the original loan that placed each FRN in circulation) on the car's bill of sale. Suppose you attached proof (public record) that each FRN's loan had been extinguished. Then you might be able to argue that since you now had "full title" (legal and equitable) to all of your paper FRNs, you could also *buy* "full" (legal and equitable) title to the car.

If any of this were true, why don't people save their old FRNs and use 'em to buy their homes and cars? Part of the reason may be that FR Banks cull old FRNs from circulation and burn them. I can't help wondering if FRNs are designed to wear out and be burned about the same time the FR System loans are repaid, and therefore be destroyed before they "mature" into real ("full title") money.

If full-title FRNs are possible, then "old" FRNs should be just as "collectable" as "old" dimes and quarters made out of real silver. If so, we could literally beat *their* swords (divided-title FRNs) into *our* plowshares and once again "buy" (not purchase) our homes,

cars, food and property – and escape the non-constitutional regulations that may now be imposed by trust-based, divided-title money.

Interesting hypothesis, hmm? "Full title" money buys full title to property. "Equitable title" money purchases only equitable title to property. The critical value of money is not it's physical mass of gold or silver — it's the "intrinsic" full (equitable and legal) title.

Oh, one last leap into the constitutionalist netherworld: Is the phrase "IN GOD WE TRUST" seen on our currency a statement of spiritual faith — or the name of a trust called "IN GOD WE". . . ?

Next "Trust Fever": How legal title and equitable title may determine whether you have access to Law and Courts of Law or to administrative procedure and Courts of Equity.

[1] "Representation" is nearly synonymous with "consent".

[2] If full title to property was so important to the American Revolution, why isn't it mentioned in the Federal Constitution? Since the Federal government had little right to own property, questions about property rights and title rights wouldn't be necessary in the Federal Constitution. However, the Founder's high respect for property and full title might be glimpsed in the original terms of suffrage: The right to vote was determined by each State, and typically held that only men over 21 year of age who *owned* property (land) could vote. Apparently, without full title to land, you had no right to vote.

Further, I suspect the Federal Constitution is, in a sense, a "generic" or secondary constitution designed to protect each of the "primary" constitutions – those of the first thirteen States. America's new and revolutionary rules of property should be enshrined in the first State constitutions. In fact, a thorough analysis of the common denominators of the first thirteen State constitutions should reveal a working definition of the term "Republican form of government". Without researching the issue, I'd still bet a fundamental characteristic of Republic is the right of the People to own full title to their property (i.e., allodial title).

[3] This entire article hinges on the report that the FRNs are actually *bought* from the federal government by the Federal Reserve System. If the FR System only "purchases" the FRNs from the feds, then legal title to the FRNs would remain with the federal government. The divided title argument would still be valid except that the real owner of the FRNs (and all property purchased with them) would be the federal government.

[4] What's the FR System's rule that allows seizing cash? I don't know, but I'd bet there's an indenture rule that prohibits any beneficiary from "hoarding" more than X amount of FRNs outside of a bank account. The "legal logic" of this hypothetical anti-hoarding regulation might be based on the banks' use of bank deposits as a foundation for "creating" more money through the "fractional reserve" procedure. That is, if I deposit $100 in my bank account, the bank can use my deposit as a foundation to "create" another $2,000 to loan to my neighbors. Therefore, by "hoarding" my FRNs outside of a bank account, I'd be depriving my neighbors of loans necessary to stimulate the economy or provide other "benefits" required by "public policy" (probably a term signaling the rules of a trust indenture). I'd also bet anti-hoarding laws are based on a presumed national emergency. So long as a national emergency is declared to exist by El Presidente, hoarding of money, food, etc. might be administratively verboten. Therefore, government is not merely allowed, it might even be *ordered* as trustees to "repossess" any excess cash and — I'll bet — redeposit that cash into a bank.

[5] The implications of "owning" full title to whatever you *create* are huge. Because the Federal government "created"/ printed the FRNs, they held full title to the FRNs and could therefore "sell" full title to the FR System.

[6] If this hypothesis concerning various moneys' intrinsic title is correct, it might follow that coins carrying intrinsic legal title are "assets" since a positive value that accrues to whoever possesses them. Would it also follow that any money that does not carry intrinsic legal title, is by definition some sort of "debt" or "debt instrument"? That possibility is consistent with FR System's admission that all of our currency is "debt-based". This in turn suggests that the legal (and accounting) definition of an "asset" is based on *legal title* while a mere possession is in fact a "debt" since it was purchased with debt-based money. In other words, "assets" must include legal title while debts include only equitable title. ■

Aaron Russo vs. Big Brother

by Uri Dowbenko

For most of the past seven years I've published the AntiShyster, "constitutionalists" have been a band of "peculiar" individuals characterized by little money and much obsession. Often, we were our own worst enemies because – while we knew why we should search for truth and (often) how to find that truth – we didn't have a clue about effectively presenting truth to our neighbors, let alone the courts.

Seeing truth for the first time is a little like having a stroke – you suddenly have a lot to say but you are also just as suddenly incapable of saying it. Out of frustration over our inability to communicate, we sometimes became loud, overbearing, obnoxious, hysterical, boring and finally cynical. So not many believed us.

But we persevered and eventually more "normal" folks began to listen. Today, even people in positions of wealth and power are beginning to see the Constitution as not only relevant but necessary to sustain the "American Way of Life." Steve Forbes dabbled with the Constitution in his 1996 bid for the Presidency. Pat Buchanan also ran for the Presidency and espoused constitutional principles so strongly, he scared the poo out of the existing power structure. Neither man won, but they laid a foundation for others to follow.

Aaron Russo is a good example of the "new" constitutionalist. Mr. Russo is the Hollywood producer of films like The Rose *with Bette Midler and* Trading Places *with Eddie Murphy. Today, he's running for Governor of Nevada in the 1998 election on a platform that's pure constitutionalist. Think about it. The man has brains, money, communication skills, celebrity contacts, and determination to restore a constitutional government.*

I'm excited. I believe that 1) although we constitutionalists don't generally recognize our own success, we're often kickin' government's butt and always giving them a run for their (actually, "our") money; 2) the Constitution will be strong minor theme in the 1998 elections and a major issue in the 2000 elections.

Welcome to the National Security State of America. Big Brother has arrived. Under the guise of Public Law 104-208 passed by Congress and signed by Clinton, Orwell's *1984* has come one step closer to reality. Why? Because buried deep in the one-inch thick insidious Omnibus Appropriations Act, 1997 lies a scheme for national identification cards. Camouflaged as a safeguard to keep illegal aliens from working in America, this new law mandates a program for establishing a national database. In bureaucratic terms, they call it "Employment Eligibility."

Of course it's all couched in euphemisms, but Title IV - Subtitle A - Pilot Programs for Employment Eligibility Confirmation, remains the blueprint for Big Brother-type ID Cards. Specifically the law calls for so-called "machine-readable documents" with "the individual's social security account number" and photo identification. There is also a stipulation for the development of" counterfeit-resistant social security cards" implying the use of *biometric* data like fingerprints and/or retinal scans. This is not sci-fi, folks, it's the law.

In addition there will be a toll-free telephone line so an employer can check on a prospective employee, in the words of the law, "concerning an individual's identity and whether the individual is authorized to be an employee." That's on page 664. Believe it or not, this code section ends ominously on page 666.

The implications are clear. In the future bureaucrats will require your employer to check with the database in Washington to find out if you have a "right" to work by virtue of your being registered. Not registered? "Sorry, but we're not able to offer you this position," the human resources manager will explain.

Aaron Russo declares emphatically, "I'm not going to allow the ID card into Nevada. There will be no ID cards."

Having recently announced that he'll be a Republican candidate for Governor of Nevada in 1998, Russo says, "My support is across all party lines. I think if you're a Democrat or Republi-

can, you don't want to carry an ID card. You don't want your phones tapped. It's about *freedom* in America. But nobody's telling the American people what's going on."

Sitting in Nate 'n Al's, a movie industry eatery in Beverly Hills, Hollywood producer Aaron Russo seems an unlikely person to go up against Big Brother. His successful career in entertainment however is probably an asset. In the past he's been a night club owner, a music promoter, then a successful manager with stars like Bette Midler, Susan Sarandon and Manhattan Transfer.

More recently Russo has been active as a film producer with major hits like *Trading Places* starring Eddie Murphy, as well as *Teachers* starring Nick Nolte and *The Rose* starring Bette Midler. He's best known in Hollywood as the first producer to get a one million dollar fee.

Now Russo has traded his Hollywood base for Nevada. So why has he given up the lucrative movie business for politics?

"I believe that America is rushing headlong into becoming a socialist totalitarian society and I want to help stop it," says Russo. "I see the federal government disobeying the Constitution. When the government is allowed to take control by force and act unlawfully, then that's tyranny."

So, could Russo's position be seen in an historical context as the continuation of the debate between the Federalists and the Anti-federalists?

"One hundred percent correct," says political consultant Pierre Salinger.

Best-known as press secretary to President John E Kennedy, Salinger has recently been an ABC senior news editor. "I'm very excited about working with Aaron because he's a very intelligent guy," says Salinger. "I'm going to be his press secretary, and I would be the one in charge of the media ideas."

And what are the other subjects that get Russo so upset? The Big Brother ID card has obviously struck a nerve. Then there's the "Communication Assistance for Law Enforcement Act in which every phone in America will be pre-wired for a tap," says Russo.

"Also the government is mandating national educational testing and standards," he says. "That means the government can dictate what is taught in schools nationally. I'm not going to allow the government to impose their will on the Nevada school system nor allow Nevada children's computer records to be sent to Washington — which is part of the Schools to Work Program in Goals 2000. I believe that the job of educating children belongs to the local community."

Runaway government bureaucracies are also a sore point. "It's been estimated that it would take you twenty thousand years to read all the laws passed in America" says Russo shaking his head, "yet you're responsible for obeying them. Under the Constitution, only Congress can make law. But now you have all these government agencies making rules and regulations that have the force of law."

And speaking of bureaucracies, Russo also believes that the self-righteous zealots who work in the FDA have continually overstepped the boundaries of their jurisdiction.

"I want to make Nevada the alternative medicine oasis of the United States," declares Russo. "I believe in freedom of choice in medicine. The FDA has tried many times to stop doctors across the country from practicing alternative medicine. I believe it's up to every individual to make his or her choice as to how to cure themselves. That's another thing we're fighting for."

Then there's asset forfeitures, a favorite self-funding mechanism for bureaucrats nationwide. "We're not going to allow asset seizures in this state unless there's due process of law," says Russo. "Last year in America, there were two hundred fifty thousand asset forfeitures and eighty percent of these people were never charged with a crime, much less convicted of anything. If the government can come in and take your assets without due process of law, then that's the definition of a totalitarian country."

Russo also has harsh words for the IRS. "We're going to make sure that people who get tips, which are gifts, will not have to pay taxes on them. Under the IRS' own code, gifts can only be taxed if they're over ten thousand dollars. There are many people in Nevada who cannot afford to live."

So how bad is it?

"I met one waitress," says Russo, "who was working sixteen hours a day and she was living in a car with her five year old child because the government pre-assumes how much money she's making in tips and takes it out of her paycheck."

"She earns nine hundred dollars every two weeks and takes home a hundred sixty seven dollars after taxes. It's beyond comprehension. Imagine — the government assumes how much money you should make, then you have to pay taxes on it. I'm going to go to the Supreme Court," says Russo, "and stop the IRS from taxing people's tips in Nevada."

Voter apathy and mistrust of the government has reached colossal proportions in America, and Russo's also aware of it. He understands the cases of rampant voter fraud in America extensively detailed in James Collier's book *Votescam: The Stealing of America*. This is the ultimate computer fraud, and Russo, as a candidate, realizes the implications.

"I'm very concerned about voter fraud," he says, "because when you use a computer to cast a vote, there's no way to really tell if there's fraud because there's no paper trail. In Nevada I've been having many meetings with the Registrar of Voters in Clark County. They have the Sequoia Pacific machine which leaves no paper trail. I'm telling them that the computer has to spit out a paper receipt which the voter looks at to see if it matches his vote. If it matches, he presses a button which verifies that the receipt's correct and then he drops the paper receipt in a ballot box. So now you have a ballot box and a computer vote and those two should line up with each other so you can verify the computer votes with the paper trail."

In tackling Big Brother Aaron Russo's platform is clearly based on states rights issues defined by the Tenth Amendment of the Bill of Rights.

When the Feds decided to use Ne-

vada as a nuclear waste dumping ground, Russo was understandably upset. "The federal government wants to bring nuclear waste materials imported from all over the world to Yucca Mountain in Nevada," he says. "It's a huge underground pit, on an earthquake fault no less. I believe that the people of the state have a say in this matter and we will not be dictated to by the federal government or one of its agencies."

When asked what he'd like to accomplish, Aaron Russo says to "stop the tide of the federal government's encroachment on everybody's life. If I can do that and light a spark in America, other states can see that it can be stopped. That would be a significant contribution."

As an advocate of state sovereignty and individual liberty, Aaron Russo stands at the forefront of the debate which framed the founding of the United States and which will determine the character of the nation in the twenty-first century.

I'm excited. I believe the Constitution is about to become "trendy", even "chic". I believe that constitutional issues and values will soon be promoted by new politicians and Hollywood celebrities.

And who will argue against them? Has this nation ever produced a politician so slick or a celebrity so popular he can publicly disparage the Constitution and its principles? No. Strangely, while 90% of Americans don't have a clue to the Constitution's content, the majority of us nevertheless revere that document as virtually sacred. The Constitution is the third rail in American politics — cross it publicly and die politically.

Further, the impulse to resist big government is not confined to the USA. Canadian teachers recently launched the world's biggest treacher strike to force Canada's national government to forgo it's plan to "centralize" control over education. All the newly independent Republics of the former Soviet Union are singing the same song: Sovereignty, independence and freedom! Around the world, the tide is running against big government and the New World Order. And who's making it happen? Constitutionalists — people who believe in personal freedom and personal responsibility and their absolute corallary: small, limited, law-abiding government.

The Aaron Russo For Governor of Nevada Campaign can be reached at 4921 Wilbur, Las Vegas, Nev. 89119, or call 888-98-RUSSO.

This battle is far from over, but constitutionalists not only CAN take this country back, they're doin' it – right now. Believe it, support it, and help make it happen.

Constitutionalists CAN!

Etc.

Legal Advice: What not to say When stopped for speeding

Sorry, Officer, I didn't realize my radar detector was unplugged.

Say . . . I thought Cops had to be in good physical condition.

I was just tryin' to keep up with traffic . . .Yeah, I know the road's empty — but that's how far I am behind the other cars.

Hi, Officer — mind holding my beer while I dig out my drivers license?

Y'know, when I was a kid, I wanted to be a Cop, but I decided to finish High School instead.

Didn't I see you get your butt kicked on "COPS" last night?

I bet I could grab that gun before you finish writing my ticket.

So, ahh . . . are you on the take, or what?

Gee, Officer, that's terrific! The Cop yesterday only gave me a warning, too.

Hey, is that a 9mm? That's nothing compared to this .44 magnum.

Hey, Officer, you musta been goin' about 125mph to catch up with me — Good job!

Bad Cop! No donut!!

Hey, you're NOT gonna check the *trunk*, are you?