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# ANTISHYSTER

BRIDGE to the FUTURE?  
OR Gangplank?

Trust Fever p. 61

# ANTI SHYSTER

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*This 1997 issue primarily focused on President Clinton's promise to be a "bridge to the future," and lawyers. But the two most important articles were "The Truth About Trusts" by Glen Halliday and my own "Trust Fever".*

*Mr. Halliday's article offered an excellent introduction to trust theory. But my article broke important, new ground with the hypothesis that government uses trusts to bypass the Constitution and oppress us.*

*I was excited by "Trust Fever" when I wrote it in 1997, and three years later – as I reformat this issue for electronic publication – I'm still excited, and more– Proud. The last three years have only confirmed the "Trust Fever" hypothesis, and just as I suspected in 1997, Trust Fever is one of my most important insight.*

*"... 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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# Secret Clinton EPA Plan for 50-Cent Gas Tax Hike

by Alfred Adask

“EPA Proposes Tough New Rules To Fight Airborne Particles, Ozone” by Randy Lee Loftus, Dallas Morning News, 11/28/96. “The Environmental Protection Agency proposed tough new clean-air standards, saying two common pollutants pose unacceptable risks to millions of Americans . . . the rules . . . could prevent 40,000 premature deaths and 1.75 million significant respiratory problems annually, according to government estimates.”

Everyone agrees the goal of saving 40,000 lives a year and almost 2 million respiratory problems sounds like a great idea. However, the EPA also said, “Meeting the new standards could cost between \$6.5 billion and \$8.5 billion a year. Industries opposing the standards have put the figures much higher.”

That works out to about \$200,000 for every life saved funded by \$30 in increased taxes for every man woman and child in America. I don’t like higher taxes, but I’m willing to pay \$100 a year for my family’s fair share in saving 40,000 lives.

Nevertheless: “Industries and some elected officials lobbied heavily against the new stan-

dards. . . . Opponents probably will take their case to Congress, which has given itself the power to review major environmental rules.”

But why would any coalition of industries and politicians stand in opposition to rules which the government claims can save 40,000 lives per year?

Maybe it’s because the roads to Hell and Big Government are both paved and promoted with seemingly “good intentions” – the only difference being the road to Big Government is a Toll Road.

## Industry’s view

The Coalition For Auto Repair Equality (CARE) is a lobbyist organization located in Alexandria, Virginia. CARE describes itself as a “company-driven, proactive coalition that steers the Automotive Aftermarket in the right direction and monitors the State Legislatures and Federal legislation pending in the U.S. Congress.” (The “automotive aftermarket” refers primarily to those businesses involved in the sale or maintenance of *used* cars and trucks.) CARE focuses on any issue that deals with motor vehicle

parts, design protection, promoting clean air, opposing Junker-Clunker bills, or affects motoring-consumers or the Automotive Aftermarket workers. CARE explains its history and motivation as follows:

In the beginning, there was H.R. 1790, The Design Innovation and Technology Act of 1991. The threat of that bill to the automotive “aftermarket industry” brought together diverse and well-known aftermarket companies and associations to form a national coalition to defeat H.R. 1790 —The Coalition for Auto Repair Equality (CARE). Some of the auto aftermarket businesses in CARE are: NAPA, Western Auto, CARQUEST, Chief Auto Parts, Big A Auto Parts, Hi-Lo Auto Parts, Trak Auto, Echlin, Midas International, and “thousands of Mom & Pop” shops at over 15,000 locations throughout U.S.A.

Over the past several years, CARE has uncovered the following facts (identified with asterisks):

- The average price of a new car ten years ago was \$11,500; since then, the average price paid for a new car has risen 75% to \$20,045. Between 1969 and

1990, the number of cars on the road that were at least 10 years old increased by 40 million vehicles. In 1994, the average age of American passenger cars was 8.5 years and trucks was 8.6 years.

Point: Government regulations of exactly the sort proposed by the EPA are causing our new automobiles to become so complex (and therefore expensive), that Americans are increasingly "driven" to buy only used cars. Worse, as the regulators' noose tightens, even used cars -- which can no longer satisfy stringent safety and pollution regulations -- are being forced off the road. Result? Less cars, less drivers, and a host of social and economic consequences that are contrary to the employment and life-style of most Americans. However,

- Because our automobile "fleet" is quickly "aging", 75 to 80 percent of vehicles on the road today are serviced and repaired by the automobile aftermarket. This aftermarket includes manufacturers, distributors, rebuilders, jobbers, and retailers for parts and service of "motor vehicles" such as automobiles, light and heavy-duty trucks, motorcycles, recreation vehicles, off-road vehicles such as agricultural and construction equipment, marine engines, small and stationary engines, all-terrain vehicles, and even lawn mowers. This aftermarket consists of 40,700 auto parts stores, 11,700 tire stores, and 253,900 service outlets with a total annual sales (1993) of over \$170 billion.

Point: The automotive aftermarket is an enormous industry with potentially huge financial and political resources. Therefore, those of us who are "constitutionalists" and opposed to increasing government growth and regulation can reasonably expect the support (at least lip service) from the Republicans and corporate PACs to protect the auto af-

termarket businesses threatened by bureaucratic regulations.

- Moreover, the automotive aftermarket industry provides over three million American jobs in approximately 375,000 individual businesses located in communities across the U.S.A. These employees are the folks who make and sell equipment, chemicals, accessories, body repair supplies, and products that enhance, polish, or paint your vehicle.

Point: Constitutionalists opposed to government growth and regulation can reasonably expect some support (at least lip service) from both the Democrats and unions who claim to protect those 3 million American jobs indirectly threatened by burdensome EPA regulations on cars.

- In 1993, the total miles driven for all vehicles in 1993 was 2,347 billion -- roughly 1,000 miles per year for every man, woman and child in this country. In 1994, total motor vehicle reg-

istration for private and publicly-owned vehicles was over 193 million. In 1994, there were over 175 million licensed drivers.

Point: American consumers have a powerful vested interest in the use and enjoyment of automotive products. How many Americans? I.e., virtually every American adult/ voter is a licensed driver, and at least half are vehicle owners. This means that, properly motivated, drivers and car owners wield virtually unrivaled political power.

### No strange bedfellows

We've just seen that over 300,000 automotive aftermarket businesses and their Republican representatives -- three million automotive aftermarket workers, unions, and their Democrat representatives -- and 175 million consumers, licensed drivers and/or automobile owners have a vested interest in keeping affordable, private transportation on America's roads. Imagine the po-

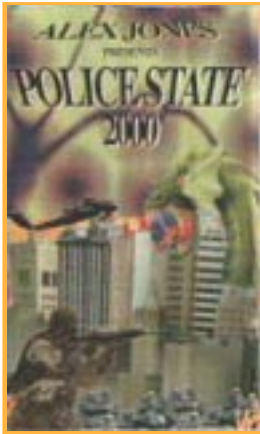
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litical clout that could be brought to bear on Congress and the state legislatures if a coalition of drivers, car owners, and auto aftermarket businesses, industries, employees, and consumers combined to save our automobiles and our “right to drive”.

Suppose all those big government advocates who seek to control and impoverish the USA with environmental issues had to directly confront all the American people who want to retain their right to build, own, drive, and service affordable automobiles:

“OK, everyone who wants to save the snail darters and spotted owls line up on the left and everyone who wants to save the Mustangs, Colts, Jaguars, Vipers, ‘bugs’ (and the occasional Cadillac or Mercedes) line up on the right. Now let’s fight.”

It wouldn’t even be a contest. The handful of big government environmentalists would be crushed by virtually the entire American population. Automotive “rights” is an issue that not only can’t be resisted or denied, but whose “time has come”.

Point: Preservation of America’s “right” to build, sell, own, and drive automobiles just might offer the single greatest political opportunity available to defeat big government and preserve or resurrect our constitutional government.

Point: *We have the power* to save this nation. It’s as close as

our cars. The only missing ingredient – so far – has been public understanding to recognize our common interests and then the motivation to organize and exercise that resultant political power.

Although it’s hard to believe, evidence is mounting that government is trying to take our cars. Not improve them -- *take them*. Through the slow, frog-cookin’ application of regulatory policies designed to increase auto prices and decrease personal income, government is building a “Bridge To The 21<sup>st</sup> Century” that can be traversed only on bicycle or on foot. If that opinion sounds extreme, even our Congressmen are beginning to recognize its truth and political potency.

#### Political view

According to the “House Republican Conference News”, Representative John Boehner (Rep. 8<sup>th</sup> Dist, Ohio) has exposed, “A secret Clinton Administration ‘War on the Family Car’ that would put most Americans on bicycles”:

“WASHINGTON (October 30, 1996)— House Republican Conference Chair Rep. John Boehner (R-OH) tonight unveiled the contents of a leaked EPA memo detailing a secret Clinton Administration plan for a 50-cent-per-gallon increase in the gasoline tax, a host of new energy taxes including resurrection of Clinton’s repudiated 1993 BTU tax, tighter

motor vehicle emissions standards, a new \$40 federal fee for automobile emissions tests, and a plan for ‘full pricing of roads’ that alone would cost motorists as much as \$400 per year.

“It’s a secret Clinton Administration plan for war on the family car,” charged Boehner, who accused the Administration of deliberately keeping this plan under wraps for two years. Boehner called the plan “a rewrite of Vice President Gore’s *Earth in the Balance*, a radical approach which would put most working Americans on bicycles.”

“Boehner said the plan, detailed in an internal EPA memorandum dated May 31, 1994 from Michael Shelby of the EPA’s Office of Policy, Planning and Evaluation, contains 39 different provisions to reduce automobile emissions, including:

- A 50-cent per gallon gas tax, to be put in place *without prior Congressional approval* under Section 232 of the Trade Expansion Act of 1962; the memo estimates the cost to motorists will be \$47 billion in the year 2000 alone.

- Seven new “Energy Tax” alternatives on fossil fuel energy use, based on their carbon content, include: “greenhouse gas tax,” “carbon tax,” “BTU tax,” an “at-source ad-valorem tax” on the value of the fuel at the point of extraction; an end-use ad valorem tax” on the value of the fuel at the final point-of-sale; a “motor fuels tax” on the retail price of gas and diesel, an “oil import fee,” and combinations or permutations of the above . . . .

- A plan for “Full Pricing of Roads” which would “decrease subsidies to road users” by requiring that state and local matching funds for road and bridge construction under the Highway Trust Fund be raised exclusively from increases in state and local gas taxes, new or increased li-



cense and registration fees, imposition of new highway congestion charges, and new or increased weight-and-distance charges for trucks. The report says that "If states raised gas taxes and decreased no other taxes, increases in out-of-pocket costs would be roughly 1% of household income, or about \$400/year." In this respect, as with the 50-cent-per-gallon gas tax, "the Administration has the authority to begin rulemaking on its own, without legislation." [emph. add.]

- Tighter emissions standards for automobiles, accomplishing additional reductions of 2 percent per year, also to be accomplished *without* Congressional approval by Executive Order or administrative rulemaking authority.

"For almost two years, this Congress has sought to learn how the Administration intends to meet their stated goal of reducing greenhouse gas emissions below those set forth in

the so-called 'Rio' Treaty of 1990," Boehner said, noting that the Energy and Power subcommittee has held four separate hearings on the subject. "In each case, the Administration has dodged us -- and small wonder, considering that their real plan is to declare war on motorists, homeowners, consumers and everybody in America who uses energy or has a job."

### Memos, we get memos

CARE sent me a photocopy of an Environmental Protection Agency (EPA) Memo dated May 31, 1994 and 39 attached "proposed additional actions for the Climate Change Action Plan" that incensed Congressman Boehner. The following are excerpts from several of those "proposed additional actions". The title of each "action" is written in "SMALL CAPITAL LETTERS". The underlined emphases within the original text are mine as are the additional [bracketed] comments.

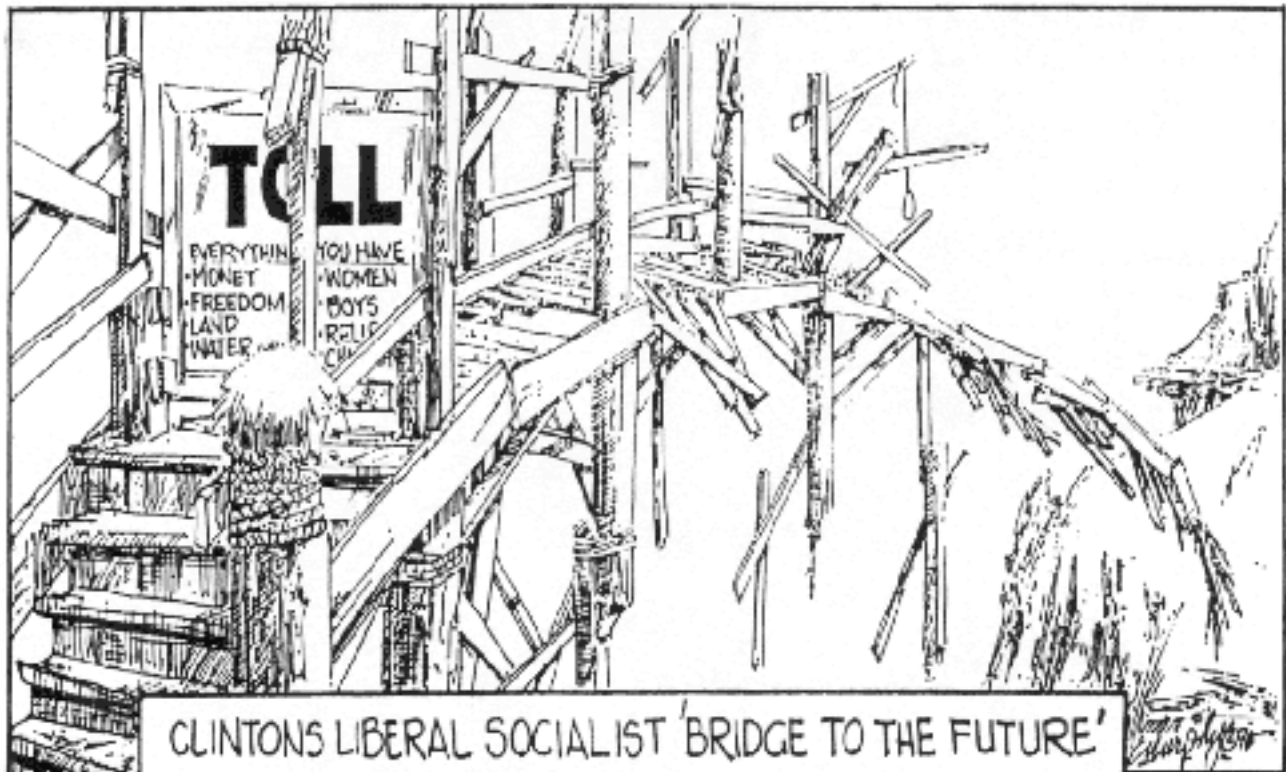
### ESTABLISH HAZARDOUS AIR POLLUTANT STANDARDS FOR GREENHOUSE GAS AS A BACKSTOP FOR THE ACTION PLAN

3. Emission Reductions: Emission reduction could either be large or small, depending on the definition EPA chooses for "source category", and "best performing" as well as the success of the President's Action Plan.

[Comment #3 offers a fascinating insight into the practical application of Congressional laws by regulatory agencies. The "law" can be lightly or harshly applied depending on the definitions the EPA "chooses" to apply. In other words, Congressional "law" can be contrived to mean virtually anything the bureaucrats desire.]

5. Implementation Problems: Such aggressive use of Clean Air Act authority may create a backlash in Congress.

[The bureaucrats clearly know their attempt to manipulate the law is contrary to Congressional intent and, if exposed, likely to cause Congressional backlash.]



TIGHTEN CAFE STANDARDS  
THROUGH RULE MAKING AUTHORITY

1. Description: Under this option, the national Highway Traffic Safety Administration (NHTSA) of the Department of Transportation would use existing rule making authority to raise the Corporate Average Fuel Economy (CAFE) standards for cars and light trucks by 2% per year, beginning in the year 2000. . . .

4. Costs: The welfare costs of this policy would be significant. Pre-2000 costs would be borne by auto manufacturers in the form of increased R&D, changes on product development, etc. Post-2000 costs would be borne by the auto industry and consumers forced to buy vehicles they would not otherwise have purchased. . . . Although some believe these levels of fuel economy could be attained today without expensive technology, others have estimated the cost at \$2,000 - \$4,000 per vehicle.

[EPA bureaucrats already have sufficient "rule making authority" to tack on an addition \$2,000 - \$4,000 cost per new car (which already average over \$20,000 each) and still "force" consumers to buy vehicles "which they would not otherwise purchase". Has anyone in Washington ever heard of "personal liberty", the "pursuit of happiness", and the "free market" wherein individuals can buy the cars they want -- rather than the cars government forces them to purchase? This "forced to buy" attitude is the working definition of communism (government control) and the complete antithesis of a free market where the people's free choice determines the design, manufacture, and cost of products. I.e., if all of us want Volkswagons, business will produce Volkswagons (or comparable, competitive vehicles). If we want Cadillacs, business will manufacture Cadillacs (or compa-

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able, competitive vehicles). Net result in either case: the least expensive, most efficient, and most widely available Volkswagons (or Cadillacs) the automotive industry can provide. Under the free market, the people truly control the business. However, when government designs automobiles, the people lose control, lose quality, and suffer the increased costs of cars they are forced to buy.]

LEVY A \$0.50/GALLON FEE ON GASOLINE IN RESPONSE TO A SECTION 232 FINDING

1. Description: Sect. 232 of the Trade Expansion Act of 1962 calls for the Secretary of Commerce (in consultation with the Secretary of Defense and other agencies as appropriate) to conduct investigation of the impact of imports on national security. These investigations may be initiated based on the request of the head of any Department or Agency or by the application of an interested party, or the Secretary's own motion.

In this case, the level and increase in oil imports would be the subject of the investigation and EPA would petition the Department of Commerce to conduct the 232 investigation. If the Secretary of Commerce finds that oil imports threaten to impair national security, the President must determine if action should be taken to "adjust imports" to re-

move the national security threat. In this case, the President would decide to impose a gasoline fee of \$0.50/ gallon to reduce consumption of petroleum and, in turn, oil imports. Since its inception in 1962, there have been twenty-one Section 232 investigations. Four of these involved oil import. In each of the four cases involving oil, imports were found to threaten national security.

[In other words, it's a virtual certainty that if the EPA initiates a "232 investigation", imported oil will be "found" to "threaten national security" and the President will be thereby empowered to impose the \$0.50/gallon tax. It's a fix.]

4. Costs: The fee will raise considerable revenues. For example in the year 2000 and 2010, \$47 and \$37 billion (1992\$), respectively, would be collected. If the revenues are used to offset existing distortionary taxes in the current tax code, this option would have little detrimental impact on national output. When reductions in traffic congestion are considered, the option could improve economic welfare substantially.

[If the taxes are used to offset . . . this option would have little detrimental impact on national output" -- but it would have some detrimental impact. And "if" the gas taxes are not used to "offset", there would be consid-



erable “detrimental impact on national output”. Also, note that the projected revenues from a \$0.50/gallon tax would drop from \$47 billion in 2000 to \$37 billion in 2010. Curiously, although the population should grow considerably during that decade and inflation has averaged 3% a year for most of this century, the tax revenues from gas consumption are projected to fall by 21% between 2000 and 2010. It’s a virtual certainty that this reduction will be caused by fewer cars on the road and/or fewer miles driven per car. While government applauds this reduced “traffic congestion”, it neglects to mention that as fewer people own or drive private automobiles, more and more Americans would be increasingly concentrated into urban environments with public transportation and/or affordable bicycles.]

### The American Way of Life

Clinton’s car-less cities of the future might have cleaner air, but they would also be characterized by high population densities like New York city or Calcutta. Conversely, rural homes, suburban communities, low population densities, and even the private ownership of homes and land by average Americans would diminish or disappear because they are all implicitly dependent on the widespread, affordable use of *private* transportation.

After all, who wants to live in the country if you have to walk or even bicycle miles and miles (past private homes on even modest sized lots) just to get to the grocery store? Private property and private homes necessarily mean low population densities and relatively long distances between individual homes and businesses.

Without inexpensive automobiles, people are effectively condemned to live in high-population-density communities and ex-

perience all the social problems those communities inevitably impose. Without private transportation, all but the wealthiest and most powerful people will be forced to live in urban environments much like those we currently described as “ghettoes”. When you think about it, it’s doubtful that “the American Way of Life” can exist without affordable *private* transportation.

### City of the future?

In 1959, I spent several weeks in Los Angeles. I loved Disneyland and Knotts Berry Farm, but I still remember the stagnant, eye-burning pollution that routinely poisoned the air. Sometimes the pollution was so bad that when women walked out of their homes, their nylons would virtually dissolve right off their legs. It’s indisputable that the auto exhaust pollution problem had to be solved.

On the other hand, in 1965, I

spent three weeks in Calcutta, India. There were lots of pedestrians, bicycles, and rickshaws (two-wheeled carriages propelled by manpower; I know -- I pulled one myself one drunken night on the way back to our ship). But there were few cars and little auto pollution so I have no recollection of anything but a clear, bright Indian sky.

This is not to say Calcutta’s air was “mountain fresh”. There was always the smell of decaying garbage or excrement from the Sacred Cows which wandered aimlessly through the streets. (Every time a cow defecated, children would dash out into the street, scoop up the excrement in their hands, and plaster “cow pies” on the walls of their homes to dry and later be burned to cook their food). Still, Calcutta’s air was far cleaner and healthier than L.A.’s.

But polluted air is not the only thing that kills us. How many

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people would rather live in Calcutta -- with its relatively pure air, high population density, poverty, and 35-year average life expectancy -- than in L.A. -- with its poisonous air, high standard of living, and 65-year average life expectancy?

Everyone agrees it would be great to escape L.A.'s pollution, but do we want to run so far we wind up living (and dying young) in Calcutta? Where do the EPA, President Clinton and V.P. Gore plan to take us? To Utopia – or a black hole?

#### Intentions and consequences

Automobiles are a not only an enormous industry, they are arguably the defining feature of the American culture. Where would this country be without cars? No roads, a wimpy industrial base, low wages for most workers, and nothing to do on Friday night but take your girl for a stroll around the block. The simplistic idea of regulating cars out of existence may have some merit, but it also carries enormous adverse cultural consequences that impact our employment, industrial base, standard of living, private property and even life expectancy.

Everyone wants clean air. You'd have to be nuts not to. But I'll bet that if you chart the worldwide relationship between clean air and standards of living or life expectancy, you'll generally find

the highest standards of living and the longest average life expectancies in those areas also marked by the highest levels of air pollution.

While it is entirely possible that the EPA's air pollution requirements *will* save 40,000 lives and eliminate 175,000 respiratory problems each year, I'll bet the majority of people saved are elderly whose ages are close to the 65 to 70 average life span of most Americans. Sure, it's a fine and noble goal to save or extend anyone's life. But we can't allow our good intentions to blind us to another reality: If those elderly people troubled by air pollution had been raised in a society free from the "adverse impact" of automobiles, their average life expectancy would probably have been no more than 45 years. In a sense, then, if it weren't for the widespread presence of affordable private transportation, most Americans wouldn't live long enough to be troubled by pollution. Instead, we'd generally die young from the social violence and medical ills associated with poverty and/or contagious diseases common in high density populations.

Yes, without cars, certain kinds of respiratory problems might be diminished -- but how many additional fatalities will we incur caused by tuberculosis, influenza, or similar contagious diseases which propagate most rap-

idly in the high population densities characteristic of "car-less" societies? I'd bet that, on balance, automobiles don't diminish our life expectancy, they increase it dramatically.

#### Muscle cars and the Constitution

The absence of cars can have a detrimental effect on our lives and society far greater than any problem caused by air pollution. Likewise, once the social significance of losing our automobiles is publicly perceived, the government's use of environmentalism to assault America may be blunted or even stopped. Better yet, once every American whose life is depends on automobiles sees the relevance of the Constitution to preserving affordable cars, we can expect to see a Constitution in every glove compartment.

No joke. It's important for "constitutionalists" to realize that if you want to sell your "product" (the Constitution), you've got to tie it to something the public likes. It's no accident that Michael Jordan makes more money for his product endorsements than he does for playing basketball for the Chicago Bulls. America loves Mike. (If I could get him to do just one 60-second TV commercial for the *AntiShyster*, I'd probably be an overnight millionaire.)

Likewise, if you're trying to promote constitutional (limited) government, don't bore your neighbors with talk about "freedom", "liberty" and "unalienable rights". Most people don't understand or care.

Frame your argument around something your neighbor likes – or even loves – like cars. Make him see that the reason he can't have a V-8 with overhead cams, posi-traction and four-on-the-floor that goes so fast it'll make his girlfriend swoon is because

he's neglected to study and enforce the terms of the Constitution (*limited* government). Help him understand the reason he can't afford to move to the suburbs is because big (*unconstitutional*) government is pushing him into poverty. Show him that the high standard of living necessary to buy a new Jet Ski is not beyond his reach because he's lazy or dumb, but because *unconstitutional* elements of his government are financially insatiable.

Americans are the most productive people in the world – our jobs aren't leaving for Mexico and Indonesia to escape our individual or corporate greed, they're going to escape *unconstitutional* government regulation and high taxes. If you want to save this country, just show your neighbor that the American dream of prosperity, private property, home, education for the kids and a solid respect for God can't take place outside the parameters of the *Constitution*.

### Man against government

So the EPA plans to "force" us to buy cars "we don't want to buy"? We'll see who "forces" who to do what. I'll bet that before this century is over, We The People will "force" the Communists in the EPA out of government and into the free market where they will have to support themselves as producers rather than parasites. And the principle tools of our "force" just might be the Constitution backed up by the American people's love for automobiles.

I know it sounds crazy, but I want to see a race car at the Indianapolis 500 called the "Constitution" with a candy apple paint job and a copy of the Constitution painted on the hood. I want to see "We The People" blowin' smoke and sparks and flying down the straightaway at 250 M.P.H. I want to cheer for it, I want to shout, I want to scream, I want to see the "Constitution" win at Indy -- and in Washington.

Constitutional government and four-on-the floor . . . burnin' rubber and *screamin'* down the straightaway --ain't that *America!*

Y'know, I'm gettin' excited. I think we're gonna kick their a . . .

I think the Constitution is headed for an American revival that just two years ago seemed impossible. I predict that constitutional government will be a strong secondary theme in the 1998 elections and a primary theme in the elections of 2000.

At first, muscle cars and the Constitution might sound like a crazy combination, but constitutional government and commerce can't be separated. Those who lust for a 1997 Corvette would do well to realize that those sleek, powerful automobiles weren't first built in Detroit -- the prototypes were created in Philadelphia in 1787. The designers behind the Camaro and Firebird include George Washing-

ton and James Madison. In fact, it was always the genius of a folks like Thomas Jefferson *and* Henry Ford that made this country great. You can't have a strong, free, prosperous nation without both a strong Constitution and vigorous free enterprise. Separate the two and we slide into poverty and oppression. Forget either and we perish. However, if we can hitch 'em up again, we can recreate our first industrial revolution with all the freedom, hope and dreams this nation once took for granted.

For further information contact:

- "House Republican Conference News", 1010 Longworth House Bld., Washington, D.C. 20515; Contact Terry Holt or Paula Nowakowski (202) 225-5107;
- Representative John Boehner (Rep. 8<sup>th</sup> Dist, Ohio); or,
- Coalition For Auto Repair Equality (CARE) at 119 Oronoco Street, Suite 300 Alexandria, VA 22314; 703-519-7555 or 800-229-5380.

<sup>1</sup> Once again, the "Convention on Biological Diversity" (which Congressman Boehner called the "Rio Treaty of 1990") lies close to the heart of a genuine attack on America's people, economy, and culture. For a copy of that 180-page Convention, send \$25 to the AntiShyster, POB 540786 Dallas, Texas 75354-0786.

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# Dismantling America's Patent System

by W. Arthur Fisher

Designed to protect the intellectual properties of American inventors, U.S patent laws are in grave danger of being dismantled. Four bills [House Resolutions (H.R.) 1732, 1733, 2235, and 1659] presently before Congress, if enacted into law, could literally destroy America's patent system as we know it. The bills are crafted to indulge the avarice of multinational corporations and foreign interests.

## 160 years of patents offered

Since the 1970's vast amounts of U.S. technology and industry has relocated to foreign countries, severely handicapping America's commerce and economy. Now, efforts are underway to make the data on U.S. patent applications available to multinational corporations and foreign governments, in particular Red China, a nation under fire for human rights violations and for the counterfeiting of American made products.

According to *FDA Week* of April 5, 1996 (a report of the Food and Drug Administration), key officials in the U.S. Patent and

Trademark Office (PTO) told *FDA Week* that Patent Commissioner Bruce Lehman has agreed to provide the communist Chinese Patent Office the "entire" U.S. patent database on magnetic tape . . . for free. *FDA Week* claims that a key PTO official said, "We have offered to provide [the Chinese] the entire collection of U.S. patent documentation, covering over 160 years of patents, in digital form." The Chinese Patent Office will specifically receive all patent documents since 1920 in digital facsimile form.

The official claimed the information includes five-and-a-half trillion characters of data and technical drawings, with chemical formulations and the like — very important in doing a patent search.

The American PTO wants to make it easier for the Chinese Patent Office to search all previously patented material and thus give the Chinese "no excuse" to infringe on U.S. patents. A PTO source said the purpose of PTO Commissioner Lehman's agreement is to "make all U.S. patent information available, with text search or index retrievable fea-

tures to allow [the Chinese] a more effective search."

## First-page database

However, the Chinese Patent Office will get the "*first-page database*" -- which is not yet available in the U.S -- with back and front files that provide condensed versions of the patent, bibliographical data and drawings. The *back file* covers all previously issued patents, whereas, the *front file* includes all new data issued each week, allowing the back file to be updated, *at no cost* to China. China and Japan are negotiating separately for access to Japanese patent data, which the U.S. cannot provide to the Chinese.

PTO sources say that Lehman told the Chinese that he would like to provide them data on still *unapproved* patents 18-months after they are filed. Lehman was also instrumental in the Commerce Department's approval of an agreement with Japan to publish patent applications 18-months after filing. Never before have patent applications been published *before* a patent was issued.

## H.R. 1733

These accords hinge on the passage of H.R. 1733, which was sent to Capitol Hill by the PTO for Congressional approval.

H.R. 1733, the "*Patent Application Publication Act of 1995*", will prematurely disclose an American invention to foreign countries so they can begin production of the invention *before* its inventor has any protection. Both H.R. 1733 and H.R. 3460 calls for the publication of *all* applications 18 months *after* the patent application is received in the Patent Office. This will negate the original intent of our founding fathers to grant an applicant a patent in exchange for full disclosure. The U.S. Code defines patents as "private property." A patent application is the property of the inventor and is supposed to be held in secret *until* a patent is issued. A published disclosure at 18 months affords no patent protection.

This premature disclosure is extremely foolhardy since U.S. patent laws require a patent application be so detailed that someone skilled in the art can practice (or work) the invention. In combination with similar bills, H.R. 1733 creates a whole new category of prior art (including information on patent applications never issued) which then can be

used in filing arguments in opposition to a patent.

In a letter I received from Steven Michael Shore, president of the Alliance for American Innovation, Mr. Shore warns that if H.R. 1733 is passed, it will:

1) "Deprive inventors and entrepreneurs of compensation for their research and development of their invention.

2) "Disclose American technology in detail much more quickly to foreign interests and allow foreign governments and multinationals to seize America's most important new job-creating technologies.

3) "Seriously harm new cutting-edge technologies because breakthrough patents take longer to issue and therefore are harmed by early publication.

4) "Encourage patent flooding . . . a tactic often used outside the U.S., where competitors file many patent applications with only minor changes which results in surrounding and strangling a breakthrough technology by delaying or preventing the original patent from issuing.

5) "Ultimately it will discourage American entrepreneurs from filing patent applications for their most important inventions.

6) "Permit patent term extensions only if the Patent Commissioner finds the patent applicant was subject to an "unusual ad-

ministrative delay". Extensions are only awarded if the PTO admits they were at fault. The legislation does not solve the problem of awarding all inventors the same guaranteed patent term. It is not a simple legislative solution."

According to Shore, providing the Chinese (and other nations) with all U.S. patents poses a *national security and economic threat* to the United States, and will give China a quick way of updating its technology. Although 20 or more years behind in missile technology, with automated patent search techniques, China can quickly leap forward to compete with the U.S., as well as become a military threat.

The exchange letters of 1995 between China and the U.S. for the Intellectual Property Enforcement Agreement (IPR) have not significantly protected American business from being ripped off by Chinese counterfeiters. The May 1, 1996 edition of *USA Today* reported that the U.S. accused China of rampant piracy and failure to implement IPR copyright protections, and threatened China with trade sanctions.

Based on a tip from Microsoft, Chinese authorities launched a raid on a bootleg factory that had produced 5,700 "illegal Russian language CD-ROM's of Windows 95, Word and Windows NT programs." Microsoft was told they were to be "shipped to Hanoi by train, then airfreighted to Russia for sale." It is estimated that 90-million bootleg CDs, CD-ROM's, video CDs and laser discs worth more than \$2 billion annually are manufactured in Chinese factories.

Why should America give a patent advantage to a nation that has 45 bootleg plants counter-

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feiting pirated products originally created in the U.S.? Does it make sense to give our patents to China when it is running a \$32 billion trade deficit with the U.S.? If H.R. 1733 passes, it will enable China (or any country or multinational corporation in the world) to grab American technology and use it before it's protected by the issuance of a patent.

The Patent Office is a "core federal function", however, with **H.R. 1659** it will be "corporatized" or privatized much like the Post Office, and headed by a CEO without substantive review of his actions. The Patent Office is not in competition with private companies. It's sole purpose is to "grant" not "sell" patents. It performs a quasi-judicial function in making a legal determination of whether an application contains subject matter that is new, non-obvious and fully disclosing. The U.S. Patent Office is the best technical teaching library in the world, and should not be corporatized. If it is, foreign countries and multinationals will gain control of America's patent system.

**H.R. 1732**, known as the "Patent Reexamination Reform Act of 1995", is a hunting license for giant and foreign companies to bring their full legal resources against any individual inventor to contest any issued patent and circumvent the Federal court sys-

tem. After an examination is completed, further requests for additional examinations can be filed by attorneys for the requesting company, thus tying up the patent process for years. An inventor's patent cannot be realistically enforced while a reexamination is in progress.

**H.R. 2235**, will wipe out American inventors and lead to a first-to-file system, which means first to the patent office — *not first to invent* contrary to the Constitutional rights and protection for inventors.

Recently, the subject matter of these four bills [House Resolutions (H.R.) 1732, 1733, 2235, and 1659] was combined together into one bill — **H.R. 3460**— entitled "To Establish the Patent and Trademark Office as a Government Corporation and For Other Purposes." The plan is to get H.R. 3460 on the floor of the House without public scrutiny, and then push it through so fast that no Congressman will have sufficient time to study it in depth.

The recent book, *Patent Wars: The Battle To Own The World's Technology*, by Fred Warshofsky, best describes the reason for the legislative struggle in Congress about intellectual property. It states,

**"In the war for global economic dominance, the fiercest battles today are over intellectual**

**property. Where nations once fought for control of trade routes and raw materials, they now fight for exclusive rights to ideas, innovations, and inventions."**

In this so-called global economy, the multinationals and foreign interests are attacking the patent system and independent inventors because it's the cheapest and quickest way of obtaining up-to-date technology. Intellectual property today accounts for well over 50 % of all American exports and 99 % of our manufacturing base. The U.S. remains a major player in the world community because we have the largest body of intellectual property in the world.

It is imperative that everyone reading this article contact their congressman, and demand that an inquiry be made into Bruce Lehman's authority to set foreign policy through the U.S. Patent Office, and that Congressional hearings be held on H.R. 1733, H.R. 3460 and any similar bills which seek to undermine the rights and protections of American inventors. Encourage your congressman to vote against any similar bills. This problem is too serious to ignore. Not only is America's patent system is at stake, so is the future of her economic and military security.

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For additional information or updates, contact: Steven Michael Shore, President, Alliance For American Innovation, 1100 Connecticut Avenue, NW, Suite 1200, Washington, D.C. 20036-4101. Phone: 202-785-3072 Fax: 202-467-5591, 1-800-308-6933. W. Arthur Fisher is a legal researcher and free-lance magazine writer from Tulsa, Oklahoma.



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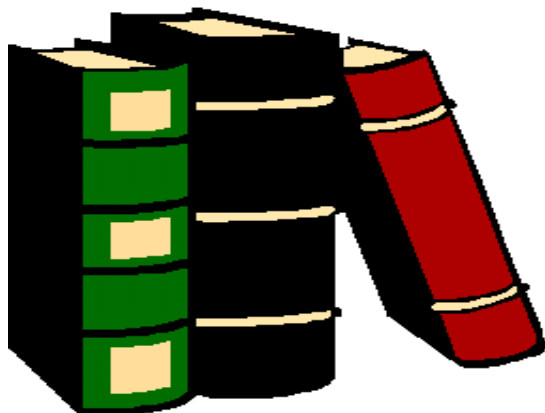
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## Deterrence . . . or State Terrorism?

While President Clinton and the Congress continue to “git tuff on crime”, a prisoner in Memphis, Tennessee, sent me part of an opinion from the U.S. Eighth Circuit Court of Appeals. This opinion illustrates that even Federal Judges are beginning to openly admit that the “git tuff” approach to crime is irrational, unjust and – given the excessive length of the legislatively imposed sentences – essentially terroristic. After all, the purpose of long, mandatory sentences is not judicial, it’s political (to “deter” crime). That is, the legislature has decided to sentence Smith to twenty years for a crime that any fool could see warrants no more than five years in order to scare Jones, Johnson, and O’Reilly into obeying the law lest they, too, have their lives crushed by politicians hungry for reelection.

By definition, the concept of “deterrence” is contrary to any notion of justice for the person convicted. The reason for imposing excessive sentences is not to punish the criminal, but to empower government by scaring the public into fearful obedience of government authority. That’s not justice for the criminal or for the victim (who is part of the ter-

rified public). Instead, it’s at least an unconstitutional usurpation of power by the legislature, and arguably an act of political terrorism directed against the American people.

The stench of the world’s largest prison system (ours) has reached even the ivory towers of Federal Judges. Perhaps a return to reason (justice) is imminent – especially if some political pressure were generated by the voters.

Unfortunately, his letter did not include a precise cite. However, the case involves two men named Stockton and Badley in the early 1990’s — that information plus the Circuit and Judge’s name should be sufficient for those interested to find the case. [Bracketed comments are my additions to the judge’s opinion.]

J. BRIGHT, senior circuit Judge, concurring separately.

I write separately to comment about the cruel sentences imposed on Stockton and Badley, and to observe that, although not illegal, these sentences emanate from a law gone awry. Sentences ought to balance punishment

with societal needs as well as some concern for the offender. Under the sentencing guidelines, a judge can exercise little, if any, judgment on these matters . . . .

In this case, both offenders will serve nearly twenty years in prison for their first offenses. Stockton, now only age twenty-six, will be forty-five years old when he emerges from prison. Badley, now age forty-four, will be sixty-three years old when he is released, assuming he can survive that long. The cost to the government and its taxpayers will be approximately \$680,542 (38 years times \$17,909; this figure does not include inflation).<sup>1</sup> The suffering imposed on these men and their families cannot be calculated in monetary terms.

In my judgment, this sort of massively heavy punishment cannot be justified in a civilized society, unless there is a showing that lengthy incarcerations protect society from incorrigible and continuing criminals. No such showing has been made in this case.

As our federal prisons at 165% capacity,<sup>2</sup> include nonviolent first-time offenders, many serving near-life sentences, they begin to resemble the barbaric

Turkish prisons depicted in the 1978 academy-award-winning motion picture *Midnight Express*.<sup>3</sup> That film shocked the public by presenting the true story of a young American tourist arrested in Turkey for heroin smuggling and sentenced to life in prison by the Turkish courts. The public should be similarly shocked if it knew of the excessive sentences that can be and are imposed on [America's] first-time offenders.

The Sentencing Commission has created a system for punishing drug offenders based almost solely on the weight of drugs, and not based on the criminality of offenders. This system runs counter to the Congressional directive that this court shall impose a sentence that is sufficient, "but not greater than necessary to comply" with the sentencing objectives established by Congress. 18 U.S.C. Sect. 13553(a) (1988); see also *U.S. v. England*, No. 91-2128, Slip op. at 15 (8th

Cir. 6/3/92) (Bright, J., concurring); *U.S. v. Quarles*, 955 F.2d 498, 505 (8th Cir. 1992) (Bright, J., concurring and dissenting).

Although the Sentencing Commission and Congress, in their war on drugs, intended to use long sentences as weapons to deter drug crime, doubt exists that longer sentences have had any deterrent effect on crime. See *Freed*, supra note 2, at 1707; Andrew Ashford, *Sentencing Purposes in England*, 3 Fed. Sent. Rep. 337, 338 (1991). These excessively long sentences mandated by the guidelines waste the lives of many men and women. Yet, can we say we are winning the war on drugs? It is time for a new and more rational look at sentencing. See e.g., Gerald W. Heaney, "The Reality of Guideline Sentencing: No End to Disparity", 28 *Am. Crim. L. Rev.* 161 (1991).

While I am obligated to affirm the sentences, I need not put my stamp of approval on them.

<sup>1</sup> See *U.S. v. Quarles*, 955 F.2d 498, 505 n.6 (Bright, J., concurring and dissenting).

<sup>2</sup> Daniel A. Treed, *Federal Sentencing in the Wake of the Guidelines: Unacceptable Limits on the Discretion of Sentencers*, 101 *Yale L.J.* 1681., 1700 n. 102 (1992) (citing Attorney General William P. Barr, Remarks to the Cal. Dist. Attorneys Assoc. (Jan. 14, 1992)).

<sup>3</sup> The United States incarcerates more than one million people, a larger share of its population than any other nation; Sentencing Project, a nonprofit research organization. "United States Leads in Imprisonment", *St. Louis Post-Dispatch*, Jan. 6, 1991, at 6E.

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# “Gangster Disciples” and Other Gang Organizations

*by Gerald A. Carroll*

Gerald A. Carroll is a media professional with 23 years experience as a reporter or editor for newspapers and magazines. He is now an adjunct professor and program assistant at the University of Iowa School of Journalism and Mass Communication, and editor of Iowa Journalist magazine.

Carroll spent nearly eleven years (1979-90) at the San Francisco Examiner, a Hearst-owned newspaper, where he learned inside information on so-called “gangs” while reporting in San Francisco, the East Bay Area, and particularly central Oakland, where gang organizations flourish. Carroll was also managing editor at a newspaper in downstate Illinois (Sterling-Rock Falls) for two years, (1990-92) and his staff routinely covered gang-related activities. Through these experiences, in which firsthand information concerning gangs was crucial to the safety of the journalists covering the news, Carroll realized that the available information about gangs was either unavailable or inaccurate.

Following are some frequently asked questions about the “Gangster Disciples”, a Chicago-based organization with reported ties in the Iowa City area.

As you read, note that drug dealing has become the modern equivalent of a “paper route” for kids wanting to make a buck in the inner city. Moreover, note the positive social structure and positive community contributions provided by some drug gangs. By contributing to their community, sophisticated drug dealers are earning the respect and political support of their neighbors. Note also that some gangs discourage drug use among their members, encourage and support “straight” members of their inner city community with services like day care — but at the same time seeks to sell their products outside their community, and apparently targets the middle- and upper- class whites. In this regard, the “Gangster Disciples” are promoting their drugs into “alien” communities just like the CIA allegedly promoted “crack” into the inner city

neighborhoods of California to fund the anticommunist rebels in Nicaragua in the 1980’s.

Mr. Carroll’s description of “gang” activity contrasts sharply with the violent, ignorant, vice-ridden image of “drug dealers” fostered by TV and the legal system. If Mr. Carroll’s observations are correct, dismissing the “Gangster Disciples” as nothing more than a “gang” of illiterate thugs is a dangerous underestimate — the “GD’s” are a sophisticated economic and political entity that wields considerable power in ways more complex than merely waving guns, commands the respect of their community, and apparently engages in a very subtle variety of political warfare against the people of “mainstream America”.

In the 1996 election, Republicans made much of the recent rise in drug use by our nation’s youth. Mr. Carroll’s analysis of gangs and drug-dealing offers an intriguing explanation for that rise.

**Q:** Just who are the “Gangster Disciples?”

**A:** The Gangster Disciples were founded in the 1960s in Chicago under the name “Black Disciples” by the late David Barksdale, known historically in gang circles as “King David.” The group’s name was later changed to “Black Gangster Disciples,” a name still used by U.S. Attorney General Janet Reno<sup>1</sup> to describe the organization. More recently, the name was shortened to “Gangster Disciples,” or simply as “GD.”

**Q:** Who is the current recognized leader of GD?

**A:** Larry Hoover, who runs the syndicate from an Illinois prison, where he is serving a 150- to 200-year state prison sentence for a gang-related murder. Hoover is also being tried for narcotics conspiracy charges, but his Oct. 7, 1996, trial date was postponed “at least a year”.<sup>2</sup> Hoover has been incarcerated on various charges since the 1970s, but has retained iron-fisted control of GD and its multimillion-dollar enterprises. It had been hoped by federal authorities that an additional conviction on narcotics conspiracy charges would allow Hoover to be transferred to a higher-security federal prison, where his leadership role in GD might conceivably be reduced. However, assistant U.S. Attorney Ron Safer stated that Hoover’s transfer to a federal jail would lead to gang anarchy and even more violence in the streets.<sup>3</sup>

**Q:** Does imprisonment act as a deterrent to gang activity?

**A:** No. Imprisonment of gang members leads to growth of the problem. Actually, prisons are the nerve centers of major international gangs and syndicates.<sup>4</sup> Many gang leaders, like Hoover, actually prefer a prison as a headquarters because it ironically provides a safe haven

in which to organize the far-flung arms of the organization. Assassination is common among gang hierarchies, so the safety of a prison, with taxpayer-supported shelter, food, armed guards and other amenities, is by far a preferred option. Most gangs are run from prisons.

**Q:** How extensive is GD membership?

**A:** The Drug Enforcement Administration (DEA) places GD’s membership at roughly 30,000 and rapidly growing. GD chapters have been detected in 35 states.<sup>2</sup>

**Q:** What are the business activities of GD, and how extensive are they?

**A:** According to the DEA, GD drug-marketing enterprises generate over \$100 million annually,<sup>2</sup> but indications are the operations are much larger in financial scope. For example, 80 gang members in the Englewood section of south Chicago alone moved an

average of 10 kilos (22 pounds) of cocaine a week with an estimated street value of \$1 million in 1995-96.<sup>5</sup> GD continuously looks for smaller communities to expand markets for its illegal products. Along with Iowa City, other medium-sized Midwest cities reporting GD activity include Bloomington, Ill., Springfield, Mo., Muncie, Ind., Appleton, Wis., Kentfield, Calif., and the Virginia suburbs of Washington, D.C., including Falls Church, Virginia.<sup>6</sup>

**Q:** What is the basic leadership and financial structure of GD?

**A:** Hoover admits studying Al Capone and his Prohibition-era crime syndicate, and modeling his organization after the infamous gangster’s network.<sup>3</sup> “The Gangster Disciples are one if not the largest and most successful gangs in the history of the United States,” says James Morgan, special DEA agent in Chicago. GD members are “incredibly well-disciplined and well-trained.”<sup>3</sup> Entry-

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level pay for "shorties" (teenaged lookouts) averages \$25 an hour. Low-level dealers have well-defined territories and, in a few hours' work per day, will move \$500 worth of contraband. Of that \$500, \$350 goes to GD's network, \$150 to the dealer. The 70-30 split is standard. Higher-level dealers control entire buildings, where income reaches an average of \$5,000 per day.<sup>3</sup> Much of this income, aside from welfare, is the only reliable source of income for most neighborhood residents. GD members commonly share profits with others in their neighborhoods, and provide armed security as needed. Neighborhood children are provided a steady stream of snacks, toys and other treats, mostly purchased with drug proceeds. Paid day care is also available for women who choose not to purchase drugs, but instead seek straight employment. Mid-level dealers are often looked upon favorably in their respective com-

munity circles. Gang networks regard themselves as "families."

**Q:** What are some of GD's member rules, policies and command structures?

**A:** GD members are prohibited from using drugs, but encouraged to market the substances to anyone desiring them. Use tends to create business conflicts of interest. Gambling on credit, poor sportsmanship, stealing and showing disrespect for other GD members is expressly prohibited. Personal health and hygiene are strongly encouraged, even required. Dress codes are prevalent, mainly for identification purposes. Rule-breakers are routinely beaten, shot in the leg or abdomen or otherwise kept in line by the severe top-down management system. GD members possess intricate command-and-control structures, similar to a military organization.<sup>3</sup> Cellular phones, beepers and police radio scanners are key components to GD's organizational structure. GD intelligence networks, using mostly preteens, routinely monitor all visible police activity. Police informants are ruthlessly rooted out and severely punished or even killed. Such details as when police personnel shift changes take place are recorded by "shorties." In Chicago, the boyfriend of a female Chicago police officer was a major boon for GD because the officer would leak vital information to the boyfriend, who would in turn disseminate the information to rank-and-file gang members in advance of major drug busts and other police investigative activities. Colors signify various gang affiliations. Blue and black are GD's colors, for example. Red and blue have long been the standard colors for the Bloods and Crips, gangs based in Los Angeles who now have 150 subsets and 60,000 members around the nation.<sup>4</sup>

**Q:** Why are these gangs so violent?

**A:** Gangs such as GD seldom engage in "random" violence. In almost every instance, the person who is attacked has provoked gang members into doing so by breaking rules, owing money, disrespecting or "dissing" other gang members, or causing unnecessary turmoil within gang ranks. GD members who begin using drugs are often purged from the organization and are sometimes killed if they threaten to expose any illegal activity as a result of their addictions. Most violence occurs when rival gangs battle over drug territory. Territories are clearly marked with spray-painted gang insignias. A rival gang will compete with an established gang if they also paint their insignia on a particular building or sign, or if they paint the rival gang's insignia upside-down. GD and other gangs also have at their disposal any weapon they choose, whether or not it is legal for the general population to own it. The high-profile assault weapons ban and Brady Bill passed by Congress only serve to keep law-abiding citizens from owning these weapons. GD and other gangs have the resources to get any firearms they need. In September of 1995, alleged GD members shot up a Bloomington, Ill., housing project using a fully automatic TEC-80 assault weapon.<sup>6</sup>

**Q:** Why are GD and the other major gangs so wealthy and powerful?

**A:** Current drug laws benefit the criminals. Drugs are now selling at 200 to 400 times what they would sell for if they were decriminalized, making the activity enormously profitable as long as it remains prohibited. Gangs greatly appreciate these suppressive laws, because they pit normal citizens against police, and

gangs reap the profits from this artificially enforced "siege mentality." Mandatory sentencing of drug offenders also benefits the gangs, enabling gang leaders to be protected behind prison walls while running their enterprises with impunity. Youth antidrug programs like D.A.R.E. also benefit the gangs by alienating young people who are already rebellious by nature and/or because of their age, inexperience and lack of parental involvement in the home. Antidrug programs encourage young people to rat or snitch on their friends, and often to bypass their parents/ guardians and go straight to police. Police departments run most of these programs, including D.A.R.E., with very little prior input from parents. Parents are simply asked to enforce D.A.R.E. directives and funnel all information about the activity of young people straight to the respective police departments. Fear is used as a blunt instrument to intimidate young people, an unsustainable tactic. Naturally, under these conditions, drug use has actually risen in almost every category. Recent polls suggest that parents are doing little to prevent this, mainly because they themselves used drugs at an early age and suffered few negative effects aside from the enormous cost of

the prohibited substances, and harassment from police whose crusade is to enforce drug laws. Under the Clinton administration, this same atmosphere of intimidation has now spread to the legitimate tobacco industry, despite its clear violations of personal liberty.

**Q:** What can we do to stem this disturbing trend?

**A:** Push for radical changes in current drug laws to keep drug lords from using the prison system as a sanctuary. Use all captured drug proceeds to benefit victims of violent drug-related crime instead of lining the pockets of local, state and federal government bureaucracies. Talk to children pragmatically about the pitfalls of drug use without using the sledgehammer of fear over their heads. Promote family-centered activities and recreation. Open a dialogue with gang members themselves, identify them publicly and give them a strong signal that they are not welcome in your community. Media should aggressively report and expose gang activity and insist on police candor in doing so. Keeping vital information on the circumstances of a gang-related incident hidden from the press only endangers the general public. Police should immediately curtail

enforcement of drug laws at the possession level and instead concentrate their efforts on penetrating sales networks and arresting the real criminals at the top of these sales networks. Instead of harassing bicyclists who ride on the sidewalk or motorists who fail to fasten their seat belts, police should monitor and apprehend violent criminals. Police priorities need to change dramatically if any headway is to be made against drug sales and use by young people.

If Mr. Carroll's research is correct, why hasn't his information been publicized by government, police, or mainstream media. The answer can only be self-interest. Somebody besides the drug dealers, somebody we trust or even elect, is also profiting from the sale of drugs.

For example, as Mr. Carroll implied, law enforcement is not only pleased but probably addicted to the financial "benefits" they receive from applying seizure laws against drug consumers. (But when do they seize the property of the really big distributors?) Given that so much money is being seized to support our local police, where's the incentive for the police to stop the flow of drugs? No drugs means no sei-

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zures, no raises and no razzle-dazzle hi-tech police equipment.

This is not to say cops are bad, but only that they are human and therefore unwilling to jeopardize a source of income. Still, Mr. Carroll's suggestion to distribute the financial gains from drug seizures to victims rather than the government strikes me as brilliant. Once government is separated from drug-profits, we can expect government to launch a real effort to end the drug problem -- either through increased force or increased smarts (legalization).

- Imagine the political impact on blacks who learn the CIA intentionally promoted drugs into the inner cities in the 1980's. Based on that exposure, the Gangster Disciples could easily justify selling drugs to middle- and upper-class whites not merely for money or out of criminal indifference, but on the political basis of retribution, even as their own brand of "counter-ter-

rorism". I.e., on behalf of the white middle- and upper-class, the CIA intentionally poisoned blacks with crack in the 1980's. Today, on behalf of the black community, the Gangster Disciples are intentionally poisoning the white middle- and upper- class.

That kind of political argument might inspire elements of the black community to see the Gangster Disciples as black "patriots" and drug dealing as just another weapon in a war of revolution and liberation. Given this political motivation, drug dealing and Gangster Disciples stand to generate enormous political power. Moreover, if the CIA sold crack to blacks to support Nicaraguan forces against Communism, it's probable that the Gangster Disciples feel a reactionary empathy for Communism.

- The only stone missing from Mr. Carroll's analysis of the Gangster Disciples' cultural foundation might be a religion that's contrary to the mainstream faiths of America (Christianity) and willing to overlook the sale of drugs - at least to members of other faiths. Although the black community's Christian faith has roots several centuries deep, I wonder if the Muslim faith (with its political undertones of holy war against "infidels") is being embraced by the GDs. Imagine the potential power of a "movement" that tied drug dealing (money), revolutionary politics, Communism and Islam into one political smorgasbord. Endowed with almost unlimited financial resources and passionate political and religious motivations, that movement could present a serious challenge to the existing culture and de facto government.

- The key to the drug organizations' political power is their enormous cash flow and profits and their willingness to use that cash to benefit their friends and bribe their enemies. As always, the real addiction is to money and

as long as drugs remain illegal (and therefore outside the free market and exorbitantly profitable), those people who deal drugs - be they "Gangster Disciples" or C.I.A. - will be empowered in ways that are contrary to the social, medical, and political interests of the free market and free Americans.

- No government "war" or prohibition has ever stopped an organization or activity as profitable as drug dealing. Anyone who believes the "git tuff" mentality can work had better explain how the Gangster Disciples' leader maintains power over a multi-million dollar drug distribution network while being imprisoned for two decades. If prison life and regimentation is not "tuff enuff" to stop drug-dealing, what is? If America finds "gangs" and drug dealing truly offensive, the only solution is to legalize drugs, subject their sale to the rigors of the free market (fair profits and increased legal liability), and watch drug-related crime and violence wane to a level similar to that currently associated with alcohol or tobacco.

<sup>1</sup> Federal News Service, press conference, Aug. 29, 1996.

<sup>2</sup> Matt O'Connor, "Trial of Hoover Delayed At Least a Year," *Chicago Tribune*, Sept. 27, 1996.

<sup>3</sup> Ann Scott Tyson, "Bringing Down a Gang," *Christian Science Monitor*, July 15, 1996.

<sup>4</sup> Marcia Slacum Greene, "Outside Allegiances Exert Lethal Force," *Washington Post*, Sept 9, 1996.

<sup>5</sup> Ann Scott Tyson, "Chicago Neighborhood Generates \$1 Million a Week," *Christian Science Monitor*, July 15 1996.

<sup>6</sup> Tom McNichol, "How One Small City Combats Gangs," *USA Weekend*, Sept. 29, 1996. ■

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# Slavery

*by Charles Davidson*

Careful identification of all the victims in any crime or tragedy is important because – until all are correctly identified – you can't be sure who is responsible. Without careful study, you might inadvertently blame one of the victims or worse, one of the victims might be "framed" as the apparent perpetrator.

Ironically, Blacks aren't the only victims of the legacy of American "slavery" – so are Southern Whites. And just as Blacks often can't be heard by America, Southern Whites are also condemned to a kind of political excommunication that prevents this nation from hearing their side of the story of slavery and the Civil War.

Insofar as Americans can't hear what the Blacks have to say and can't hear what Southern Whites have to say, it's not unreasonable to ask "Who is imposing this communication blockade?" Perhaps the entity that embargoes truth and promotes pleasing lies is exactly the entity responsible for the tragedy in the first place.

Does slavery still exist in the USA? According to some researchers, the average southern slave paid about 20% of his crops to his "massa". Today, the aver-

age "free" American pays about 55% of their income to government. Arguably, slavery is alive, well, and more widespread today than it ever was prior to the Civil War.

More importantly, slavery not only describes the condition where one man is controlled by another, it also describes the condition where a people are controlled by a lie. The old cliché about "those who don't learn from history are bound to repeat it" is usually presented as an indictment of a people's laziness and reluctance to read their history books to learn the truth. But what if the history books are intentionally falsified? How can another tragedy be avoided if it's virtually impossible to learn from history because our "history" is itself fraudulent?

According to Roger K. Broxton President of the Confederate Heritage Fund (P.O. Box 771, Andalusia, AL 36420):

"Alabama State Senator Charles Davidson withdrew from the [1996] political race for the U.S. House of Representatives because of intense pressure from the Republican Party and threats on his family, in response to his famous Senate speech that was proposed but never deliv-

ered. The following is a copy of his entire speech ..."

State Senator Davidson's undelivered speech deals with the question of whether the Alabama state government should continue to display the Confederate battle flag. However, his argument touches topics far more fascinating than flags and presents an interpretation of American history whose "political incorrectness" is extraordinary:

My fellow members of the Alabama senate, our South, our Confederate history and by extension, our Confederate battle flag have suffered for many years from the relentless hatchet job of false propaganda heaped upon them by the news media, the education system and, of course, Hollywood and television. It appears that they wish to drive a wedge between Southern blacks and whites, much as the carpetbaggers did after the war for Southern independence and much as the northern news media drove a wedge between the north and South before the war.

It is important to remember

that, movies such as “Roots” and “North and South” are *make believe*, fiction; in other words, they are not true, just like *Uncle Tom’s Cabin* -- written before the war -- was not true. One must wonder if the only reason such false propaganda is produced and promoted by the movie and television industry, is to make blacks hate whites, especially Southern whites.

For example, the Confederate battle flag has no more to do with the Ku Klux Klan than the Christian cross which the Klan carries and burns or the flag of the United States that the Klan says the pledge of allegiance to; yet the news media and Hollywood constantly try to connect our Confederate flag to the Klan in their propaganda. However, the news media never ask preachers if they are Klan members, because they wear a cross around their neck or link the American legion to the Klan because they carry the U.S. flag. It is time to put

an end to this anti-Confederate bigotry.

It is past time that the truth were told. Hitler’s tactic of “tell a big enough lie often enough and people will believe it” has been utilized to the fullest extent, to smear the Confederate States of America and her symbols such as the battle flag.

Fortunately, most people have not been deceived by such hate mongering tactics, as is evident from a recent Louis Harris poll showing that 92% of the Southern people, of all races are not offended by our Confederate battle flag and that nationwide, 68% of blacks are not offended. Unfortunately, a few too many have believed the lies about our Confederate battle flag, which has resulted in unjustified and horrible intolerance, bigotry, hatred, violence and even murder.

Today, I come before you to set the record straight: to refute the myths and false propaganda and to remind you of the truth concerning our Confederate ancestors and history. It is my hope and fervent prayer that truth will replace fiction; that tolerance will replace intolerance; that peace will replace violence; that love will replace hate; and that unity will replace division. Our Lord Jesus says, “know the truth and the truth will set you free”; in this case, free from hate and intolerance of our Confederate symbols. So, I beg of you to listen with an open mind and a Christian heart.

The first lie concerns slavery and its link to racism. The lie is that *only* blacks were slaves and thus have some special right to a “slavery pity party” because their ancestors were slaves and therefore, anyone who owned slaves was a racist. This is *not* true.

### White slavery

The word “slave” is Greek for the word “Slav” and rightly applies only to *white* European slaves or

Slavs from the countries of Yugoslavia, Czechoslovakia, Slavonia, Russia, Poland, Hungary and others. The Slavonic tribes are the root of all European white people. For a thousand years, so many millions of these white European Slavs were captured and sold as servants, that the word “Slavs” or “slaves” became universally used for the word “servant” and was only later applied to black servants.

Every white person in America has ancestors who were slaves at some time or the other, including the Scots, British, French, Spanish, and Germans. In the early colonies of America whites were regularly sold as permanent slaves. If it were justifiable, whites would be much more justified in having “a chip on their shoulder” or “a pity party” over slavery than blacks, because more of their white ancestors were slaves and for a longer period of time than blacks. Almost all blacks in the U.S. were under slavery for less than 100 years and only 5% of all black slaves shipped by black masters out of Africa ever came to the United States, because most black slaves were shipped to South America or the West Indies.

The white European “Slavs” or “slaves” were sold to Romans, Arabs, Germans, and yes, even to *black* African masters in Northern Africa nations such as Egypt, Libya and Ethiopia. Are these black masters in Africa *racist* because they owned *white* European slaves? The Bible tells us that the blacks of Egypt owned the oriental Jews as slaves for 400 years. Does that make Africans in Egypt racists because they owned the Jews as slaves for 400 years? The Bible also tells us that Abraham, who is father of the Jews, the Christians, and the Muslims, owned *hundreds* of slaves; God also required Abraham to circumcise those slaves that he bought with

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money, as well as, those slaves that were home born. Moreover, Abraham's slaves fought for Abraham in a war with King Chedorlaomer to rescue Lot. In addition, Isaac, Jacob, Daniel, Job, Joseph, and David *all* owned slaves and even the apostle Paul returned a white runaway slave to his Christian master in the book of *Philemon*.

My question is this: Is the anti-Southern news media, education system, and Hollywood calling these great men of God like Abraham! — a racist or evil or wicked because he owned hundreds of slaves? If not, then neither can they call Southerners like George Washington, Thomas Jefferson, and Jefferson Davis racists because they owned slaves. What hypocrisy and bigotry to criticize only white Southerners or the Confederate States for owning slaves. Almost every nation in the world owned slaves, especially the black masters in Nigeria, where most American blacks have their roots. Accordingly, if flags of nations that owned slaves are to be labeled "racists", then almost all the flags in the world are "racists", *especially* the African flag of Nigeria which dealt so overwhelmingly in slave trading.

#### **How do I know . . . ?**

Our ancestors in the old South were fundamental Christians, which means, they believed that the Bible, Old and New Tes-

taments, were the opinions of Almighty God, who does not change, and *not* the opinions of man. On the other hand, the abolitionists from up north were humanists. They believed that God changed with the times and that the Bible was merely the opinions of men and not necessarily the opinions of God. I shall read to you a little of what God says in the Bible concerning slavery and thus what our ancestors in the old South believed.

In the Old Testament, *Leviticus* 25: 44-46, God says: "As for your male and female slaves whom you may have — you may acquire male and female slaves from the pagan nations that are around you. Then, too, it is out of the sons of the sojourners who live as aliens among you that you may gain acquisition, and out of their families who are with you, whom they will have begotten in your land, they also may become your possession. You may even bequeath them to your sons after you, to receive as a possession; you can use them as *permanent slaves*."

In the New Testament, *1 Timothy* 6:1-5, God says: "let all who are under the yoke as slaves regard their own masters as worthy of all honor so that the name of God and our doctrine may not be spoken against. And let those who have *believers* as their masters not be disrespectful to them because they are brethren, but let them serve them all the more,

because those who partake of the benefit are believers and beloved. Teach and preach these principles." People who are bitter and hateful about slavery are obviously bitter and hateful against God and his word, because they reject what God says and embrace what mere humans say concerning slavery. This humanistic thinking is what the abolitionists embraced, while Southerners and most Northerners embraced what God said in the Bible. The humanists' argument is not with me or the South or the United States but rather their argument is with God. They have made themselves out to be greater than God, for they add to God's word when they call something evil that God obviously allows. This is what the humanistic abolitionists did, teaching the doctrines of men as if they were the doctrines of God.

#### **Mistreatment**

The second lie is that slaves were mistreated in the old South. Again, this is *not* true.

In *Colossians* 4:1, Jesus says: "Masters, grant to your slaves justice and fairness, knowing that you too have a master in heaven." To say that slaves were mistreated in the old South, is to say that the most Christian group of people in the entire world, the Bible belt, mistreated their servants and violated the commandments of Jesus their Lord. Anyone who says this is an accuser of the brethren of Jesus Christ; not a very good position to take. We in the South are offended by such false accusations.

Just the opposite is true. In the old South there were numerous laws that protected servants from abuse just like there are laws to protect wives and children from abuse, today. But just because a few men abuse their wives or children does not make marriage or having children a cruel hateful endeavor.



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The same is true for slavery. Of course, there were masters who violated the law and mistreated their servants, like *Union* General William T. Sherman, who owned a number of slaves before the war and who was constantly in court facing charges for abusing his slaves. That is what the laws were for, to stop *Yankees* like Sherman from mistreating their slaves. The incidence of abuse, rape, broken homes and murder are 100 times greater, today, in the housing projects than they ever were on the slave plantations in the old South. The truth is, that nowhere on the face of the earth, in all of time, were servants better treated or better loved than they were in the old South by white, black, Hispanic and Indian slave owners. That's right, even blacks and Indians owned slaves in the old South. While 7% of Southern whites owned slaves, 2% of free blacks in the South also owned slaves.

For example, in 1860, the U.S.

census reported that about 10,000 free blacks owned some 60,000 black slaves. It was a black slave master, named Anthony Johnson, who sued and won in a Virginia court in 1653 that changed *temporary* servitude to *lifetime* servitude. Thus a *black* slave owner established permanent slavery in Virginia. Moreover, when the Cherokee Indians were removed by the U.S. government along the "trail of tears" out west, almost 30% of the people removed were black slaves of the Cherokees.

### Civilizing influence

Just as white European slaves were primitive, barbaric pagans who practiced human sacrifice, incest, witchcraft, and idolatry; yet were converted to Christianity, learned trades and skills and became a civilized people under black, oriental and white masters; so also, did black African, barbaric pagans become civilized, Christians with skills and trades under slavery in the old South.

Slavery was a family institution in the old South, just like it says in the Bible in *Galations* 4:1 "As long as the son is a child he does not differ at all from a slave although he is the heir of everything." A typical family plantation had one family of whites living next door to one family of blacks. They had the same last name, worked in the fields and on the farm, side by side, played together, prayed together, raised each others children, took care of each other in sickness and all in all, loved one another, just like family.

It was on these small family farms that Southern blacks were taught about and converted to Christianity, by the millions! I am sure that those converted black Southerners are most grateful today -- just like our white European ancestors are grateful for their conversion to Christianity while slaves of *black* masters in northern Africa, such as, the black Coptic Christians in Egypt, one of

the oldest Christian groups in the world. Remember, it was not from Yankees that Southern blacks learned about Jesus Christ. For the most part, it was from Southern slave owners.

It was here on the family plantation that blacks learned trades and skills from farming to saw-milling to ranching to carpentry to driving steamboats and railroad trains. Even the Yankee abolitionist government's Department Of Education admitted after its total failure of the "reconstruction experiment" in 1892, that the best technical education that the world has ever seen, was the education that was given by their masters to the slaves *before* their emancipation.

Remember, black slaves from Nigeria, the most populous region in Africa, were not civilized and not Christian, practicing voodoo, cannibalism, and witchcraft, just like the white European slaves did. These blacks were captured in tribal wars by other blacks in Nigeria. White people did *not* run "through the jungles of Africa kidnapping blacks and making them slaves. Black Africans captured and sold other blacks as slaves; they were *already* slaves of *black* Africans before they ever set foot on a New England Yankee slave ship. Such ships stayed anchored off shore for fear of jungle diseases and the slaves were rowed out in long boats by Africans and put on board. Many of these slaves were already riddled with disease and half starved.

All slave ships from the United States sailed from the northern States of Massachusetts, Rhode Island, New York, new jersey and Delaware under the United States flag. Not one Southern ship sailed to Africa to bring back slaves and no ship ever sailed under the Confederate flag to bring back slaves. This slave trading was the big business of the rich new England Yankees. They traded rum

made in northern factories to black African slave owners for their slaves and then traded most of the slaves to South America or the West Indies for molasses (only 5% of the slaves reached the U.S.), and then manufactured the molasses into rum and made another trip. With rare exception, the life of a slave in the United States was ten times better than his life had been in Africa.

### The War to Free the Slaves?

The third lie is that the War for Southern Independence (or as the U.S. Congress *officially* declared it to be: The War Between The States, it was *not* a civil war), was fought over slavery, with the north fighting to free Southern slaves and the South fighting to keep her slaves. This is, of course, *not* true.

First off, all thirteen original States that seceded from England in 1776 and formed the United States, from Maine (a part of Massachusetts at the time) to Georgia, owned slaves. Was the 1st American revolution fought over slavery?

No? Then neither was the 2nd American revolution fought over slavery, when the Southern States withdrew from the United States and formed the Confederate States of America. Is the 4th of July a racist holiday because all thirteen original colonies had slaves? No? Then neither are our Confederate holidays.

Is the United States flag a racist flag because all thirteen original States had slaves? No, then neither is the Confederate battle flag, or do these intolerant individuals and the news advocate taking down the U.S. flag, also? If yes, they will need to take down almost all of the national flags in the world, starting with the flag of Nigeria, who was more involved in selling slaves than any nation. What blatant bigotry to call the Confederate flag racist!

During the War for Southern

Independence, the north *also* had slaves, but refused to free *their* slaves until *after* the war. Delaware, Maryland, Washington, D.C., Kentucky, Missouri and west Virginia all owned slaves, never seceded, and were under the control of the United States for the entire war. However, they were not required to free their slaves by the U.S. government. The U.S. Congress in 1862 even *refused* to pass a Constitutional amendment abolishing slavery, when the only senators and representatives in Congress were from the *North!* Remember, all Southerners had left Congress to form their own nation. How could the North be fighting the war to free southern slaves when they would not free *their own* (like U.S. Grant's personal slave or Abraham Lincoln's father-in-law's slaves)?

What hypocrisy! Even worse, Lincoln and the U.S. Congress offered to pass a Constitutional amendment for the South, guaranteeing permanent slavery forever in the slave States, if only the Southern States would return to the Union. The South refused the offer.

Northern slaves were even *exempt* from Lincoln's Emancipation Proclamation! Furthermore, captured Southern slaves on the Mississippi river were forced to work on the plantations as slaves for the United States Army, growing cotton for northern factories, rather than be set free. Also, during the war just as many Union

soldiers owned slaves as Confederate soldiers. Is the U.S. flag a symbol of slavery because the north owned slaves during the war? No, then neither is the Confederate battle flag. How could the war be fought over slavery when both sides had slaves?

### **“That this big government shall not perish . . .”**

The War for Southern Independence was fought over local self-government for the South versus centralist government by the North; the centralist government won and local self-government lost. The Confederate battle flag is the symbol of the right of the local people and the States to govern themselves and is flown in memory and honor of our Confederate ancestors and veterans who gave their lives for less government, less taxes and Southern independence.

In his inaugural address of march 4, 1861, U.S. President Abraham Lincoln Stated that he had “no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so.” Furthermore, Union General Ulysses S. Grant said that if he “thought this war was to abolish slavery, I would resign my commission, and offer my sword to the other side.” A war over slavery? *Not hardly!* The Confederate States of America even of-

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ferred to free all Southern slaves in return for independence. *Lincoln* refused the offer.

The term “free” State meant “free from blacks”. Northerners did not want to live with blacks, slave or free, and many northern States and territories actually passed laws prohibiting free blacks from entering into them. Abraham Lincoln, himself, stated the opinion of the northern people at a meeting with a group of black leaders during the war, when Lincoln said, “There is an unwillingness on the part of our people (northern whites) to live with you free colored people. Whether this is right or wrong, I am not prepared to discuss, but a *fact* with which we must deal. Therefore, I think it best for us to separate.”

Whereupon, Abraham Lincoln and the United States Congress purchased land, passed laws and started shipping free northern blacks out of the U.S. down to poverty stricken Haiti. Lincoln put together several such schemes to remove free blacks from the U.S., to send some back to Africa and some to Central and South America. At the end of the war, a few weeks before Lincoln was killed, Union General Benjamin Butler asked Abraham Lincoln what was he going to do with all the recently freed southern blacks? United States President Abraham Lincoln replied “I think we should deport them all.”

### **Southern hospitality**

Meanwhile, down South, Confederate States President Jefferson Davis and his wife Varina were *adopting* an eight year old, free *black* orphaned boy, named Jim Limber. After his mother died, little Jim was placed with a free black family as foster parents. But this black family badly mistreated this eight year old youngster to such a degree that the news reached the ears of Mrs. Davis and the president. Whereupon,

President Jefferson Davis, in the middle of the war, took the time and effort to intercede and rescue Jim Limber from this child abuse. Little Jim’s wounds were doctored and he was welcomed into the Confederate White House as a member of the Jefferson Davis family.

President Davis, himself, went to court in Richmond and had free papers registered on Jim Limber, so he would always be free. Even when our president was on his way to prison for trying to obtain independence and self-government for the Southern people, he made arrangements and provided for Jim Limber’s future education and care.

In the old South it was not uncommon for blacks to take in orphaned whites or for whites to take in orphaned blacks. A relationship between blacks and whites that Northerners even today do not understand or appreciate.

### **Industry vs. agriculture**

The war for Southern independence was fought over the right of the local people to govern themselves versus a centralist government by the few, the rich and the powerful. The South wanted less government, less taxes, independence, and decisions made at the local level where the people have control. The north wanted more taxes, more government, and centralism, with a compulsory Union at bayonet point and decisions made in Washington rather than by the local people. The South stood on the principles of the Southerner, Thomas Jefferson, who, in the Declaration of Independence, said “governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government.” In other

words, the people should control government, not the government controlling the people.

The North stood on the principles of the Northerner, Alexander Hamilton who believed that government should be ruled by an intellectual aristocracy, maintained by the enlightened self-interest of the wealthy rather than the common people governing themselves. Northern abolitionists, like William Lloyd Garrison, burned the U.S. Constitution in the streets, calling the Constitution “a pact with the devil”. U.S. president Abraham Lincoln brutally violated almost every article and amendment to the U.S. Constitution, throwing over 35,000 northern citizens in prison as political prisoners, including State legislators, without cause or trial, as well as, violently closing down opposition newspapers and suppressing freedom of speech.

President Jefferson Davis and the Confederate States Congress never did any such thing. The Southern people took the U.S. Constitution with them when they voluntarily withdrew from the voluntary Union and brought forth upon this continent, a new nation, where the right of the local people to govern themselves was protected.

### **Root of all evil – the love of taxes**

Just like the War for American Independence of 1776, the War for Southern Independence of 1861 was fought over “taxation without representation”. The North was constantly trying to raise taxes on Southerners through high taxes on imported goods, in order to protect the inefficient big businesses up north who could not compete with manufactured goods from England and France with whom the South traded cotton in exchange for their manufactured products.

The South did not have factories and so had to import most

finished products. The industrial revolution allowed England and France to produce and ship across the Atlantic products that were cheaper than the products northern manufacturers (who refused to modernize) could produce with their white child labor; ten year old children working 16 hours a day in polluted cities for pennies and sleeping in the streets. Slaves in the South were treated much better than child labor in the north.

When the taxes on imports were raised then the price paid by the Southern people for goods from England and France went up and of course the northern manufacturers immediately raised their prices for products the South bought from the North. But the South did not receive any more money for its cotton to compensate for the increased prices. Therefore, the Southern people, rich and poor, black and white, *all* paid for the taxes or higher priced northern goods, while the north received the profit and tax receipts, to spend on their canals, railroads and other internal improvements. The South paid much more in taxes than the north and received much less back in tax spending, a very burdensome, unfair situation for Southerners. This was in direct violation of the Constitution, which provided for taxes to be levied equally among the States.

However, the South was outvoted in the U.S. Congress by the populous North and became little more than sheep to be fleeced by the North's oppressive taxation without representation. The South's only recourse was to either admit more States to the Union that would vote against the oppressive taxes, or keep a low-tax President in the White House (whose veto power would protect against higher taxes), or withdraw from the Union and form another nation with lower taxes.

For example, when the "tariff

of abominations" was passed in 1828 and another such high tariff in 1832, the State of South Carolina threatened to withdraw from the Union, but these oppressive taxes were repealed or diluted to a 20% tax on imports before her secession took place. Please note that South Carolina's threatened withdrawal from the Union was not over slavery, but over taxes.

For a period of years after that, the South was able to keep the import tax at a tolerable level of 20%, by electing Presidents who would veto higher tariffs.

Unfortunately, in 1860, in a four way presidential race, Abraham Lincoln was elected by only 38% of the vote, all from up north. Lincoln did not receive even one vote in the deep South. This minority elected president had promised the rich big businesses in the north that, if elected, Lincoln would drastically raise the import tax. That is why the Southern states quickly be-

gan to escape from the tax net that Lincoln was spreading.

Within Lincoln's first month in office, the U.S. Congress had passed the Morrill Tariff, which was the highest import tax in U.S. history, which more than doubled the import tax rate, from 20% to 47%, enough to bankrupt many Southerners. This oppressive tax is what pushed southern States to legally withdraw from the voluntary Union, and not slavery.

Since the Southerners escaped the tax by withdrawing from the Union, the only way the north could collect this oppressive tax was to invade the Confederate States and force them at gun point back into the Union where they could be taxed. It was to collect this oppressive import tax to satisfy his northern industrialist supporters that Abraham Lincoln invaded our South and not to free any slaves. Lincoln's war cost the lives of 600,000 Americans.

When Lincoln invaded

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Charleston and then Virginia, all Southerners: white, black, Hispanic, Indians, Orientals, Protestants, Catholics, Jews, rich and poor, male and female almost to a person rose up and volunteered their services in defense of the Confederate States of America, because *all* were going to suffer from this horrible federal tax. Nowhere in the history of movements of independence and self government, have a people been so united in purpose and dedicated to the cause of independence. No, not even in 1776 did the thirteen Colonies receive such support of and sacrifice by the people and that war was fought over a 3% tax on tea!

My fellow Senators, *the South was right!* The Confederate battle flag represents all Southerners and even northern Confederates from states like Ohio, Illinois, Indiana, and others who supported the South and who even tried to secede from the Union and form their own nation but whose ef-

forts for freedom were crushed by Lincoln's troops.

Confederate Indians, Hispanics, blacks, and whites *all* received Confederate pensions after the war and attended Confederate veterans reunions together, year after year; just as they had suffered and fought together during the war, year after year. The Confederate battle flag represents all Confederates, regardless of race or religion and is the symbol of less government, less taxes, and the right of a people to govern themselves. It is flown in memory and honor of our Confederate ancestors and veterans who willingly shed their blood for Southern independence. Their Confederate battle flag deserves the highest of honors, by being flown on top of our Alabama State capitol.

The decision we make today is similar to a decision that was being made in Mississippi on February 11, 1890 regarding a monument to the Confederate dead. John F. Harris, a black Republican

delegate from Washington County rose to speak for the bill, saying,

"When the news came that the South had been invaded, our men went forth to fight for their country and for what they believed, and they made no requests for monuments . . . but they died, and their virtues should be remembered. Mr. Speaker, I went with them. I too, wore *the Gray*, the same color my master wore. We stayed four long years, and if that war had gone on till now, I would have been there yet . . . I want to honor those brave men who died for their convictions. And sir, I shall vote *for* it. I want it known to all the world that my vote is given *in favor* of the bill to erect a monument in honor of the Confederate dead."

When the applause died down, the measure passed overwhelmingly, and every *black* member voted "aye". May God grant that the same response occur here today. Thank you. ■

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Article I Section 2 Government  
Isaiah 9:6

# The Practice of Law -- Authorized & Otherwise

*by Lynn Hardy*

The Texas State Bar has admitted in one of their own surveys that 2/3rds of the people of Texas can't afford to hire an attorney. That means 2/3rds of all Texans are effectively denied access to even the pretense of justice in "the best legal system in the world".

What are these "poor" (middle class and below) people to do? Live without even a chance of finding a civil resolution to their problems? Accept their problems as insoluble (live on their knees)? Or resort to violence to solve the problems lawyers and courts can't "afford" to hear?

Note that the political majority of Texas (and probably the USA) are being denied virtually any legal services in the "most litigious society on Earth". Note also that this lack of services represents an incredible unserved market for legal services; i.e., there's a lot of money to be made serving the majority of Americans who don't happen to live in the upper-third of the economic strata.

The potentially huge political and economic power of this unserved market may be the force that finally topples the Bar monopolies. Despite any contrary

rhetoric, virtually all monopolies exist for the sole purpose of charging exorbitant fees for services that would be provided at affordable rates by the free market. Just so, the Bar's monopoly on providing legal services has raised its rates to levels most Americans can't afford. But more subtly, the monopoly has also "addicted" lawyers to legal fees far greater than those a free market might provide. As a result, although there's an enormous untapped market among the poor and middle class, the lawyers are too spoiled to work it. Most American's can't afford \$100-\$400 per hour legal fees, and most "licensed" lawyers generally refuse to work for less.

Enter the independent paralegals. These are folks who have sufficient knowledge or training to perform some relatively simple legal services like name changes, uncontested divorces, or writing simple wills. These are "boiler plate" services that involve little more than the proper selection of existing forms and accurate data entry.

Although paralegals can work for lawyers for \$15 an hour (the lawyer charges the customer \$50/ hour for the paralegal's

time), paralegals can not compete with lawyers in the free market at rates the public can afford. The Bar argues that paralegals are not qualified to determine the real legal needs of their customers -- which may be true. However, if the customer determines what legal service he wants, what's wrong with having a paralegal satisfy that customer's determination?

Allowing paralegals to offer legal services to the public at affordable, free market prices would shatter the financial foundation of the Bar's monopoly. Once the public found out it could get a name change application filled out for \$20 from a paralegal instead of \$200 to \$500 from a lawyer, the lawyers would not only start losing business, they'd be forced to compete in the free market. Once that starts, the average lawyer will soon receive what he's really worth: about \$20-\$50 an hour (unless he's a litigator which is a valuable talent worth several hundred dollars an hour while in court). Result: the average lawyer's income would be cut by half or more.

Obviously, the Bar is not about to allow free market competition to enter into the Ameri-

can legal services marketplace, even among “poor” people the lawyers refuse to serve.

Even the Bar recognizes the conflict between the public who can’t afford lawyers and the lawyers who refuse to work for free market wages. According to the Dec. 5, 1996 Dallas Morning News, “Lawyers Battle Order on Death Row Appeals”, the Texas Court of Criminal Appeals is ordering individual lawyers to represent death row inmates and paying \$100/hour for “justifiable work”. Lawyers want none of it. First, \$100 is chicken feed to lawyers. Second, the cases will be tried on appeal which means the lawyers will actually have to work (not “settle”) the case. Third, the Courts won’t overpay the way the average ignorant laymen do for extended billing hours. That means lawyers are suffering the sacrilege of being “drafted” into jobs characterized by low pay and real work.

Worse, lawyers are being forced to take these appellate cases even if they’ve never handled a previous criminal appeal. Why? Not because anyone cares if these poor folks die, but because executing poor people without legal representation is a Public Relations no-no. Moreover, if the “system” executes poor people (who commit most of the murders that are solved) without lawyers, the public might start to see one reason poor people kill each other might be because legal fees are so high the poor folks can’t afford access to a civilized resolution of their problems in court and therefore resort to violence.

So the Bar is caught in a tragicomic Catch-22. If they serve the poor, their incomes must decline precipitously; if they ignore the poor, the political consequences might end the Bar’s monopoly and cause their incomes to decline precipitously. On the other hand, if they allow paralegals to

serve the middle class and poor at affordable rates, the free market pressures will also indirectly cause the lawyers’ incomes to precipitously decline.

Amusing, hmm? The lawyers have taken so much for so long, they can’t afford to work for us and we can’t afford to hire ‘em. Ask any economist if this relationship can be allowed to continue. It can’t. Lawyers are heading toward an huge financial “reorganization”.

Of course, lawyers will not go quietly. They will shuck, jive, scream, shout, promise, beguile, and do whatever they can to postpone the inevitable. For the moment, the principal threat to the Bar’s income is the growth of paralegal services. Hence, should any “unlicensed” lawyer go into business, the Bar will dedicate itself to removing the interloper.

This article reflects some of the thoughts of a paralegal (a “non-union lawyer”) who’s been battling by the Texas Bar.

- Have you ever pledged allegiance to the flag of the United States of America and really thought about what it meant?

- Have you ever been a parent and had the arduous task of correcting your child in order to teach him or her the difference between “right” and “wrong”, especially during the “terrible twos”?

- Have you ever attended church and listened to the minister preach that the highest social law is the “Golden Rule” (“Do unto others as you would have them do unto you.” *Matthew 7:12, 22:36-40, Luke 6:31 and “Equity”, Blacks Law Dictionary*)?

- Have you ever enlisted or been inducted into the armed forces and raised your right hand and sworn the OATH that you promised to “uphold, protect and defend the Constitution of the

United States from all enemies, both foreign and domestic”?

- Have you ever exercised your right to “freedom of speech” or considered yourself a law-abiding citizen?

If you answered “yes” to one or more of the preceding questions, then — believe it or not — you are “practicing law”.

As an American Citizen, I believe it is my duty and responsibility to practice law. In fact, I have been practicing law ever since I knew what the Constitution for the United States of America meant!

As a result, on October 13, 1994, I was indicted by a Jefferson County, Texas, Grand Jury for falsely holding myself out as a lawyer. The charge was an alleged violation of Texas Penal Code Section 38.122 in the 3rd Degree, a felony. That means I could be fined and incarcerated if convicted of this alleged offense. The indictment stated plainly that the Grand Jury took an Oath prior to handing down their indictment against me. They probably swore to tell the Truth, the Whole Truth and Nothing But the Truth. Unfortunately, sometimes the information given to the Grand Jury on which these indictments are issued, is *not* the *whole* truth! Therefore, since it is my duty to uphold the Law, it is also necessary to tell you the *real truth*!

The truth is . . . I am a *non-union* lawyer!

1) I practice law, just like you do. You should be studying and understanding the law, just like I do. That way, you will know the difference between your Constitutional Rights, and your duties and commercial responsibilities as a Citizen of this State.

2) On the bond form (#34270) I had to sign to be released from jail the “Offense charged” section read: “Impersonating a Lawyer”. Daily living of the Golden Rule is the highest practice of law, and is necessary for a

stable society. Such practice of law cannot require a license, and compels the conclusion that: *every man or woman who professes and lives the "Golden Rule" is a lawyer!*

3) It is *my* duty and responsibility as a Citizen of this State to maintain the peace and dignity and the continuity of Commerce in this State. It is also the duty and responsibility of the Sheriff of Jefferson County, Texas and the Grand Jury that was impaneled to indict me to do the same.

4) If you did *not* understand what you just read in the preceding sections, you should start studying and practicing law, just like I do! As part of my duty and responsibility to maintain the peace and dignity and continuity of Commerce in this State, I have educational materials to aid you in your research and understanding so you can be a better "non-union" lawyer . . . just like me, lest you be charged with the same offense as I.

I have never held myself out as a "union" lawyer! In order to be a "union" lawyer (and there is a difference), you have to be a member of the State Bar of Texas. The penal code section for which I was indicted claims that I "was not then and there licensed by the State Bar of Texas or other licensing authority at the time such representation was made." The synopsis of the offense states "Defendant went out, solicited clients and held herself out as a lawyer when she was not." This is a definite misrepresentation of facts.

The information given to the Grand Jury was that I was holding myself out as a "union" lawyer! Unfortunately, the person or persons that gave the Grand Jury this information were "union" lawyers. I always thought that Texas was a "right to work" State. Moreover, this is a violation of the Anti-Peonage Laws (for the principle on this matter, see 42 USC 1994,

et. seq.).

One of the prohibitions mentioned in the Constitution (Article 1, Section 10, Clause 1) is that, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts, or grant any Title of Nobility." Titles of Nobility are any advantage or privilege enjoyed by an individual or group that is not afforded equally to all Americans. Unfortunately, by restricting the practice of law, by trying to suppress the remedies of the poor (my clients) to the advantage of the aristocracy (the rich), "union" lawyers are enjoying "Titles of Nobility".

When "union" lawyers limit their "non-union" competition with Grand Jury indictments for "offenses" that every Citizen commits daily, it is clearly a violation of Rights under Title 42, United States Code, Sections 1988 and 1986; and a violation of Title 18, United States Criminal Code, Sections 241 and 24211

### By legal precedent . . .

"A lawyer is a person who knows the law." *Black's Law Dictionary*

"It is said that all persons are presumed to know the law, meaning that ignorance of the law excuses no one." 16 American Jurisprudence 2d 178.

Therefore, all persons are presumed to be lawyers.

Further, by researching and understanding the law as I did, you will discover:

- The Holy Bible is the "Supreme Law of the Land". Our founding fathers, who believed and practiced the true meaning of the Holy Bible authored the Constitution for the United States of America based on those same true meanings.
- Any State statute which supersedes the Constitution is null and void.
- The Texas State Bar Association is a private 501(c)(6), not-for-profit corporation. It operates as a union for lawyers. Even

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though this corporation has some very attractive benefits, (like a retirement plan and limited liability from prosecution for crimes that would land a average person in prison for several years), as Texas is a “right to work” State, I chose *not* to become a member of that private union.

- A license takes away a Right and makes it a privilege. Every individual has a Right to engage in any commercial activity, as long as it does not disrupt the peace and dignity or interfere with the continuity of commerce. Because a license grants known privileges to a chosen few, it confers upon those chosen a “Title of Nobility” (that is, an advantage or privilege enjoyed by one person or group of people that is not available to all persons or groups).

- State Bar Associations do *not* have the authority to issue a “license”. I have attempted to obtain a “law license” from the

State of Texas. The Secretary of State and the Secretary of Commerce in this State have informed me in writing that they are not the licensing authority for obtaining a law license, *nor do they know who the authority has been conferred upon to issue such licenses.*

- Judges have to be licensed attorneys for a prescribed period of time before they can sit on the bench. If one cannot obtain a law license, how can one sit on the bench? Although lawyers receive documents from the State Supreme Court stating they’ve been “admitted” to practice before that court, this “admission” is not legally equivalent to being “licensed” to practice law. An “admission fee” is *not* the same as a “license fee”. . . if it was, the law would say so. Being “admitted” to practice law is the same thing as being “admitted” to a sanitarium. To be “admitted” you get a referral and then permission to enter whatever it is you’re being “admitted” into.

- State Bar Associations issue a *union card* and *certificate* called a “Certificate of Admission to the Bar”. These are *not* licenses to practice law. Try asking a union lawyer for a copy of his law license. Further, it is a violation of the antitrust laws to allow a private corporation to regulate and monopolize any industry and set public policy and statutes to satisfy its own whims. When you continually consent to give someone authority, pretty soon they will take it from you without your consent.

Title 18, U.S.C. Section 1001. Statements or entries generally:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned more than five years, or both.

Question: Are union lawyers [members of a 501(c)(6) non-profit corporation under the authority of the Internal Revenue Code (hence, federal jurisdiction)], subject to this law?

You bet. And so are the judges. And none of them are licensed. So who do they indict and prosecute? Paralegals and “non-union” lawyers -- the only people in the legal system who are probably operating according to law.

Lynn Hardy can be reached at L.B. Hardy and Associates, 2304 Hwy. 105, P.O. Box 544, Non-Domestic, Orangefield, Texas.

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# Deemed, Doomed, & Damned

by Alfred Adask

Three years ago, a friend and I challenged a lawyer to produce his *license* to practice law. The lawyer was annoyed, but reached into his wallet and produced his membership card for the Texas State Bar. The Bar card had a unique number on it (like drivers licenses and fishing licenses) and read “Licensed 8/17/87”. This, he declared, was his “license”.

However, we pointed out that the word “License” did not appear on his Bar card -- only the word “Licensed” and a date that event allegedly took place. “Licensed” is a verb as in “He was licensed on 8/17/87,” while “License” is a noun that signifies a real object; i.e., the physical license itself. Therefore, although his Bar card might memorialize that he was “licensed” on 8/17/87, the Bar card was no more his “License” than the announcement in his home town newspaper celebrating his admission to the Bar. The lawyer stuffed his presumed “license” into his wallet, and left. Speechless.

It was revealing that the lawyer truly believed his Bar card was his license. In other words, he *didn't know* what document (if any) really constituted his “license”. But how could he not know? That sort of mistake is as improbable as supposing for years that your Health Club membership card was your Drivers License.

The lawyer’s ignorance proves nothing, but suggests that lawyers are as confused as laymen by the mystery surrounding attorney licenses.

## Books of knowledge

As a child, I had little interest in dictionaries -- except the fat one in the public library that contained all the forbidden, sexual words that made us kids snicker, blush and roll our eyes. As I’ve matured (ahh, aged), I find dictionaries more intriguing. Although definitions no longer make me blush, some entries still make my eyes roll.

For example, according to Noah Webster’s 1828 *American Dictionary of the English Language*, the verb “deem” means, “To think; to judge; to be of opinion; to conclude on consideration; as, he deems it prudent to be silent.” As a noun, “deem” means “opinion, judgment; surmise”. So, a century and a half ago, “deem” signified a personal opinion.

Webster also mentioned that “deem” and “doom” shared a common etymological root. “Doom” was defined to mean: “1. To judge; 2. To condemn to any punishment . . . 3. To pronounce sentence or judgment on. . . .” As a noun, “doom” meant, “Judgment; judicial sentence. . . .”

“Doomsday” was defined as: “[T]he day of the final judgment;

the great day when all men are to be judged and consigned to endless happiness or misery.” Therefore, “doomsday” means “judgment day”.<sup>1</sup> See the common meaning between “deemed” and “doomed”? They mean “judged”.

Hmm. Note that “deem” and “doom” aren’t only similar in meaning and spelling, they also sound a lot alike. “Damn” also sounds somewhat like “deem” and “doom”. Could “damn” have a similar meaning?

Not precisely, but the Webster’s (1828) does note an etymological link: “Damn . . . coincide[d] with the English *doom*,” and meant, in part, “To sentence; to condemn; to decide . . . ; to censure.”

Again, there’s an obvious correlation in meaning between “deem” and “doom” (to judge) and “damn” (to sentence). All three terms involve judgment.

Fascinating, hmm?

No? Well, then let’s consider more modern definitions and applications of the term “deemed”.

## “Disputable presumptions”

According to *Black’s Law Dictionary* (Rev. 4<sup>th</sup>, 1968) the word “deem” has been defined by several court cases as:

“To hold; consider; adjudge; condemn; determine; treat as if;

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construe. . . which gives ‘deemed’ the force of only a ‘disputable presumption,’ or of prima facie evidence,” and also,

“When, by statute, certain acts are ‘deemed’ to be a crime of a particular nature, they are such crime, and not a semblance of it, nor a mere fanciful approximation to or designation of the offense.”

Apparently, this second definition empowers the legislature to “deem” smoking marijuana and other political offenses to be statutory “crimes”, even though no real person or property was damaged. In any case, the legal application whereby that which is “deemed” becomes uncontested “reality” seemingly applies only to the statutory designation of “crimes”.

For the rest, to “deem” is to pass a personal judgment that has “the force of *only* a ‘disputable presumption,’ or of prima facie evidence”. For example, at first glance I might “deem” (judge/presume) that the red objects in the box are apples, but after tasting one realize they are in fact, tomatoes. As such (unless we’re talking about newly “deemed” crimes), “deemed” still describes a personal presumption that may or may not be factually accurate and is therefore “disputable” and open to challenge.

### “Deemed licensed”

So what does this quasi-boring analysis of the three “d-

words” have to do with attorney licenses? A lot.

Although it’s hard to believe, it appears that Texas attorneys are not truly “licensed” under the police power of the state as are other licensee’s who have drivers, fishing, and plumbing licenses, etc. Stranger still, so far I can tell, most of the lawyers of the remaining 49 states are also “unlicensed”.<sup>2</sup>

Here in Texas, the word “deemed” plays a pivotal role in understanding (creating?) the mystery surrounding attorney licenses. Consider the five provisions for licensing Texas attorneys as they’ve existed since 1939 (when the first Texas State Bar Act was first passed) until at least 1987 (see State Bar Act; Vernon’s Ann. Civ. Statutes 320(a)-1 Sect. 11)

[The following bracketted and/or italicized comments are my own insertions or highlights]:

“Within the meaning of this section, all persons furnishing evidence of or complying with any of the following provisions shall be *deemed* as now licensed to practice law within this State, viz:

“(a) That he is now enrolled as an attorney at law before the Supreme Court of this State.

“(b) A license or the issuance of a license by the Board of Legal Examiners of this State authorizing him to practice law within this State.

[This provision is no longer

significant since (so far as I can discover) although there is now a “Board of Law Examiners”, the “Board of Legal Examiners” no longer exists.]

“(c) A license or the issuance of a license to practice law within this State by any authority, which, at the time of the issuance thereof, was authorized by the laws of this State, then in effect, to issue the license.

[This provision is no longer significant since Sec. 81.061 of the Texas Government Code declares that the Texas Supreme Court has “exclusive jurisdiction” over the rules governing the admission to the practice of law” in Texas. I.e., there is no Texas licensing authority other than the state Supreme Court.]

“(d) Where an attorney, licensed before October 6, 1919, has lost or misplaced his license . . . .

[I deleted the remainder of provision (d) because, although there may have been many attorneys in 1939 (when the Texas State Bar Act was first passed) who were “licensed” before October 6, 1919, today, those lawyers would be a century old. I doubt that there are many 100 year old lawyers and so provision (d) is now moot.]

“(e) Any proof satisfactory to the Supreme Court of this State he is and was, upon the effective date of this Act, authorized to practice law in this State.”

[Provision (e) offers little insight into licensing other than to reiterate that the determination of who is or is not “licensed” and what proof constitutes a license rests solely with the Texas Supreme Court.]

Of the five possible provisions for being “*deemed* as now licensed to practice law”, provisions (b), (c), (d), and (e) are no longer significant. Therefore, provision (a) – “That he is now enrolled as an attorney at law be-

fore the Supreme Court of this State” – appears to control the “licensing” of attorneys.

How does an attorney get “enrolled”? By passing the state Bar Exam.

As each law school graduate passes the Texas State Bar Exam, the Texas Supreme Court issues a certificate that declares the fledgling attorney is now permitted to practice before the Texas Supreme Court. Based on that permission, the would-be lawyer is “deemed” to be licensed by both the Supreme and lower Courts of Texas. Because the law school grad has been accepted to practice before the Texas Supreme Court, all the remaining Texas judges say (in effect) “Well, if he’s good enough for the Supremes, he’s good enough for us, too.” Thus the law school grad is also admitted to practice in the lower courts. Without ever seeing or asking for a real license, the courts “deem” the new attorney to be licensed.

This “deem-inology” is not confined to Texas. The key proviso for eligibility to practice before the U.S. District and Supreme courts is being previously admitted to practice before “the highest court of a state” (See Rule 46, Fed. Rules of Appellate Procedure, and Rule 5 U.S. Supreme Court Rules). Again, if the attorney is merely permitted to practice before a state Supreme Court, he’s *presumed* eligible to practice in the Federal courts.

But note that the new law school graduate has not seen or received an actual “license” in the physical sense of a drivers license or a plumbing license, nor do the Texas and Federal courts require one. Our new attorney has merely been “permitted” to practice before the Texas Supreme Court and is therefore “*deemed*” as now licensed to practice law within this State” and therefore, also eligible for admission to practice in the Federal courts.

Remember our discussion of the term “deemed”? It means “judged”; an expression of a personal opinion; a “rebuttable presumption” – and (only) *prima facie* evidence. For example, we might normally “deem” (judge/presume) that every car and driver on the highway were legally licensed, registered, and insured. However, on closer inspection, we would probably find that some of the cars and drivers were not licensed, registered, or insured. Our presumptions may reflect an ideal world, but they do not necessarily reflect reality. Though we might “deem” all drivers -- or lawyers or judges -- to be licensed, it ain’t necessarily so.

The point I’m belaboring is this: being “licensed” is a *fact* but being “deemed licensed” is merely a *rebuttable presumption*. With proper research that presumption might be refuted. (Imagine the consequences if you could prove the prosecutor who’s trying to jail you, the lawyer who’s suing you for money, or the judge sitting on the bench was not truly “licensed” to practice law.)

#### A legal disability?

If you read the *Blacks Law Dictionary* definitions of “license”, “permit”, “permission”, “admit”, “enroll”, etc., you might be persuaded that the Texas Supreme Court can lawfully “deem” (judge) someone is licensed and that judgment constitutes a legal “li-

cence”. But even if that’s true, why go through all the legalistic mumbo-jumbo to “deem” a man licensed -- and thereby inspire a host of suspicions concerning the alleged license’s legitimacy? Why not simply issue a small, plasti-coated card with the attorney’s name, address, photograph, and a unique license number? After all, the states issue millions of similar documents every year like “drivers licenses” or “fishing licenses” so it’s hardly a difficult or exotic technology.

And remember, even rank and file lawyers are unsure which document – if any – constitutes their “license”. That uncertainty must leave a lot of ‘em insecure and anxious. So why not help the lawyers themselves by issuing a license so unambiguous its legitimacy was beyond suspicion?

Further, if only Texas lawyers were unlicensed, or if only a handful of states neglected to license their lawyers, I might accept the argument that the license “problem” is evidence of some bizarre oversight by a couple of incompetent state Bars. But the licensing problem appears almost universal throughout the United States -- even the Federal courts don’t require a “license”. This widespread absence of legitimate licenses can’t be easily explained as a result of accident or incompetence.

Apparently, most state bars *intentionally* reject being “li-



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censed". Which brings us to the core of the license mystery: *Why* don't lawyers have licenses that are obviously and unambiguously legitimate? If the lack of licenses is so widespread, it stands to reason that there might be some fundamental *legal disability* associated with attorney licenses (and perhaps licenses in general) that cause most lawyers to resist being licensed.

What is that hypothetical disability? I don't know, but I have a few preliminary suspicions:

- If you read *Blacks'* definitions of license, etc., you'll see that a license allows the licensee to do something that would otherwise be illegal. If so, an attorney license must allow attorneys to do something which is otherwise illegal. But what? Practice law? No. The practice of law is arguably a common law right and certainly an occupation of such ancient lineage as to be (mostly) legal.

I suspect the attorney license is required to "represent" someone else. That is, I doubt that a license is required to "counsel" or "advise" someone on the law, but suspect there should be a license to (illegally) "represent" them, appear in their stead, in court and argue on their behalf. Perhaps "representation" creates an artificial or fictitious entity which violates common or Biblical law.

- Corporations are artificial entities which cannot represent themselves in court. That is, an

officer or owner of a corporation can't normally appear "pro se" in court as the corporation's lawyer. Instead, corporations must – by law – be represented by licensed attorneys. This implies that lawyers must appear in court as "real people", rather than artificial entities. After all, if a lawyer were an artificial entity, then like a corporation, he would also have to find a "real person" to represent *him* in court. It follows that lawyers cannot be construed as artificial entities within the courts.

Is it possible that some fundamental consequence of being licensed changes the status of licensees to that of *artificial entities*?<sup>3</sup> If so, no *licensed* attorney could legally represent a corporation or another real person. The loss of income to the Bar would be staggering and no attorney would accept a license.

- Perhaps licenses are *benefits* dispensed by government trusts. If so, by having a license each licensee becomes a *beneficiary*. As a beneficiaries, lawyers would be legally prohibited from acting as *trustees* (administrators) for the trust that dispensed their license. I.e., *licensed* lawyers might not be able to sit as judges, legislators, or executive officers for the government. Therefore, lawyers may have accepted "deemed licenses" to enjoy the de facto privileges of being "licensed" while retaining their de jure unalienable rights and opportunity to dominate politics.

- Licenses subject the li-

cence-holder to administrative control under the police powers of the executive branch of government. Unwilling to accept any form of discipline other than "self-discipline" (by other lawyers), perhaps the Bar has cleverly declined to accept the usual government licenses.

Whatever the reason, the widespread absence of unambiguous attorney licenses suggests that licenses may create a fundamental disability that lawyers dare not accept. If that disability truly exists and can be discovered, it would not only help to compel lawyers to obey the law, but might even help the average American understand if he is also accepting unsuspected legal disabilities whenever he applies for a driver's, plumber's, or beautician's license.

Until further research is conducted and verified, it appears that attorneys of Texas and much of the nation may be "deemed licensed" . . . they might be "doomed licensed" . . . they might even be "damned licensed" – but they are not yet truly "licensed".

<sup>1</sup> Curiously, "doomsday" doesn't necessarily signal our inevitable destruction – it merely means we shall be "judged" and then "sentenced" to either eternal torment or eternal happiness. "Doomsday" could be cause for celebration.

<sup>2</sup> I have a copy of an Alabama "Attorney-At-Law License" that appears legitimate and unambiguous. There are probably other states that also issue documents that I would "deem" to be real licenses. However, I believe these "license" states are in the minority.

<sup>3</sup> Could it be that all "privileges" are dispensed by governments only to artificial entities while Rights are "endowed" only to real flesh and blood people?

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# Keep Personal Info Private -- Don't Answer Questions!

by John Weber and Patricia Renninger

While big government has a natural animosity toward religion and the alternative authority structure it offers, government nevertheless makes some surprising concessions to religion's power.

This article illustrates a subtle insight into the government/religion confrontation: While many "Christians" don't truly believe in their professed religion – government does. The proof is implied in the various laws which allow the truly religious a great deal of legal latitude.

Of course, there's a powerful political reason for government to sidestep confrontations with the allegedly religious: Right or wrong, a man whose faith is challenged can be stubborn and recalcitrant to a degree that's potentially dangerous. (Yes, he may be just another hypocrite, but God help you if he's a true believer – he just won't quit.) Nevertheless, those accommodations suggest that government reluctantly concedes their statutes are inferior to Biblical law.

By providing "extralegal" accommodations for the religious, government not only validates religion but implicitly concedes

religion's legal superiority. You may have to dig for 'em and pay for 'em in ways atheists regard as absurd, but there are practical, pragmatic, legal advantages to being a Christian (or Jew or Muslim, etc.) in the USA. This article illustrates some of those legal advantages.

Citizens routinely waive several Rights when they apply for Driver's Licenses. These include Rights under the Fourth and Fifth Amendments, the Privacy Act, and an exchange of our legendary "Right to Travel unimpeded" for the statutory "privilege" to Drive a Vehicle. However, while some Rights may be waived, others can be preserved.

For example, there's a Miranda Warning hanging in the Pennsylvania Driver's License photo office that we visited. It said: *Your photograph may be used in Criminal Investigations.* That being so, some people argue that the use of photographs on driver's license must be "voluntary" since a "mandatory" requirement for a photo that might later be "used against you" in a

criminal prosecution would implicitly violate the Fifth Amendment's protections against mandatory self-incrimination. If submission of a photograph is "voluntary", some applicants may simply refuse to "volunteer".

However, we did not attempt a Fifth Amendment Waiver-from-photograph. We opted for a *First* Amendment Waiver, especially since provisions already exist in Title #75, Pennsylvania Consolidated Statutes Annotated (Vehicles), for such Religious exemptions. As a result, in Pennsylvania, my wife and I held Driver's Licenses that were exempt-from-photographic "requirement" for religious reasons. See: Holy Bible, KJV, *Exodus* Chapter 20, verses 4, 5, & 6:

**"Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth."**

That means photographs are forbidden for believers, and the state of Pennsylvania agrees. The State cannot force a Citizen to be photographed if the Citizen states that having his picture taken is against his religion. To

attempt to do so would violate the First Amendment of the Constitution for the United States and the Pennsylvania Constitution's Article One, Section # 3 — the guarantee of Religious Freedom. Although this religious exemption from photographic requirement is not clearly expressed in statute, it is written on Driver's License renewal forms.

There's a similar exemption for Social Security Numbers in Pennsylvania statutes at Title #75 §1510(f). My wife and I revoked and rescinded our Social Security numbers by Affidavit, on file at the Montgomery County Court House, and therefore our Pennsylvania drivers licenses did not reference our SSN.

**W**e moved from Pennsylvania to South Carolina in April of 1995. As in Pennsylvania, the State of South Carolina also cannot force a Driver who takes *Exodus* 20:4 literally to be photographed because it would infringe on the Driver's Rights to Religious Freedom as guaranteed under Article One, Section #2 of the South Carolina State Constitution. The photographic exemption for religious reasons can be found in South Carolina's Title #56 at 1-150.

When we applied to South Carolina's Department of Transportation (DOT) for Driver's Licenses, the DOT began demanding that we provide certain personal information. When we informed her that we were exempt from photographic "requirements", she sent a fax to DOT headquarters in the state capitol at Columbia. It turned out that the bureaucrats *already* had a blank Affidavit on file which was designed to deal with religious objections.<sup>1</sup> Although this affidavit was not advertised, its existence not only indicates religious objections are more common than most people suppose, but also that the state government

has a policy of accommodating those objections. Copies of the affidavit were faxed to the local DOT office, we signed them, and no photographs were taken.

Next, the clerk asked for our Social Security numbers. We explained that according to the Old Testament Book of Second Chronicles (KJV), Chapter 21, verses 1 through 7, God forbids the numbering of the People. The clerk appeared to develop a severe migraine headache and returned to the fax machine to make another contact with the state Capitol in Columbia. Again, the folks at the Capitol *already* had blank Affidavits available which were entitled "*Affidavit For Refusal of Social Security Number*".<sup>2</sup> Copies were faxed, we signed, and no Social Security Number was attached to our drivers license application.

The clerk returned and asked what our Racial status is. We explained to her that we did not believe that our race was any of the government's business. The Clerk accepted our position on this issue and wrote "Unknown" on her form.

We were handed a form with two questions on it, and "yes/no" boxes next to them. The questions were: 1) "Are you a U.S. citizen?"; and, 2) "Are you a Resident of South Carolina?"

We answered "no" to both questions. We are *State* Citizens, not federal citizens. We answered "no" to the residence question because we intend to make South Carolina our *permanent* home. Therefore, we are *domiciled* in South Carolina, but not residents, since according to *Black's Law Dictionary*, "'resident' and 'residence' sometimes mean something less than domicile." The clerk accepted the form without questioning our answers.

Finally, the Clerk escorted us over to a device that was attached to a computer. She tried

to hand us a small steel rod about the size of a pen. She told us to take this pointed piece of steel and write our signatures on a flat steel pad. We asked her "Why?" The Clerk said this was necessary so that our signatures could be made a part of the computer's memory-bank records. We told her "our signatures are our property and we do not want our property in your computer".

Once again, she returned to her fax machine to request instructions from Columbia. After about 15 minutes, she told us that we could make an "X" instead of writing our cursive signatures if we would let the clerk write "his Mark" and "her Mark" next to our "X's". We replied that we would allow this if we could write "All Rights Reserved, without Prejudice UCC §1-207" next to our "X's". The Clerk refused. So we refused to let her write "his/her Mark". So she "compromised" with us. She did it our way. We wrote our "X's" and were given our South Carolina Driver's Licenses. I believe the Clerks were glad to see us go.

**P**oint: before you answer any questions from a government official, or give any information which you may be uncomfortable in divulging, simply ask the bureaucrat if your answers are "mandatory" or "voluntary". If they say your answers are "mandatory", ask to see the Statute that forces you to comply. If they are "voluntary", then simply refuse to volunteer.

Like most common people, most DOT employees simply don't know or aren't sure of the "Law". More importantly, the people in the various departments of transportation work for *you*. Be polite with the clerks, but remember, *you* are the boss, not them. But you cannot exercise your Rights or authority until you learn them. Don't be a Sheep.



Learn the law.

We suggest that you check your state's Motor Vehicle Code for the availability of Religious Waivers. If these waivers aren't available, consider suing the state to get your Rights recognized.

For example, if there are no such Waiver Statutes in your state, we suggest that you contact your State Human Relations Commission or Civil Rights Commission. The names of the offices vary from state to state but every state has one. When you initiate such an action, you have one arm of the state government arguing your cause with another arm of the same government. Because the Freedom of Religion provisions of most states' Constitutions are so simply but powerfully written, such actions should result in an administrative decision in favor of the Driver. There is usually no charge; bringing suit against our local Department of Transportation was free.

The next time your license

comes up for renewal, or if you move to another state, feel free to use the methods described above to reserve your Rights. Become a Believer.

<sup>1</sup> Text: "AFFIDAVIT FOR ISSUANCE OF DRIVER LICENSE WITHOUT PHOTO Pursuant to South Carolina State Law 56-I-150 1976 Code of Laws as amended.

I do solemnly swear or affirm that the taking of a picture to be placed on a South Carolina drivers license would violate the tenets and beliefs of the religion or sect of which I am a active participating member.

Signature of Licensee / Date  
Signature of Depart. Personnel/  
Date"

<sup>2</sup> Text: "Form 5046 AFFIDAVIT OF REFUSAL OF SOCIAL SECURITY NUMBER I, \_\_\_\_\_ affirm that I am a conscientious objector to the Social Security law. Therefore, I do not have a Social Security number to furnish the Department. Customer's Signature / Specialist's

Signature

Driver License Number / Date"

Religious arguments may be effective on untrained clerks and administrative agencies, but they won't necessarily work that well in court. For example, if you try to use the "graven images" argument on the judge, he may say that's nice and then ask if you're married -- and, oh, incidently, -- do you have any snapshots of your family, kids, folks? If you proudly produce a photo of your baby boy, your religious argument will collapse. And rightfully so; photo's are "graven images", and if you use 'em or keep 'em, so can Big Bro.

Biblical law's not a scam. It's almost certainly harder to obey than man's laws -- which is fair, since Biblical law offers a better reward. Biblical law can provide some protection from government, but only for those willing to walk the walk. ■

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# Unqualified Officers

by Charles Janosz

Whenever government officials tried intimidate or arrest Jesus, He usually asked “By what authority . . .” do you act? I don’t know if Jesus ever mounted a “jurisdictional challenge” (a favorite patriot strategy), but He did challenge the authority of the various government officials to act. Even in Christ’s time, government officials could not lawfully act without proper authority.

The following affidavit challenges the authority of various government officials in Lewisville, Texas to issue and prosecute traffic tickets. This challenge is based on the simple presumption that the Law is for everyone – even lawyers, judges, and police officers – and they may not lawfully exercise any authority to write tickets, hear cases, or issue orders unless they have first satisfied all of the legal requirements to hold appointed or elective office.

Whether you have a drivers license is not the first order of business at a traffic stop; the first order of business is whether the person who stopped you has met necessary legal requirements to exercise the police powers of government. If not, he is acting without lawful authority, arguably impersonating a police officer,

and legally required to let you go whether you have a drivers license or not. Without proper authority (meeting all the requirements established by law to hold a particular office), a man in a police car wearing a badge and a gun, has no more right to stop, ticket, or arrest you, than a high school freshman. Similarly, a judge or prosecutor who has not satisfied all the legal requirements to hold his office may not lawfully exercise the powers of that office. If he does, he is committing virtually the same kind of offense as a private citizen driving without a valid drivers license.

## AFFIDAVIT

Texas Republic  
Denton County  
Subscribed, Sworn, Sealed.

Before me, the undersigned authority, appeared Charles J. Janosz, known by me, and having been duly sworn by me, did depose and give statement affirming the truth of the following:

MEMORANDUM OF FACT AND LAW ON THE UNCONSTITUTIONAL AND UNLAWFUL CONDITION OF THE GOVERNMENT OF LEWISVILLE, TEXAS

I, Charles Joseph Janosz, now come as a sovereign *sui juris* follower of Yahshua the Messiah and the laws of The Almighty Supreme Creator first and foremost, and the laws of man when they are not in conflict (*Leviticus* 18:3,4). Pursuant to *Matthew* 5:33-37 and *James* 5:12, let my yea be yea and my nay be nay. I have personal knowledge of the matters herein stated, and hereby asseverate understanding the liabilities presented in *Briscoe v. La Hue* 460 US 325. I come now at law, *in propria persona*, of my own free will and declare the following to be accurate to the best of my knowledge and belief as to why this Council must view this matter as urgent and act in such manner as is befitting of a person both rightly concerned and properly positioned to correct this matter in whatever way may be most responsible to and before the people who directly own this Lewisville Government, and before all mankind in general and our Creator, and against any wrongful and unlawful perpetration by various operatives of local government within Denton County, Texas Republic. This matter is further a flagrant violation of God-given unalienable Rights

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and Due Process of law concerning the owners of this government and all others who would fall victim of its scandalous wanton activities. It is repugnant to every Honorable Man, Woman, and Child, whether they be directly afflicted or not, it still stands as a vile and contemptuous matter of public disgrace that directly hampers the business of our government.

This document is brief in keeping with its intended use of being presented, in part, to the Council of Lewisville, Texas. It can and surely will be detailed and further clarified upon any request being made by any interested person, governmental or otherwise, even to the holding an expose' of this subject matter in full public view with any body willing to so disagree with a fact or law.

**Item - 1**

Ann E. Anderson, "Municipal Court Judge," Christopher Paul Wagnon, "Police Officer," Linda Steal, "Court Administer," specifically, (others may be named when they are identified) each individu-

ally is, and collectively are, guilty of being in direct violation of the Constitution of the Texas Republic in such manner as to preclude them from the Public Office that they do espouse holding within the government of Lewisville, Texas. They have therefore unlawfully removed tax-collected funds through an act tantamount to constructive fraud, whether individually, collectively, or in concert with others unnamed, and whether through any malicious or ignorant assent, and are hereby brought to the attention of this Council at Public Meeting for the purposes of being given a public notice to cease in all ways any improper removal of tax collected funds, and that an Administrative Hearing will be held to determine the extent of this and any other similar tax fund usage impropriety. A violation or other disregard of any law cannot be excused, and certainly not condoned, on the grounds that the person so acting at the time of their receiving tax collected funds is: in some way acting under "color of law"; carrying a gun; collecting, whether individually or in concert, more funds (in the form of fines, forfeitures or otherwise) than they are removing for their personal use; or, is an attorney.

Ann E. Anderson, has NOT been a judge as required by law, pursuant to the Texas Constitution, Article 16, sec. 1(c) (d) (f), and beginning on or about January, 1993.<sup>1</sup>

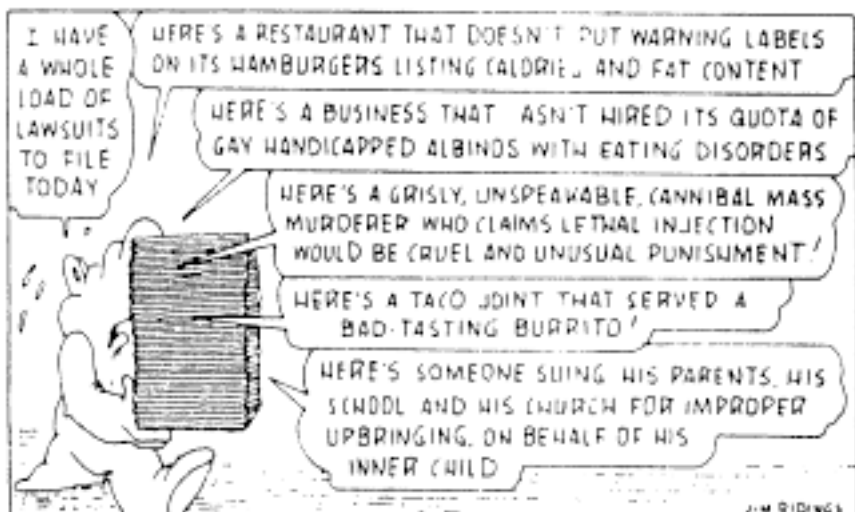
Christopher Paul Wagnon, has NOT been a Police Officer by law, pursuant to the Texas Constitution, Article 16, sec. 1(c) (d) (f), and beginning on or about July, 1990.<sup>1</sup>

Linda Steal, has NOT been a Court Administrator as required by law, pursuant to the Texas Constitution, Article 16, sec. 1(c) (d) (f) and beginning on or about January, 1993.<sup>1</sup>

Ann E. Anderson, is in violation of the Texas Constitution, Article 16, sec. 1(f), [proper filing of documents] by filing her Statement of Office more than two weeks *after* her Oath of Office was administered, from January 13, 1993, to January 28, 1993.

Christopher Paul Wagnon, is in violation of the Texas Constitution, Article 16, sec. 1(f), [proper filing of documents] by filing his Statement of Office more than *four years* after his Oath of Office was administered, from July 19, 1990, to October 18, 1994.<sup>1</sup>

Linda Steal, is in violation of the Texas Constitution, Article 16,



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sec. 1(f), [proper filing of documents] by filing her Statement of Office *three days* after her Oath of Office was administered, from January 4, 1993, to January 7, 1993.<sup>1</sup>

#### Item-2

Ann E. Anderson, “Municipal Court Judge,” Christopher Paul Wagnon, “Police Officer,” Linda Steal, “Court Administer,” have been informed that in the CIVIL STATUTES concerning traffic, specifically VTCS Article 6701f, *Speed signs*, it has been identified that the posted maximum lawful speed is for, “commercial motor vehicles, truck tractors, trailers and semi-trailers (trucks) and motor vehicles engaged in business of transporting passengers for hire (buses).”<sup>2</sup> [emph. add.]

When Ann E. Anderson, “Municipal Court Judge,” found out about the CIVIL STATUTE [concerning “Speed signs”] she started “yelling,” at me, according to one witness, that she, “Did not want to know . . . .” She then ordered the Bailiff to force me to leave the Court Room where she continued as, “Municipal Court Judge.”

When Christopher Paul Wagnon, “Police Officer,” found out about the CIVIL STATUTE and was requested to go to the Police Station “Fourteen times,” in order to look at the CIVIL STATUTE and derive from it in fact it

applied in any way to the instance for which he was involved with me. He refused to investigate the matter, and refused to allow me to go to the Police Station to prove it. Instead, he then called in an assistant and he arrested me for not showing a drivers license to a “Police Officer.”

When Linda Steal, “Court Administer,” found out about the CIVIL STATUTE, and was actually shown VTCS Article 6701(f), “Speed signs”, from the CIVIL STATUTES law book in the Lewisville Public Library, she said, “Well, I’ll have to think about this a little.” She at least was not abusive with the unlawfully assumed office she claimed as, “Court Administer.”

#### Summary of Memorandum

It would appear on the surface (Prima Facia) that at least three persons are improperly holding an office within the general limitations that describe the government of Lewisville, Texas, and those three have shown acute disinterest, or outright contempt, for the Process of Justice, Due Process of the law, the law in general and as provided in the Constitution (which they supposedly made an oath before their God to uphold) and various Texas Civil Statutes, and even the Rights provided to us by our Creator, God.

It is therefore respectfully de-

manded that there be an Administrative Investigation into this matter and all other similar matters, and that persons in violation of Texas Constitutional law and under oath to obey that Constitution be held to their Oath before their God, and required to provide proper restitution to the Tax Payers for all funds received in an Unconstitutional and Unlawful manner, and then if properly installed in those or any other public office, be properly trained so as to be able in the future to manage the constitutional and lawful duties as given in the form of a public trust, and that are not to be used as a *license* to escape from justice or as an opportunity to pervert the use of a public office into an instrument operating directly to their own personal benefit, or otherwise undue emolument.

All things are as herein provided by me altogether true, correct, and right, and in accordance with the full constraints upon members of government as provided by the Constitution of the United States, the Constitution of the Texas Republic, and laws of the legislature of the state of Texas pursuant to the said Constitutions. Further, I am not limited from making this affidavit in any way, and I realize that I can be found guilty of perjury for any deliberate shading of accuracy of a statement. Finally, Affiant saith, “I am responsible unto the God of all creation for my actions before mankind.”

This document is submitted unto the Honor and Glory of God Almighty, on this, the \_\_\_\_\_ day of \_\_\_\_\_, 1995.

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s/ Charles Joseph Janosz  
Sovereign Charles Joseph Janosz, in Propria Persona

Before me, the undersigned authority, did appear Charles J. Janosz, in Propria Persona, and known by me to be the person whose name is subscribed to the foregoing affidavit, who this day being by me first duly sworn, upon oath did state that his statements contained therein are both true and correct Further the Affiant saith not.

SUBSCRIBED AND SWORN TO ME, THE UNDERSIGNED AUTHORITY, on this, the \_\_\_\_\_ day of \_\_\_\_\_, 1995.

s/ notary  
Notary Public in and for the state of Texas

<sup>1</sup> **TEXAS CONSTITUTION ARTICLE 16, Sec. 1: OFFICIAL OATH -**

(a) Members of the legislature, and all other elected officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

“I \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.”

(b) Each member of the legislature and all other elected officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement

“I \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected so help me God.”

(c) The Secretary of State, and all other appointed officers, before entering upon the duties of their offices, shall take the following Oath or Affirmation:

“I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.”

(d) The Secretary of State, and all other appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement

“I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, or promised to pay, contributed, or

promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God.”

(e) Members of the legislature and all other elected officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section.

(f) The Secretary of State and all other appointed officers shall file the signed statement required by Subsection (d) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (c) of this section. (Amended Nov. 8, 1938, and Nov. 6, 1956; Subsecs. (a)-(c) amended and (d) - (f) added Nov. 7, 1989.) [emph. add.]

<sup>2</sup> VERNON’S TEXAS STATUTES AND CODES ANNOTATED: CIV ST Art. 6701f, Speed signs [Copyright (c) West Publishing Co. 1994 No claim to original U.S. Govt. works.] — Page 124501 follows: . . . Title 116 - Roads, Bridges, and Ferries

CHAPTER ONE A – TRAFFIC REGULATIONS

Art. 6701f. Speed signs  
It shall be the duty of the State Highway Department and said Department is hereby directed to erect and maintain on the highways and roads of Texas appropriate signs showing the maximum lawful speed for commercial motor vehicles, truck tractors, trailers and semi-trailers (trucks) and motor vehicles engaged in the business of transporting passengers for compensation or hire (buses).

1977 Main Volume Credit(s), Acts 1951, 52nd leg., p.163, ch. 100, Sec. 1. 1977 Main Volume Library References: Automobiles k5 (4); Highways k165, 177; C.J.S. Highways Secs. 232, 242; C.J.S. Motor Vehicles Secs. 27, 29, 35.

# Statistical Evidence In Law

*by Ron Bibace*

The previous article (“Unqualified Officers”) questioned the lawful qualification of several officers to prosecute traffic tickets in the Lewisville, Texas municipal court. By itself, the “unqualified officer” argument is interesting, but what relevance does it have for folks outside Lewisville?

Although particulars will vary from state to state, the judges and government lawyers’ immunities, arrogance, and contempt for the law are so commonplace that we can assume the unqualified officer problem is probably common across the USA. Certainly, the “unqualified officer” problem is endemic in Texas.

In November, 1995, a precise survey of 745 Texas municipal courts was devised and carried out by the Texas Justice Council (429 Meadows Bldg., Dallas Texas 75206; 972-245-0050). Each Texas municipal court was contacted individually to derive an accurate database of all “judges” and “prosecutors” currently acting in those cities. Based on this survey, it was learned that a majority of bar-licensed attorneys meting out “justice” in Texas Mu-

nicipal Courts as “judges” and “prosecutors” are themselves wholesale violators of the law.

The Texas Secretary of State’s Statutory Documents Section is charged by law with the duty of recording the “Statement(s) of Officer” mandated by Article XVI Section 1 of the Texas Constitution. All municipal court judges and all prosecuting attorneys who try cases in the name of the State of Texas are “officers” required to file such Statements and then take necessary oaths of office before exercising the powers of office.

A comparison of database of mandated Statements actually filed with the Secretary of State to the survey results of the Texas Justice Council’s compilation of acting municipal judges and prosecutors revealed a shocking personal disregard for the law by the “Guardians of Justice”.

Of 1091 acting Municipal “judges” surveyed (who are mostly attorneys), 577 or 52.9% refused or otherwise failed to file the mandated Statement with the Texas Secretary of State. Thus, by implication and by law, over

half of the sitting municipal judges are not properly qualified to pass judgement on anyone. I.e., they have no lawful authority to exercise any judicial or administrative powers of the State.

A survey of 795 municipal “prosecutors” (who are all attorneys) revealed that 708 or 89% were unqualified to hold and exercise the power of public office by refusing or otherwise failing to file the mandatory Statement of Officer with the Texas Secretary of State!

Other examples of apparent Municipal Court lawlessness were discovered throughout the Municipal System, and include: Mayors (executive branch officers) simultaneously holding municipal judgeships (judicial branch offices); husband and wife prosecutor/judge teams; and scores of ‘judges’ and “prosecutors” illegally receiving paychecks from several cities simultaneously in direct violation of the Constitution (Art XVI, Secs. 40, & 33) and Attorney General Opinion JM-333.

Even if we only consider those judges and prosecutors who’ve failed to file their State-

ment of Officer, of a total of 1886 “judges” and “prosecutors” surveyed, 68% earn a living while legally unqualified to hold public office. Given that the court cannot lawfully prosecute cases unless both judge and prosecutor are lawfully qualified. Given that only 47.1% of the judges (100% - 52.9% unqualified) and 11% of the “prosecutors” (100% - 89% unqualified) appear qualified, the odds that any particular Texas municipal court is lawfully qualified to prosecute and judge anyone is  $47.1\% \times 11\% \approx 5\%$ . Therefore, as of November, 1995, only one Texas municipal court in twenty was statistically likely to be lawfully qualified to prosecute traffic tickets.

OK, now we have statistical evidence of what we’ve known all along: municipal courts are unlawfully processing traffic tickets. So what?

Well, it turns out that statistical “evidence” (actually inferences) have legal application in court, and properly presented, can compel judges to authorize or initiate investigations.

This article is based on a 1989 statistical study of lawyer grievance procedures in Florida. It’s numerical data is too dated to be precisely relevant today. Likewise, it’s legal cites and legal foundation are also seven years old and therefore should not be relied on without additional research to confirm the law is still essentially unchanged. Nevertheless, the statistical methods and legal applications that were valid in 1989 remain at least instructive, and should still be generally valid. Moreover, the Florida lawyers contempt for justice in 1989 and the Texas lawyers contempt for the law in 1995 is simply more evidence that our judicial branch of government routinely operates in ways that are unlawful or corrupt.

### On statistics generally

For most of us, our problems are fairly obvious and so we generally occupy our time seeking solutions rather than trying to identify the problems themselves. However, there are occasions when it is unclear whether a problem really exists. Therefore, before we can seek a solution, we must first prove to ourselves that our possible “problem” is real rather than imaginary.

Rational, logical debate and discussion by reasonable men sometimes still produces inconclusive results. That is when statistical studies can prove most useful. The discipline of statistics (using mathematical formulae and approved methodology) has developed a technique for getting reasonable men to agree as to whether or not a problem exists. This technique involves the comparison of the numerical occurrences of actual events with the probability that such events could have occurred by chance.

An example will serve to clarify the concept. Supposing an individual, whom we shall call Mr. Complay, is handed a black bag holding two marbles. One white, one black but otherwise identical. He is told he must place his hand in the bag and pick one marble, identify its color and replace it in the bag, then repeat the process a total of five times; If he gets three white marbles or more out of five picks, he wins. If he gets less than three he loses. Mr. Complay goes through the process and picks five black marbles! Convinced that both marbles are black and that the procedure is dishonest, he demands to verify the contents of the bag. This demand is refused and Mr. Complay is advised that there is nothing wrong with the procedure even though he happened to be “unlucky” enough to pick five black marbles. Debate and discussion lead nowhere. So

Mr. Complay goes to court, has the bag sealed and brings in a statistician to do a study.

The statistician’s job is to show that picking five black marbles in a row constitutes such an unlikely happening that the probability that it occurred by chance alone, is remote enough to cause the Judge to agree that there is a “problem”. In this case, this determination will cause the Judge to order the sealed bag opened to determine if its contents really include a black and a white marble. (Of course there might still be a black and white marble in the bag notwithstanding the remoteness of the probability that called for the verification in the first place). But the Judge will *not* order the bag opened unless a certain statistical “threshold” has been reached that satisfies him that a “problem” may exist as to the contents of the bag.

To establish this threshold, the statistician calculates the following probabilities:

1. Chances of initially drawing a black marble: 1 in 2 or 50%
2. Chances of drawing a second consecutive black marble: 1 in 4 or 25%
3. Chances of drawing a third black consecutive marble: 1 in 8 or 12.5%
4. Chances of drawing a fourth consecutive black marble: 1 in 16 or 6.25%
5. Chances of drawing a fifth consecutive black marble: 1 in 32 or 3.125%

The Federal Civil Rights Statutes<sup>1</sup> have defined an event that does occur but has a probability of occurring by chance of 1 in 20 times (5%) or less as “statistically significant”. Or, in laymen’s words, the Federal law is saying - OK, if this event happened (drawing five consecutive black marbles), but it shouldn’t happen by chance more than 5% of the time, there may be a problem, so let’s look

inside the bag.

In the example, we can see that four draws in a row of a black marble, could occur 1 in 16 times. That probability is insufficient to get the Judge to act. But the fifth black marble, drawn in a row, does the trick by exceeding the 1 in 20 (5%) "legal threshold" probability with 1 in 32 (3.125%).

The lower the probability of an event occurring by chance, the greater the probability that there is a "problem". For example, instead of five black marbles in a row, the probability of Mr. Complay drawing ten black marbles in a row by chance would be 1 in 1,024. Further probabilities are: 20 in a row - 1 in 1,048,576; 25 in a row - 1 in 33,554,432, and so on.

### Statistical Evidence In Law

The U.S. Supreme Court opened the door to statistical proof in 1971 in, *Griggs v. Duke Power Company* 401 US 424, 432 (1971). It has since been used in

civil rights cases, price fixing conspiracy cases and administration law and procedure cases. At present there is virtually no area in which it cannot be used.<sup>2</sup>

The essence of the statistical analysis is the evaluation of differences between expected (in an ideal world) and observed frequencies of particular events and the quantification of the likelihood that such differences would be found (again in an ideal world) purely as a matter of chance. These determinations may constitute circumstantial evidence from which inferences can be drawn about such things as the magnitude of legally material discrepancies.

*Statistical Significance* is a term applied to figures that reflect events that could not have occurred by chance more often than a predetermined level such as 1 in 20. (The actual level may vary with the matter being considered).

*Practical Significance* is the

magnitude of disparity that will be persuasive to a decision maker.

Thus, a statistically significant result may fall short of practical significance if it fails to persuade a decision maker to act.

*Legal Significance* is that magnitude of discrepancy that will be accepted by a Court of Law as probative evidence. While legal significance has no precise statistical definition, some Courts have attached legal significance to particular levels of statistical significance. Generally, the Court's determination will depend on its ad hoc assessment of such factors as adequacy of data, thoroughness of analysis and credibility of expert witnesses.

"A strong statistical relationship between two events tempts the logical mind to infer a causal connection between these events. By eliminating chance as an alternative causal explanation and by showing there is either a

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weak or no relationship between the events and the outcome of interest, statistics may support the inference of an inculpatory explanation.”<sup>3</sup> It is normally the burden of the opposing party to show that there are innocent reasons for the relationship observed or that the circumstantial evidence is otherwise unpersuasive.

### Florida Bar's grievance procedures

Much has been said and written about the injustice of our legal system. One method of verification, accepted by reasonable men and courts of law as to whether there is “a problem” in any system, is a statistical analysis of that system.

The Florida Department of Professional Regulation, an agency of the State Government, regulates over one million professionals in the state. Rules that govern the Department of Professional Regulation are established by the legislature under Florida statutes and no profession governs itself under those rules.

The Florida Bar, on the other hand, is an arm of the Supreme Court and is run by a Board of Governors elected by the very attorneys they are supposed to discipline. The Supreme Court has responsibility for determining rules of discipline and disciplining lawyers and delegates those responsibilities (subject to its “supervision”) to the Florida Bar. Any

adjudication by the Florida Bar that results in dismissal of a complaint does not require Supreme Court Approval. In practice and historically, rule changes in the disciplining of lawyers recommended by the Florida Bar get approved with no input or opposition from non-lawyers. So, unlike the rest of the Florida professions, lawyers effectively govern themselves.

Complaints are filed with the Department of Professional Regulation and the Florida Bar. A proportion of these complaints are determined on a preliminary basis to be justified in what is called a “finding of probable cause”.

It is reasonable to suppose that these “findings of probable cause”, as a percentage of total complaints, will not vary too greatly in any one profession from the average of all professions, if in fact, the process for determining this probable cause is equally fair in all professions. To make this determination, a statistical study was commissioned. The statistical study was done by Mr. James Slitor, Instructor of Statistics at Florida Atlantic University in Boca Raton.

In 1986/87, the findings of probable cause as a percentage of complaints filed averaged 28.6% for the Department of Professional Revenue. The comparable figure for the Florida Bar was 3.68%. The probability that such a difference could have occurred by chance alone was de-

termined to be less than one in one trillion trillion or 1 in 1,000,000,000,000,000 or 1 in 10<sup>-18</sup>. The number was too small for even a main frame computer to determine and would require the U.S. Defense Department's super computer for a final determination.

Compared to even the lowest level of probable cause for any Florida profession (11% for dentists) the corresponding number for the Bar on a comparative basis, would still give a probability that the Bar's results could occur by chance of less than 1 in 33,000,000,000 (1 in 33 billion).

Since the probabilities of occurrences that are less than 1:20 are viewed as “statistically significant”, the validity and seriousness of the problem is presumed.

The statistical analysis requested, has produced results bearing such astronomical values that they stagger the imagination and soar beyond “legal significance” to some yet undefined stratospheric level of “immediate conscience shocking persuasiveness”. In our case, such results are merely the icing on the cake. Although the results obtained are so dramatic that alone and unsupported, they certainly appear enough to persuade the Court to reach the same legal conclusion.

<sup>1</sup> Code of Federal Regulations – Judicial Administration Section 50.14 -28 CFR chapter 1 (7-1-88 Edition) Department of Justice.

<sup>2</sup> *Statistical Evidence in Litigation* – ISBN 0-316-08148-5 Barnes & Conley - 1986

<sup>3</sup> See *Castenada v. Partida*, 430 US 482, 496, n17 (1976); *Contreras v. City of Los Angeles*, 656 F. 2d 1267, 1273 (9th Cir 1981); *NAACP v. Siebels*, 616 F. 2d 812, 817 n13 (5th Cir 1980); *Johnson v. Shrevesport Garment Co.*, 422 F. Supp. 526, 539-540. (W.D. La 1977) aff'd, 577 F. 2d 1132 (5th Cir 1978).

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## AFFIDAVIT

Date: June 26 1989

I, the undersigned, James Slitor of Delray Beach, Florida hereby confirm the following:

1. That I am an Instructor of Statistics at the Florida Atlantic University, Boca Raton, Florida and my qualifications are Bachelor and Master Degrees in Mathematics and Political Science.

2. That prior to undertaking the statistical analyses requested by American For Justice, Inc., I had never met Mr. Ronald Bibace nor heard of American's For Justice, Inc.

3. That I was asked to do a statistical analyses to determine the probability that the percentage of probable cause decisions to complaints filed in the area of lawyer discipline could have occurred by chance when compared with the same data in all other professions in Florida.

4. That I was asked to use all generally accepted statistical methods to make that determination.

5. That I did so and that the extremely low level of the results obtained necessitated the use of a main frame computer.

6. That the computer used which produces results that extend to eighteen zeros or one trillion trillion was inadequate to the task.

7. That therefore, while it can be said with certainty that the probability of the results obtained by the Florida Bar occurring by chance are less than one in one trillion trillion (1: 1,000,000,000,000,000,000) or  $10^{-18}$ , I can not say how much less.

8. That even taking the lowest probable cause level of any profession as opposed to the average of all professions the Bar results could have occurred by chance only one in thirty three billion (33,000,000,000) times.

9. That due to the astronomi-

cally low level of the results the figures have been re-verified more times than would be standard procedure and that they are accurate.

10. That I was advised that the source of the data received was the Department of Professional Regulation and the Florida Bar. That the data was more than adequate for the conclusions drawn.

11. That my work was paid for at an hourly rate based on the number of hours worked and was unrelated to the results obtained.

S/ James (Jim) Lewis Slitor, B.A., M.A.

On this 26<sup>th</sup> day of June, 1989, personally appeared before me James Lewis Slitor, and acknowledge that he executed the foregoing Affidavit.


S/ (signature illegible)

Notary Public, State of Florida, My Commission Exp. May 23, 1993, Bonded thru PICHARD Ins. Agency

How much evidence is laying around in the files of the legal reform and patriot community that -- if logically assembled -- could provide a statistical foundation to challenge or sue various entities or procedures of our government? How much similar evidence is already assembled in government files that can be readily accessed over the internet or through Freedom of Information Act requests? Since statistical arguments can be lawfully used in court, here in the "information age", we'd be foolish not to start gathering and analyzing that information.

Author Ron Bibace can be reached at Americans for Justice, Inc., 4720 N.W. 2nd Ave. Ste. D-10, Boca Raton, Fla. 33431.

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# Call Us Before You Hire A Florida Lawyer

*by Ron Eubanks*

The Florida Bar seems “statistically” reluctant to prosecute lawyers for operating outside the law, but relishes the prosecution of paralegals operating outside the Bar’s protection. Here’s three documents mailed, filed, or published by a Florida paralegal and his wife after five years of the Bar’s harassment.

Once again, here’s a guy trying to earn a living in the free market as a paralegal, and the Florida State Bar is reportedly doing their level best to shut him down. Why? Reportedly, there are no complaints against this paralegal from his customers -- only from lawyers. If the public’s not harmed, why the enforcement action? The answer, of course, is to protect the Bar’s monopoly-based incomes.

As for the paralegal, he seems to be doing what he can to confront the Bar, but his efforts as peacemaker are probably in vain. The Bar can’t let him win, so they won’t. He might get a “draw” where they leave him alone if he makes enough trouble, but they won’t let him win. Therefore, the Eubanks may be in for some difficult times.

Their paperwork is interesting; full of righteous study and the faint scent of hysteria. After five years of “Hell” (as Mr. Eubanks writes), they may be almost emotionally exhausted and therefore vulnerable to defeat. But what was their crime? Believing they could exercise their personal freedoms and right to work in the free market of the “Land of the Free”?

Ron Eubanks is in for a fight, but isn’t finished and looks unlikely to quit. Moreover, his last document implicitly threatens the Bar’s insurance with public exposure. Very nice. If the Eubanks have any more tricks like that up their sleeve, the Bar – even if it wins – will certainly regret challenging these paralegals.

August 21, 1996  
Certified Mail, Return Receipt Requested  
No. Z 104 380 316

Chief Justice Gerald Kogan  
The Supreme Court of Florida  
Supreme Court Building  
500 South Duval Street  
Tallahassee, FL 32399-1925

Re: Notice of conspiracy to deprive non-lawyer citizens of their inalienable rights under color of law

Dear Justice Kogan:

I hereby give you notice of the existence of a conspiracy to deprive non-lawyer Florida citizens certain inalienable rights protected by Title 42, Sections 1983, 1985 and 1986<sup>1</sup> involving members, officers, employees of The Florida Bar and The Florida Bar. The particular rights being chilled and/or denied under color of law are the First, Fifth, Sixth and Fourteenth Amendments to the United States Constitution<sup>2</sup> as well as these amendments’ counterparts in the Florida Constitution.

The conspirators’ scheme is to attack, harass, persecute and silence, non-lawyer private citizens, under color of law, using intimidation and coercion to frighten a targeted individual into signing a cease and desist affidavit. If this fails, The Florida Bar prosecutes *civilly* instead of criminally in order to circumvent and deny the targeted citizen his or her federal Constitutional rights

provided by the Sixth<sup>3</sup> Amendment as well as rights provided by Sections 2, 9, 16, 21 and 22 of Article I of the Florida Constitution. The Florida Bar targets those who attempt to expose the corruption involving dishonest, unethical Florida Bar members operating within Florida's legal system and those who act in the capacity of non-lawyer legal technicians who assist the public in the preparation of legal documents concerning uncontested dissolution of marriage, name change, third-degree adoption, chapter 7 bankruptcy and other legal documents of a clerical nature which are either authorized by this Court or by federal law (Title 11, Sect. 110 U.S. Code).

Their ultimate goal is to force these entities out of business and stop the criticism and further exposure of corruption so prevalent in our legal system by *overreaching* and the *ill-use* of authority granted to The Florida Bar by the Supreme Court of Florida to prevent "unlicensed practice of law". Using dubious allegations of UPL asserted by Florida Bar members, The Florida Bar takes action against legal technicians and others under the ruse of "protecting the public from harm," but is in fact taking such action for the benefit of fellow slackers, for the benefit of Bar members and sole practitioners who cannot economically compete with legal technicians' low prices and to attempt to reestablish a "pre-Rosemary Furman" monopoly of legal services including the previous bankruptcy court monopoly. Such is a *special private interest* which is being protected by The Florida Bar — not a public interest.

I have operated Able Legal Document Service since October 1991 and Lawyer Complaint Ser-

vice since January 1993, and the only complaints filed against me and my business entities were filed by members of The Florida Bar who were offended by my mere existence. To my knowledge, not a single complaint has been filed with The Florida Bar, or with any law enforcement agency, against me or any business I control by a customer or any non-lawyer citizen of this state! Except for an abhorrent ulterior motive, explain to me why The Florida Bar, without any evidence of public harm or violation of F.S. 454.23, has targeted me for a *five year non-stop investigation* for Bar member-fabricated UPL violations since October 1991, depriving my wife and me of the goodwill of our business for which we have worked so hard! If The Florida Bar and its members employed our work ethic there would be no need for The Florida Bar Client Security Fund.

The Court on which you serve previously established the "purpose" of The Florida Bar in Rule 1-2 of the Rules Regulating The Florida Bar. The Florida Bar has been grossly negligent in respect to its precisely defined reason for existence, otherwise there would be no need for you to be served with this notice.

You obviously hold a position of sufficient authority<sup>4</sup> to stop the herein described violations of law before additional harm is suffered by me, my wife, my business or by other non-lawyer citizens in this state. If you ignore this notice and allow these unlawful activities to continue, I will be forced to file suit in federal court against you personally to redeem my rights and recover damages for the harm you willfully allowed to occur.

Sincerely,  
s/ Ron Eubanks

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1. The Florida Bar shall immediately petition the Supreme Court of Florida to amend the Rules Regulating The Florida Bar to change the composition of The Florida Bar Board of Governors and The Florida Bar Executive Committee such that these bodies will include a *Super Majority* of public members (non-lawyers who do not feed from the trough of the legal profession), so The Florida Bar will in fact be controlled by the very persons whom The Florida Bar is supposed to serve – The Public . Such Being In the Best Interest of the Public and Consistent with Article 1, Section 1 of the Florida Constitution.<sup>5</sup>

The *public* is obviously the most appropriate group of citizens to determine the public needs in regard to “duty and service to the public.”<sup>6</sup> Such a change is also necessary to prevent further corruption and racketeering activity in Florida’s legal justice system and to restore public confidence in our court system.

If the Florida Supreme Court should refuse to ratify the above amendment to the Rules Regulating The Florida Bar, the citizens of this state should initiate impeachment proceedings against each Justice of the Supreme Court voting against said petition due to the particular Justice or Justices’ lack of concern and disregard for the public interest.

2. The Florida Bar shall immediately petition the Supreme

Court of Florida to amend the Rules Regulating The Florida Bar to accomplish the following: The Client Security Fund shall be fully funded to ensure that all bona fide claims from victims of defalcating members of The Florida Bar will be compensated *in full* instead of in part. Example, a victim of a \$300,000 theft by a Florida Bar member shall receive \$300,000 in compensation instead of only \$10,000, which is The Florida Bar’s current practice. IN THE ALTERNATIVE, all active Florida Bar members must be fully bonded and insured to secure the money and property to which said members have access. Members of The Florida Bar shall be required to provide proof of bonding and insurance coverage at least annually or the lawyer shall not be allowed to practice law in this state. SUCH BEING IN THE BEST INTEREST OF THE PUBLIC AND CONSISTENT WITH ARTICLE 1, SECTION 1 OF THE FLORIDA CONSTITUTION.

If the Florida Supreme Court should refuse to ratify the above amendment to the Rules Regulating The Florida Bar, the citizens of this state should initiate impeachment proceedings against each Justice of the Supreme Court voting against said petition due to the particular Justice or Justices’ lack of concern and disregard for the public interest.

3. The Florida Bar shall immediately petition the Supreme Court of Florida to amend the Rules Regulating The Florida Bar to accomplish the following: The Florida Bar shall dismantle its Unauthorized Practice of Law Department and immediately cease all civil prosecutions, and then hereafter shall defer all UPL prosecutions to Executive Branch of our state government so defendants will be afforded due process of law and his or her Sixth

Amendment rights under the federal constitution and the equivalent rights provided by the Florida Constitution. SUCH BEING IN THE BEST INTEREST OF THE PUBLIC AND CONSISTENT WITH ARTICLE 1, SECTION 1 OF THE FLORIDA CONSTITUTION.

If the Florida Supreme Court should refuse to ratify the above amendment to the Rules Regulating The Florida Bar, the citizens of this state should initiate impeachment proceedings against each Justice of the Supreme Court voting against said petition due to the particular Justice or Justices’ lack of concern and disregard for the public interest.

4. Or in the alternative to 1, 2, and 3 above: The RABID BEAST (The Florida Bar) shall be SEVERED from the Judicial Branch of government as its official arm and given no more influence in our state government than is given any other special interest group or private professional trade association. Lawyer regulation and discipline shall be accomplished by the Executive Branch of state government

5. My wife and I shall be compensated for the hell and misery we have endured for the last five years at the hands of The Florida Bar, its employees, its staff and various members of The Florida Bar for violating our federal Constitutional rights protected by Title 42, §§ 1983, 1985, and 1986, our state protected rights enumerated in the Florida Constitution, for violating state and federal RICO statutes and for taking from us the goodwill of our business, without due process of law, for which we have worked so hard.

Compensation for our damages is demanded in the amount of \$500,000 to Ron Eubanks, Ron Eubanks d/b/a Lawyer Complaint Service, and d/b/a Able Legal

Document Service and Paula Eubanks for each of the five years we have suffered, TOTALLING FIVE MILLION (\$5,000,000.00) DOLLARS.

IF THE ABOVE DEMANDS ARE IMPLEMENTED, THE CITIZENS OF THIS STATE WILL HAVE A LEGAL JUSTICE SYSTEM IN WHICH THEY WILL HAVE CONFIDENCE AND CAN TRUST TO RENDER JUSTICE TO ALL.

Dated this 22 day of August, 1996.

s/ RON EUBANKS  
s/ PAULA EUBANKS

**AUGUST 19, 1996  
PUBLIC NOTICE**

All persons who have actually suffered damages at the hands of a Corrupt, incompetent, dishonest Florida lawyer which maybe attributable to The Florida Bar's negligence and failure "to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence" or from unconstitutional/ unlawful actions of The Florida Bar, its staff or employees, should consider filing a claim for damages directly with The Florida Bar's insurance carrier. See information below:

The Florida Bar's insurer:  
**Nationwide Insurance**

Policy Number:  
**77PR593721-0003**

Number to Call to File Claim:  
**800-421-3535**

Florida Bar's Agent's Name:  
**Douglas Croley**

Agent's Telephone Number:  
**904-386-1922**

Agent's Fax Number:  
**904-385-1685**

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Ron Eubanks, Lawyer Complaint  
Service, 3 Maples St., N.W.  
Fort Walton Beach, FL 32548

<sup>1</sup> *Santiago v. Philadelphia*, (1977 ED. P. A.) 435 F. Sup. 136. Section 1986 actions are proper where a defendant knew of a conspiracy to deprive the plaintiff of federal constitutional or Statutory rights, had the Opportunity to prevent the deprivation, and neglected or failed to prevent the deprivation of right.

<sup>2</sup> *Monroe v. Pape*, 385 U.S. 167 (1961); *Id.* at 183; 18 U.S.C. §242.

<sup>3</sup> Sixth Amendment (1791). In all criminal prosecutions, the accused shall enjoy 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 favor, and to have the Assistance of Counsel for his defense.

<sup>4</sup> *Santiago v. Philadelphia*, *supra*; 42 U.S.C. 1986.

<sup>5</sup> Political Power.—All political power is inherent in the people.

The enumeration herein of certain rights shall not be construed to deny or impair others retained by the people.

<sup>6</sup> The Supreme Court of Florida defined the purpose of The Florida Bar in Rule 12 PURPOSE of the Rules Regulating the Florida Bar, which states: "The purpose of The Florida Bar shall be to inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence."

Who insures the other State Bars? What would happen if folks starting suing the state Bars for negligent enforcement of their own codes of ethics, grievance procedures, and/or members' criminal acts? What would happen if those suits dragged in the Bars' insurance companies? Would that affect the Bar's insurance premiums, costs, dues, and member dissatisfaction? Perhaps we'll see. ■

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# Control your lawyer

by Phillip C. Freytag

All lawyers can't be blamed for the failures of our legal system any more than all teachers can be blamed for the failures of the public education system. When you hire a lawyer *you* have considerable power – if *you* wish to use it. The main thing you have in your favor is the money that turns the lawyer on or off just like a light switch. If you fail to use this power it is your own fault.

Most lawyers will probably not admit it, but much of the time they do not know in advance what the product of their work will be or how much it will cost. They can only be 50% successful on the average in litigation. Therefore, lawyers generally work by the hour.

Before you see a lawyer on a significant matter decide that you are going to remain in control at all times. Remember that you are the employer and he is the employee. You can remain in charge at all times because you have the money that will pay him.

Check with your friends and acquaintances for their recommendations of a lawyer. Do not look in the telephone book for the biggest ad. The biggest ad may belong to the lawyer who has the highest overhead, charges the most and is the one who depends on fear, desperation and impulse to get his clients.

When you first meet your prospective lawyer, observe his office. It should be functional, equipped with modern business machines and staffed by people who appear competent.

Start your conversation by telling him that *before* he starts

keeping time on your case and *before* you even talk about the details of your case, you have a few business matters to discuss:

- \* Ask if he is qualified in the area of law you may need advice on and find out briefly what his experience is.

- \* Ask if he bills for the first conference which you are about to start.

- \* Ask how he bills his and his staff's time, the rates and how often he sends statements.

- \* Ask for a sample of his billing so you can see if it contains enough detail to keep you advised of charges on your account. *Beware of the lawyer that bills for his work in very broad terms without reference to date, number of hours, specific task or who did the work.*

If he reacts adversely to this line of questioning, or you get a doubtful feeling, get out of his office before you owe him any money and become his next victim. If he reacts favorably, and you are satisfied with what you have heard and see, state that you are *now* ready to discuss your case.

Present your case briefly and ask for his assessment. Do not make a decision to hire him at this time, but rather ask for his bill, pay him, and say that you need some time to consider whether you will hire him and will advise him of your decision in a day or two.

If the matter involves a large sum of money or potential high liability, see another lawyer and go through the same process. The extra money you spend at this point will not be wasted. Seeing more than one lawyer will also give you confidence that you

are proceeding correctly.

Assume now that you have found a lawyer that you feel comfortable with and that you think you can afford. Tell your lawyer that you have hired him but that you would like to discuss the rules that he will follow in pursuit of your case with his billing clock turned *off*. Make it clear, *in writing*, that he will proceed with work or expenditure of funds only when previously approved by you. Include the amounts of any retainers or deposits in your agreement and their disposition when work is ended. Be sure you do not commit to more cash flow than you can handle.

Supply all information requested promptly. Be cooperative at all times, but if you do not understand, ask questions. Insist on a being copied with everything related to the case. This serves two purposes, it keeps you advised of the status of your case and in the event anything goes wrong with your relationship with your lawyer you will be prepared to step into his place "pro se" or go to another lawyer. *Study your case until you understand it thoroughly.*

Be a good employer; check what your employee is doing periodically, encourage him, keep him paid, but also expect good prompt work on his part.

Always remember that any mistakes your lawyer, the Court or anyone else makes will ultimately be born by *you*. Your lawyer represents and hopefully helps you, but *you are responsible* for everything he does.



# Private Prosecutions

by Jon Roland

There's a growing awareness that crimes are prosecuted selectively in the United States, especially at the Federal level. U.S. Attorneys have discretion to pick and choose which cases they wish to prosecute and as a result some cases – which many believe should be prosecuted – are ignored by U.S. prosecutors.

More troubling is the clear indication that many of the cases not prosecuted are rejected for political reasons. For example, it's virtually impossible for an average citizen to file criminal charges against a federal judge and find a U.S. Attorney willing to prosecute the case. As a result of this prosecutorial "discretion" (cowardice or corruption), the government is effectively shielded from criminal prosecution.

This article explores of an emerging solution for prosecutorial "discretion": private prosecutions.

Although almost all criminal prosecutions are currently conducted by public prosecutors, there is a long-standing

tradition of Anglo-American law for criminal prosecutions to be conducted by private attorneys or even by laymen.

The practice of using private attorneys to prosecute criminal offenses is derived from English common law. Until the late nineteenth century English criminal procedure relied heavily on a system of private prosecution even for serious offenses. This is discussed in some detail in a classic article by Morris Ploscowe, "The Development of Present-Day Criminal Procedures in Europe and America", 48 *Harvard Law Review* 433 (1935). On p. 437, Ploscowe states, "The Germanic procedure of Charlemagne and the Anglo-Saxon procedure of nearly the same period still looked upon the redress of most crimes as a private matter. . . . Since crime was in general treated as a private injury, there was no distinction between civil and criminal proceedings." On p. 469, "The English criminal procedure developed its traditional accusatory characteristics largely because it relied upon a system of private prosecution. . . . In the

course of the 19th century private prosecution proved itself inadequate. The private individual would frequently forego prosecution rather than incur the expense and responsibility involved. Sometimes there was no individual who could be called upon to prosecute a particular case, and when a private individual did institute proceedings, the case was very often badly prepared. Moreover, the system was abused for private ends, lending itself to bribery and collusion. . . . The office of the Director of Public Prosecutions was created by act of Parliament in 1879. . . . Many towns and boroughs appoint solicitors whose functions are to prosecute offenders. . . . Prosecutions are also carried on by the police, either directly or through private solicitors whom they hire. The traditional English system of private prosecution is therefore supplemented by various devices for public intervention. . . . The public prosecutor has no greater advantages than any private solicitor or barrister prosecuting a case on behalf of a client."



Today, the forms of criminal procedure are the same for both public and private prosecutions; they differ only in the official status and source of compensation of the prosecutor. Most of the cases of private prosecution that we've found in the federal courts were conducted by private attorneys who also represented the victim in a civil action against the accused.

The first of these federal cases was *State of New Jersey v. William Kinder* (1988).<sup>1</sup> A private complainant instituted a criminal case against the defendant by charging him with simple assault and battery under the authority of New Jersey Municipal Court Rule 7:4-4(b), which provides in part, "any attorney may appear on behalf of any complaining witness and prosecute the action on behalf of the state or the municipality". After removing the case from the Municipal Court of New

Brunswick, the defendant moved to dismiss. District Court Judge J. Debevoise held that:

(1) Municipal Court Rule 7:4-4(b) allowing state to prosecute defendant through use of private attorney was applicable even upon removal to federal court, and

(2) the private attorney who prosecuted the case did not have a conflict of interest that violated defendant's constitutional right to due process. In its opinion the Court stated that "there is no provision of the Federal Rules of Criminal Procedure which conflicts with its provisions".

Another case was *Wesley Irvan Jones, Appellant, v. Jerry E. Richards, Sheriff of Burke County, N.C.*<sup>6</sup> (1985). On an appeal of a petition for habeas corpus denied, Circuit Judge Chapman held that no constitutional right was impaired by involvement of the same attorneys as prosecutors in a criminal trial and as plaintiff's

attorneys in civil suits filed against petitioner arising out of a traffic accident which produced both criminal charges and civil actions. In their appeal, attorneys for petitioner cited *Ganger v. Peyton*<sup>7</sup> (1967), in which private prosecution was disallowed. However, in that case, the Commonwealth's attorney who prosecuted Ganger in his criminal case for an assault against his wife was at the same time representing Ganger's wife in a divorce proceeding. Ganger testified that the prosecuting attorney offered to drop the assault charge if Ganger would make a favorable property settlement in the divorce action. On the basis of that testimony, it was decided that Ganger's prosecutor "was not in a position to exercise fair-minded judgment" in the conduct of the case.

In North Carolina, the use of private attorneys to assist the state in the prosecution of criminal cases "has existed in our courts from their incipiency," *State v. Best*<sup>8</sup> (1972), and such use in a particular case is committed to the discretion of a trial judge. *State v. Lippard*<sup>9</sup> (1943). However, when private attorneys are employed, the district attorney must remain in charge of and be responsible for the prosecution, *State v. Page*<sup>10</sup> (1974).

Other states provide for private prosecutors by statute. In Texas, Vernon's Annotated Texas C.C.P. art. 2.07(a) [Attorney pro tem] provides that "Whenever an attorney for the state is disqualified to act in any case or proceeding, is absent from the county or district, or is otherwise unable to perform the duties of his office, or in any instance where there is no attorney for the state, the judge of the court in which he represents the state may appoint any competent attorney to perform the duties of

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the office during the absence or disqualification of the attorney for the state.” However, by Op.Atty.Gen. 1990, JM-925, a district judge is authorized to appoint a district attorney pro tem pursuant to the above article even though there is an assistant district attorney in place. In *Davis v. State*<sup>11</sup> (1992), it was held that appointment of a special prosecutor was within the discretion of trial courts, and that such appointment is not predicated on the absence or disqualification of elected district attorney.

However, some State courts have invalidated criminal prosecutions by private attorneys for cases involving serious crimes and those involving situations where a public prosecutor has *expressly* refused to prosecute the defendant. See e.g., *State v. Harton*<sup>2</sup> (1982) (prohibiting private prosecution for vehicular homicide absent consent and oversight of the district attorney); *State ex rel. Wild v. Otis*<sup>3</sup> (1977) (where county attorney refused to prosecute and grand jury refused to indict on charges of perjury, conspiracy, and corruptly influencing a legislator, private citizen could not prosecute and maintain such charges; dicta suggests that this might be permissible with legislative approval and court-appointed private attorney as prosecutor); see also, *Commonwealth v. Eisemann*<sup>4</sup> (1982) (Pennsylvania Rules of Civil Procedure require that a person who is not a police officer must get the district attorney’s approval to file felony or misdemeanor charges which do not involve a clear and present danger to the community); *People ex rel. Luceno v. Cuzzo*<sup>5</sup> (City Court, White Plains 1978) (“exercising its discretion,” court prohibits private criminal prosecution against police officer where complainant

## American Patriot Needs Help!

I have fought for years against the **Ungodly** who, today, almost totally control America. Because I’ve fought corruption, our government has charged me with several felony indictments in a U.S. District Court. I, and others, believe these charges were filed to shut me up.

It’s time for us to reclaim God’s country — which He ordained for us — and live under God’s laws and not man’s laws. God’s warnings are coming to pass; they are being fulfilled every day. This is our last chance to stand up for God before God’s second and final coming.

My most precious possession is my soul that God gave me. If we sacrifice our souls to survive in this world, on judgement day, God states, “**He will know us not**”.

The cost for my upcoming court trial will exceed \$100,000. As one of God’s children, I am asking for any donations you can afford to send to me, to offset the cost of my upcoming trial and defense.

Let us all join together and create a united house and fight God’s unholy evil enemies. We will then be blessed by our God. God bless all who have eyes to see and ears to hear. To paraphrase Patrick Henry, “give me God’s liberty or give me death”.

**Celeste C. Leone**

**POB 475 Riverside, Connecticut 06878-0475**

was charged with a criminal offense arising out of the same occurrence).

Nevertheless, the possibility remains that, with proper research and preparation, private individuals may be able to prosecute criminal cases which the “system” might prefer to ignore.

<sup>1</sup> *State of New Jersey v. William Kinder* 701 F.Supp. 486 (D.N.J.1988).

<sup>2</sup> *State v. Harton*, 163 Ga. App. 773, 296 S.E.2nd 112 (1982)

<sup>3</sup> *State ex rel. Wild v. Otis*, 257 N.W.2nd 361 (Minn.1977), appeal dismissed, 434 U.S. 1003, 98 S.Ct. 707, 54 L.Ed.2nd 746 (1978)

<sup>4</sup> *Commonwealth v. Eisemann*, 308 Pa.Super. 16, 453 A.2nd 1045 (1982)

<sup>5</sup> *People ex rel. Luceno v. Cuzzo*, 97 Misc.2nd 871, 412 N.Y.S.2nd 748

<sup>6</sup> *Wesley Irven Jones, Appellant, v. Jerry E. Richards, Sheriff of Burke*

*County, N.C.*; Rufus L. Edmisten, Attorney General, State of North Carolina, Appellees, 776 F.2d 1244 (4th Cir.1985)

<sup>7</sup> *Ganger v. Peyton*, 379 F.2d 709 (4th Cir.1967)

<sup>8</sup> *State v. Best*, 280 N.C. 413, 186 S.E.2d 1, 3 (1972)

<sup>9</sup> *State v. Lippard*, 223 N.C. 167, 25 S.E.2d 594, 599, cert. denied, 320 U.S. 749, 64 S.Ct 52, 88 L.Ed. 445 (1943).

<sup>10</sup> *State v. Page*, 22 N.C. App. 435, 206 S.E.2d 771, 772 cert. denied, 285 N.C. 763, 209 S.E.2d 287 (1974).

<sup>11</sup> *Davis v. State* (App. 12 Dist.1992) 840 S.W.2d 480.

Write to Jon Roland via Email at [jon.roland@the-spa.com](mailto:jon.roland@the-spa.com), or visit his Web site at <http://www.constitution.org/>



# The Truth About Trusts

by Glen Halliday, trustee

The trust is an excellent tool to protect assets, avoid probate, increase personal privacy, and minimize income taxes. However, trusts are under-used and frequently misunderstood. This not surprising when you consider the scarcity of written material on the subject. According to *A Trustee's Handbook* (7th ed.) by Loring:

"In the late 1960s law schools set about the process of downgrading courses in the law of trusts from required to elective status, so that while almost all law schools have made courses on state regulation mandatory, only a few continue to afford the law of trusts the status it enjoyed at the turn of the century. In most law schools trust law is now an afterthought, buried somewhere in an elective course on estate planing."

Likewise, in the preface of *Income Taxation Of Trusts, Estates, Grantors and Beneficiaries*; author Jeffrey Pennell states: "Unfortunately, when I first recommended to our curriculum committee that we add a course on this subject, there was simply no classroom text available."

Because trust literature is

seldom published, it is virtually impossible to go to any single source to get all the reliable information about every benefit of trusts. Further, available information on trusts has been complicated to the point that the average person has almost no chance of understanding even the basic principles. However, the information is out there, if you know where to look. The basic principles of trusts and their management are relatively simple and proper operation of a trust is no more difficult, and often easier, than running your basic, small business.

There is no mystery surrounding trusts. It is true that they are less known than other types of business organizations, but they hardly uncommon. In 1993, there were approximately 1.6 million tax returns filed for partnerships, more than 2.5 million tax returns (form 1041) filed for trusts, and 4 million returns filed for corporations. In other words, trusts are more common than partnerships, and comparable in number to corporations. Further, the audit rate for trusts is roughly 20% that for corporations, partnerships and in-

dividuals.

## Divided titles

The fundamental idea of a trust is to divide the legal and equitable (possessory) title of the trust's assets. For example, suppose Mr. Smith owns and operates a business. Because he has both "legal" title (he owns the business) and "equitable" title (he actually works the business; he hasn't leased it to someone else), Mr. Smith alone is entitled to any benefits (profits) from the business. Likewise, Mr. Smith is solely responsible for any liabilities and taxes his business may incur. With full title (legal and equitable) comes full benefits - and full liabilities.

But suppose Mr. Smith leases his business to Ms. Brown. Now, while Mr. Smith still has his "legal" title to his business (he still owns it), Ms. Brown is operating the business under lease and therefore has "equitable" title. Because the title has been split ("legal" stays with Smith, "equitable" goes to Brown), so have the potential benefits and liabilities. If the business has a bad year, Mr. Smith is still guaranteed

to be paid his lease money in full. If the business prospers, Ms. Brown receives all the benefits of the profits no matter how large. Mr. Smith will be liable to pay taxes on the income he receives from his lease. Ms. Brown will be liable to pay income taxes on any profit generated by the business. If someone falls on the business premises and breaks a hip, Ms. Brown (who has equitable title) or the business itself, will be liable. Mr. Smith (with legal title) will normally escape liability.

Essentially, by dividing the full title to his business, Mr. Smith has both guaranteed himself an acceptable income and limited his potential liability for business operations or mistakes.

Typically, trusts also divide full title into "legal" title to property (owned by the trust, itself), and "equitable" title (owned by the trust's designated beneficiaries). In general, the trust's division of title can result in significant gains to beneficiaries and minimized liabilities for grantors.

For example, instead of leasing his business to Ms. Brown, Mr. Smith might place his business into a trust and designate his children as beneficiaries. Mr. Smith could continue to manage the business as a trustee and receive a salary for his efforts, but the profits would be divided among his three children. Although each child might have to pay taxes on his share of the income from the trust, in a graduated income tax environment, the collective tax burden might be reduced and net income to the family increased. (I.e., without a trust, if Smith's business generated a \$600,000 annual profit, his corporate tax liability might be \$250,000. However, if he placed his business in trust, and divided the \$600,000 among his three children, then each child might receive \$200,000 and owe \$50,000 in taxes. Collectively, the three children would

pay \$150,000 in taxes on the same income that would've cost the corporation \$250,000. That's a \$100,000 net to the Smith family and good reason to use a trust.)

#### Additional benefits

**Privacy.** We live in the information age. Information that used to be confidential and private, is readily available on almost every aspect of a person's life. Privacy becomes an increasing problem. Trusts traditionally have enjoyed protected status in the area of privacy. Often times trust records are difficult, if not impossible, to subpoena.

In 1995, I followed a court case in Hawaii between the IRS and the owner of a car dealership. The individual's business and family financial holdings had previously been organized into trust. The trust was refusing to surrender financial records based on the precedent that trust records are private and surrendering them could compromise the trust and

thereby jeopardize the interests of the beneficiaries. The defense attorneys had done considerable preparation and presented various court cases that substantiated the privacy of trust records.

The IRS countered with the argument that in 1938 the common law had been "statutized" and the cases that the defense used, no longer applied because we are under admiralty law. (I'd heard the "admiralty argument" several times, complete with the gold fringe of the flag. While it was possibly true, I'd discounted its practicality in the "real world". You can imagine my surprise at hearing that from the IRS's attorneys.)

The Judge allowed certain very limited concessions and the IRS was allowed to examine certain non-vital trust papers. The end result was that the IRS failed to find any fraudulent intent. The judge ruled in favor of the trust, the trust's privacy was maintained and the case was dismissed. The case was subsequently appealed



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to the ninth circuit court of appeals and again the privacy of the trust was upheld, court of admiralty or not.

**Wills.** While better than nothing, most wills can't truly protect the surviving family members from the horrors of probate and the confiscatory taxes. However, with a properly designed trust, probate doesn't exist. Probate is triggered by *transfer of title* of a decedent's assets. Assets held in trust are not subject to probate when a trustee dies. The assets do not belong to the trustee. His position is vacated and a successor is appointed to fill it.

**Liability.** A bankruptcy case involving Arizona Governor Symington is a perfect example of limiting liability and the trust's immunity from the actions of the trustees. Before he became governor, he personally guaranteed a development project that went bankrupt. When he was sued, his lawyers responded that all the Symington family's wealth was in trust and that the trust could not be forced to honor the governor's *personal* debts. The lawyers went on to say that they were dropping their defense and that no check would be written in the foreseeable future. Imagine -- a legal entity so strong the lawyers wouldn't even bother to defend it!

A properly administered trust is nearly impossible to penetrate to satisfy personal debts. The supreme court affirms the liability protections of the trust: "Further, the primary objective of a TRUST relationship is to obtain the advantages of corporations, but with the freedom from the burdens, restrictions, and regulations generally imposed upon them." (*Ashworth v. Hagen Estates* 165 Va 151, 181 SE 381)

**Income tax.** Income taxation of trusts and potential tax savings to the creator of the trust is not a matter of opinion, but fact. Trusts are recognized by the IRS and are issued tax ID numbers. The trust files its own tax return which is an IRS form 1041. Any lawsuits or back taxes charged against a trust business or property would be limited to seizing only those assets contained in the trust. If the IRS tried to collect back taxes on Mr. Smith's business, they might be able to seize the trust's business, but could not seize Mr. Smith's home (or car, or bank account) which were not assets of the trust.

For tax purposes, the IRS separates trusts into three categories: "Simple Trusts" (any trust where all the trust income is distributed annually); "Grantor Trusts" (since the IRS tries to define most trusts as Grantor Trusts, it follows that this classification is not necessarily to the trust's advantage); and, "Complex Trusts" (defined as a trust that is *not* a Simple Trust). Note that the IRS does not determine whether a trust is statutory or contractual, or impose any restrictions on who may create one — they merely try to categorize trusts for tax purposes and process the correct tax forms once the trusts have been created.

Nevertheless, it's curious that the entire IRS definition of Complex Trusts consists of a description of what they are *not*. *Blacks Law Dictionary* is less mysterious and defines Complex Trusts as those where the trustees have *complete discretion* (power) over the administration of the trust assets. In fact, the Complex Trust has the greatest degree of flexibility and freedom from statutory encumbrance. Without getting bogged down in definitions, note that it is possible to have two kinds of Complex Trusts: those

formed under statutory law, and those formed by private contract. As we'll see, a Complex Trust established in *contract* — not statute — is the best way to form a trust.

### Statutory vs. contractual

There are basically two classes of trusts. The first is a trust established in *statute*, by the legislature. *Blacks Law Dictionary* lists over 85 different types of statutory trusts including living trusts, discretionary trusts, pour over trusts etc..

Statutory trusts derive their existence from Congress and can be altered, amended or revoked by Congress. For example, Living Trusts, at best, protect the estate only up to \$1.2 million. Worse, there's been an alarming trend for the past several years in which living trusts are often set aside by the courts and the estates probated anyway. As a result, the Living Trust estate is subjected to ruinous legal fees and taxes. Is it a matter of time until Living Trusts are set aside entirely? Remember, Congress created the Living Trust. They are *statutory*. What Congress creates it can amend or revoke.

Have you ever heard the saying "ignorance of the law is no excuse"? In the realm of statute, you are liable for laws that you aren't even aware of. For example, you are driving down a road and the speed limit lowers and you don't see the sign. You continue on at your previous speed in blissful ignorance until you are caught on radar and given a ticket for speeding. You explain that you had no idea that you were exceeding the limit. It doesn't matter. You are liable whether you knew or not. That is pure liability. It doesn't matter what your intentions were. You didn't mean to break the law and you probably wouldn't have if you had known. It doesn't matter that there was no criminal intent

or harm done. The simple fact is that you were in violation of the law and the price must be paid. The realm of statutory law is the realm of pure liability. If you choose to put yourself into that realm with a statutory trust you'd better have a good lawyer.

The second class of trust is established in *contract*. The very definition of a trust is a *contract* involving *three* parties: The first party (grantor) creates a trust and typically conveys property into that trust; the second party (trustee) administers that trust for the benefit of the third party (beneficiary). Trusts are typically formed by a contract between the grantor(s) and trustees. Beneficiaries play no active role in the trust's creation or administration.

The legal significance of contracts was of supreme importance to the framers of the Constitution. Article 1 Section 10 states: "No State shall . . . Pass any Law impairing the Obligation of Contracts." The guaranteed right to contract is evidence of the People's sovereignty over government in that, once a lawful contract ("private" law) is entered into, even Congress cannot pass a subsequent law to revoke or "impair" an existing contract. This guarantee is far more important than most people imagine.

For example, suppose a farmer has a contract to receive payment for the crops that he delivers to market. If the contract is not honored and he's not paid for his crops, he'll have no incentive (or money) to produce crops the next year. Instead, he'll only produce enough to feed himself and his family. If no one could depend on contracts, there would be no incentive to produce anything. Production would halt and factories would close. There would be nothing to sell, the stores would be empty and almost all commerce would cease.

The right to contract is cru-

cial to the existence of free market and even personal freedom. As proof, consider those communist and socialist societies whose governments are able to "impair" the obligation of existing contracts. Although even the most repressive governments preserve some measure of the right to contract, to the extent that right is restricted, those societies are characterized by poverty and political oppression.

The United States Supreme Court affirms the right to enter into a contractual relationship (trust): ". . . the (contract) TRUST relationship is based upon the common law, and is not subject to legislative restrictions as are corporations and other organizations created by legislative authority." (*Crocker v. MacCloy*, 649 US Supp 39 at 270) I.e., if Congress didn't create a contract, it can't lawfully alter, amend or revoke it.

Nevertheless, can Congress pass laws restricting the ability to

utilize trusts? Yes, but not likely. Virtually all our elected officials use "Blind Trusts" — a trust that is listed in a registry in Washington DC and *does not report the source of its income* (IRS 1041 Instruction book p.7). In light of the power and wealth of those who already use trusts, it is unlikely that legislation restricting trusts will become too severe in the foreseeable future.

When creating a trust, remember that since a trust is a contract (private law) which can be freely entered into, there is little or no need for *statutory* trusts of any kind. And as you'll see, *contractual* trusts offer far more advantages than statutory trusts. Therefore, the subject of trusts can be hugely simplified by ignoring statutory trusts and focusing entirely on contractual trusts.

### Grantors

A trust begins with the Grantor who (typically) not only designs and creates the trust on

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paper, but also endows it with some of his valuable assets (land, businesses, money, etc.).

Once the trust is created and endowed with assets, the Grantor must disassociate himself from the management of the trust (and the assets he placed in the trust) or the IRS will cheerfully classify his creation as a “Grantor Trust” and tax him accordingly.

Trusts can be “revocable” or “irrevocable”. If a trust is “revocable”, the grantor has the legal power to take back whatever property he put in trust. This may seem like a safety feature in the event that a person changes his mind, but in reality it is a gaping hole in the trust’s armor. In the eyes of the courts and IRS, if the trust is revocable, the grantor technically still owns the property he placed in the trust. If he owns it, he can be taxed on it or even have it taken away from him in a judgment.

Therefore, to minimize IRS intrusions, it is vital that trusts be “irrevocable”; i.e., the grantor retains no residual or revisionary power over the trust and therefore cannot tell the trustees what to do or take back his property. The idea of permanently surrendering all control over your property to the management of others is a scary concept for some people, but it is a key principle and an essential attribute of the term “trust”.

It is a simple matter to make a trust irrevocable. The grantor simply declares it “irrevocable” in the trust “indenture” (the document which created the trust) and it is legally so because when the grantor creates a trust, he is literally *creating law*. (The people making law? What a radical concept – exactly what is meant by holding We The People as sovereign over our government.) If a trust finds itself in court for whatever reason the judge must use the trust “indenture” as the guide for how the trust is to be treated. Remember the Constitution’s (Art. 1 Sect. 10) prohibition against impairing the obligation of contracts?

When assets are conveyed *irrevocably* into trust, the tax liability of the assets no longer attach to the grantor. While the tax deductions for individuals are disappearing one by one, deductions for trust have remained almost perfectly preserved.

Therefore, why do so many competent professionals disagree on this point? It is because of the lack of familiarity with trusts and their potential. I repeat: the principles and laws pertaining to trusts are not complicated, they are just not widely known. Details pertaining to taxation of trusts are available from a variety of reliable sources. One of the sources I reference frequently is *Practitioners 1041 Deskbook*, Practitioners Publishing Co., Texas.

## Trustees

There is a great deal of difference between being a grantor who places property into a trust, and a trustee, who manages assets for the trust. Some grantors go to great pains to create a trust and still retain control over the assets by making themselves “managers” or “protectors”. They do this because they don’t understand the concepts of trusteeship and irrevocability.

Assets conveyed *irrevocably* are “transferred” into trust just as if they were *sold*. So long as the grant is irrevocable, “[t]he settlor (or grantor) may make himself sole trustee or one of several trustees.” (*Trusts*, 6th ed., George T. Bogert) Therefore, the grantor may administer the trust as *trustee* without retaining any residual power or interest. The court agrees: “By declaration of trust, the legal title, possession and control of the trust estate passed irrevocably from the grantor as an individual to himself as a trustee. The effect is no different than if the trustee had been another person.” (*Helvering v. St Louis Union Trust Co.* 296 US 39, ante, 29, 56 S Ct. 74, 100 A.L.R 1239)

If a trustee understands his role and administers the assets for the benefit of the beneficiaries, there is no danger of the trust failing for that reason. Trustees in a properly created complex trust have complete discretion and broad powers over the administration of the trust and its assets. Although trustees must follow the trust indenture as a general guide, no one can tell the trustees what to do. Trustees may even amend and add to the trust indenture.

The courts have ruled that in order for a contract trust to fail, the trustees must willingly and knowingly commit fraud. A trustee will not cause a trust to

fail because he makes an administrative error. The courts recognize that the trustee's job is not to be a lawyer, but a custodian or steward over the assets. Historically there is a great deal of leeway given to trustees in the administration of their duties. Fraudulent intent must be proven. Intent is much harder to prove than a simple mistake because of oversight. Essentially, if a trustee makes a mistake he must correct it, and having done so is personally immune from any civil or criminal liability. Liability cannot be assessed to a trust because of the actions of a trustee. Similarly the trustee is not liable for the debts of a trust.

However, a problem will arise if the grantor also makes himself both a trustee and a *beneficiary* of the trust. It is a hard and fast rule of trusts that *trustees cannot also be beneficiaries*.

However, additional assets (like houses, cars, etc.) can be purchased by the trust and conveyed into the trust as trust property. This can be accomplished with no tax liability to the former grantor (now, trustee) who resides in the trust's house or drives the trust's car. Although there is some dispute among legal and accounting professionals, the trustee may occupy the house or drive the car at no charge or tax liability to himself. There are numerous letter rulings involving the IRS where the person occupying the house (equitable or possessory title) is *not* assessed income and the entity that owns the house (legal title) is allowed the *deduction*. The pivotal point is *contract*. The trustee or employee may occupy the residence if it is a condition of employment and stipulated in the employment contract. The same rules apply with respect to a car. In the absence of a contract the point is less defensible.

### Complex irrevocable trusts

Trusts are powerful tools for estate planning and administering assets. By entering into a complex irrevocable trust you can elevate your family and business financial dealings to a higher plane and be ruled under a nonstatutory set of laws. The benefits of trusts are available to anyone who freely elects to use them. A degree of privacy and protection from liability can be achieved that is otherwise unavailable. Probate can be totally avoided, income taxes reduced, and personal liability virtually eliminated.

It is reasonable and prudent for a person to reorganize his affairs so that he may enjoy better privacy, protection and an improved tax position. The courts have ruled specifically, that a person is not more or less patriotic because of the amount of taxes he may or may not pay. Additionally, a person may choose to organize his affairs, whether or not

the resulting benefits or tax savings are incidental or by design.

Many of the benefits of trusts can be achieved using corporations and other statutory entities. However, the contract-based complex irrevocable trust is clearly protected by the courts for various reasons. Given a choice, I would rather have the protection of the courts than to have to depend on my wits or luck to keep me out of harms way.

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# Trust Fever

by Alfred Adask

Recent, remarkable research by William Cooper (Veritas Magazine, POB 3390 St. Johns, Arizona 85936) indicates the Internal Revenue Service is really Puerto Rican Trust #62.

“Ah HA!” we shout. “That’s the key! Those dastardly IRS bureaucrats are not true representatives of our lawful government -- they are foreign agents because they operate out of Puerto Rico!” (I should’ve known; the pointy shoes, the slicked back hair . . .)

But maybe the real significance of Cooper’s research is not that the IRS is located in Puerto Rico, but that the IRS is a *trust*.

The majority of this article is pure speculation — and broad, unsubstantiated speculation at that. At times, it leaps from hunch to conclusion like a mountain goat on LSD, but its purpose is only to explore an insight I find intriguing, exciting — and quite possibly wrong.

Further, this article is incomplete in that it presumes the reader has some personal knowledge of both trusts and “patriot law”. Without some background information on trusts (see “The

Truth About Trusts”, this issue), readers may find this article incoherent. Without some knowledge of the various “patriot” theories (which try to make sense of our loss of Constitutional rights and freedoms), this article may seem absurd.

However, with a “little knowledge” (dangerous though it may be) of trusts and “patriot law”, a few of you might find this article infectious. You, too, may be struck down with a dose of “trust fever”.

The word “trust” is so innocent-sounding and commonly used, that we read or hear it daily without noticing or attaching any significance to the term. For example, Robert Moffit reported in “Medicare Reform” (*Dallas Morning News*; 11/24/96):

“The Medicare *trust fund* . . . will post a \$2 billion deficit this year. . . . [T]he longer we wait to save Medicare from bankruptcy — which will arrive for the hospitalization *trust fund* by 2001, according to the Medicare *trustees* — the worse the options become. Eventually, they will narrow down to two: (1) *impose* huge new pay-

roll tax increases on all Americans or (2) withdraw Medicare *benefits* from many who need them. . . . If the hospitalization *trust fund* goes broke as scheduled in 2001, the average American household will be *forced* to pay \$4,000 in new taxes over the next four years to bail it out. . . . If nothing is done, the total cost of Medicare Part B to the average household will be [another] \$10,000 in taxes between 1996 and 2005.” [emph. add.]

The prospect of being “forced” to pay *another* \$14,000 in taxes to support Medicare over the next nine years is hardly intriguing. However, I am fascinated by the realization that Medicare (like the IRS) is not only a *trust*, but also an entity which we may be *forced* to support. Is it possible that *trust* relationships include an inherent power to somehow *force* Americans to meet certain performance obligations (paying taxes?) not otherwise justified or allowed by our Constitution?

Social Security is also described as a “Trust Fund”, and I’ve seen references to the “National Highway Trust”. How many gov-

ernment “trusts” are there? Does government use “trusts” (like Medicare or perhaps the IRS) as a fundamental strategy to bypass constitutional law? Is it possible that the same trust structures we can use to protect our *property* from government can also be used by government to ensnare our *persons*?

### Patriot hypotheses

The patriot/ constitutionalist movement is full of theories which try to explain the glaring contradictions between the Rights and Freedoms we are guaranteed by our Constitution, and the privileges and obligations we in fact receive. Like college girls who’ve been drugged on their dates and abused, we know we’ve been had – we just don’t know exactly how.

Some students of government’s unconstitutional behavior have determined the cause of our lament lies in the Social Security Number (SSN) — some say it’s the Uniform Commercial Code (UCC) or the Birth Certificate. “FOOLS!” shouts the fellow from Ohio, “it’s admiralty law!” “You stupid sons of . . .” mutters the West Coast guru, “it’s *martial* law imposed at the end of the Civil War.” “Nahh,” say others – “They got us with *adhesion contracts*!” Still more insist the problem stems from the national bankruptcy declared in the 1930’s which makes us all, always, operate under bankruptcy law. And of course, there’s always the time-honored 14th Amendment “citizenship” (or is it “Citizenship”?) and upper case (“JOHN W. DOE”) versus capitalized (“John William Doe”) name arguments to explain how we’ve been constitutionally deflowered by the randy corporate state.

All of these arguments and explanations have value, but none finally satisfy. One man may successfully use the “martial law”

argument to fend off government, but was his success based on the strength of his legal argument? Or was his success based on his personal determination to cause such endless, expensive litigation that the “system” declined to prosecute because he was more trouble than he was worth? The same questions apply to the “citizenship” arguments and all the rest. They all sound like they *should* work, and all *seem* to work some of the time, but none of ‘em works all the time. And so the patriot search for silver bullets continues -- often amid the smirks and guffaws of “licensed” lawyers, judges, and even other patriot researchers who view pet theories other than their own with contempt.

While I’ve yet to understand a patriot law theory that’s completely right, I’ve yet to see one that doesn’t contain at least a kernel of truth. Maybe the problem isn’t that patriot theories are wrong so much as incomplete. Maybe the patriot community is analyzing the legal system much like that a bunch of blind Hindu’s once analyzed an elephant: the blind man who felt the elephant’s nose declared elephants were like hoses; the blind man who felt the tail declared elephants were like ropes; the blind man who felt a leg declared elephants were like posts. The problem wasn’t that any one blind man was exactly wrong; the problem was that each blind man was trying to fit his evidence of elephants into his own limited knowledge of life. Having never seen the “big picture” of elephants, the blind men reached amusing but inaccurate conclusions.

Perhaps patriots do the same. I suspect the “big picture” in legal reform may be *trusts*. Most Americans dimly understand that “trusts” are some sort of boring accounting device used by the rich to protect their assets. Be-

cause most Americans are seldom solvent let alone rich, we understand trusts about as much as we understand horse polo. As a result of this “class unconsciousness”, most Americans are as collectively “blind” to trusts as the Hindus were to elephants. But like the elephant, unseen trusts may be much larger, powerful, and fantastic than anything most Americans can normally “see” or imagine.

### Improbable, but . . . .

Yes, it sounds farfetched to suppose government uses trusts in a sinister manner to deprive us of our rights. However, there are “patriot” rumors of Supreme Court cases which declare that any individual who is merely *in a position* to accept a “benefit” is thereby obligated to meet certain performance criteria – regardless of whether that individual ever actually received a dime’s worth of tangible “benefit”.<sup>1</sup> If those rumors are true, it would mean anyone who has been designated as a trust beneficiary – even if he has no idea he’s been designated and has never received a single tangible trust “benefit” – is still obligated to meet whatever performance criteria were mandated by the grantor and trustees who created the trust.

For example, suppose the rules of the Social Security Trust Fund specify that all beneficiaries must file and pay income tax. Then once you applied for a Social Security Number, you’d become a beneficiary of the Social Security Trust Fund and thereby obligate yourself to pay income tax -- even though you may never receive one dime’s worth of Social Security payments.

My suspicions are strengthened by Glen Halliday’s assertion (“The Truth About Trusts”; previous article) that:

1) In 1993, the IRS received

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1.5 million tax returns from partnerships, 2.5 million from trusts, and 4 million from corporations; but,

2) There are almost *no* trust classes conducted in our nation's law schools or modern classroom textbooks on trusts.

In other words, although there's an enormous number of law school classes and texts on partnerships and corporations — trusts (which are comparable in number, hold much wealth, and should therefore be the lawyers' natural prey) are virtually ignored. I find this institutionalized ignorance suspicious and more reason to suspect you and I may be the unwitting "beneficiaries" (we enjoy all those government "benefits", remember?) of government trusts which entangle us in administrative law without constitutional recourse.

### **Trust features**

**Contracts.** Trusts created with forms according to statutes are subject to government regulation. However, *common law* trusts can also be formed by *private contracts* and as such are largely exempt from government regulation.

Contracts are examples of "private law" in which We The People make our own (limited) laws to govern you, me, or whoever signs our contracts. This contractual power is *superior to the Constitution* and protected as

such in Article 1, Sect. 10 of the Constitution ("No State shall . . . pass any . . . law impairing the Obligation of Contracts"). Given that common law trusts can be superior to the Constitution, they are in some regards "above the law". As such, trusts are not only powerful but potentially dangerous.

**Three parties.** Another essential feature of trusts is that they always involve at least three parties: grantors, trustees, and beneficiaries. The contracting parties who create the trust are typically the grantors and/or trustees. They sign a contract (called an "indenture") under which the grantor conveys legal title to some property into the trust which the trustees agree to manage for the "benefit" of the beneficiaries (children, for example). Hence the essence of a trust is that a mature grantor "trusts" his trustees to manage property for the "best interests" of the relatively incompetent beneficiaries.

Again, note that *beneficiaries need not sign or enter into a charitable trust contract* as active participants. In fact, beneficiaries — who have equitable title (use) of the property (money, cars, "benefits", whatever) owned by the trust and managed by the trustees — need not even *know* of the trust's existence. Therefore, *you* could be a designated "beneficiary" of several trusts (Medicare? Social Security?) and not even

know these trusts exist — or that your status as a beneficiary compels you to obey the rules of the trust.

Those potential benefits could include money, a welfare check, Social Security disability, medical insurance, or use of the state's automobile — all depending on the particular trust involved and the property it contained.

Because beneficiaries can be "included" in charitable trusts without their knowledge, trusts sound like a potentially dangerous device for seducing Americans into compelled performance and obedience to the state/trustees.

**Divided title.** The essential feature of trusts is the division of a trust property's full title into "legal" and "equitable" (possessory) titles. For example, by placing your business in trust, the "legal" title to the business (ownership) will belong to the trust, but the "equitable" title to the use, benefits, and profits of the business will belong to the beneficiaries (perhaps your children). By dividing title, certain tax and legal liabilities are reduced or even eliminated. For example, if the trustees or trust property damage another party or property, only the trust property can be sued; the grantors, trustees, and beneficiaries are virtually immune from personal legal liability.

Curiously, the "divided title" aspect of trusts is very similar to the patriots' "divided title" theory concerning ownership of automobiles. According to that theory, the "Certificate of Title" to your car is not "the" Title, it's merely an official document that "certifies" (hence, the term "Certificate") that a "title" exists . . . somewhere — but you don't have it.<sup>2</sup>

Sounds nuts, no? After all, why would anyone (even government) be dumb enough to give you *possession* of an expensive

automobile but keep the mere scrap of paper called “title” for themselves? Perhaps the answer’s implied in a quote attributed to one of the Rockefellers: “Own nothing, control everything.”

It appears that the state holds legal title to “your” car while you – much like a teenager uses his dad’s Ford for a Saturday night date — merely enjoy the benefit of equitable (possessory) title – *under certain conditions*. I.e., just as a teenager must have the car back in the garage with a full tank of gas, undamaged, by midnight (and rake the leaves on Sunday) if he wants to use the car again — you may also use “your” car, but *only under certain conditions*. Although you don’t have to rake leaves to continue using the “benefit” of the state’s car, you are required to pay a modest rent (annual registration and licensing fees) and agree to use the state’s car only according to the state/owner’s terms (you must have a drivers license, auto insurance, wear your seatbelt, and don’t exceed the speed limits, etc.). In this way, the state owns your car, but controls *you*.

My point is that the apparent division of legal and equitable title for automobiles is so similar to the divided title feature of trusts, that I can’t avoid the suspicion that government is using the Certificate of Title as evidence of a trust that converts us from auto owners to mere beneficiaries subject to the government/trustees’ administrative powers to tax and regulate our driving habits in ways that seem unconstitutional.

How ‘bout the “National Highway Trust”? I’ve heard that term bandied about on the news recently. Other than the name, I don’t have a clue to what the “National Highway Trust” is, but obviously it’s a trust . . . and since trusts contain property, it seems reasonable to suppose that some

or all of the nation’s highways have been granted into that trust as trust property.

Hmm.

Then those of us who use the nation’s highway could be construed as *beneficiaries* of the National Highway Trust. As beneficiaries, we might be compelled to obey the rules of the National Highway Trust as a condition of enjoying the benefits (driving on the highway). Those rules might include having a drivers license, insurance, obeying speed limits that would otherwise apply only to commercial vehicles, etc.

There’s no doubt that the Social Security Administration operates a Trust Fund. Presumably, your Social Security Number (SSN) makes you a card-carrying *beneficiary* and therefore subject to certain obligations (filing income tax returns?) mandated by the rules of that trust.

If these car title, highway or SSN trust theories are valid, then trusts form an unnoticed but critical aspect of our lives. Once you “volunteer” into a trust as a beneficiary you have contracted to obey certain unspecified rules, even if those rules are unsupported by the Constitution.

### More rabbit trails

**Bankruptcy** What’s a bankruptcy? It administers property. It has trustees. It works for the “best interests” of beneficiaries (creditors). Sounds like a

trust, no?

Consider your personal bankruptcy. Isn’t that formed by a contract (petition) to the bankruptcy court? Don’t the bankruptcy judges wield unparalleled judicial *and* administrative authority? Isn’t that consistent with trustee status?

What about the “national” bankruptcy? Generally speaking, the patriot analysis runs like this: the government was legally bankrupt about 1933, President Franklin Roosevelt surreptitiously declared the bankruptcy, seized the public’s gold (real money), and shifted the nation to a (largely) paper (debt-based) money system. Since then, the courts have operated as administrators of the national bankruptcy and without real allegiance to the Constitution except as “public policy”. (Note that the bankruptcy hypothesis fits comfortably within the larger “trust hypothesis”).

**Federal Reserve** Is it a trust? I don’t know, but we do receive the “benefit” of using Federal Reserve Notes (debt-instruments) instead of real money (gold, silver, asset-instruments) to “discharge” our debts. Where there’s a “benefit”, I suspect you’ll usually find a trust.

**Property** Patriot law recognizes a serious problem with property rights -- we don’t truly own anything anymore. Patriots generally seek to correct this

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problem with allodial titles, common law liens, or purchase with real money (gold, silver). Could the problem be that we have somehow placed our property into a government trust in which we have equitable title (use) and government/trust has lawful title?<sup>3</sup>

**Banks** Is your bank account a trust? Does this explain why, once the money is deposited, it is legally the bank's? Then the bank allows you to withdraw and use "its" money as a beneficiary? You have equitable use, but no legal right to the money once its been deposited? Is this why the IRS can seize money from your bank/trust account without going to court —because the rules of your bank account/trust allow it? (Again, the bank account mystery seems to "fit" within the structure of the trust hypothesis.)

### Trustees can't benefit

Perhaps the last essential feature of trusts is that, while a person can be a grantor and a trustee of the same trust, *no one can be a trustee and a beneficiary in the same trust*. There's an obvious conflict of interest and the opportunity for "self-dealing", etc. Therefore, if government is "imposing" various trusts on us, government officials (and perhaps employees) who serve as trustees cannot also be beneficiaries in the same trust.

Again, there is circumstantial evidence to support this government-imposed trust theory: Do government employees contribute to Social Security? Here in Texas they don't. Texas government employees, cops, judges, etc., have their own state-based retirement fund and do not normally contribute to Social Security. Likewise, our U.S. Senators and Congressmen (presumably trustees for various federal trusts) have their own retirement program *other than Social Security*.

As a result, Congressmen who are not Social Security beneficiaries can legally serve as trustees for the Social Security Trust Fund.

This may be a critical insight. For example, if the beneficiaries of the National Highway Trust are defined as "U.S. citizens", the administrators of that trust must be something other than "U.S. citizens" since the administrators/trustees can't also be beneficiaries of the same trust.

Could a traffic cop be construed as a trustee? Probably not. Traffic cops might be trust *employees* or even quasi-trustees, but not full trustees. But judges and U.S. Marshals are probably trustees, and if so, can't administer the trust ("enforce the law") if they are still beneficiaries (presumably, "U.S. citizens"). Does this explain the rumors that the "Secretary of the Treasury" and "Governor of the International Monetary Fund (IMF)" must renounce his U.S. citizenship to hold those offices or that many government agents are reportedly operating as "foreign agents"? So far, the patriot community has viewed these official revocations of citizenship as evidence of some foreign plot by the U.N. or bankers or New World Order to take over the USA. But maybe the revocation of citizenship is less a "foreign" conspiracy than a legal requirement to administer a trust on behalf of beneficiaries designated as "U.S. citizens". (Again, a cherished patriot theory seems compatible with the trust hypothesis.)

### What's in a name?

Many patriots suspect that the upper case name (JOHN DOE) creates or implies a serious legal liability for the flesh and blood "John Doe", and exposes him to a degree of government control which might not otherwise exist. However, the mechanism that explains the significance of the dis-

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inction between upper case (JOHN DOE) and capitalized (John Doe) names remains unclear.

Is the upper case name (JOHN DOE) an artificial entity and/or "legal title" to the flesh and blood "John Doe"? And once that title's been surrendered to the state in the form of a birth certificate and/or SSN, does the state "own" the *artificial entity* "JOHN DOE"? Based on that ownership, is the state enabled to compel or deceive the flesh and blood John Doe into accepting certain obligations of performance? If so, whenever "JOHN DOE" appeared in court, could he be "managed" by the judge/trustee as an object just like any other form of property ("in rem?") for the "best interests" of trust?

Pretty bizarre notions, hmm? But I can leap to stranger conclusions than that.

For example, using this trust hypothesis, I can imagine a scenario whereby you unwittingly entered (created?) one or more

trusts through use of your marriage license, children's birth certificates, and/or Social Security applications. Depending on the documents used (contracts or "applications" for benefits), you might've contracted with the state to create/join a trust, declared your children to be that trust's unknowing beneficiaries, and thereby condemned your own children to obey government regulations to receive trust "benefits".

Worse, you might've unknowingly contracted your children into the trust as *property* to managed by the state/ trustees for you, the beneficiary. This, of course, would give the state/ trustees the legal right to revoke your "equitable title" to your kids and take 'em away from you any time the trustees thought it served the "best interests" of the state/ trust to do so.<sup>4</sup> These hypothetical trusts might even allow the state to "administer" your kids in courts as property ("in rem") or as artificial entities (requiring *representation* by licensed "ad litum" lawyers) instead of as flesh and blood people with constitutionally-guaranteed, God-given rights.

The childhood disability imposed by the birth certificate/ trust might have to be affirmed by the child himself when he became an adult (probably by "applying" for a SSN). Upon voluntarily requesting those SSN benefits, that disability would follow the child into adult life. As a result, if "JOHN DOE" is *property* of a particular trust (maybe the trust is identified by a *number* like the SSN or the certificate number on a birth certificate), then "JOHN DOE" can be tried as inanimate trust property (in rem) and without the rights we assume are guaranteed to all "John Doe's".

### Criminal Trials

After a judge or jury reaches a guilty verdict in a criminal trial,

there is the moment of "allocution". Here, the judge asks the defendant if there is any reason why he should not pass judgement. The defendant dutifully replies "No sir" (hoping if he cooperates the judge might go easy), sacrifices his last chance to argue for his freedom and is accordingly given the maximum sentence.

There is a patriot argument that, at the moment of allocution, you can refuse the conviction and any potential penalty by claiming the flesh and blood "John Doe" was not tried. Instead, the lawyer who "represented" you in court (or the upper case "JOHN DOE") was really on trial and you, "John Doe", refuse to accept "his" punishment. It's another notion that sounds nuts but has reportedly worked.

If there's any truth to the allocution strategy, it sounds suspiciously similar to "divided title" feature of trusts. Perhaps the "JOHN DOE" artificial entity is tried; but the "John Doe" flesh and blood entity is jailed. The trust is tried; the beneficiary unwittingly accepts the sentence. . . .

It is also alleged that you can't be jailed without an attorney. But why? Since the lawyer is an "officer" (trust officer?) of the court, when you give him a "power of attorney", have you contracted to grant or convey some aspect of your "self" as property into the body of the court trust (i.e., belly of the beast)?<sup>5</sup>

Could a similar conveyance of your person be achieved if you file a petition, pleading, form, whatever, as a plaintiff with the court in a civil trial? Do you become a "beneficiary" of the court/ trust by filing a pleading and asking for the court/trust's services? Patriots have long argued that making a motion surrenders jurisdiction to the courts. Perhaps the more accurate explanation, is

that by making a motion or plea, you "apply" for the court's services (benefits) and thereby verify your status as a beneficiary subject to the court/trustee's administrative powers.

### Hard to believe

I frankly don't believe all these patriot/ trust scenarios – they seem too risky, too far out. I can't believe the courts would dare go that far. . . . And yet, like most patriot theories, these trust scenario's seem to "fit". The whole idea of a trust is limited liability based on the division of full title into Legal and Equitable titles. The trust/ artificial entity that is numbered or perhaps named "JOHN DOE" (with a particular Date of Birth and Mother's Maiden Name to distinguish it from other similarly named trusts) that has legal title to the "property" JOHN DOE — is responsible for trust errors. As *beneficiary*, the flesh and blood "John Doe" is immune to *legal* liability for errors committed by the trust.<sup>6</sup>

However, under the "sonam idems" rule for similar sounding names, the court is allowed to presume "JOHN DOE" and "John Doe" are the same entity. Therefore, the court may prosecute the artificial entity "JOHN DOE", and then jail the flesh and blood "John Doe" as if he were "JOHN DOE" – unless "John Doe" specifically objects.

What's his objection? "Misnomer" (wrong name) on the charging instrument. Misnomer has been a central element of the "abatement" defense strategies that have enjoyed recent popularity in the patriot community. However – *if* there's any validity to the idea of that we are being tried as trust property (JOHN DOE) – a better defense *might* be simply to say, "Sorry, I am not the trust (or property of the trust) named 'J-O-H-N D-O-E'; I am 'J-o-h-n D-o-e', the *beneficiary* of that trust and therefore immune from prosecu-

tion or legal liability for any criminal or civil offence committed by its trustees or trust property." After all -- hard and fast rule -- beneficiaries can't be trustees.

### Unlikely remedies

Suppose my "trust fever" is more than delusional and actually grounded in some degree of fact. Then how could we escape the grips of government trusts?

1) Develop a solid understanding of trust principles and strategies.

2) Confirm whether the government trust hypothesis presented here is valid.

3) Identify all the government trusts to which we are bound.

4) Determine our status relative to each trust (status might vary: in some trusts we might be beneficiaries; in others, property or trustees; in some we might "enjoy" a dual status like grantor-beneficiary).

5) Discover the legal procedure for ending our legal relationship to each trust (we might "re-sign" as trustees, "revoke" our status as beneficiaries, cease making contributions as grantors, or file a quiet title action to emancipate ourselves from the status of trust property).

6) Publish official notices of our separation from government trusts. Create and carry official documents confirming that separation.

7) Prepare to sue any enforcement agency and officer -- and especially the background trust(s) they operate under -- should you be officially harassed based on the mistaken notion that you were still associated with a particular trust.

If we're trapped in trusts, can we escape? In some cases, maybe not. That is, perhaps only the grantor(s) who created the trust and entered us as property can revoke the trust and "liqui-

date" our status as "property". For example, *if* your birth certificate created some kind of trust, perhaps *you* can't revoke it -- but your *parents* (who were the original grantors) could. But what if your folks have died? Who can revoke the original grant? Maybe you can't revoke the grant, but you might be able to perform a "quiet title" action on yourself to regain full ownership of your legal and equitable titles. (Again, the quiet title strategy has been advocated and used successfully by the patriot community and seems to "fit" within the structure of trusts.)

And if Social Security is a trust, did *you* grant yourself into it? If so, perhaps it's a "revocable" trust and you can therefore revoke that trust by removing your artificial self (JOHN DOE) from the trust's inventory of property and your flesh and blood self (John Doe) from the trust's list of beneficiaries.

### Freeing children

Suppose you and your spouse contract to form a trust when your child is born (perhaps even *conceived*) and place that child into *your* trust as property to be administered by you and your spouse (trustees). Could any subsequent government trust (birth certificate, SSN, etc. created before your child turns 18 years old) alter the fact that *your* trust "owned" your child and

you and your spouse were the child's only trustees?

I don't think so. If you formed the *first* trust to include your child as "property", no subsequent government trust should be able to claim the child as "government property" and thereby obligate that child to a lifetime of compelled performance rather than personal freedom. Therefore, with the proper understanding and application of trusts, you might be able to free your own child at birth from compelled government servitude.

Of course, the idea that a child could be "granted" into a trust as "property" may be legally absurd. OK. But how 'bout merely creating a trust which owned the upper case name (and all variations) of your child's flesh and blood, capitalized name? I.e., suppose Mr. and Mrs. Doe have a daughter which they name "Cynthia Joyce Doe". Suppose they form a trust and somehow grant the names "CYNTHIA JOYCE DOE" and "CYNTHIA J. DOE" into their trust (and make it clear that these upper case names refer to the flesh and blood child with the *capitalized* name born to those particular parents on the particular date of birth) -- and then make it clear that those names in reference to this particular child are the exclusive property of their trust and no one can use those names without a copyright infringement . . . or maybe . . .

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OK, you get the idea. By claiming “ownership” of the upper case name of your child (or perhaps the child herself) *before* the state did, you might be able to preempt the state from ever using her upper case name to gain unconstitutional authority over your daughter without the specific approval of the trustees (you and your spouse). If the state tried, it might be liable for “impairing the obligation of contracts” between yourself and your spouse.

### Suing judges

If the courts are functioning in some trust capacity, the judges may be the “trustees” who sit in an *administrative* capacity with the sole objective of operating in the “best interests” of the trust. If so, the judge/trustees can exercise virtually unlimited power, decide cases any way they please without regard for the Constitution, *stare decisis*, etc., so long as they promote the “best interests” of their trust.<sup>7</sup>

If this were true, the key to suing a judge would be to allege he violated his fiduciary duties *as a trustee* and committed acts contrary to “public policy” and/or the “best interests” of the trust. For example, if the judge committed an act that caused a *significant number* of beneficiaries (not just the defendant) to lose “confidence” in his administration of the trust, then that judge might be liable for some breach of his fiduciary obligations (probably spelled out in the Judicial Code of Ethics). This notion is consistent with the observation that the only thing this system seems to fear is public exposure (the adverse opinion of large numbers of people/ beneficiaries). Therefore, the key to suing a judge might be the presence of a multitude of court watchers (beneficiaries) who could testify that their confidence in the judicial system (or whatever trust the

judge administers) has been diminished by the judge’s “unreasonable” acts.

### Silver Linings

The Constitution’s prohibition against “impairing the obligation of contracts” not only empowers government to seduce us into trusts contrary to our interests, it also prevents Congress from passing a law that prohibits or nullifies existing trusts. No generic laws could be passed by Congress to free us all at once from a contract-based trust. As a result, the only way 250 million Americans trapped in trusts can free themselves is one by one. Personally. Pretty diabolical, hmm? These trusts may not be easily escaped.

Worse, a friend of mine (Mosie Clark) was recently in court, bumping heads with the IRS. Mosie challenged the court’s jurisdiction. The judge responded by asking Mosie if he’d ever received any Social Security benefits. Mosie is retired, his wife is an invalid, so he answered, “Yes -- but I paid for all that with my contributions when I was working.” The judge asked if Mosie had ever enjoyed the benefit of driving on the highways. Again, Mosie answered, “Yes -- but I paid for that with my gasoline and tire taxes.” The judge smiled and asked if Mosie ever bought food in the grocery store. Mosie thought a minute, then agreed that he had, but couldn’t see the relevance. The judge explained: Much or all of that food was grown by farmers receiving the benefit of government subsidies, which meant Mosie had received a benefit.

The case remains to be resolved, but the point seems to be that it doesn’t matter if you paid into social security, or paid gasoline taxes, or even purchased your food with gold and silver. If you enjoyed a “benefit” provided by the government, you were a

beneficiary and therefore bound to accept the *administrative* authority of the judge/trustee.

I was pleased to hear that the judge’s questions implicitly support my notions on trusts, but I was also shocked to realize the extent of the “beneficial interests” we enjoy. It’s not just Social Security that establishes our status as beneficiaries; it’s using the highways, buying groceries, and probably using any product or service (public transportation and utilities?) that are *subsidized* by the government.

It appears that government has constructed a web of benefits so detailed and extensive, that no living American can escape the status of beneficiary and the obligations thereby imposed. Does this render any attempt to “escape” trusts pointless? Are we hopelessly mired in trusts? Should we therefore “learn to enjoy it”?

Only extensive study will tell, but for now, my answer is, “Maybe not”.

Maybe the solution to our problem is not to escape the many trusts that bind us. After all, who can live without groceries, utilities, transportation, etc.? Maybe our deliverance is suggested in the Biblical query, “By what authority do *you* act?”

Maybe we need to inquire at the very beginning of any trial or confrontation with government if they are acting as trustees, and if so, do *they* receive Social Security benefits, do *they* enjoy the benefit of driving on the highways, do *they* benefit from any of the various government subsidies for food, transportation, or utilities. As we’ve seen, it may be virtually impossible for any mortal man -- even judges -- to escape government’s “beneficial” web. And given that fundamental trust rule that beneficiaries cannot also be trustees in a particular trust, *if the judge has received*



any “benefits”, then he may be ineligible to exercise the trustee’s administrative powers. This doesn’t necessarily mean a beneficiary/judge would be recused, but if he continued to try you, it might be only according to judicial/constitutional law -- not trust/ administrative procedure.

### Bind the rascals down

There’s another, even a more fantastic possibility. The essence of “trust fever” is the possibility that trusts can be created by government which bind us without our active participation or knowledge. Is it also possible that we might create *our* trusts to bind government?

Suppose each of us set up our own charitable trust and named all officers and employees of the various branches of government (federal, state, local) as beneficiaries. Suppose we structured our charity to “donate” a certain amount of money each year – maybe \$500, maybe \$5 – to, umm, say the IRS or the state and national *Treasuries* (not Federal Reserve accounts), or the local government employees retirement fund for dispersal and benefit of *all* government employees and officers. And suppose that we wrote the rules of our trust such that all beneficiaries (government officials and employees) of *our* trust were compelled to relate to our trust’s grantors and trustees (us), perhaps even to all fellow beneficiaries (other government workers) only according to the rules laid out in the Constitution for the United States of America (or maybe your state constitution . . . or even the Bible).

If they cashed our check as beneficiaries, could we thereby bind government in *our* trusts just as government may now bind us? Who knows? Even if this strategy doesn’t work, I’ll bet it would slow prosecutors and give ‘em fits.

### Constitutional trust

A number of analysts have claimed the Constitution for the United States of America is a trust. I.e., We The People granted certain of our sovereign powers (property) to our government officials (trustees) for the purpose of supporting the “general welfare” of our Founders (grantors/beneficiaries) and their posterity (beneficiaries) — provided the trustees (government officials and employees) operate only according to the rules of the trust (Articles I to VII of the Constitution plus the Amendments).

If the Constitution is a trust, did our trustees (government officials etc.) turn the tables on us (probably around the Civil War) by creating their own trusts which then bound We The People to obey the government’s rules? Is that how they did it? Is that how our government evaded the Constitution and turned this nation from a Republic into a “benign dictatorship” (trust) ruled by administrative law?

Again, I emphasize I’m only guessing, but I can’t avoid the powerful suspicion that trusts are being used by government as *the* fundamental device for converting unwitting Americans into beneficiaries, indentured servants, and virtual slaves. If so, it’s time to stop “trusting” our lives and our children’s lives to government and instead start “trusting” our lives to God and/or ourselves.

If my speculations are wrong and trusts are universally benign and lawful, well, great — no harm done. In the process of searching for a possibly malignant application of trusts, we’ll also learn enough to use trusts to minimize our taxes and protect our property from legal liability. On the other hand, if trusts are being used to exploit the American people, a solid understanding might set us free.

<sup>1</sup> “Voluntary acceptance of benefit of transaction is equivalent to consent to all obligations arising from it, so far as facts are known, or ought to be known, to person accepting.” *Norther Assurance Co. v. Stout* (1911), 16 C.A. 548, 117 p. 617.

<sup>2</sup> I.e., just as our paper “Silver Certificates” were not silver (real money), but merely “certified” that a certain sum of silver (real money) was in the bank, waiting to be claimed by holder of the Silver Certificate — so a “Certificate of Title” is not a title but merely “certifies” a real title exists.

<sup>3</sup> Do title search companies reveal if their search is for full, legal, or equitable title? Do they declare you have *full* title, or merely that no conflicting claims were found?

<sup>4</sup> Anyone who’s experienced a child custody battle can recall the court’s use of the undefined term “best interests of the child” — was that slim clue evidence that custody battles are somehow tangled up in trusts?

<sup>5</sup> Or is it true that the lawyers are property of the court trust, and the lawyers are in fact tried, and you (a foreign entity to the trust) then “volunteer” to accept the lawyer’s penalty?

<sup>6</sup> However, he’s not immune to *administrative* action by the trustees of the trust. Question: while trustees might lawfully deprive a beneficiary of the use of trust property, by what authority can they extort a fine from the beneficiary or worse, jail him? Probably none. The only way you can be fined or jailed by trustees is if you *voluntarily* accept their punishment.

<sup>7</sup> What limit could there be on the trustees’ general obligation to seek the “best interests” of the trust? Only that they act “reasonably”?

# Courts Without Justice

by Robert S. Palmer, Ph.D.

I was dragged into the study of law by my 1983 divorce. Until 1990, I was convinced that divorce courts and divorce lawyers were the premier examples of the judicial system's corruption and injustice. I was wrong. While virtually all divorce courts and lawyers are detestable creatures who profit from institutionalized injustice and merrily cripple children's lives, the divorce "professionals" are mere scavengers compared to the predators that populate our bankruptcy courts. The U.S. bankruptcy courts are essentially unaccountable to the people and deal in such huge sums of money that corruption is not occasional, it's endemic, blatant, and when necessary, murderous.

Robert Palmer got tangled up in a bankruptcy, and over time also began to realize the dimensions of the extortion racket he'd fallen into. As you'll see, the real dimension of bankruptcy court corruption can be glimpsed, not in the individual case, but in the number of people and institutions that turn a blind eye and refuse to investigate or correct that corruption. If you want to study organized crime, study bankruptcy courts. Compared to bankruptcy "trustees" et al, Chicago's Gangster Disciples and L.A.'s Crips are purse-snatching punks.

Also, since I have recently begun to obsess about trusts (see "The Truth About Trusts" and "Trust Fever", this issue), I suspect

the bankruptcy system's use of "trustees" signals that bankruptcy courts are really operating as some sort of trust(s). To precipitate a bankruptcy (trust?), the bankrupt individual needs to apply (contract) to the court for protection. Likewise, until the bankruptcy is fully discharged, the bankrupt individual can revoke his bankruptcy petition whenever he likes and return to a "non-bankrupt" status. This peculiar power suggests the bankrupt individual functions like the Grantor of a revocable trust. Further, as you'll see in Mr. Palmer's article, bankruptcy court "judges" are allowed to exercise unusual powers, far greater than mere government administrators or judges. Maybe they aren't adjudicating a case, so much as administering a trust.

Of course, a minimum of three creditors can also petition to place a debtor into an involuntary bankruptcy. "Out of the mouths or two or more witnesses shall a thing be established" . . . ? Is it possible that these three creditors are really creating a Trust and conveying the debtor (or their liens on his property) into the body of that trust/ bankruptcy?

Are bankruptcies really trusts? If so, the solution to bankruptcy corruption might be found in a study of trusts. Read Mr. Palmer's article, and let me know if you think there's any validity to my bankruptcy /trust suspicion.

Since the bombing in Oklahoma City, the Department of Justice has denied the notion that the government is encroaching on our constitutional rights. Indeed, the President contends that the Justice Department protects our constitutional rights. Unfortunately, those who believe that the government is really concerned about our individual rights should consider what's going on in the courts — especially the bankruptcy courts, where business owners file for reorganization of their debts under Chapter 11 to protect their assets from creditors, only to lose them to bankruptcy professionals acting under color of law.

In October of 1989, Charles Duck, who served as a trustee in the Santa Rosa, California, bankruptcy court was convicted of embezzling \$1.9 million from Chapter 11 bankruptcy estates. Duck was prosecuted by the United States Trustee who has jurisdiction over bankruptcy trustees, but no jurisdiction over other bankruptcy professionals. Duck, as trustee held a nominal position. He relied on his attorneys and other bankruptcy professionals to administer estates.

The *San Francisco Daily Journal* reported, "While Duck often operated outside the rules, he sometimes did so with the tacit approval of people, including judges, lawyers and other trustees, whose job it was to police him."

Duck was the fall-guy. He filed for bankruptcy to fend off debtors whose assets had been stolen. His plea and a light 27 month prison sentence closed out one of the nation's biggest bankruptcy scandals. Those who should have known what was going on, including Duck's attorney, Harvey Hoffman, claimed they had no idea what Duck was doing. The Department of Justice did not protect the constitutional rights of fleeced debtors. Instead, the U.S. Attorney granted immunity to the judges, lawyers and other trustees who may have acted with Duck.

### Dexter Jacobson

In June of 1990, Jacobson revealed that he meant to do something about the fraud that had poisoned Bay Area bankruptcy courts for over a decade. If federal prosecutors would not investigate the dealings of bankruptcy professionals, he would. Jacobson was one of those few lawyers who would put his clients' interests above those of other lawyers.

In August of 1990, Jacobson set up conferences with Department of Justice officials to describe complaints against those who had victimized his clients in the Santa Rosa and San Francisco bankruptcy courts. Just before he was scheduled to confer, Jacobson was taken into the Marin Highlands, north of San Francisco, and shot once in the head while he faced his killer. The assassin took the slug leaving no evidence to attach him to the crime.

Several days passed before Jacobson was found in a culvert. While Jacobson's body lay hidden from view, his home and office were ransacked. His hard drive was erased. All trace of the complaints he had been drafting was obliterated. The U.S. Attorney took no action.

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### My case

Just as the U.S. Attorney took no action on the Dexter Jacobson case, he also ignored my complaints about judicial crime in the San Jose bankruptcy court. My experience may shed some added light on how the government fails to protect the people from judicial crime.

I was drawn into bankruptcy court after I did business with a building contractor, Ilbert Tucker. Tucker was both spiritual leader and business leader of the Carmel Valley Subud, a Spiritual Brotherhood. Some 20 Subud employees were joint venturers in a Subud Enterprise called "Stone, Post & Flower" which built houses in and around Carmel Valley, California.

On August 6, 1976, an involuntary bankruptcy petition was filed against Tucker by several of his unpaid creditors in San Jose, California. However, Tucker was not a poor, honest debtor. Tucker and his attorney, Dennis Powell, exploited the bankruptcy system to put Tucker on the fast track to wealth.

The record shows that Stone, Post & Flower was a joint venture operated by a five man Board of Directors, including Tucker. Yet the court and its appointees administered Tucker's estate as a proprietorship. They relieved his partners of the liability for the enterprise's debts. In contemplation of bankruptcy, the venture disbursed over \$300,000 to

Tucker's parents, and four members of the Board. Testimony in the record attests that five residences belonging to the enterprise were held in the names of joint venturers.

On September 21, 1976, Tucker reported net *debt* of almost \$46,000. However, less than three months later (December 8, 1976), Tucker amended his schedules and reported net *worth* of almost \$685,000, with real property of approximately \$836,000 and *debts* suddenly increased to almost \$534,000.

In my opinion, Bankruptcy Judge Seymour J. Abrahams acted illegally when he continued to administer the bankruptcy estate after Tucker reported that his financial position improved by over \$730,000 *during* three months of bankruptcy.

In December of 1976, I employed James Grube, an attorney who specialized in bankruptcy, to protect my interests as holder of two secured notes. A year later, I fired Grube for conniving against me to lose. The security for one property was stolen with a fabricated contract of sale, and the other property was stolen by pre-arranged bid sale. These actions were validated by Judge Abrahams. We cannot expect Grube, who is now a Bankruptcy Judge in San Jose, to be any more honest as a judge than he was as an attorney.

In April of 1980, Judge Abrahams discharged Tucker

from bankruptcy wiping out his debts and thereby completing the swindle of Tucker's many creditors. At discharge, it was a "no asset" estate. Creditors got nothing. Later that year, Tucker's attorney Powell reportedly told my attorney that Tucker and Tucker's brother had built a \$2 million housing project. I believe the money stolen from bankruptcy creditors was used to capitalize the construction of a 54-unit housing project having a retail value approaching \$5 million.

### Redress of grievance?

After several years of litigation and personal study, I asked U.S. Attorney Joseph Russoniello to investigate Tucker's sham bankruptcy. He refused. In 1989, I complained to U.S. Attorney General Richard Thornburgh for an order compelling an investigation of Tucker's sham bankruptcy. He also refused.

I appealed to the circuit court and petitioned for a rehearing en banc. The case was dismissed because District Judge Thomas Hogan ruled that he could not compel an investigation when federal prosecutors (U.S. Attorney Russoniello) would not prosecute.

I complained about Tucker's sham bankruptcy to the Department of Justice. FBI agent James Rabin said, "You're nuts if you think I'm taking on a federal judge."

I complained to the California State Bar against the trustee's attorneys, Harvey Hoffman and William Kelly, the bankrupt's attorneys, Dennis Powell and Robert Herendeen, and my attorneys, David Murray and James Grube. The State Bar complacently tolerated the moral turpitude of attorneys who acted in conspiracy with a judge.

I appealed to the United States District Court, raising a

Fifth Amendment constitutional issue of denial of due process of law. Instead of justice, I got injustice. Favored parties like Tucker rely on the judge, while unfavored parties rely on the merits of their case, and lose.

Finally, judgments were imposed on me by District Judge Marilyn Patel to drive me from the courts. (On TV, Patel projects the public image of a fair judge, but she is an unabashed tyrant in the courtroom.)

### Administrator or judge?

In 1794, the Supreme Court ruled that judges cannot exercise administrative duties. Administrative duties are solely within the jurisdiction of the executive branch. This constitutes an expression of the "separation of powers" doctrine fundamental to our Constitution.

Nevertheless, bankruptcy judges are the only judges who exercise dual administrative and judicial duties. As an *administrator*, the bankruptcy judge confers with the trustee regarding actions to be undertaken to recover assets for an estate. Then in his *judicial* capacity, he may rule on that which *he* has *already* approved. The bankruptcy judge, who appointed or approved the appointment of the trustee and his attorneys, lacks the appearance of impartiality and denies opponents of the trustee due process of law.

Moreover bankruptcy judges are unconstitutionally appointed *by judges* of the appellate courts. Because the dishonesty of bankruptcy judges reflect on the judges who appointed them, appellate judges are reluctant to expose judicial misconduct in the bankruptcy courts.

No statute of limitations protects a dishonest judge from removal, including justices of the United States Supreme Court.

Nevertheless, in my case, no judge provided judicial review of those elements of the National Bankruptcy Law that are inconsistent with the Fifth Amendment or the separation of powers doctrine.

Four justices reviewed the sham bankruptcy in their former capacities: William Rehnquist, Ninth Circuit Associate Justice, Anthony Kennedy, Ninth Circuit Judge, Clarence Thomas and Ruth Ginsberg Judges of the District of Columbia Circuit Court of Appeals. I believe that all justices who reviewed Tucker's bankruptcy should be impeached. The constitutional rights of Tucker's creditors have been sacrificed because lawyer-justices are put above the law by lawyer-prosecutors.

A lack of judicial accountability has created a judicial system where judges may rule in accord with their own will rather than the law. When judges are at little personal risk for any amount of bribery, cronyism, fraud or other malfeasance in office, we know our system of government is deeply flawed.

Lawyers dominate all three branches of government and complacently tolerate judicial crime. They are indifferent when injustice is imposed on unfavored litigants. When the people refuse to elect lawyers to serve as President or members of Congress, then lawyer-judges will be accountable to nonlawyer officials and judicial accountability may be restored to our courts. Until then, the courts will be dominated by cronyism and fraud.

Mr. Palmer published *Courts Without Justice*, which focuses on bankruptcy court abuse and is available from BookMasters Distribution Center, Mansfield Ohio, 800/247-6553. ■



# Three Grooms and a Bride

*by Eric Moebius*

Attorney Eric Moebius served as an assistant attorney general for Texas for five years and went on to eight years of private practice. In Volume 6 Nos. 1 & 2, the AntiShyster reported on Mr. Moebius' extraordinary allegations concerning the murders of adults and children perpetrated by coalitions of insurance company executives, lawyers, and judges for the purpose of defrauding millions of dollars from insurance companies. These allegations include the rape, murder and evisceration of four girls, aged 13 to 17, in a Texas yogurt shop insured for \$12 million and the murder of a 5-year old boy by the driver of a pickup truck insured for \$19 million dollars. The details are sometimes gory, always fantastic, and reproduced more fully in "Hot News" on our website ([www.antishyster.com](http://www.antishyster.com)).

What follows are edited and reordered excerpts from a January 27, 1997 radio interview of Eric Moebius conducted by Rick

Donaldson, and Alfred Adask on the "Christian Patriot Connection" (KPBC, Dallas, 770AM 8-9pm Mondays). Mr. Moebius' comments are in regular type; Adask & Donaldson's comments are in blue text.

The interview relates Mr. Moebius' growing understanding that these murders are motivated by the money laundering of today's drug dealers and also those who looted the Savings and Loan associations in the 1980's.

I am particularly intrigued by the role allegedly played by the Texas State Bar in implementing the money laundering, especially the use of the lawyers' trust accounts. Once again, I'm seeing anecdotal support for "Trust Fever" (this issue) and the idea that We The People are being systematically assaulted by government and gangsters hiding behind trusts.

**W**e are in a historical epoch. A time when there is more cash from drug money and from the Savings & Loan bank fraud money outside of the Texas bank system than ever before in history.

After the 1980's Savings & Loan collapse, the government's Resolution Trust Fund succeeded in recovering about \$25 million of the \$200 BILLION stolen from the S&Ls. The recovery effort failed miserably. As a result, there's an army of people that defrauded the government and got away with 99% of the money.

However, by looting the S&Ls, they got the cash *out* of the banking system. Now, in order to spend it, they have to get the money laundered back *into* the banking system.

Billions of stolen dollars is not money to buy a new Cadillac or take your girlfriend out for expensive dinners every night. We're talking about real "power" money that can invest in skyscrapers,

stocks and bonds — but not as cash. Billions in cash are almost worthless unless you can move it back into the banking system and “legitimize” it so you can write a check to buy that skyscraper.

It’s also a risk to possess so much cash that’s been shrink-wrapped and hidden. People stole this money because money represents power; but it’s only *latent* power unless it gets back *into* the banking system.

Another big problem is the introduction of the new hundred dollar bills since they threaten to devalue the old hundreds — and the S&L looters have billions of dollars in old hundred dollar bills stockpiled. Government’s are notorious for suddenly shutting down a currency. If our government suddenly declared those old hundred’s worthless, the value of those billions of stolen dollars will suddenly be zero. Therefore, threatened by the devaluation of all their old hundreds, these gangsters face a sudden urgency to “legitimize” their stolen cash by somehow moving it back into the banking system. Because time may be short and the stakes enormous, they are willing to use extraordinary violence to preserve their stolen money.

### “Income stream” money laundering

Money launderers like money that’s “in motion”. Consider a typical money laundering transaction: If you own a business and deposit \$20,000 every month, you may be approached by a money launderer who says, “Listen, if you agree to ‘blend’ an additional \$8,000 in drug money into your \$20,000 deposit, we’ll give you 12%.” That’s “*income* streaming” -- mixing illicit money with an existing “stream” of lawful income.

Any business can do it. Motels, theaters, and baseball stadiums are great because they can report many more rooms rented or seats filled, than really were.

Then, to “explain” the additional income that’s being “blended” into his income stream, a motel owner might report renting 100 rooms when he only rented 50. This false reporting essentially “legalizes” the additional illicit income.

That’s right. But this kind of “blending” creates an extended relationship between the money launderer and the businessman that lasts months or even years. Let’s say you’re laundering money through a motel that has an average occupancy rate of 45% but you’re going to report an 85% occupancy rate on your income stream because you’re money laundering. You’ve got to come up with extensive paperwork.

To protect yourself from a serious audit, you might have to hire more maids to change the bedding for the extra fifty rooms you’re claiming to rent and account for more sheets and toilet paper that should be used by the phantom “occupants” of the extra rooms.

And your accountants will start asking why your business is doing better. Maintaining a

plausible income stream is a very labor intensive, highly detailed project -- and it doesn’t really move that much money. There’s also a tax burden on your new “profits” which may “red flag” the movement of money to the IRS.

When Congress passed the Bank Secrecy and Money Laundering Suppression Acts, they assumed that all money laundering would be done through an *income* stream. This is important. Therefore, these Acts create reporting requirements but *only* for money that moves from *outside* the banking system *into* the banking system.

We think S&L bank fraud people looked at the Bank Secrecy and Money Laundering Suppression Acts and realized that while you can’t easily move money from *outside* a bank into a bank, you can move \$100 million “account to account” *within* the banking system without any reporting requirements.


### Loss streaming

Most people don’t realize that money “moves” in response to both income and *losses*. And though it’s very difficult to create even a \$100,000 income for conventional money laundering, it’s easy to create a multimillion dollar *loss*.

In other words, money not only “moves” because its gener-

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ated by a legitimate business income -- it also "moves" if I make a mistake, get sued, and suffer a "loss".

We differentiate this type of money laundering from "income streaming" — we call it "loss streaming". We believe that Savings & Loan bank fraud people, who are very educated — most of them are lawyers who understand the banking system better than anything you can imagine. They understand the courts, the insurance industry and the legislature. We believe these people came up with a money laundering scheme that we call "loss streaming."

"Loss streaming" is a one night stand — no extended relationships, detailed record keeping or income taxes [personal injury claims paid by insurance companies are nontaxable]. To do "loss streaming", you take a site like a yogurt shop and "create" a loss. Money launderers set up and insure the site and then arrange for murders on that "groomed" site.

You have to remember something about money laundering. It's an illusion. It's like an empty stage and they bring everything to the stage. If you have a \$19 million coverage, that means within days of the death \$19 million starts moving.

But you're saying is it's not just the \$19 million that's moving. They mix in another \$10 to \$20 million of stolen or drug money with that \$19 million?

Yes.

"Loss streaming" also avoids the messy "income stream" of legitimate businesses, extended paper trails, paying taxes, etc.

Right. Nonlawyers may not recognize what happens on an insured site. It can be a yogurt shop, E-Z Mart, cowboy ranch, home, or a store. But once there's an insured loss, there is movement of money *from bank account to bank account*. All insurance companies keep their money in "general" accounts. However, when a claim is filed, insurance companies must put money into "reserve" accounts in response to claims. Therefore, money "moves" (that's important to the money launderer) from a "general" bank account to a "reserve" bank account.

Suppose I have an accident and file an insurance claim for \$10,000. Just because I filed a claim doesn't mean the insurance company is going to pay. However, because they might have to pay, they are required to take \$10,000 from their general account and place it in the reserve account where it is "reserved"

strictly for me until the validity of my claim is determined. Then, once my claim is validated or rejected, the \$10,000 will be given to me or returned to their general account.

Right. The reserve account is something like an insurance company's "trust account".

### Three grooms and a bride

Loss streaming is making Texas the premier place for drug trafficking. If you're moving a lot of cocaine, you're moving in the hundreds of millions. Do you really want to settle for these \$200,000 *income* streaming schemes? No. You want to go to a state where in one night, with the murder of four children, you can move \$100 million into an account and then shoot it right back. So loss streaming is part of an overall picture. It's like a wheel. Big drugs come in. Big money launders out.

We call these schemes "three grooms and a bride". The three "grooms" are the site, the follow-up investigation, and the insurance claim — but the "bride" is the drug or stolen S&L money waiting *outside* the bank.

Because the launderers are moving enormous amounts of money, it's important this murder be accomplished reliably. So they "groom" the site before the murder. In Diana Havner's case, over the months before her murder, the convenience store owners took out the store's burglar alarm and phone, and put big signs over the windows so no one could see what was going on inside. They took out the drop safe but added check cashing which signaled that there might be several thousand dollars in unprotected money on site. The possible presence of this money created a "pseudo motive" for murder.

When Diana was murdered, we naturally assumed some thug killed her to steal money from the convenience store.

The reason these murders persist is it took forever to figure out the real motive. Who would ever imagine that killing a girl, or four girls, on a site could be connected to a money laundering scheme? It took so many of us lawyers traveling around the state, meeting with other lawyers, comparing notes, looking at the cases, looking at the disbarment activity against us, and finally, we came to an unmistakable conclusion that they were “blending” or laundering money into the loss streams that they were creating.

However, you don’t just groom the site for the murder, you often times groom the follow-up investigation. You induce corruption in the police department. If you schedule the murder properly, you can often determine which homicide detective gets control of the case. If he’s corrupt, there won’t be a meaningful investigation.

Once the death claim arises, money starts moving from account to account. Keep your eye on that because money launderers like money that is “in motion”, moving *into* a bank account. Within minutes, hours or days of the death claim, money moves from the insurance company’s general account to their reserve account and then from the reserve account to the bank *trust account* of the lawyer claiming to represent the beneficiaries of the insurance policy. The best place to blend or launder in the drug money is as it’s moving from the reserve accounts to the lawyer’s *trust accounts*.

Most people assume the lawyer handling the money represents the heirs of the dead person, but I want to shock every-

one out there. It’s very, very easy to set up someone’s murder and then move the money through the accounts and download it into a lawyer’s trust account in the name of the family of the murdered people when that lawyer does NOT in fact represent those people.

I’ll tell you how we lawyers found out about this. If you kill someone on the site or you set off an arson, money moves through the accounts, and the money laundering is done. But suppose an honest lawyer comes along a year or two later, and represents the real heirs of the dead person who have no idea that their names were already used to facilitate a money laundering transfer. The lawyer’s suit threatens to set off a *second* disbursement through the same insurance account for the same death. That could expose the murder scheme since the insurance company’s fraud units would pick up the second claim and/or payout.

### Lawyers trust accounts

The only downside to loss streaming is that it’s easy to determine where the money went. It goes into the lawyer’s trust account. That’s why lawyers like Roy Q. Minton and Jerry Gibson, control, and I mean *control*, the Texas State Bar. The Texas State Bar has become a Racketeer Influenced Corrupt Organization.

But here’s another kicker. The State Bar collects all the interest that accrues on the lawyer’s trust accounts but refuses to account for how much that interest is.

[The interest from lawyer trust accounts is supposed to go to the State Bar to pay for legal services for poor people.](#)

Right. Which is one of the big-

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gest lies you’ve ever heard. In fact, if I kill four children on the yogurt shop site and download \$100 million into my lawyer’s trust account, the annual interest on that \$100 million would be about \$5 million. That would cause the bank to send a 1099 report of interest earned to the IRS which would cause the IRS to ask *me* how I got hold of the \$100 million.

However, the State Bar is a “political subdivision of a state”, and political subdivisions are exempt from the reporting requirements of the Bank Secrecy and Money Laundering Suppression Acts. Therefore, because the State Bar collects the lawyer’s trust account interest, no 1099 is filed by the bank, the lawyer, or the Bar and therefore, that \$100 million doesn’t show any interest to attract the IRS. *That’s* why the State Bar collects the interest.



Under the tax laws, they can download a billion dollars into a lawyer's trust account, and if they don't claim a dime of it as income, they don't have to report any of it. A lawyer's *trust account* — don't ever forget it — is heaven for laundering. There is no better place. The law firm acts as a bank, does the bookkeeping, and from there, they can wire the money to the Cayman Islands or wherever.

So they're committing murders to generate insurance losses, put money "in motion", cause "loss streaming", and then blend illicit money with the apparently legitimate money. We believe that blending takes place as the money moves from insurance company reserve accounts to the lawyers' trust accounts.

These lawyers' trust accounts are starting to dominate the state. . . . There's a big problem with that. Honest lawyers that want to take on bad judges — if we can't run against them — if we can't have a party behind us, and we're out there, saying "hey, get rid of this judge" -- there goes our law license. We're going to be indicted. We're going to be arrested. We're going to be chased out.

In Austin, the trust account of the Minton, Burke, Foster & Collins firm, and in San Antonio the trust account of the Plunkett Gibson firm are dominant. They *choose* the judges.

It's hard for people to believe. We lawyers are in day-to-day contact with public officials. You people out there are working your lives and trying to stay away from these people, so when we tell you that we're seeing nightmares in this courtroom, that they're setting us up for arrest, or we see overt corruption where lawyers from dominant money laundering firms are in the courtroom signaling to the judge

how to rule, maybe that sounds wild, but guess what? That's where we work. We see it every day. We're dealing with people that murder people, murder *children*.

### Fighting the fleet

Eric, give folks an idea of the kind of pressure that's been brought to bear on you, since you started to expose this information.

Because there's so much money moving, it's like an aircraft carrier surrounded by destroyers. When you fight these guys they come after you with everything. And not just me, but a lot of lawyers. They will destroy your life and when they've got that kind of money, they can do it.

This loss streaming "industry" has been around a while and it attracts psychopaths. Ted Bundy would be well employed in this system. And I'm not kidding about that. You are dealing with people that are sexually, emotionally and financially attracted to murder.

What's amazing about these people is they are masters at illusion. That yogurt shop was never a "yogurt shop". From the very moment it was put in place, from the moment those girls were hired, it was a *murder site*.

If you deal with people that can create illusions, they can create mental impairment illusions, they tried my wife for fraud, they tried me for fraud. Now they're trying me as a child molester. How do you fight this?

### Public exposure.

Yes, you go high publicity — because they define you. As I was trying to litigate this arson case I was told by Roy Q. Minton — a name well known in Texas

— that if I filed a lawful appeal, I would be incarcerated in a mental asylum. Roy Minton has a very precise pattern. He tries to get a judgment issued — and by the way — your US District Judges — don't you think that a US District Judge can't be the most corrupt animal in the world. These Article III judges like Prado or Knowlin or Magistrate Coppell or O'Connor -- these guys love money and there's nothing more corrupting. What they do is they hit you with some kind of judgment or decree and most people think that's the end of it. But guess what? No sooner does that decree come down, than they try to arrest you and kill you right afterwards. What they do is try to create a "suicide credible environment".

In other words, if they can cause a significant loss in your life and you die soon afterwards, people might dismiss your death as a suicide.

Exactly. And it's a repeating pattern. In 1993, I got hit with a \$70,000 sanction, I didn't even have a *trial* for my client. It'd be like going to a night softball game and they never turn on the lights but just announce the score at the end. Three days later I was found "mentally impaired" and they tried to get — without any medicals — they tried to get me incarcerated. I filed a jury demand. The jury declared me sane.

So they came to my office and tried to arrest me and later tried to arrest me in a courtroom. That happened in November, 1993, and again when they disbarred me in November of '95 — and by the way, the jury again found in my favor, so the judge voided the jury verdict. They hit me with an absurd sanction -- \$176,000 -- and next day tried to arrest me.

Now they've put something in my son's records at school and when we got it was all blacked out. They tried to paint my son as my accuser in a child molestation case. They're saying that I molested a boy as I and my wife were going up a crowded staircase at school, taking my son to class at 8 o'clock in the morning.

When they made the original allegation, they knew you were at the school if I understand correctly, but they didn't know your wife and son were with you.

Al, actually what they were going to do — is just get the indictment down — they don't care about the sloppiness of the facts, they try to arrest you as you walk into your State Bar courtroom. Nobody looks at the fine details. If you sidestep the arrest, and that's when I published my story on your website, now they have some problems.

So they generated a new time line. Now they put me in a Cub Scout camp. Their problem is neither my son nor the little boy they said I molested were even in the Cub Scouts that year, and I've never been to a Cub Scout camp.

This is the Bar acting against you?

Elements of the Bar. This is Roy Minton. This is the lawyer that controls the Bar. These racketeers. And I'm telling you these guys are psychopathic murderous racketeers.

Those are extraordinary allegations and I've got to do a little dance for the benefit of KPBC as well as myself. Again, ladies and gentlemen, Eric is making these allegations -- I am confident that Eric is making honest statements -- but again, we don't have a second side on this so we have to be cautious in what we believe.

Hey, if Roy Minton wants to call you, let's do it. I had to move my family out of the state *overnight*. To us, this is the end of democracy. Because guess what? The drug money will always come into this state and now that they're doing loss streaming, they're corrupting judges. I am saying some judges on the Texas Supreme Court are actively in this murder-based money laundering.

### Silver linings and ominous clouds

After these seven years and the complete destruction of the lives of so many lawyers, we're actually getting somewhere. Where's the solution here? If I can give a number to the US attorney which is (512) 916-5858. There's a guy there named Dan Mills. He's a good US attorney. You need to call him or leave a message on his voice mail and tell them to move on this "loss streaming".

You're implying that part of the impetus to actually solve these cases is political. That without enough public pressure, solutions are unlikely.

Yes. We now have a major TV network affiliate that's assigned an investigative reporter. And we're talking with reporters. These reporters have determined through their calls that "loss streaming" is taking place.

There's also a guy named Jaime Lavarre with the House Banking Committee in Washington, DC; they're looking at the money surpluses in Texas. All they got to do is take out a calculator and say "you know something, this much money cannot be coming in through the *income* streaming transfers." When Jaime Lavarre and I talked — and I told

him about the *AntiShyster* website, he said, "you know something, we'd already concluded that the money launderers had started moving their schemes and mimicking the bank-to-bank transfers."

If you can "blend" stolen money into a quantity of apparently legitimate money that's moving bank-to-bank, the Money Laundering Suppression Act and the Bank Secrecy Act are meaningless.

And these money launderers have enormous power. We deal with IRS, CID agents and US attorneys that are frightened. I've got some hearings coming and I'm worried about these people *killing me*. Do I sound alive and vigorous to you?

You sound all right to me, Eric. As a matter of fact, you sound like you're getting better, less anxious and less frightened than you were several months ago.

I'm better because investigative reporters have come in, because we understand "loss streaming" and we're dealing with the House Banking Committee. Yes, I'm better, but I'm frightened.

I understand. What you're trying to convey is that you're not suicidal and if anything does happen to you, it's not going to be by your own hand.

Al, you don't fight something for seven years and be life-affirming and suddenly take your life. It doesn't happen and it's not going to happen.



# Etc.

Benjamin Disraeli served as England's Prime Minister in 1867 and again from 1874-1880. His formidable intellect was often revealed by his wit.

For example, in the 1850's Disraeli so angered another member of Parliament that he blurted out, "Sir, you will either die on the gallows or from a social disease!"

Disraeli smiled. "That will depend, sir, on whether I embrace your politics or your mistress."

British humor is not only legendary among their politicians, but also among their military. For example, here are some actual excerpts from British Military Officers' Fitness Reports:

"His men would follow him anywhere, but only out of curiosity."

"When he opens his mouth, it is only to change whichever foot was previously in there."

"This young man has delusions of adequacy."

"He sets low personal standards and then consistently fails to achieve them."

"Works well when under constant supervision and when cornered like a rat."

"This man is depriving a village somewhere of an idiot."

Understated humor is not practiced only by the Brits. When asked, "Do you have anything nice to say about Bill Clinton?" G. Gordon Liddy reportedly replied, "He has a fine head of hair and is fully qualified to be a television journalist."

The eternal war continues. According to one woman, "The main difference between the sexes is that men are lunatics and women are idiots."

The feminists' lament: "I admit my husband is more intelligent than I am. The proof is that he was smart enough to marry me and I was dumb enough to marry him."

A young couple died and went to heaven just before they were to be married. So they asked St. Peter if they could be married and he said they'd have to wait five years.

In five years they came back, but St. Peter told them to wait another five years.

Finally, after ten years, they were married, but soon realized they'd made a terrible mistake and asked St. Peter if they could be divorced.

Shocked, St. Peter told them, "It took ten years to find a preacher up here, how long do think it'll take to find a lawyer?"



# Ahh, Danny Boy



I met Carroll Murphy in 1991. He was a big, lanky Texan about 53 years old with a toothy grin that was just a little bit threatening. My first description of “Murph” (it’s still in my data base) was “Texas mean”.

Murph took a fancy to the *AntiShyster*. He was a cowboy artist of modest repute and offered to provide cartoons at no cost for my magazine.

At first, I didn’t like his cartoons. They had a hard edge and the articles in my early editions of the *AntiShyster* were so virulent, that I felt more comfortable publishing softer, less threatening cartoons.

But over the months, my early virulence waned and I began to appreciate Murph’s cartoons. They were intelligent, insightful, and a good, aggressive balance for my increasingly “moderate” articles. So Murph’s cartoons appeared regularly in the *AntiShyster* from 1992 through 1996.

Over the years, I got to know about Murphy, but I didn’t get to know him. Still, he was an extraordinary man. Although he’d shrunk some due to diabetes in his later years, he claimed that as a young man he was 6’4” tall, and weighed in around 225. No fat. He’d won the Texas *state* fast

draw contest once or twice with his long barreled .45 single action revolver. He’d worked in a top secret military intelligence unit in Europe during the 1960’s, and performed the kinds of violent stunts we see Stallone or Schwarzenegger fake in the movies: extracting spies from behind the Iron Curtain, running road blocks, stealing secrets, and even murder.

Murph was powerful, fearless, and deadly. He claimed to have killed several men, including one guy who’d slit Murphy’s guts open in a phone booth with a knife (Murph said he could see his own intestines as he wrestled his .45 out from under his coat and killed the man who was still stabbing him).

But he was also an artist, and after he left the military, he did very well – had paintings hung in art galleries and made a good living. But when Murph was about 40, it all just turned against him. He couldn’t sell a painting to save his life.

Over time he began to suspect he was cursed, but I never saw him show a trace of self-pity. He was tough, bold, and mean enough to fight a tank, but he just couldn’t understand why absolutely nothing worked for him.



He had talent, brains, courage, and persistence, but no amount of effort could sell a painting, close a deal, get a job.

So he withered. Eaten by diabetes, his teeth were falling out, his body shrinking, and his strength failing. I'd known he was dying since '94 - Murphy'd told me matter-of-factly. Didn't make a fuss. I expected him to pass in 1995, but he was too tough.

I liked Murphy, I wanted to be friends, but I never felt comfortable around him. There was almost always the hint of latent violence.

The only time Murphy "softened" was in regard to his granddaughter Sarah. He loved that little girl. Drew pictures of her, delighted in her. I don't know if anyone else brought out Murphy's humanity, but he gladly displayed it for Sarah.

Last time I saw him was November 1996. He was striding confidently with little Sarah at one of our legal reform meetings, grinning like he could kick every ass in Dallas. He looked like a young man.

Still, I wasn't surprised when he died a month later.

However, Murphy did surprise me at his funeral. He'd been cre-

mated. The service was in a church. The pastor spoke, the family spoke, Sarah wept and spoke about missing her granpa.

And then a lady sang "Oh, Danny Boy", that beautiful, bitter-sweet Irish ballad which always makes me weep. Turns out it was Murph's favorite song. I was astonished.

As I sat in the pew, listening to the song, trying not to cry, my appreciation for Murphy jumped about 100%. If Murph loved "Oh, Danny Boy", then under all his "Texas mean" exterior he had to have a sensitive side I never glimpsed or suspected.

But how'd I miss it?

Good Lord, Murphy was one of those rare individuals I could've really *talked* to. But I didn't.

And so I'm left with the disturbing suspicion that I didn't lose a "friend" last December - I lost a *best friend* - but I didn't know it til after he was gone.

I feel haunted by ghosts of conversations we never had. Strange. For the first time since I met Murphy in 1991, I'd really like to talk to him.

Perhaps, some day I will.

Not too soon, though.

Til then, God Bless.

