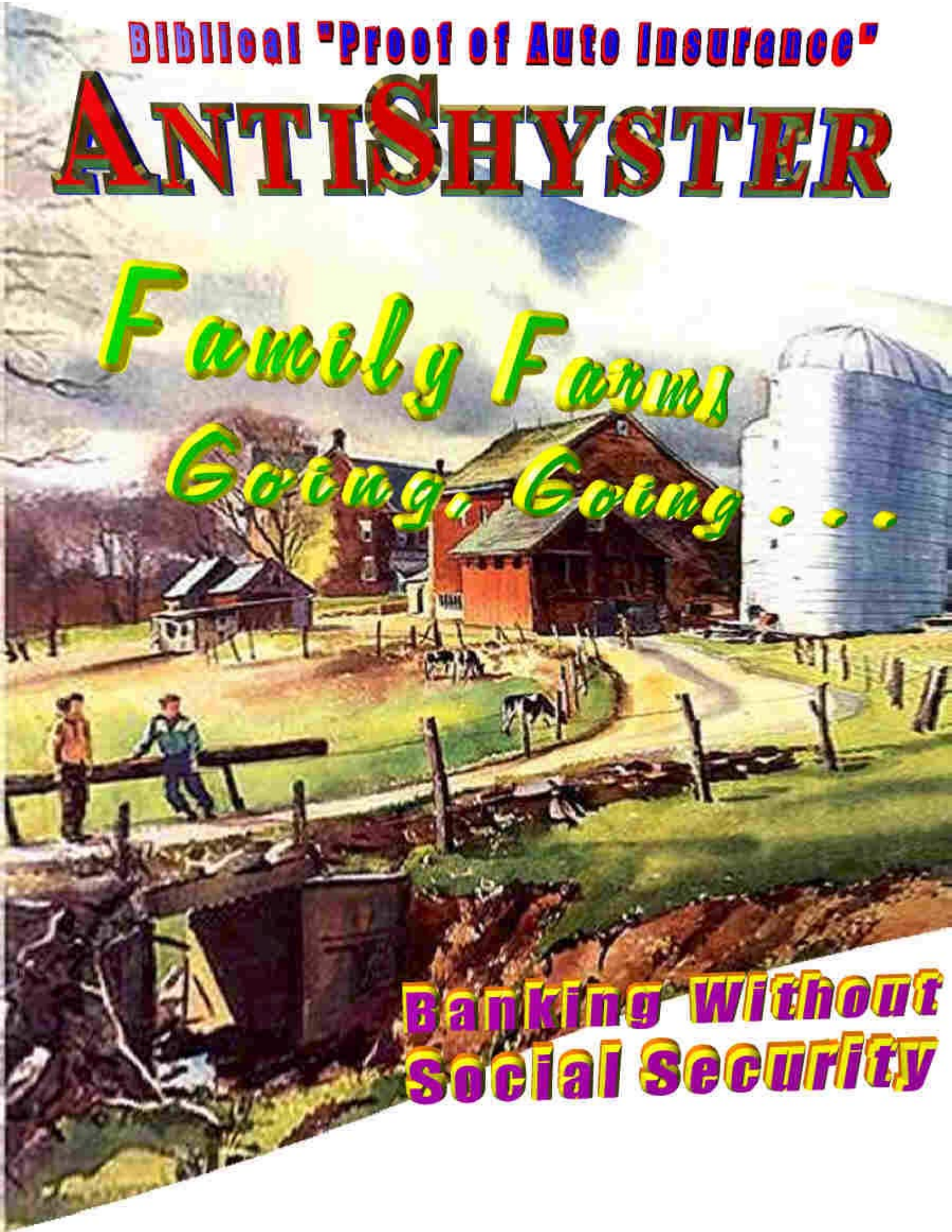
Biblical "Proof of Auto Insurance"

AntiShyster



Family Farms Going, Going . . .

Banking Without Social Security

ANTISHYSTER
NEWS MAGAZINE

Anno Domini 1999
Volume 9, No. 2
Creator, Editor & Publisher
Alfred Norman Adask

"'. . . 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.

Legal Advice

The ONLY legal advice this publication offers is this:
Any attempt to learn to cope with our modern judicial system must be tempered with the sure and certain knowledge that secular "law" is always a crapshoot. That is, *nothing* – not even brown paper bags filled with hundred dollar bills and handed to the judge – will absolutely guarantee your victory in a judicial trial or administrative hearing. The most you can hope for is to improve the *probability* that you may win. Therefore, DO NOT DEPEND ON THE ARTICLES OR ADVERTISEMENTS IN THIS PUBLICATION to illustrate anything more than the opinions or experiences of others trying to escape, survive, attack or even make sense of "the best judicial system in the world". But don't be discouraged; there's not another foolproof information on law in the entire world– except the word of Yahweh.

Reprint Policy

Except for those articles which specifically identify a copyright or have been reprinted with permission of another publication, permission is granted to reprint any article in the *AntiShyster,* provided that: 1) the reprinted article contains the following credit: "Reprinted with permission from the *AntiShyster,* POB 540786, Dallas, Texas, 75354-0786, or call (800) 477-5508 - annual subscription (6 issues) $30"; and 2) one copy of the publication carrying the reprinted article is sent to the *AntiShyster.*

Correction Policy

There is so much truth that is offensive about the American legal system that we have no need or intention to lie or fabricate stories. Nevertheless, unintentional errors may occur. We are eager to make corrections quickly and candidly as soon as we discover and confirm them. This policy should not be mistaken for a policy of accommodating readers who are simply unhappy about a published article. If someone has been portrayed in a false light, we will endeavor to portray them accurately. Likewise, if someone has been falsely accused, we will investigate and make every effort to see that they are correctly accused.

Advertising Policy

The *AntiShyster News Magazine* reserves the right to reject any advertisement we deem unsuitable and will not knowingly publish advertisements that are fraudulent, libelous, misleading, pornographic, or contrary to our editorial policies. However, we do not have the resources to absolutely determine the true value of any product or service offered by our advertisers. Therefore, readers should not assume that publication of an advertisement in the *AntiShyster News Magazine* constitutes our endorsement of its sponsor, or the products or services offered.

Advertising Rates

See our website.

AntiShyster News Magazine
POB 540786 Dallas, Texas 75354-0786
The United States of America

Office: **972-418-8993**
EMail: **adask@gte.net**
Website: **www.antishyster.com**

The Grapes of Technology

by Edward Lotterman

The following is a hugely edited version of a 1996 paper presented by Edward Lotterman, Agricultural Economist for the Federal Reserve Bank of Minneapolis entitled "Farm Bills and Farmers, The effects of subsidies over time". Mr. Lotterman's paper explains the apparent demise of the family farm as primarily due to massive technological innovation that was both inevitable and relatively benign. Mr. Lotterman argues that the loss of family farms is not as severe as most people believe since "proportionally" family farms make up virtually as much of the American farm industry as they did in 1933.

However, having worked on a farm for several years and met ranchers from around the country, I found Mr. Lotterman's tendency to "sanitize" the farm crisis somewhat perplexing. Technically, he may be correct, but the problem goes far beyond the effects of technology or free market competition. As I learned in 1970, farmers have been reduced to the status of sharecroppers. Unlike previous generations, modern farmers rarely own their land. They work it and posses it but legal title typically belongs to a bank or some distant corporation.

I've modified the substance of Mr. Lotterman's insighful essay with my own [bracketed] comments concerning the farm crisis and its relationship to banking.

U.S. agriculture is a marvelous success in terms of producing large quantities of food and fiber at low cost to consumers. Indeed, the average U.S. household now spends less than one-eighth of its income on food, a proportion that is unprecedentedly low both in recorded history and in comparison to other high-income countries.

Ironically, the enormous success and efficiency of American agriculture has impoverished the American farmer. Millions of family farmers have gone out of business since 1920, and the number of family farms continues to decline steadily.

While this decline in the absolute number of family farms is often cited as a social tragedy, it is not without parallel in other sectors or other countries. Indeed, for general living standards to rise, productivity must increase. The fact that 2 percent of the population can now feed the country vs. 30 percent in 1933 indicates dramatic increases in productivity. Moreover, other sectors, especially retailing, went through similar patterns. [For example, the various "mom 'n pop" family-owned stores on Main Street went broke and were replaced by giant corporate mega-markets like Walmart located at the outskirts of town. Mr. Lotterman implies that our sympathies and political concerns for failed family farmers are misguided since this widespread attrition is caused primarily by technology and virtually inevitable.]

Nevertheless, from the Eisenhower years on, the need to "preserve the family farm" or "farming as a way of life" has been sounded in public debate over agricultural legislation. The idea of family farming as a socially desirable and morally superior mode of production is deeply rooted in American culture and can be traced back to Thomas Jefferson and other 18th century writers. Well into the second half of the 20th century, many urbanites had farm roots, being children or grandchildren of active farmers, and frequently had great sympathy for them.

Most people believe the Great Depression started with the 1929 stock market crash. However, for farmers, the Great Depression started in 1921 when agricultural prices plummeted 30% percent from the previous year and did not recover. Government didn't respond meaningfully to the farmers' plight until President Franklin Roosevelt started his "New Deal" in 1933. Included in the New Deal was the Agricultural Adjustment Act (AAA) which authorized direct payments to farmers who curtailed crop and livestock production. This destruction of food and fiber at a time when the President himself described much of the populace as "ill fed, ill clothed and ill housed," caused much criticism but did briefly boost depressed prices.

The AAA also established "sup-

port" prices for six basic agricultural commodities relative to the "parity," or the price of the commodity relative to the general price level in the 1910-1914 period. Under this "parity" program, farmers were guaranteed to receive the same relative price for their products in 1935 as they received in 1914. If the average prices for industrial products and/or urban labor in 1935 was 20% higher than in 1914, then government guaranteed price support for farm products in 1935 at levels be 20% higher than they were in 1914.

The AAA certainly met with some success. Output restrictions from 1933 through 1937 probably raised farm incomes, albeit at the cost of higher prices to consumers. However, some historians argue that this cost was lower than government would have faced if the rural to urban displacement vividly portrayed in Steinbeck's *The Grapes of Wrath* had become even more widespread. In policy wonk terminology, the AAA was a cost-efficient way to transfer income to low-income rural families. [Apparently, farm support programs were first intended as *welfare* for the 30% of Americans who were impoverished farmers.]

But laws and policy solutions intended to deal with acute short-term problems, such as near-starving rural populations in 1933 (or a wave of farm and farm bank failures in 1984-85) are seldom effective in easing longer-term questions such as the social costs of *structural* change induced by *technological innovation*.

Since the early 1800s, the United States has been a fertile bed for new agricultural technology. Farmers and nonfarm inventors produced a stream of new machines to apply animal and fossil fuel energy as a replacement for human effort. Such labor-replacing innovation continued in the present century and was bolstered by advances in biology and chemistry that boosted output per acre through hybrid and genetically engineered seed, synthetic fertilizers and pesticides. New technology also allowed the same acreage to be cultivated by many fewer people. The decline in farm populations and increase in the size of farms that began by 1920 continued largely unabated by policy interventions up to the present. The effect of such technological innovation was to increase productivity so rapidly that federal programs to restrict output were frequently overwhelmed.

Thus, 60 years of federal programs did little to slow the reduction in farm numbers. In other words, in many of the last 60 years, government's agricultural policies may not have been particularly important.

Consistent with this legislative ineffectiveness, prosperity did not return to rural areas until the outbreak of World War II. During that war, market prices exceeded the 1910-1914 "parity" level and therefore AAA legislation was moot in regard to costs to the U.S. treasury. However, the AAA remained in force for nearly 60 years and laid a time bomb for subsequent Congresses and administrations.

During mid-1950s, U.S. agriculture was beset by a period in which product prices were too low to pay prevailing prices for land and still provide a living for many farm families equal to that enjoyed by urbanites. Post-WWII Europe and Asia were well on the way back to feeding themselves, and a new wave of technological innovation in the form of hybrid seed, chemical pesticides and synthetic fertilizers was expanding output per person and per acre.

Farmers were producing too much. New technology meant that fewer farmers could meet the food needs of the nation and that something had to be done to ease the financial pain of all concerned caused by this fundamental change in our social *structure* (the 30% of Americans who were farmers in 1933 decreased to less than 2% today). During the Eisenhower administrations, most farm programs were justified as necessary to ease excess labor out of agriculture. It was essentially an agrarian version of the debate about whether automation would lead to chronic unemployment of industrial workers. These sentiments persisted through the Kennedy, Johnson and Nixon administrations.

During the Eisenhower administrations the Food for Peace program was passed as a "humanitarian" foreign aid program, but its chief purpose was disposal of surplus food. Under the existing legislation, farmers could take out *loans* on commodities stored after harvest. But if the market price of the com-

modity remained below the loan rate, or price per unit advanced on the stored crop, the farmer could simply forfeit the crop to the government in full payment of the loan. This loan provision was a thinly disguised measure by which government fixed a minimum price by guaranteeing to purchase *any quantity* of farm output at the loan rate. [By "fixing the minimum price," government also indirectly guaranteed *bank* loans to farmers and fostered unreasonable credit for farmers.]

Of course, if this loan rate were substantially above the free market price for food, farmers would have an incentive to produce more than markets would normally absorb. That is precisely what happened – with a vengeance – during the Eisenhower years. Bin sites, fields of round grain bins or Quonset huts filled with government-owned grain, sprang up on the outskirts of nearly every farm town. "Humanitarian" donations or sales of commodities at giveaway prices were a way to dump these surpluses outside the country behind the fig leaf of helping the poor and downtrodden. But surplus disposal was the most important, if not the only, objective of the act. [Presumably, risk-free farm loans were also an important consideration.]

U.S. agriculture remained relatively stable until 1972-1973 when the Soviet Union surreptitiously purchased wheat and corn in international markets in such massive quantities as to cause unexpected increases in market prices. Commodity brokers [and their bankers] might have experienced substantial losses if they had to buy grain at unexpectedly high prices to cover their initial commitments to provide Russian grain at low prices. However, the U.S. government adopted an export subsidy program to cover the difference (losses) between the companies' domestic purchase costs and international sales price. This open-ended subsidy covered trading firms' losses and meant that taxpayers [rather than commodity brokers and their bankers] ended up absorbing the loss.

Changes in international financial relations following the demise of the post WW II Bretton Woods arrangements also affected American agriculture. Under Bretton Woods, the exchange rates of major currencies were fixed relative to the U.S. dollar and the dollar was tied to gold at the rate of $35 per ounce. In the 1960s, the U.S. ran persistent balance of payment deficits and its gold holding shrank. When the U.S. withdrew from these arrangements in 1971 and 1973, the U.S. dollar declined in value relative to other currencies. This initially made U.S. agricultural commodities more attractively priced to foreign buyers, and exports boomed.

This expansion of agricultural exports raised real commodity prices and (with increasing general inflation, the OPEC oil embargo and a great popular flurry about declining natural resource supplies) contributed to an upward spiral in real land prices and sparked the most intense period of investment [bank loans] in machinery, farm buildings and rural housing in 60 years. [This boom/inflation era provided farmers with easy credit and long-term debt that would later prove ruinous.]

But in the 1980s, the dollar began to rise against other currencies, cutting into U.S. exports. Grain prices dropped as many importing countries went into recession or debt-induced austerity. Many farmers who purchased land in the 1970s believing that inflation and grain prices would remain high began to default on their debts.

By 1985, many farm businesses were in liquidation, land prices had fallen by 30% to 50% from their peak, and dozens of agricultural banks were failing. One reaction was the Export Enhancement Program, a new export subsidy to help sell U.S. grain abroad when domestic prices were above prevailing prices in international trade. [Arguably, the foundation for our current "international free trade" was laid in our early attempts to protect farmers from the impact of technology by increasing their foreign markets. Presumably, to open foreign agricultural markets to American farmers, government had to agree to open our domestic industrial markets to foreign competition.]

Massive treasury outlays ($26 billion in 1986) and an easing of the slump in exports halted the downward slide in farm incomes and farmland *values* by

the late 1980s. [Thus, while government support might not prevent farm foreclosures, it could still minimize bank losses due to diminishing "value" of farmland previously used as collateral for long-term bank loans.] But between 1985-1995, congressional and public concern over federal budget deficits grew to a point where substantial outlays for farm price support became a major target. The upshot was the 1996 "FAIR" act, a seven-year winding down for most grain support programs and the apparent end of a 60-year period of government action in the agricultural sector.

As you've probably guessed, I suspect it's more than "coincidental" that government farm support programs seem to inevitably support banks more than farmers. This pro-bank bias isn't necessarily sinister. After all, it's entirely possible that harm to rural communities might be hugely magnified if community banks were as decimated as family farms. Thus, protecting banks might be sound social policy.

What follows are a few more excerpts from Mr. Lotterman's essay (and my comments) which hint at the close relationship between farm programs and bank support:

In 1933, farm families made up nearly a third of the population and their average incomes were substantially below those of urban households. But as a proportion of the population, farmers shrank steadily over time, and average farm incomes rose so that after the 1970s they were as high or higher than non-farm incomes.

However, by the 1980s, family farm incomes were above the national average – but only because of the off-farm earnings of household members.

[Average family "income" does not reflect average family *investment*. In 1970, average farm families managed land and equipment that was probably worth $200,000, while average non-farm families net worth (their home equity, cars, saving, etc.) was probably less than $20,000. Although a comparison of farm family investments to urban family net worth can be misleading, there is something clearly wrong if a farm family that works 50 to 60 hours a week managing a $200,000 investment only makes as much income as a family with $20,000 net worth. The farmer's labor may have generated an income comparable to the non-farm workers income, but the farmer received virtually no *profit* from his investment. Who did? Banks.]

In any program that sought to raise incomes by raising prices, the most benefits would accrue to those who produced [borrowed] the most. Large producers were seldom those with low incomes [or low credit ratings].

Saving the family farm is frequently cited as a motivation for farm policies. But federal tax policies from the 1950s into the 1980s had offsetting effects. The increasing size of farms was one symptom of the disappearing family farm that successive farm bills were intended to slow. But high marginal tax rates combined with liberal depreciation rules for purchased machinery made the after-tax cost of new machinery or facilities considerably lower for higher-income large farmers than for lower-income small farmers. Some studies showed that the after-tax costs of new machinery were 40% lower for high-income [high credit] farmers than for those with low incomes. Such subsidies to *capital intensity* implicit in the tax code produced greater movement to large farms than would have occurred if tax rules had been size-neutral, and ran directly contrary to the implicit and explicit objectives of successive farm bills.

[Mr. Lotterman's use of the term "capital intensity" is peculiar. At first, you might think "capital intensity" implies "wealthy farmers," but on reconsideration it also includes those farm entities that have the greatest access to *credit*. Thus, a "capital intensive" farm (and all its attendant advantages) was one that was closely "connected" with banks and "subsidies to capital intensive" farms would indirectly accrue to bankers.]

However, if one looks at the proportion of farm output produced by "family farms" where the bulk of management, control, labor and equity is supplied by household members, then

the majority of agricultural production still takes place on family farms.

[Just because a "family" provides the "bulk" of the management and labor on a farm does not constitute a "family farm". The definition for "family farm" does not depend on biological relationships among farm workers, but rather on who OWNS the particular farm and what family might inherit that farm. The term "family farm" is imprecise and potentially deceiving since, unless the definition of family farms centers on family *ownership*, any impoverished association of loosely related sharecroppers could be defined as a "family farm". Just because my son or daughter might work with me on the same farm does not mean it is a "family farm". A true "family farm" is one where the patriarch (or matriarch) owns *legal* title to the farm land and can therefore pass that *legal* title directly on to his/her heirs. Mere management of a farm by a particular family does not equal ownership, and inheritable legal title/ ownership is the essence of "family farms". A true family farm is one where a biological family *owns* the farm and is solely entitled to the *profits* thereof. Families who merely manage or labor on the same farm, do not qualify as "family farmers" so much as sharecroppers.]

Is government protection for banks that loan credit to farmers a sound social policy? Perhaps, but over the years of publishing the AntiShyster, I've learned that banks – big *banks, the Federal Reserve, the International Monetary Fund and banks so big they are almost unknown – lie at the heart of virtually all of our constitutional problems. It's not the economy, stupid – it's the* money, *the* paper *money . . . and the coalition of banks and government officials that make us use it.*

As we've explained and explored in previous issues of the AntiShyster (notably Volume 8 No. 2) it is 1) certain that all property rights flow from title, and 2) probable that Federal Reserve Notes (FRNs) are trust instruments that convey only equitable (not legal) title to the purchaser. If so, legal title (real ownership, control and legal rights) to whatever we purchase with FRNs accrues to the Federal Reserve, and we only receive equitable title (possession) to our property.

I suspect that the real evil of Franklin Roosevelt's New Deal was that it ultimately made sharecroppers of all of us. By using paper FRNs and bank credit, we've lost legal title to our property and therefore also lost most of our legal rights. We've been reduced from Freemen with unalienable rights to serfs with privileges. This reduction is especially clear in the case of farmers.

Frankly, I don't much care if the average farmer has to live on less than minimum wage. His income is not my problem. But I deeply care that the average farmer no longer owns legal title to his land. Through FRN-based purchases and bank loan defaults on their grandfather's land, farmers have lost their legal title to their land. Through the shiny apple of credit-based purchases they've gained only the equitable illusion of ownership.

I suspect the heart of the family farm crisis revolves around the fact that "family farmers" no longer own nor profit from their farms. As you'll read in the next article, It is the loss of ownership and therefore profits that has crippled the American family farmer. First, they lost their land to the banks. More recently, they've lost their land to corporations. But so long as farmers don't own their land and the profits therefrom, those farmers are destined for poverty.

Concentration of Agricultural Markets

by Dr. William Heffernan, Dr. Robert Gronski, Dr. Mary Hendrickson

This next report was presented to the National Farmers Union on February 5, 1999 and originally contained over 9,000 words (I've edited it down to less than half that size). As you'll read, "corporatizaton" of the food system threatens the family farmer, rural America and indirectly, all Americans. Closely read, this report illustrates 1) how our political structure and standard of living depend on private ownership of the "means of production" (land, labor, agriculture and factories) and 2) how multinational corporations inevitably deprive local people of the ownership, profits and benefits of their own efforts.

This report provides surprising insight into the corporate forces behind the "global plantation" on which farmers (first) and you and I (later) may one day serve as serfs. Although farmer Brown may be first to get the ax, you and I are not mere observers in a distant, urban audience – we're all standing in the same line, waiting our turn to get (at best) whatever the farmer got.

Bracketed comments and italicized highlights are my additions.

The organizational structure of the national/global food system is dynamic. New firm names emerge (often as the result of new joint ventures) and old names disappear – but underlying these name changes is a growing concentration of *ownership* and *control* of the food system. These structural changes (aka, "the industrialization of agriculture,") are so strong that they often undermine the desired and expected outcomes of much of the agricultural policy developed over the past couple of decades.

Few Americans understand the magnitude of the changes in our food system and their implications for agriculture and long-term sustainability of the food system. It is almost heresy to ask if these changes are what the people of our country really want or – if not – how we might redirect the change. The changes are the result of notoriously short sighted [corporate] market forces and not the result of public dialogue, the foundation of a democracy.

Concentration of power

For well over a decade, several of us at the University of Missouri have reported the concentration ratios of the largest four processors of the major commodities produced in the Midwest. We liken the food system to an hour glass in which farm commodities produced by thousands of farmers must pass through the narrow part of the glass that is analogous to the few firms that control the processing of the commodities before the food is distributed to millions of people in this and other countries. We focus on the largest four processing firms because the economic literature in the mid-1980's indicated there was general agreement that *if four firms had 40% of the market, that market was no longer competitive*.

When we began collecting data in the mid-1980's, this information was relatively easy to obtain in trade journals, government reports, annual reports from corporations and other secondary sources. Over time, this information has become [suspiciously] more difficult to obtain. Trade journals have come under pressure to not publish some of this information and government agencies often say that to reveal the proportion of a market controlled by a single firm in such a concentrated market is revealing "proprietary information".

I once appeared on a four-person panel to discuss the concentration within the beef sector. Although each panelist calculated a different percentage of the market controlled by the largest four beef slaughtering firms, we all agreed the top four had at least *75% of the market*.

In a democracy where we expect the citizens to be involved in setting national policy, it is absolutely necessary that they have accurate information on the major causes for change. The public must have better data. I urge

Congress to seek better data and make it available to the public as it debates the relationship between concentration, agricultural policy and rural issues.

Today, data indicate that four firms control *over 40%* of the processing of the major commodities produced in the Midwest. The data suggest vertical integration in the food system. For example, Cargill Inc. ranks in the top four firms producing animal feed, feeding cattle and processing cattle.

Multinationals

We've already noted the difficulty of getting information in America. Getting global information is far more difficult. To understand the U.S. food system, one must understand the global food system; to understand the global food system, one must understand the operations of the major global firms such as Cargill, Archer Daniel Midland (ADM), and ConAgra. For example, Cargill has operations in 70 countries and is a privately held firm. How do we get all of the necessary information? We have exposed the tip of the iceberg, but exposure only indicates the type of information needed to understand the global food system.

In the past, most global grain firms were family-held operations that maintained low visibility and were secretive about their transactions. These firms operated in one or two stages of the food system and in only a few commodities. Today, the system is much more complex and involves biotechnology, production, and even highly processed food.

Increasingly, these firms are developing a variety of different alliances with other players in the system. Acquisition is still a common method of combining two or more firms, but mergers, joint ventures, partnerships, contracts, and less formalized relationships, such as agreements and side agreements, are also utilized. We will use the concept "cluster of firms" to represent these new economic arrangements.

The term "alliance" describes the emerging food system that is "seamlessly integrated" from gene to shelf. As this system evolves, even the price of the livestock feed and its ingredients, such as the corn, will not be known to the public, because (like today's broilers) those product will not be sold. The firm owns the chick and sends it to their processing facility from which it emerges, perhaps in a TV dinner. The only time the public will ever know the "price" of animal protein is when it arrives in the meat case. Thus, there will be no [free] markets in agriculture and no "price discovery" from the gene, fertilizer processing and chemical production to the supermarket shelf.

In a food chain cluster, the food product is passed from stage to stage, but *ownership* never changes and neither does the location of the decision-making. Starting with the intellectual property rights that governments [and taxpayers] *give* to the biotechnology firms, the food product always remains the property of a firm or cluster of firms. The farmer becomes a "grower" [sharecropper] providing the labor or some of the capital, but *never owns the product* as it moves through the food system and never makes major management decisions.

The system is still evolving and it's not yet possible to determine how many clusters may evolve, but experiences in other economic sectors (like the auto industry) suggest we won't see monopolies evolve. Even at the global level, where there are no antitrust regulations, "oligopolies" [an economic system where only a few sellers sell a standardized product] – not monopolies – tend to emerge.

We predict the development of four or five food clusters. We assume the number of clusters will be limited because it will be difficult for any new or emerging cluster to obtain the monopoly power that accompanies the intellectual property rights that lead to control of the food gene pool.

Food Chain Clusters

Cargill/Monsanto. The 1998 joint venture between Monsanto and Cargill established one of the clusters. Cargill had already established its own food chain as one of the world's largest seed firms with seed operations in twenty-three countries. However, Cargill did not have access to biotechnology and the new genetic products it would produce. As the *Wall Street Journal* (9/29/98) pointed out, "most seed companies have either aligned themselves with, or been acquired by, crop-biotechnology juggernauts such as Monsanto Co., DuPont Co. and Dow Chemical Co." Thus, Cargill sold their international seed operation to Monsanto and their domestic seed operation to AgrEvo, a Berlin-based joint venture between Hoechst and Schering. Cargill then formed a joint venture with Monsanto which had the intellectual property rights to develop the genes and had a very comprehensive array of seed firms.

Perhaps most importantly, the Cargill/Monsanto cluster is now obtaining control of the "terminator gene" that can be inserted into plants to cause all of their seeds to be sterile. No longer will Monsanto have to depend on access to farmers' fields for collection of tissue samples to make sure farmers don't keep seed from one year's crop to plant the following year. Use of the terminator gene will mean that *all* crop

farmers must return each year to obtain their seed from seed firms, just as corn producers have done for the past half-century.

Corporations the size of Cargill have access to such large sums of capital that they can usually acquire whatever assets are necessary to survive. The Cargill/Monsanto cluster unites giants in their respective stages of the food system. They have a complete food chain, but since they know very few clusters will survive, they continue to pursue other firms through acquisitions, joint ventures or other arrangements to increase their economic power.

ConAgra currently ranks second behind Philip Morris as the leading food processor in the U.S. In its 1998 Annual Report, ConAgra claimed it had acquired or created joint ventures with approximately 150 companies during the past 10 years and generated earnings growth at a compound rate of 15 percent for 18 consecutive years. ConAgra processes food farther down the food chain than Cargill and ultimately sells labeled food items that most consumers recognize as Armour, Swift, Butterball, Healthy Choice, Hunt's, and many others.

Novartis/Archer Daniel Midland. Novartis is a Swiss firm with agribusiness operations in 50 countries worldwide – primarily in crop protection chemicals, seeds and animal health. The company claims, "the largest R&D budget in the life sciences industry." Their emphasis on R&D is reflected in their collaboration with the University of California-Berkeley, where they recently signed a 5-year $25 million research agreement to work "in all areas of functional genomics related to agriculture, including gene-library construction, sequencing, mapping and bioinformatics." (*Chemical Market Reporter* 11/30/98)

Archer Daniel Midland (ADM) has entered the Chinese market through its oilseed refining, feed and broiler processing operations, where ADM is the junior partner with the Chinese government and a local processor. In discussing China's dilemma of balancing the need for food security with economic security, Martin Andreas, ADM's spokesman, commented "It means that China is resigned to importing food and paying for it with products made from their overabundant supply of cheap labor." (*Journal of Commerce* 2/17/98)

Data are very difficult to obtain, particularly reliable data about global operations. For instance, who are all of ADM's European Union cooperative partners? How do ADM's operations in China impact farmers in the United States? What role does ADM's own *brokerage firm*, among the top 40 largest in the US, play in currency and grain futures trading, particularly when ADM is a major grain handler and processor in Europe, North and South America and Asia?

There are a host of other major players in the food system which are not included in our three food chain clusters **(**Cargill/Monsanto; ConAgra; and Novartis/ADM). Most likely, some of these will join together to form new food chain clusters, while others may join the clusters we have identified.

Three implications

First, a *very small* number of dominant food chain clusters appear to be emerging. Some are organized around one or two dominant players as exemplified in the cases of Cargill/Monsanto and ConAgra. At least during the formative period, these clusters generally consist of a dominant firms from the biotechnology area, grain trading and processing area, and meat production.

Second, the food system is becoming *very complicated and difficult to describe* because there are no individualistic firms out there competing with one another. The whole system is woven together by a host of working relationships between firms. For example, knowing that Japan's Nippon Meats has a twelve to fifteen year joint venture with Cargill producing broilers in Thailand makes it hard to believe there are no constraints in the competition they exercise in America as Nippon becomes a U.S. hog producer and processor. One is left asking: Just how much [free market] competition is there in the system?

We know there are rivalries between firms and in some cases the firms spend millions of dollars in court to settle their differences. But perhaps society would benefit most if the differences were settled in a competitive [free] market!

Third, since food chain clusters are formed through major management decisions made by a small core of corporate executives, there is *little room left in the global food system for independent farmers*. Experts tell farmers they must give up their independence if they "want to maintain economically-viable farming operations."

In most livestock commodities, the production stage is integrated into the larger food system. Ninety-five percent of the broilers are produced under production contracts with fewer than 40 firms. The production system is about the same for turkeys and eggs. At the end of low hog prices (which may last for at least another year) there will be few independent hog producers remaining. *The issue is not who can produce hogs most efficiently. The issue is who has the deepest pockets and largest market share.*

Even now, market access for independent producers who don't have special relationships with feed or slaughtering firms has become a problem. Twenty feedlots feed about half of the cattle in the US and these are either owned by the slaughtering firms or have contracts with the processing firms. Operators of "independent lots" tell us that they seldom see buyers from more than one firm.

[This implies that instead of profiting from competitive bids from several buyers, livestock on "independent lots" tend to be sold for whatever low price the "one buyer" cares to bid. Result: independent family farmers are forced to sell at a loss and eventually lose their farms.]

Vertical integration

Two recent technologies will hasten the process of vertical integration in the crop sector. The first is biotechnology and the terminator gene that places the farmer at the mercy of the food cluster for seed to plant the crop. If firms in the processing stage of the cluster require crops composed of specific genetic material and the farmer can't get that specific, patented seed, he/she has no market access.

The second technology is precision farming's global positioning system. It is no longer necessary for the farmer to have *personal contact* with their land and crop to make appropriate management decisions. Most decisions can now be made in a corporate office – perhaps in a distant city. Soon, the person operating the corn planter (with a computer on board reading from a satellite) will not know much about the fertilize or chemical being applied to the field – just like the grower does not know much about the feed fed to the birds he/she cares for but does not own. The crop farmer who actually works the land will be paid on a piece-rate basis just like the grower. As a result, we increasingly hear predictions that we'll only need *20,000 to 30,000 farms in the United States* to produce for the global food system. [That's an average of just 400 to 600 farms per state.]

Family vs. corporation

Many different groups and individuals in this and other countries are expressing serious concerns about the "globalizing" food system. One concern focuses on consequences for rural communities.

Today, most rural economic development specialists discount agriculture as a contributor to rural development because of the food system's emerging structure. Formerly, in most *family* businesses – such as family farms, family grain elevators, or a family grocery stores – the family subtracts its annual expenses from its income to determine profits. Those profits are then distributed *locally* among labor, management and capital. For the economic well-being of the family and the rural community, it made little difference how the profits were distributed among labor, management and capital since the *local* family spent most of their profits in their *local* community. Thus, the rural community *retained all of the profits* related to the three factors of family production, and those profits circulated more in the community. Not just the family farms, but all of the *family* businesses providing the agricultural infrastructure contributed to the economic well-being of the community.

So long as family businesses were the predominant system in rural communities, newly generated dollars in the agricultural sector would circulate in the community, changing hands from one entrepreneurial family to another three or four times before leaving the rural community. This "multiplier effect" greatly enhanced the economic viability of the community.

Today, however, large *non-local* corporations, whether hiring local labor as wage earners or piece rate workers, see labor as just another input cost to be purchased as cheaply as possible. The resulting "profits" are then allocated to management and capital and are usually taken *from* the laborers/growers of the rural community. Instead of being spent locally, farm *profits* now go to the company's distant headquarters and are then sent to all corners of the globe to be reinvested in the food system.

[By reducing family farmers from *owners* to mere managers, laborers, growers or sharecroppers, the "globalized" food system sucks the *profits* of farming from farm communities, leaves rural communities to survive on *wages* alone, and thereby impoverishes entire rural areas. I find this insight into the nature of corporations is so

extraordinary that I've continued to explore it in the next article, "Corporations & the Multiplier Effect".]

Increasingly, the major decisions in the food system are made by a declining number of corporations involved in the food system clusters, which are primarily concerned with maximizing their profits and increasing the wealth of its stockholders – not the local farmers who actually grow the crops. Thus, *these global firms are in position to decide which people in the world will eat.* Their decisions are based on whether one has the money to buy food.

We hear a lot about the growing population of the world and how feeding the increasing millions will provide great opportunities for U.S. farmers. The problem is that much of the population increase is in the "have-not" nations of the world, in countries where the people earn only a few hundred dollars a year. *These families cannot afford to buy imported food!* The global firms travel the world "sourcing" their products from those countries where they can get the product the cheapest and then sell them into the countries that will pay the most.

This raises the question of whether the countries with rapidly growing populations will be our farmers' customers or their *competitors*.

[Thus, the alleged benefit of international free trade may impoverish American farmers by increasing foreign competition and simultaneously starving third-world consumers who can't afford to buy the global corporations' food.]

Food is first

Another question being asked, given the financial problems faced by some nations, is: What would happen if the United States were to experience a depression like that of the 1920's and 1930's? Imagine an economic dislocation in our "just-in-time" system of food delivery. Will food products get to the stores on a regular schedule? Could an Iowa farmer get a replacement engine from England for his new New Holland combine if it breaks down during harvest? Will the seed, chemicals and fertilizer, coming from overseas, get to the local farmer in time?

A shutdown of the highly integrated agricultural production system for *just a few weeks* can have far greater consequences than shutting down an automobile assembly plant for the same amount of time. A lengthy delay in agricultural production at a critical stage in planting or harvesting could mean the loss of an *entire year's crop*.

- As control of the animal gene pool is concentrating, the genetic base for domestic animals is narrowing. For example, over 90 percent of the world's commercially produced turkeys come from just *three* breeding flocks. The system is ripe for a new strain of avian flu to evolve for which these birds have no resistance. Similar concerns exist in hog, chicken and dairy cattle genetics.
- Large centralized organizations commonly have problems with management, coordination, worker satisfaction and adapting to change. The structural viability of the emerging global food system is called into question when one remembers the former Soviet Union. The Western world realized there were major problems in the centralized food systems when it learned that small Soviet farm plots were producing a significant proportion of the USSR's food.

These are *food* issues – not just agricultural and rural issues. Although the global food system is becoming more like many other economic sectors, food is different from all other goods and services. Food is a human *necessity* and is needed on a regular basis. As Dwayne Andreas, former chairman of ADM, said (*Reuters*, 1/25/99):

"The food business is far and away the most important business in the world. Everything else is a luxury. Food is what you need to sustain life every day. Food is fuel. You can't run a tractor without fuel, and you can't run a human being without it either. Food is the absolute beginning."

[I.e., those who control the global food system have the ultimate in economic power.]

These are all good reasons to predict that the evolving global food system is vulnerable and will probably be repeatedly "restructured" in the future – but at what social and economic cost? And to whom? When "restructuring" occurs, it is doubtful that society as a whole will benefit and certain that some people will pay a very high price for the changes.

Just a quarter of a century ago, our decentralized system of agricultural production was held up as a model for the world. Today, a centralized food system continues to emerge was never voted on by the people of this country or the people of the world. This centralized, globalized food system is the product of deliberate decisions made by a very few powerful human actors – but it is not the only system that could emerge. It is time to ask some critical questions about our food system and about what is in the best interest of this and future generations.

For further information, contact Dr. William Heffernan, Department of Rural Sociology – University of Missouri, Columbia, MO 65211 (573) 882-4563. e-mail: HeffernanW@missouri.edu

Corporations & the Multiplier Effect

by Alfred Adask

The previous article ("Concentration of Agricultural Markets") hinted at the fundamental changes in the social structure of rural American communities imposed by corporate agriculture:

"Today, most rural economic development specialists discount agriculture as a contributor to rural development because of the food system's emerging structure. Formerly, in most *family* businesses . . . profits were . . . distributed *locally* among labor, management and capital. . . . [I]t made little difference how the profits were distributed . . . since the *local* family spent most of their profits in their *local* community. Thus, the rural community *retained all of the profits* [derived from local farms] and those profits. . . . contributed to the economic well-being of the community."

"Today, however, large *non-local* corporations, whether hiring local labor as wage earners or piece rate workers, see labor as just another input cost to be purchased as cheaply as possible. . . . Instead of being spent locally, farm *profits* now go to the company's *distant headquarters* and are then sent to all corners of the globe to be reinvested in the food system." [Emph. add.]

Thus, by reducing family farmers from *owners* to mere managers, laborers, growers or sharecroppers, the globalized, corporate food system sucks farm *profits* out of farm communities, leaves rural communities to survive on farm *wages* alone, and thereby impoverishes entire rural areas.

To illustrate, consider farmer John Brown who (with his family) successfully owned, managed and worked an Iowa farm in 1950. When farmer John passed on, he left the farm to his son (farmer Bob) who took out a bank loan in the 1960s (when agriculture was hot), failed to repay the loan in the 1970s (when agriculture went cold) and lost ownership of the farm through foreclosure.

When the new owner (a corporation headquartered in New York) bought the Brown farm, they "generously" allowed Bob Brown and his family to continue managing and working the farm (just as his father had).

Bob's family was pleased. Even though they lost ownership, they could still live on, manage and work "their" farm without suffering the humiliation of being driven off the land. Besides, their corporate owners provided a good medical, dental and life insurance policy. So maybe losing ownership wasn't so bad.

But no matter what sort of wages or insurance Bob's family received as corporate employees, they (and their local community) did not receive the farm *profits* (perhaps 20% of the gross income). Instead, those profits were whisked out of the Iowa community where they were created, sent to the corporate owners headquarters in New York and spent wherever the corporation wished.

If all the farms in this rural Iowa community were owned by distant, non-local corporations, none of the community's farm profits would be spent within the community where they were created. So, if we had 20 local farms that each generated an average of $50,000 in profits per year, $1 million that would otherwise be spent locally will instead be transferred to corporate headquarters in New York.

A million dollar loss can be significant in small, rural communities. As a result of this corporate drain, $1 million worth of televisions, microwave ovens, new cars and similar products that might otherwise have been bought in the local community will not be bought. Further, because the local electronics and automobile dealers won't sell as many TVs, microwaves and cars, they will also suffer reduced profits and also be less able to purchase additional products from their neighbors.

Invisible Multiplication

The previous article ("Concentration of Agricultural Markets") explained that, "So long as family businesses were the predominant system in rural communities, newly generated dollars [profits] in the agricultural sector would circulate *in the community*, changing hands from one entrepreneurial family to another three or four times before leaving the rural community. This "multiplier effect" greatly enhanced the economic viability of the community."

This "multiplier effect" is a subtle concept to grasp, but its effects are regularly seen in the competition between big cities to attract tourists and conventions.

For example, suppose the National Fireman's Association wants for a place to hold their annual three-day convention. And suppose that convention will be attended by 2,000 firemen who will spend an average of $1,000 each on hotel, food, taxis, souvenirs and entertainment. That means the city that wins that convention will add $2 million into its local economy. That's good for local business, local workers and local politicians. The hotel owner makes more money and buys a new car; the car dealer makes more money and buys a new TV; the TV dealer makes more money and makes a downpayment on a new house. Everybody profits from the extra money.

But as a result of these cascading sales, economists guesstimate that every outside dollar brought into a community changes hands as much as five to seven times and thereby "multiplies" into the equivalent of an extra $5 to $7 for the local community. This "multiplier effect" means that the extra $2 million spent at the convention will generate the equivalent of *$10 million* on additional local business. That's why the City of Chicago will fight tooth and nail with the City of Miami to host the Fireman's Ball.

But what people don't talk about is the negative consequence of the multiplier effect. While a local community generates an additional $5 million in business for every $1 million in tourist of convention dollars it attracts, what happens to a community that loses $1 million? Won't the multiplier effect cause the community that loses $1 million to suffer a $5 million loss in local economic activity?

If so, and if our hypothetical Iowa farm community sold 20 local farms to distant corporations, and the farms' $1 million collective profits were transferred to the non-local corporations – a 5x "multiplied effect" of the measurable $1 million loss might cause the equivalent of an "invisible" *$5 million* loss in local economic activity.

When farmer Bob went to work for the new corporate owner of his former family farm, Bob might've received higher wages and better benefits than he ever made when worked for his Dad (farmer John Brown). Maybe his dad paid him $30,000 a year, and the corporation pays him $40,000 – *plus* a dental plan! (OK, he lost ownership of the farm but, hey, he's doin' better now than ever before.)

However, because 1) the $50,000 in farm profit that farm *owner* John used to spend in the local community has been vacuumed out and sent to New York; and 2) the multiplier effect of this loss may be equivalent to an "invisible" *$250,000 loss* to the local community – the local community will lose its former economic vitality and begin to "mysteriously" run down.

Man does not live by wages alone

When the local economy first begins to decline, the local TV dealer and Ford franchise will make some extraordinary deals just hoping to stay in business. And of course, farm *manager* Bob (the corporate employee) will thank his lucky stars he's got the distant corporation to pay his wages while his local community goes through this mysterious depression. Further, being one of the few well-paid individuals left in the community, Bob could even make some great buys at his neighbors' "going out of business" sales.

But in a year or two, the New York corporation that owns the farm will call farm manager Bob to tell him that due to falling wage scales in his community, they can no longer afford to pay him $40,000 to run the farm. In fact, since the former local Ford dealer (who went broke and lost his franchise) is willing to run the farm for $25,000 a year (and no dental plan), manager Bob is out unless he's willing to accept a $15,000 pay cut and work for $25,000 (less than the $30,000 he used to make when his dad owned the farm). Now what?

As long as the profits are drained from the local economy and sent to a distant corporate headquarters, the local community will slide deeper into depression.

In another year or two, the distant corporate owner might call again and tell manager Bob to accept another

pay cut (now the former TV dealer is willing to manage the farm for just $20,000 a year). And so long as local profits continue to be exported to distant corporations, local competition for work will eventually drive wages down to a subsistence level.

Point: Wages alone are not enough to sustain a local community; *profits* are the lifeblood of any community.

Why? Because in any business, profits are what's left over after you deduct your costs for labor, material and overhead (like rent). Material costs and overhead are largely fixed, and labor rates are set at just enough for workers to survive on a hand-to-mouth basis. But profits are the fuel for growth.

Profits are our "savings," they are the cushion we need to carry us over unexpected expenses like a tornardoes, crop failures or birth of another child. Without profits, a community cope with emergencies or even afford to have more children without sinking deeper into poverty. For example, if a community of 100 persons earns $10,000 in total wages a year, the average income per person (standard of living) is $100 per year. If that community has ten more children but their wages remain the same, the average income per person will drops to $91 per year. Without profits, communities not only sink into poverty, they wither in size and tend to become ghost towns.

Functionally, profits can be described as the "rent" paid to *owners* (of land, factories, etc.). Thus, profits flow to *ownership*. Once a community loses *local* ownership of local land, industry or retail businesses, whatever profits that community generates and would otherwise enjoy, will be sucked out of that community. Given the "multiplier effect," the resultant losses to the local community can be devastating.

The key to prosperity is *local ownership* (private property). Karl Marx understood the necessity for common people to "*own* the means of production," but I don't think he understood the "multiplier effect". As a result, Marx missed the importance of *local* ownership. The Communist solution to let some government in Moscow own everything "in the name of the people" rather than the Czar (who owned all in the name of a "divine right") missed the fundamental point: the *kind* of owner is not as important as the owner's *location*. (This may help explain why all "centralized" governments tend to fail. By extracting profits in the form of taxes from local communities to distant seats of government, communities become increasingly impoverished, resistant to authority and finally prone to revolution. Local government and local taxes serve the people best. National government, national taxes – and even national banks – may be inevitably detrimental.)

It makes no difference whether the "owner" of our productive resources is a Czar, a dictatorship of the people or a multi-national corporation. If that owner is not "local," the profits from the local enterprise will be drained from the local community to enrich the distant owner. Given the "invisible" multiplier effect, that loss will guarantee a "mysterious" local slide into poverty.

For any community to prosper, it must maintain *local ownership* of its land, factories, stores and associated means of economic production. The institution of *local private property* must be honored.

The devil's in the distance

The problems caused by "distant" ownership of property are fairly easy to see in the rural farm setting, but the very same process is going on all over the world. For example, when Wal-Mart builds a new "mega-market" in Dallas, it inevitably bankrupts scores or even hundreds of mom-and-pop family businesses that used to sell food, hardware or magazines. Nobody cares. Those mom-and-pop operations were "small time" and probably never made more than $50,000 net a year, anyway.

But given the multiplier effect, each of those mom-and-pop businesses might've generated the equivalent of $250,000 a year in local economic activity for their community. So if Dallas loses 100 mom-and-pop businesses to install one Wal-Mart, the Dallas community may be collectively (and "invisibly") impoverished by $25 million a year as former mom-and-pop profits and their "multiplied" benefits are sucked out of Dallas and sent to Wal-Mart's distant HQ.

And does our local government discourage Wal-Mart from building in Dallas? Noooo! We offer *tax breaks* to entice 'em into our community! Of course, by giving tax breaks to foreign corporations, we necessarily increase the tax burden on local residents at the same time we bankrupt local mom-and-pop operations by allowing a distant corporation to suck the profits (and vitality) out of Dallas. We are literally paying distant corporations to rob Dallas and force its most productive citizens to flee to the suburbs.

Look at the various Black "ghettos" in Chicago, New York, etc. How many of the businesses and apartment buildings located in those Black communities are *owned* by *local* Black residents? Not many. Not enough. And so, until *local* Blacks own *local* black businesses and keep Black profits in Black communities, those communities will continue their slide into poverty.

And Blacks should not be conned into believing that a business owned by a "brother" who lives *outside* the community is preferable to a business owned by a Korean who lives *in* the Black community. The issue is not race, but *local* ownership. (We'd better all learn to value whatever local owners we still have.)

And what about the effects of multi-national corporations? If the multiplier effect holds true, then every foreign corporation is essentially in business to suck the life out of local communities and nations. If the idea seems extreme, consider all of the third world nations where corporations have established themselves. Are those "corporatized" nations growing richer or poorer? Ohh, they may point to some refineries and factories and other expensive symbols of progress, but what about the average native of those third world nations? Will wealth in the form of factories and refineries that the corporations bring to the third-world countries "trickle down" and thereby enrich the local poor? Not in the long run.

Instead, the locals will become collectively poorer. More impoverished. And of course, as the nation becomes increasingly impoverished, it also becomes increasingly desperate to attract additional foreign corporations because they will "create jobs" – even if those jobs offer only subsistence-level wages!

At first, these third-world nations don't realize that the more foreign corporations they attract, the more local profits they lose, and ultimately, the more impoverished they become. Eventually, they sense the relationship of their poverty to the presence of foreign "influences" (corporations), and start a revolution for the purpose of ejecting the foreigners and seizing the foreign-owned land and factories.

Frankly, I don't blame 'em a bit. Multi-national corporations which purchase ownership of third-world land and factories are sucking the life (profits) out of these poor people and their countries. Like any other parasite, they must be excised for the host to survive.

Almost inevitably, the revolution will seek to "nationalize" the foreign corporations and convey ownership (and profits) from the foreign corporate headquarters to the third-world nation's capitol. Admittedly, that's an improvement since the new government-owners won't be as distant as the former foreign corporate headquarters. Nevertheless, these revolutions usually miss the fundamental point: ideally, ownership, profits and prosperity are only available to those communities where local individuals own the "means of production" and thereby retain the "multiplied" benefit of their own profits. But revolutions that replace distant corporate owners with distant national owners generally result in little change or benefit for local people.

Corporate colonization

Distant ownership (and claim to profits) of local communities is the dream of every king, tyrant, and greedy self-serving executive who've every walked the earth. In the past, claims to the profits of distant communities were made through the Huns' plunder, Rome's empire, and the European colonies. Today, corporations are simply the modern instrument for achieving "distant ownership of local property" (less charitably known as "looting").

From an historical perspective, those domestic, foreign and multi-national corporations that routinely seek to own property far from their corporate headquarters are identical in pur-

pose and adverse effect to the Thirteen Colonies England planted in America. As such, corporations can be fairly described as modern instruments of colonization.

Just as our Thirteen Colonies were chartered by the King of England, so are our modern corporations chartered by our current state and federal governments. Just as England operated the Thirteen Colonies for the purpose of extracting unearned wealth (profits) to enrich King George, so modern corporations operate for the primary purpose of extracting the profits created by local "corporatized" communities and sending them to some distant corporation – who splits them (through corporate income taxes) with the government that granted its "charter".

For all practical purposes, when an Iowa farm community sells its farms to Archer-Daniel-Midland, it's been colonized. It's voluntarily agreed to surrender ownership of its productive resources (farms) and the attached profits (community life blood) to some foreign corporation.

Similarly, when the City of Dallas gives tax breaks to entice another out-of-state corporation to build a facility in Dallas, it may enjoy a short-term gain in terms of "job creation" but long-term, Dallas will be impoverished by that foreign corporation's profit-taking. As distant corporations move into "Big D," Dallasites become increasingly "colonized" as they send more and more of the profits of their labor to some distant corporation.

Likewise, when China allows Pepsi to build soft-drink factories in Peking, they are contributing to the China's loss of profits and slide into deeper poverty.

Local ownership

Is there a solution? Sure. Private, *local* ownership of the means of production. Foreign corporations should almost never be allowed into a community. In those rare instances when foreign corporations are granted entry, part of the condition of sale might be that at least half the stock in the local corporate facility (and thus over half the profits) must always be owned by local residents.

The lesson in the farmer's "colonization" and subsequent poverty is pretty clear: To prosper, a community doesn't merely need wages, it needs *profits*. Profits flow to *ownership*. Distant ownership results in loss of local profits which, due to the invisible "multiplier effect," can be far more devastating than simple accounting figures reveal. Thus, local prosperity depends on *local* ownership of productive resources. Prosperous communities don't need programs to create jobs, they need programs to create owners.

Just as agriculture is being corporatized, colonized and impoverished, so are you and I. Distant ownership of local productive resources is the essence of the New World Order.

Likewise, the genius of the American Constitution and foundation for our nation's original propserity may have been the creation of a political system of 1) decentralized government and 2) private ownership of property for common people. Both of these characteristics were previously unknown. Could it be that our Constitution unwittingly created a society that functioned in accord with the "multiplier effect" and thereby made American prosperity possible?

Today, if we sell our resources (including our labor) to distant corporations, we inevitably impoverish our community and leave less to our children than we ourselves received. No nation can surrender its "inheritance" – *legal ownership* of land, labor and similar productive resources – and avoid poverty, violence and revolution.

Bad Faith Immunity

by Alfred Adask

My understanding of "good faith" is derived primarily from the Bible. In *Acts 23* Paul is charged with various wrongdoing. Paul defends himself in *Acts 23:1*, by looking "straight at the Sanhedrin" and saying, "My brothers, I have fulfilled my *duty* to God in all *good conscience* to this day."

Note that Paul's defense involves two elements: 1) fulfilling his *duty*; and 2) acting in "good conscience".

"Fulfilling your *duty*" presumes:

1) some higher authority (in this case, God) has *specified* a particular *duty;*

2) Paul generally *understood* what his duty was; and

3) Paul agreed (perhaps swore) to fulfill his duty and was thereby *bound* to perform that specified duty.

However, when Paul claims to have fulfilled his duty "in all good conscience" (good faith), he's adding some weasel words. That is, Paul recognized that his understanding of his total duty may be incomplete – and based on his incomplete understanding, he might've committed some sins of omission. However, Paul excused any possible sin of omission by declaring he had always acted "in all good conscience". In other words, if he made any mistakes, they were never knowing or intentional. He always did his duty to the best of his ability and understanding.

That's good faith.

In essence, good faith recognizes that the duties imposed on a particular person are probably far more numerous and complex than anyone can be reasonably expected to understand. For example, could any police officer specifically know all of laws and his resultant duties? Could any judge? Could any government official absolutely know every single duty that he is supposed to perform in every possible circumstance that he might confront? Of course not. Although all of these officials have sworn to uphold the Constitution and all the laws of their state and/or nation, No one can possibly know what all those laws are or every duty they impose.

Because the list of potential duties in a complex society is too great to be completely known by anyone, government has granted its officials a "good faith immunity". Like Paul, so long as government officials are sincerely trying to fulfill their duty to the best of their knowledge and ability, they will be granted a "good faith immunity" to protect them from personal liability in case they unwittingly neglect or violate some unknown portion of their duty. Given our mass of laws, "good faith immunity" is not only reasonable, it's necessary since no government official can possibly know all of his duties.

The problem is that "good faith immunity" depends entirely on the integrity of each government official, and thereby invites abuse. An *honest* man will admit the full reason for any failure to perform his duty. However, an unscrupulous cop, official or politician can excuse egregious violations of the law by simply declaring he "didn't know" what the law was or that a specific duty applied in a particular circumstance. So long as he claims personal ignorance of any duty he failed to perform, he will avoid personal liability for consequent damages.

And who can challenge another individual's claim of ignorance? How can you prove what another man knew at a particular time? Unless he *admits* to knowing a duty that he intentionally refused to perform, (or you can prove he knew of that duty with an administrative notice) you can't hold him personally liable for his errors.

The problem is further complicated because most people don't realize that government personnel enjoy a *presumption* of "good faith" in courts of equity that is virtually identical to the presumption of innocence private persons enjoy in courts of law. If a police officer breaks into the wrong house on a defective warrant and shoots an innocent person, the courts of equity will silently presume the officer was acting in good faith (trying to do the best he could with the knowledge he had) and unless that unstated presumption is overcome, the officer will enjoy a "good faith immunity" to shield him from most personal liability.

Thus, unless the presumption of good faith is expressly challenged, it's almost impossible to hold a government official personally liable for damages in a court of equity.

Bad faith allegations

In the article "Is Good Faith a False Religion?" *(AntiShyster* Volume 9, No. 1) I speculated that a defendant's allegations of prosecutorial "bad faith" might have a powerful deterrent effect on government prosecutions. At the time, this speculation seemed both logical and unlikely.

But on March 22, 1999 (about two weeks after I published my preliminary suspicions concerning "good faith"), *American Lawyer Media* published an internet article by Hank Grezlak (originally published in the *Pennsylvania Law Weekly*) entitled, "Insurers Take It on the Chin Over Bad Faith Discovery Issues". The article verified the power of "bad faith" allegations as demonstrated in a Pennsylvania court's decision in *The Birth Center v. The St. Paul Companies (*PICS Case No. 99-0448, PA. Super. March 9, 1999; Judge J. Kelly).

According to the *American Lawyer Media*, the case started when a pregnant woman delivered her baby at "The Birth Center" and doctors made a mistake that permanently damaged the baby's brain. The Birth Center was insured by the St. Paul Insurance Company. The damage to the baby was so severe and undeniable, that even The Birth Center urged their insurance company (St. Paul) to pay $1 million (the policy limit) to the grieving parents.

St. Paul refused to pay one dime. Reportedly, a St. Paul representative said St. Paul litigates, "*all* of these bad baby cases – and we're going to trial." In other words, St. Paul *never* automatically pays any large settlement on "bad baby" cases.

Think about that. If brain-damaged babies need medical care, St. Paul sez, "Scroom". The parents, already devastated by the birth of a brain-damaged baby, were further assaulted by the insurance company's callous refusal to pay one dime to help care for that "bad baby" for *six years*.

Can you imagine the frustration and rage those parents felt? Did the financial and emotional strain bankrupt them? Destroy their marriage? Drive one or both to alcoholism or suicide? And why? Because St. Paul Insurance effectively said, "Screw those parents and their 'bad baby'. We got the money and we're gonna keep it 'cuz those losers out there in TV-land don't have the resources to make us pay one dime before we're ready."

Why would St. Paul behave so badly? Well, according to the *American Lawyer Media* article, a St. Paul Insurance supervisor determined there was a 50-60% chance for a pro-defense verdict in which St. Paul would pay nothing! The insurance company calculated that if they faced ten $1 million liabilities for ten "bad babies," they'd face a total liability (loss) of $10 million if they quickly settled and wrote ten $1 million checks (as promised in the insurance policy) for each "bad baby". However, if they refused to write the ten $1 million checks and instead waited to be sued, they could reasonably expect to win five or six of those cases and get by with only paying $4 or $5 million several years later.

Since litigation is time-consuming, St. Paul could invest the unpaid $10 million at 15% per year in the stock market during the six years of litigation and generate another $10 million. Thus, by choosing to litigate rather than quickly write ten $1 million checks for the ten "bad babies," the insurance company could change a $10 million loss (for quick pay-outs) into a $10 million gain (for litigating and investing the original $10 million). That's a $20 million swing in six years. Even if St. Paul ultimately lost five cases and was forced to pay out $5 million, that's still works out to over $2 million net per year for screwing ten "bad babies" and their unfortunate folks. That's a powerful financial incentive to ignore their fiduciary duty to promptly pay for damages on "bad babies" (or on other large settlements, too).

Yer in good hands, hmm?

In fact, the company policy of 1) *predicting* the probability of winning in court, 2) *calculating* the profit potential for money invested rather than paid out, and 3) choosing to litigate (stall) on *all* "bad baby" cases – is fairly clear evidence of *bad faith* – an intentional refusal to perform one's known duty. Because the insurance company *predicted*, *calculated*, and established an intentional *policy* of litigating *all* "bad baby" cases (regardless of facts), the insurance company demonstrated *knowledge* and *willful* intent to profit enormously by refusing to fulfill it fiduciary obligation to pay legitimate claims quickly. That's bad faith.

Administrative blasphemy?

The *American Lawyer Media* article emphasized that "bad faith" was also demonstrated by the insurance company's repeated *refusals* to *settle out of court*. (This is consistent with speculation in "Is Good Faith a False Religion?" *AntiShyster* Vol. 9 No.1.) The baby's parents, "offered to settle several times over the course of six years of litigation. The Birth Center asked St. Paul to settle the case several times, . . . three different judges suggested that the suit be settled. St. Paul refused every time . . . and made no counter-offer. St. Paul again refused the settlement on the day of the trial at a final pre-trial conference held in the judge's robing room. . . . The trial judge expressed his anger over the refusal."

The fact that the insurance company consistently refused to make counter-offers or even consider settling the case out of court became evidence of St. Paul's bad faith. This tends to support previous speculation that every trial can be viewed as evidence that at least one party is acting in "bad faith" by *refusing to settle out of court.*

Implication: administrative law is largely a test of the adversaries' "good faith". Any failure to correctly resolve a case administratively *before* trial can be viewed as evidence of at least one party's bad faith. The party shown most guilty of "bad faith" is most likely to lose in court, and possibly lose big. (And remember, in cases against the government, the court's silent "presumption of good faith" almost always goes to the government official. So unless that presumption is expressly challenged, the government almost always wins.)

The jury in the St. Paul case found St. Paul guilty of egregious bad faith and ordered St. Paul to pay the parents *$7.1 million*. After six years of grief, frustration and rage, I can't say that's a happy ending, but it's nice to see an insurance company that abandons "bad babies" take a beating.

It's all in your (state of) mind

But it gets better. The Birth Center (which damaged the baby) also sued St. Paul and won a $700,000 judgment because St. Paul had acted in bad faith by refusing to *quickly* settle the "bad baby" case. In the course of that litigation something really remarkable occurred: allegations of "bad faith" were use to defeat the lawyer-client privilege and expose all of St. Paul's and its *lawyers'* work product to discovery. The Pennsylvania Superior Court ruled that "letters, memoranda and notes from attorneys could potentially be discoverable in *bad faith* lawsuits . . . [and] that type of material isn't necessarily shielded by attorney-client privilege or the work product doctrine."

I wouldn't've thought any argument could penetrate the "lawyer-client" or work product privileges – but "bad faith" can. That's evidence of lethal power.

According to the *American Lawyer Media* article, St. Paul Insurance exposed its lawyer's work product to discovery by inadvertently making the company's "state of mind" an issue in its "good faith" defense against the "bad faith" lawsuit. Once the insurance company's "state of mind" became an issue, "it basically waived its right to protection under the work product doctrine". Since the attorney would not only know but even help *create* his client's "state of mind" – the attorney's letters, memoranda and similar work product became open to their opponent's discovery.

According to *American Lawyer Media*, "That particular bit of reasoning should give insurance companies something to worry about. Why? Because theoretically, when wouldn't an insurance company's state of mind be at issue in a bad faith case? The reality of the court's decision is that the work product rule might be waived in *every* bad faith suit."

Therefore, to peek into the opposing lawyer's notes, plans, offhand comments, lewd jokes, conspiracies to conceal evidence or employ snitches and similar elements of his work product, we might first allege the client and/or his attorney acted in bad faith and thereby open the issue of their "state of mind".

The implications are extraordinary.

For example, it appears that any good faith defense or claim of good faith immunity opens the issue of the defendant's "state of mind" and might thereby expose his attorney's work product to discovery. Thus, allegations of "bad faith" against an opposing litigant and/or his lawyer might vaporize their attorney-client privilege.

If that principle could be applied to every case in which a government employee hid behind his "good faith" immunity (and that's virtually every case), it would mean that whenever government agents were sued, their defense lawyers' work product (including that of the state Attorney General's Office) might be opened to discovery. That's remarkable. Almost revolutionary.

In fact, the implications of the Pennsylvania ruling are so extraordinary, I'd bet the case will be reversed on appeal. I don't believe our courts will compel government lawyers to surrender their work product privilege to use a "good faith" defense and thereby provide the evidence that would probably prove they were actually lying and precisely guilty.

Nevertheless, the mere possibility of penetrating the lawyer-client privilege demonstrates the lethal potential of "bad faith" allegations and lawsuits.

Whodunit?

True story: About ten years ago, a husband and wife went to bed, and during the night one of them shot the husband in the head, killing him. Although the wife claimed her husband committed suicide while she slept at his side, she was indicted and tried for his murder. Because she was the only witness (and she, of course, claimed to be not guilty), the prosecution's case was built on forensic evidence – primarily the pattern of blood splatter around the bed.

The prosecutor hired an expert witness who testified that the blood splatter proved the husband could not have committed suicide and therefore must've been murdered by the wife. The defense hired another expert who testified that the blood splatter proved the husband could not have been murdered and must have committed suicide.[1] The jury believed the prosecution's expert; the wife was convicted and imprisoned.

The couple's son did not believe his mother killed his father, so over the next several years (while Mom languished in prison) he studied law and the prosecution's case. Using Freedom of Information Act requests, he uncovered evidence that the prosecutor had hired *two* expert witnesses – not just the one who testified at trial. The prosecution's first expert determined that the blood splatter could only be caused by suicide and the wife must therefore be innocent. Undeterred, the prosecutor simply ignored the first expert's report and hired a second "expert" whose analysis supported the prosecution's contention that the wife committed murder. The prosecution concealed the exculpatory evidence provided by their first expert (who determined the wife was innocent), and went on to win a conviction.

When the son uncovered the previously concealed exculpatory evidence, his mother's conviction was overturned and she was released from prison. She's undoubtedly had a tearful reunion with her son, and the state will probably compensate her for the injustice of being falsely imprisoned with a fat, financial settlement.

Hooray – the wheels of justice grind slow, but exceeding fine, hmm?

Maybe. But what about the *prosecutor* acted in bad faith by: 1) concealing exculpatory evidence from the defendant, and 2) by prosecuting a defendant he knew or had reason to know was innocent?

Typically, rather than burden the poor prosecutor with personal liability, taxpayers will probably pay the "fat, financial settlement" that eventually goes to the former wife. But where's the justice in making *you and me* (the taxpayers) pay more taxes to compensate a woman who's been falsely imprisoned by some unethical prosecutor? Why not make the *prosecutor* pay? And if false imprisonment is morally indistinguishable from kidnapping, why don't we jail him, besides?

The answer, I suspect, is that like all government officials and employees, the prosecutor is *presumed* to have acted in "good faith". Although the prosecutor may suffer some public embarrassment, so long as the unstated presumption of good faith remains *unchallenged*, he will enjoy an automatic "good faith immunity" sufficient to shield him from almost all personal liability for conspiring to imprison or deny due process to an innocent defendant.

If the falsely convicted woman charges the prosecutor with a civil rights violation, she can tie him up in court for a while and cause him to pay some high legal fees. But unless the case generates media attention and public interest, the prosecutor will probably skate away without paying any serious personal penalty.

But – if the former wife simply used the *same* evidence in the *same* case with the *same* parties and added an allegation of prosecutorial "bad faith," the falsely imprisoned woman might be able to take the prosecutor's house, car, boat, bank account, some portion of his future earnings, and have him disbarred or even jailed.

Professional witnesses

Normally, the only people who can testify in a particular case are those people who have direct, personal knowledge of relevant facts. Did you *see* Mrs. Smith shoot Mr. Smith? Did you *hear* the shot? Did you *see* her running from the murder site? Did you *hear* her admit she shot him? Can you *identify* the murder weapon as belonging to Mrs. Smith? If you have direct, personal knowledge of relevant facts, you may testify.

But if you don't have direct, personal knowledge, you normally can't testify – *unless* you're an "expert witness". Then, even though you have no direct personal knowledge of relevant facts, you may testify because you can analyze and *clearly explain* difficult, technical issues to a jury of laymen.

The previous story of the wife

convicted by conflicting testimony from two "expert" witness illustrates the apparent purpose for expert witnesses: to *communicate persuasively*. The local cop who investigated the murder scene may be qualified to analyze blood splatter, but he is almost certainly unqualified to effectively *communicate* blood splatter analysis to a jury. Therefore, litigants employ "expert witnesses" as expert communicators much like the gun lobby employs Charlton Heston as a spokesman.

The expert-as-communicator is a nice theory, but it's not the primary reason for hiring "experts". Everyone in law knows the real reason prosecutors (and defense lawyers) repeatedly hire particular expert witnesses is because those experts are *predictably biased* (for or against the defendant) and can *persuasively* communicate their bias to the jurors.

Prosecutors don't hire just any "expert" they can find. They hire experts who they *know* will habitually conclude that the defendant is guilty. If an expert is truly unbiased and sometimes concludes the defendant is innocent, the prosecutors will thank him for his time, ignore his conclusions, and probably never call him again.

Same is true for defense lawyers. They have a list of pro-defense "experts" who they *know* can be relied on to conclude the defendant is innocent. Any expert witness who impartially concludes a defendant is guilty will be removed from the defense attorneys' employment list.

In the real world, "expert witnesses" are handsomely paid for their testimony by the side who *employs* them and are implicitly expected to reach conclusions that support their employer's position. Any expert's tendency to "unpredictable" impartiality will dim his employment prospects considerably. However, those "experts" who *always* conclude their *employer's* position is correct can enjoy a long and prosperous career as a professional witness.

Thus, the essential attribute for most regularly employed "expert witnesses" is predictable *bias*. Some experts always support the prosecution-employer, others always support the defense-employer. It's not right, but it's a living.

However, any evidence of *known* bias in expert witnesses implies the presence of prosecutorial bad faith since prosecutors are duty-bound by law to seek *justice* (not conviction) in every trial. Such bad faith might be demonstrated by asking a prosecutor's expert witness how many times he's been hired to testify for prosecutor or defense lawyers, and how many times he's reached conclusions contrary to his employers' positions. If his testimony always favors his employer, he's arguably a "professional" witness biased in favor of his personal income rather than impartial truth. If he's testifying almost exclusively for one side or the other, his bias is also apparent.

Even expert witnesses known to testify equally for prosecution and defense are also vulnerable to allegations of bias and bad faith. The question is not whether they always reach conclusions that support the prosecution or defense, but whether they always reach conclusions that support their *employer's* position – regardless of whether their employer is the prosecution or the defense. Such "professionally correct" expert witnesses are arguably biased, acting contrary to the good faith presumption that they are impartial, and possibly guilty of bad faith.

Thus, logical arguments might be crafted whereby *any* use of a professional expert witnesses *known* to be biased could be used as evidence of both the expert's and prosecutor's bad faith.

Semi-pro witnesses: a snitch in time

If predictably biased experts violate the prosecutor's prime directive to secure justice rather than convictions – what about jail house "snitches" who are figuratively "paid" to testify that other prisoners admitted to committing some crime? It's common knowledge that snitches often fabricate exactly the kind of testimony prosecutors want and trade that "testimony" for personal privileges or sentence reductions. The implication of bad faith is apparent.

Incidentally, when was the last time a prosecutor *released* a man from prison based on some snitch's testimony? See the implication? Are prosecutors as willing to use the "unpaid" testimony of snitches to free prisoners as they are to prove they're guilty? Does unpaid snitch testimony for the defense carry as much weight as paid testimony for the prosecution? How often is testimony by a jailhouse snitch used to free – rather than convict – another prisoner? Not often. Maybe never.

A prosecutor's habitual and exclusive use of paid, pro-prosecution snitches implies a *knowing* bias that contradicts the prosecutor's *duty* to secure justice rather than convictions. That's bad faith.

If a defendant is charged with a crime based on a paid snitch's testimony and the defendant merely claims the snitch lied, it's his word against the snitch's and the defendant will probably be convicted. But if the defendant expressly alleged the snitch and/or prosecutor acted in "bad faith," I suspect he might present a much stronger defense– if only because his allegation threatens to eliminate the prosecutor's good faith

immunity and place him in *personal* jeopardy.

Moreover, once the issue of bad faith is raised, the prosecutor becomes vulnerable to the snitch! After all, if the snitch revealed by accident (or gleeful intent) that he and the prosecutor had conspired in bad faith, the prosecutor just might wind up as the snitch's cellmate. (Like politics, bad faith can make for strange bedfellows . . . so to speak.)

Think about it. Would you want to gamble your personal and professional future on the loyalty of a jailhouse snitch you hired to lie? If the snitch is willing to betray his fellow prisoner, why not betray the prosecutor, too? And even if the snitch testifies as promised, what happens a year or two later when the snitch tells the prosecutor he's thinking about reporting the prosecutor's former bad faith? Could the prosecutor be tried without his good faith immunity and subjected to loss of his wealth or freedom?

Once the magic words "bad faith" are invoked and the prosecutor loses his good faith immunity – the snitch just might "own" that prosecutor. So it appears that a thorough understanding of good faith might play a serious role in reducing the use of testimony by both snitches and expert witnesses.

Highway blasphemy

The Texas traffic code declares that speed limit signs merely apply to *commercial* vehicles. For non-commercial vehicles, the speed limit is unspecified other than "reasonable and proper for current conditions."

So suppose a police officer stops you for driving 73 in a 60 m.p.h. zone. And suppose you ask the officer whether he understands that 1) the speed limit signs only apply to *commercial* vehicles and 2) you are *not* driving in commerce. If he answers Yes (i.e., he *knows* the posted speed limit doesn't apply to you), he has no business ticketing you. That's bad faith.

If he answers No (he doesn't know about the traffic signs only applying to commercial vehicles), but you provide him with an appropriate *notice* of the law (perhaps a certified copy of the relevant traffic sign law), and he still proceeds to ticket you – he's acting in violation of his *known duty.* Ergo, bad faith and personal liability.

I doubt that bad faith tickets for trivial offenses (seat belts, etc.) will be vigorously prosecuted since the officer may be *personally* liable for whatever damages or financial losses you suffered by being ticketed and forced to spend your time going to court. Thus, a couple of well-crafted "bad faith" suits against traffic officers might considerably slow the issuance of traffic tickets for petty offenses.

Bad faith immunity?

If you merely complain that government denied you due process or otherwise violated the Constitution, your defense may be ignored. The judge will listen sympathetically to your tale of woe and then find you just as guilty as he planned long before you ever set foot in his court. But if you expressly allege that some member of the prosecution acted in "bad faith," you might see the system blink. Same facts, same evidence, same parties, same case. The only difference is whether you *expressly allege* "bad faith" and thereby strip your government opponent of his automatic presumption of good faith immunity.

Although this is speculation, it still appears that just as the presumption of good faith gives government a near-universal "good faith immunity," allegations of "bad faith" may offer common Americans a "bad faith immunity" against improper or unjust indictments and lawsuits.

[1]But how can two "experts" in the same technical field arrive at contradictory conclusions based on identical facts? It's like having one expert mathematician conclude that two plus two equals four, while another concludes it's five. Clearly, at least one of them is incompetent or lying. Insofar as contradictory answers are logically impossible, we might even argue that no true expertise or "experts" exist in that field.

Administrative Notices

by Alfred Adask

Most *AntiShyster* readers are familiar with the term, "judicial notice," which generally describes a procedure for giving notice to a judge about certain facts or law concerning a case. The underlying assumption behind "judicial notices" is that no judge can know all the law, and therefore, unless he is officially notified of relevant law (or facts), he might rule incorrectly on a particular case. The purpose of such "notice" is to inform the judge of such law or facts as will "compel" the judge to rule in a certain manner.

"Judicial notice" is a nice theory, and sometimes it even seems to work. However, most of the time, the judges seem to ignore such notices and toss 'em in the trash. Over time, we've come to suspect the reason judge's ignore "judicial notices" is that they are typically not hearing a case "*judicially*" but rather "*administratively*". If so, the effect of a notice marked "judicial" that's sent to a judge who's hearing a case *administratively* may be similar to sending an baseball rulebook to a football referee: it's irrelevant and therefore ignored. (See, "Federal Plea Bargains Unconstitutional?," this issue.)

In 1997, after several years of studying notices, Mr. Bill Shephard (an Oklahoma farmer) began to apply *administrative* notices with such effectiveness that according to one government source, he nearly "shut down the entire Department of Agriculture." This is undoubtedly an exaggeration. Still, it makes the point that administrative notices can be powerful.

Mr. Shephard's administrative notices were brief (usually just one or two pages) and included *no conclusions or personal opinions* – that's *critical* – only terse statements of facts or law relevant to his case. The average person might see Mr. Shephard's administrative notices as little more than insignificant "letters" written in a "legalistic" style to some government official. Few would expect Mr. Shephard's administrative notices to be so powerful.

In Texas, Tinker Spain heard about Mr. Shephard's success, started studying administrative notices, and ultimately stopped the IRS from auctioning his home. Mr. Spain's administrative notices were so amazingly effective that within days of losing his house, a U.S. Attorney responded by telling the IRS in no uncertain terms that they would absolutely cease and desist from any further enforcement action against Mr. Spain. Again, without attorneys or court hearings, the administrative notice seemed to have an extraordinary effect. And again, the person sending the administrative notice had no idea why it was so effective.

In January of 1998, without my authorization or knowledge, a long distance telephone service provider "slammed" my phones and started billing me up to $3.00 *per minute* for long distance service. My *average* long distance rate jumped from $0.14/minute to over $1.00/minute. I yelled and hollered and threatened – all to no avail. Technicians working for GTE (my local phone company) explained that since there was a "pick freeze" on my long distance service, it should've been *impossible* for any phone company to seize control of my long distance without my explicit approval. Nevertheless it happened. Worse, it could not be stopped.

I didn't know what I was doing, but I decided to try using the mysterious administrative notices. Every time the phone pirates sent me one of their excessive bills, I replied with administrative notices sent by *registered* (not certified) mail to the phone pirates, GTE and the State of Texas Attorney General's office. This went on for five months. I continued to pay my local phone company bills, but refused to pay the long distance charges that were included on my local bill. The long distance pirate continued to provide my long distance service and my unpaid long distance bills grew to several thousand dollars. Relying on "mere" administrative notices for five months, I was getting pretty anxious and expected to have my phones turned off or be sued in court when – ta-da! – the phone pi-

rates simply disappeared and freed my long distance service.

Of course, GTE wanted to bill me for five months of unpaid long distance service, but "only" at my former rate of $0.14/ minute. I sent them another administrative notice explaining that all long distance charges during the five month period were based on fraud and sent to me by mail fraud and wire fraud. I drew no conclusions, but GTE got the message and replied by *crediting* my account with over $1,800 in phone services.

In other words, by using administrative notices, I not only stopped all charges for five months of long distance phone service – I even received an *additional* $1,800 in phone credits to be applied to future telephone bills. I was amazed. No lawyers. No court hearings. Nothing. In return for just writing a half-dozen administrative notices and sending 'em registered mail to several officials I received the equivalent of about ten month's free long distance service.

Thus, like Bill Shephard and Tinker Spain, I became a believer in administrative notices. And just like Bill and Tinker, I didn't have a clue why they worked.

Ignorance is bliss

I thought about the "mystery" of administrative notices for some time. Finally, the only explanation I could imagine for the administrative notice's unexpected power was that perhaps administrative notices work because they defeat administrative officials' claim to good faith immunity.

I strongly suspect that most government (and perhaps corporate) officials act in a fiduciary capacity wherein they are mandated by law, corporate charter or trust indenture to act in the "best interests" of their customers, clients and "subjects". However, since no one can possibly know all the laws in this country, government officials (especially if they aren't trained as lawyers) are allowed to make various mistakes based on their ignorance of the law.

We all know that "ignorance is no defense in the eyes of the law" (at least not for common people). But few realize that for trustees and similar government and corporate administrators, ignorance is an almost perfectly blissful defense against personal liability.

A classic example recurs in the news every few months: the police, attempting to serve a defective warrant, break in at the wrong address and "accidentally" kill an innocent "John Doe". Although the survivors may successfully sue the city for the John Doe's "wrongful death," the policemen who actually pulled the trigger will evade personal responsibility for murdering an innocent man by claiming they acted "in good faith" since they believed the information on the warrant was accurate. If the warrant said go to "44 *S.* Oak Street" when it should've said "44 *N.* Oak Street" – oh, well – these things happen and surely the police can't be blamed for relying on a defective warrant. Thus, their good faith immunity ultimately depends on their ignorance of the facts and of the law.

But what would happen if the police (or any other administrative official) had "administrative notice" of such law or facts that would prevent them from committing what might otherwise be a mistake? Could that administrative notice provide enough information to an official to defeat his subsequent claim of underlying ignorance and thus preempt his good faith immunity?

Suppose the innocent John *A.* Doe (who lives at 44 *S.* Oak St.) heard that a warrant was being issued to arrest the criminal John *B.* Doe (who lives at 44 *N.* Oak St.) and sent an administrative notice to the police department that he, John A. Doe at 44 S. Oak St. was not the criminal John B. Doe at 44 N. Oak St. Now, if the police break in at 44 S. Oak St. and shot the "wrong" John Doe, could the police claim their usual good faith immunity? I think not.

I suspect that once an official receives proper *administrative* notice of relevant facts or law in a particular case, if that official continues to act in ways contrary to that notice, that official loses his good faith (ignorance is bliss) immunity and becomes *personally* liable. If an officer shoots the wrong guy now, evidence (the certified mail green card) that he'd previously received an administrative notice would defeat any pre-

sumption of personal ignorance and good faith immunity. Without the presumption of ignorance, the police would be exposed to charges that the killing was *intentional* and thus *criminal*, and the officer who pulled the trigger might be jailed or even executed. That level of personal liability will deter most officials from reckless conduct.

Proper administrative notice probably defeats an official's claim of "good faith" immunity in civil cases, too, and thereby place *his* house, *his* car, *his* boat, *his* bank account, future earnings and retirement fund in peril.

For example, suppose IRS agent Smith has seized the property of hundreds of delinquent taxpayers. Maybe the law allows Agent Smith to make those seizures and maybe not. No matter. Unless a victim can prove that Agent Smith *knew* he lacked proper authority to seize that victim's property (and therefore acted "knowingly"/ criminally), the worst that can happen is that the IRS will be forced to compensate the victim for his loss – but Agent Smith will suffer no personal liability.

But suppose Agent Smith (currently itching to bust John Doe) receives a proper administrative notice that 1) John Doe is not a "taxpayer" subject to the IRS Code and 2) Agent Smith lacks lawful authority to seize John Doe's property in any case.

Will Agent Smith still seize Mr. Doe's property? Maybe not, since doing so places all of Agent Smith's *personal* property and future earnings in jeopardy. Most government agents and officials are willing to risk breaking the law so long as they won't be held *personally* liable. What do they care if the government gets sued and the taxpayers wind up paying a fat settlement to the innocent victim? So long as the official enjoys his *personal* good faith immunity, there's little compelling reason to avoid committing an improper or criminal act. But once an official's "good faith" (ignorant) immunity is compromised, he tends to be much more "discrete" in his application of the law.

Presumed ignorant

Over the years, our "brave new world" of administrative law and courts of equity have evolved and caused some subtle but remarkable changes. Where We the People were formerly "presumed innocent" in courts of *law*, today, government officials are "presumed ignorant" in courts of *equity*. Based on that presumption of ignorance, government official enjoy a good faith immunity that shields them from personal liability for almost any act they commit.

Good faith immunity *presumes* that officials who commit improper or criminal acts, didn't *know* the acts were improper or criminal and therefore acted in "good faith" (ignorance). Thus, even if the official actually knew that his act was improper or criminal, unless someone can *prove* he had that knowledge, he will enjoy a presumption of ignorance and good faith. Unless the official *admits* he had knowledge and acted despite that knowledge, the *presumption* of good faith immunity will shield him against personal liability.

Thus, good faith immunity ultimately relies on *presumptions* of ignorance.

How do you defeat presumptions of *ignorance*? By proving the official *had knowledge* that his acts were improper or criminal *when* he committed those acts.

How do you prove he had such knowledge? By providing a proper administrative notice *before* he can commit a improper/ criminal act. Once an administrative official has notice of facts and/or law necessary to prohibit a particular act, if he acts despite that notice, he's *personally* liable. Since government agents won't knowingly accept personal liability, any case that creates that kind of liability tends to disappear. (Why prosecute someone who might take your home when there's plenty of other idiots that can be safely prosecuted without incurring personal liability?)

Tentative conclusion: administrative notices eliminate official ignorance and thus defeat claims of good faith immunity.

Never too late?

In trust law, a trustee is always presumed to act in good faith and so

long as he does, escapes virtually all personal immunity. But does this mean that trustees can commit virtually any act they like (no matter how criminal) and get away with it so long as they claim ignorance and good faith immunity? No.

While mistakes are forgivable, refusing to correct mistakes is not. Thus, even if a trustee intentionally commits a "mistake," his act will be presumed to be proper unless someone provides administrative notice to the contrary. But once notified, trustees have a fiduciary obligation to correct or mitigate any personal error that's brought to his attention. However, if – despite the administrative notice and resultant *personal knowledge* – the trustee refuses to correct his error or mitigate the resulting damages, his *knowing* refusal becomes evidence of "willfulness" and expose him to personal and even criminal liability.

Does the trustee's fiduciary obligation to correct personal errors also apply to government and corporate administrative officials? Prob'ly maybe. If so, this implies that unless there are relevant statutes of limitations or similar time constraints, even *after* the fact, a proper administrative notice might force government to correct or mitigate its mistake.

Hypothetical applications?

Let's suppose that when you go to court, you think your case is being heard "judicially" when it's actually being heard "administratively". To the uninformed, this misunderstanding seems impossible. However, this sort of "misunderstanding" is not only common but lies near the heart of our confrontation with government. So far as I can see, through government deceit and our own ignorance, most of our "trials" are actually *administrative* hearings.

Again, this may explain why "judicial" notices are routinely ignored – the judges are sitting in an "*administrative*" (not "judicial") capacity. If so, it should follow that while a "judicial notice" might be ignored, the same text presented as an "*administrative* notice," might make a judge jump.

The possibility that most cases are being tried administratively raises interesting implications about appeals and similar "judicial" procedures employed by the defendants. If your case was heard administratively, how can a "judicial" procedure (like an appeal to another court based on constitutional issues) be expected to work? Are judicial procedures only for "judicial" hearings? Is it possible that an *administrative* hearing (even if it appeared "judicial") might also only be compelled to respond to *administrative* process? Thus, an *administrative* judge who could safely ignore a *judicial* writ of habeas corpus, might be personally obligated to act quickly if the same information were presented as an *administrative notice*.

If so, what is the proper solution to an improper conviction? Appeal to a higher court? Or send an administrative notice to the errant judge, prosecutor, their superiors or employers? If your case is being heard in an administrative tribunal, is the proper procedure governed by the state or federal code of Administrative Procedure?

We're looking for feedback. Let us know if our speculation on administrative notices makes sense. As confirmation or denial comes in, we'll publish.

Are Federal Plea Bargains Unconstitutional?

from Gary Graham

The United States jails a higher percentage of its citizens for longer periods of time than virtually any other country in the world. According to "The Million Inmate Mark" by Vincent Schiraldi (*The Final Call*, 5/18/99):

"Last year, for the first time in our nation's history, over one million people were imprisoned for non-violent offenses. Although politicians have made a lot of hay about locking up the 'worst of the worst,' over the past 20 years we've actually added more non-violent offenders to our prisons than violent ones. Since 1978, the number of violent offenders sent to prison each year has doubled, non-violent offenders tripled, and drug offenders increased eight-fold. . . . The 1.2 million nonviolent prisoners locked up last year is *three times* the number of all offenders imprisoned by the 12 countries that make up the European Union, even though those countries have 100 million more citizens than the United States. The $24 billion spent to imprison those offenders is almost 50% more than the federal government spends on a welfare program that serves 8.5 million people. In 1995, states around the country spent more money building prisons than universities."

Based on our rate of incarceration, the U.S. is arguably the world's Number One police state and, according to some, flirting recklessly with fascism.

The primary reason our government is so "successful" at incarcerating masses of Americans is that prosecutors use quick, administrative "plea bargains" rather than expensive, time-consuming trials to establish a defendant's guilt. The vast majority of criminal cases (97% state; 93% federal) are settled by plea bargain "agreements" between prosecutors and defendants.

The plea bargain procedure works something like this: First, Congress (or your state legislature) passes mandatory sentencing laws that establish maximum penalties that are so irrationally extreme that they scare the guilty, terrify the innocent and, perhaps most importantly, impress the voters.

Second, a prosecutor sternly warns a criminal defendant that if he dares to plead Not Guilty and is nevertheless convicted in court, the Judge will "get angry" and probably impose a maximum (incomprehensible) 15 years in prison for possessing a few ounces of a "controlled substance" (58.9% of Federal prisoners are convicted for drug-related offenses).

Third, the defendant (terrified by the prospect of spending the balance of his natural life in prison) becomes "cooperative," pleads guilty, saves the state the cost of a lengthy trial and appeal, and in return, receives a less severe sentence (perhaps three years in prison with five on probation).

Our "efficient" (terrifying) plea bargain system not only allows government to jail vast numbers of Americans, it also spares lawyers from the onerous task of actually studying the relevant law and preparing to argue a case in court. This is a huge benefit since a lawyer can plea bargain (and charge for) scores of cases in the time it takes to actually prepare and litigate a single criminal trial. Further, if a criminal case is plea bargained, the defendant is presumed to have voluntarily agreed to the "bargain" thereby relieving his lawyer from malpractice liability.

Thus, plea bargains allow lawyers to sell minimal services with minimal personal liability and still squeeze an easy dollar out of the poor. Instead of charging $100,000 to defend one person in a trial by jury (and later risk being sued for malpractice), these lawyers sell plea bargains for $2,000 each to fifty defendants. Result? They still gross $100,000 but they don't have to study the case, study the law, present the case in court, or risk being sued for malpractice.

Moreover, thanks to plea bargains in criminal court (and "out of court settlements" in civil court) our attorneys' incomes depend primary on *sales* volume rather than the quality of the representation. Thus, lawyers have devolved from "litigators" (people who argue issues in court) into "pitchmen" who merely "sell" plea "bargains" to clients. The public has sensed this devolution and rewarded attorneys appropriately by treating them to the same level of respect we formerly reserved for carnival barkers. ("Step raht up, ladies 'n

ge'men! Step raht up! Gitcher justice he-ah!")

The O.J. Simpson case illuminates use of plea bargains. Can anyone imagine a poor, middle class or even moderately wealthy defendant achieving a similar victory in a similar criminal case? No. Because the vast majority of criminals are too poor to pay for an adequate defense, the system has evolved to give criminal defendants only as much "justice" as they can *afford*. Thus, plea "bargains" provide an "illusion" of justice for the majority of Americans who are too poor to afford the real thing.

Prosecutors also benefit from plea bargains since they also need not actually prepare to litigate most of their cases. Thus, our prosecutors also tend to serve as "pitch men" selling "bargains" rather than lawyers implementing justice. Perhaps worst of all, the tendency to bargain rather than litigate diminishes the average prosecutor's understanding of law and fosters incompetence.

Plea bargains even affect our police. Since almost all criminal cases are plea bargained, the police are effectively relieved from the obligation of collecting evidence according to strictly constitutional procedures. The sloppy police work that ultimately freed O.J. Simpson was not an aberration – it was a prime example of standard, sloppy police investigations. After all, since 97% of all criminal cases are plea bargained, 97% of all evidence will never go to court. So why should police be diligent about collecting and preserving evidence if that evidence will almost never be used in court? Moreover, if they're sure the "bad guy" did the crime, why not fake the evidence to "encourage" him to confess and plea? Sure the evidence might not stand up in court, but thanks to plea bargains, it'll never get to court.

But once law enforcement loses respect for collecting and preserving evidence, how long before they also lose respect for truth? Remember the 1997 scandal when FBI agent Whitehurst revealed that the vaunted FBI laboratory in Washington was routinely fabricating or falsifying evidence? Why not? Thanks to plea bargains, the evidence is almost never used in court. Instead, that falsified evidence will probably be used as a "sales tool" to persuade some hapless defendant to accept a plea bargain. "Sure, you *say* you're innocent, Johnson – but how will you explain to the jury that the FBI lab found *your* fingerprints on the bomb fragments?" What's an innocent man to do when faced with inexplicable "evidence" of his guilt provided by the mighty FBI? Thus, even the innocent can be "persuaded" to plead.

Plea bargains foster endless prison construction programs (and resultant higher taxes), sloppy prosecutors, incompetent police and finally corrupt law enforcement. Plea bargains diminish our government's need, understanding and respect for law, and increase government dependance on fear tactics, intimidation and even fabricated evidence. Thus, the plea bargain's "efficiency" tends to violate fundamental principles of liberty and push us toward fascism.

Safety in numbers

David Washington (one of our readers) reported:

"A friend told me once that while he was in a County Jail, he got approximately forty people to sign a statement saying they were going to trial and refused to take any plea bargains. Because of that, many charges were actually dropped and people were released."

David's anecdote illustrates our criminal justice system's dependence on plea bargains. Without plea bargains, the entire system would totter and tend to collapse – unless it could content itself with only prosecuting truly violent criminals while ignoring the nonviolent and victimless crimes that have filled our prisons and elected politicians for twenty years.

Plea bargains pack our prisons, raise our taxes, turn prosecutors into pitchmen, render police incompetent and subtly push America toward fascism.

Plea bargains are no bargain.

An activist's lot

Gary Graham has been a legal reform activist since 1990. At one point, he led a legal reform group in Dallas, Texas, that met bimonthly and drew 100 to 200 people per meeting. Gary laid the foundation for "Take Texas Back"

– an organization that sought to restore Texas as a sovereign State (rather than an instrumentality of the corporate Federal government) and eventually evolved into the Republic of Texas movement. Eventually, Gary started traveling around the USA, helping to create politically active organizations in other states.

When Gary started traveling, he made two mistakes:

1) He forgot that political activists must maintain a political base of support. As long as he remained in Dallas, he had the support of hundreds of members of Take Texas Back. He thus enjoyed a measure of political "protection" since government is reluctant to confront activists who enjoy widespread support from other activists. But once Gary left Dallas, he became more vulnerable to government prosecution.

2) Recognizing that our "money" system is largely fraudulent, Gary started studying "certified money orders" (CMOs) which some people were making on home computers and using to pay their income taxes or home mortgages. Gary didn't use or sell CMOs, but he did provide samples to a man in Louisiana who made his own CMOs and sent them through the mail to discharge some of his debts. On December 3, 1994, the FBI arrested the man in Louisiana for Mail Fraud and Gary as a background "principal".

Gary was arraigned on December 7, 1994, denied bond as a "Flight Risk," and tried before a jury in February, 1995. He appeared in court pro se and handled his case well enough that (just *before* closing arguments) some U.S. Marshals told him it looked like he'd won. However, during *closing arguments* (when it was too late for Gary to respond), his *co-defendant's* attorney argued that even though his client may be guilty of actually *using* CMOs, it was all Gary's fault for giving him a free sample in first place. The jury found Gary guilty and sentenced to two years confinement and three years probation.

Gary entered the Federal Prison Camp at Fort Bliss (El Paso) Texas in August, 1995 and filed a Petition for Writ of Habeas Corpus with the Fifth Circuit in New Orleans. On November 4, 1995, after receiving no answer, Gary decided he'd had enough and simply *walked away* from the prison camp. He worked in Texas until September, 1996, when he was stopped for speeding, and returned to El Paso to face federal charges for escape.

In January 1997, Gary pled "absolutely guilty" to the charge of Escape before a U.S. District Court Judge. The judge warned him that by entering a plea of guilty, he was waiving certain rights such as his *individual right* to a trial by jury as guaranteed by the 6th Amendment ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . .") Gary said he understood the waiver, the judge found him guilty without further trial or jury, and Gary was sentenced to serve another 18 months.

If this personal narrative seems overly lengthy, it does have a:

Silver lining

While researching the issues of his case in prison, Gary made a monumental insight: The Constitution for the United States of America specifies a "Trial by Jury" in *two* places: 1) the 6th Amendment (which defines our *individual right* to a trial by jury); and 2) Article III – which specifies the powers and *duties* of the judicial *branch* of government and mandates, "The Trial of *all* Crimes, except in Cases of Impeachment, *shall be* by Jury;" [emph. add.].

We tend to overlook the distinction between the Article III *judicial duty* and the 6th Amendment's *individual right* to a trial by jury. But while Article III mandates that *all* federal crimes tried in Article III courts must be by jury, it says nothing about criminal trials conducted in courts not created under Article III (for example, *state* or county courts). Therefore, while Article III compels all *federal* criminal trials to be by jury, the 6th Amendment protects the right of all criminal defendants to be tried by jury, even in *state or county courts*.

Gary realized that the Article III mandate for trials by jury did not describe an *individual's* right to a trial by jury (as is seen in the 6th Amendment) but instead imposed a mandatory *duty* on all federal courts and judges hearing criminal cases. Since Article III ap-

plied only to the *federal* criminal cases, it was unlawful, unconstitutional and technically impossible for Gary (or any other individual), to agree, revoke or otherwise "bargain" away that Article III *duty*.

In other words, while an individual might waive his 6th Amendment *individual right* to a *state* trial by jury – no individual or plea bargain could waive an Article III court's *duty* to provide a trial by jury in *all* federal criminal cases. The only lawful way to remove the Article III duty was by constitutional amendment.

Since no such amendment has been made, it appears that any federal plea bargain that waives a jury trial in a criminal case violates Article III and is therefore unconstitutional. If federal plea bargains are unconstitutional, so are the resulting convictions and sentences. This implies that a lot of federal prisoners who've been incarcerated with plea bargains may have a constitutional argument to demand they be released or at least actually tried by a jury.

2255 Questions

Gary informed his judge of the apparent constitutional error with a "2255" Motion (28 USC 2255). A "2255" is a Civil Motion in a criminal proceeding to move the court to vacate, set aside, or correct a sentence. A 2255 Motion is a *collateral* attack in which the issue of guilt or innocence cannot be addressed. Collateral issues include *procedures* used by government to obtain the conviction, the *jurisdiction* of the court, and/or the information or procedure used to determine the length of sentence.

Here's a slightly edited version of Gary's original 2255 Petition:

"On January 21, 1997, this Petitioner informed U.S. District Judge Harry Lee Hudspeth of the intention to plead guilty to the charge of Escape. Judge Hudspeth then informed this Petitioner that the entry of a guilty plea was a waiver of the Petitioner's Rights, to which this Petitioner agreed.

"However, at no time was this Petitioner informed that the Court and the Government were using this Petitioner's waiver of his 5th and 6th Amendment Rights as an excuse to ignore the requirement placed on the government by Clause 3, Section 2, Article III of the Constitution for the United States of America which provides: 'The Trial of all Crimes, except in cases of Impeachment, shall be by Jury;'

"Article III is not an enumeration of Individual or Collective Rights and therefore none of the provisos in Article III can be waived by this Petitioner. Further, none of the requirements of Article III have been changed by constitutional amendment.

"The conviction was obtained in direct violation of Article III, Section 2, Clause 3 of the Constitution for the United States of America and the sentence was imposed illegally as based on the unconstitutional conviction. The sentence of eighteen (18) months confinement must be VACATED and the IMMEDIATE RELEASE of this Petitioner ordered as any further prosecution of this Petitioner would be in violation of the Right against Double Jeopardy."

Babbling, baffling bull

Over the years, I've learned that in litigation, less is more. That is, the surest sign of a competent, professional litigation is brevity. The lawyers who know their business write the least and don't expose one bit more of their strategy than necessary. Their petitions and motions are crisp and to the point. They focus exclusively on one or two issues.

The amateurs, on the other hand, generally try to "B.S." their way through court by filing reams of paperwork on everything from the Bible, Magna Carta, Declaration of Independence, Articles of Confederation, the Constitution, international treaties, commentary on the money issue, claims to be "white sovereigns" and a Whitman's Sampler of quotations derived from court cases spanning recorded history. Inevitably, all that paperwork betrays the amateur's fear and incompetence. You show me a litigator who can argue a single issue extremely well, and I'll show you a dangerous man. Show me a litigant who threatens to argue twenty issues, and I'll show you a lightweight who doesn't really understand his own issues and can therefore be easily discredited and defeated in court.

The "baffle 'em with BS" strategy is common among pro se litigants, but when government is stumped, they'll try it, too. For example, the Government's Response to Gary's 2255 Motion was lengthy, technical, based primarily on procedure, unfocused and clearly off point. Read closely, the government offers piles of rhetoric to conceal the fact they don't have an effective reply to Gary's issue. As you'll read, the government tries to hide behind Gary's 6th Amendment, individual right to a trial by jury, but never addresses the primary issue: By what authority can Gary or government waive the Article III *duty* imposed on federal courts to provide a trial by jury in *all criminal* cases?

As you'll read, at one point the prosecutor writes that due to the "need for the efficient and orderly administration of justice, it is respectfully urged that the court *not consider* these issues". [Emph. add.] In other words, a U.S. prosecutor is telling the judge this is an important issue the government can't win or afford to lose, so therefore please

don't even consider the issue and "Just Say No!" to the Constitution.

Government's Response

"Comes now the United States of America, by and through the United States Attorney for the Western District of Texas, and in response to GARY LYNN GRAHAM's Motion under 28 U.S.C. Sect. 2255 to Vacate Sentence, respectfully shows the Court as follows:

"I. Procedural History

"On November 20, 1996, GARY LYNN GRAHAM, hereinafter referred to as Petitioner, was indicted by a federal grand jury in El Paso, Texas. Petitioner was charged in an indictment with escape from a federal institution in violation of 18 U.S.C. Sect. 751(a). On January 21, 1997, Petitioner pled guilty to the one count of the indictment. On March 5, 1997, Petitioner was sentenced to a 18-month term of imprisonment . . . .

"II. Issues

"In the present Motion to Vacate, Set Aside or Correct Sentence, the sole ground of the Petitioner's claim *appears* to encompass the following twofold argument: that the Petitioner's plea was involuntary in that the Petitioner was not advised that he would be waiving *his right* to trial by jury, and the Petitioner *could not* waive that constitutional right." [Emph. add.]

Note that government's statement of Issues completely misses Gary's issue – not his 6th Amendment right – but the court's Article III duty. *The balance of the government's reply is long-winded, technical and probably too dry for most readers, so it's been included as a footnote[1] at the end of this article. But as you'll read in Gary's reply, the government simply refused to even address Gary's fundamental issue:*

Petitioner's Reply

The PROCEDURAL HISTORY of my case as recited in the Government's Response is correct and this Petitioner objects only to the omission of the FACT that there was no "Trial by Jury" during any of the proceedings.

The ISSUES as stated in the Government's Response are incorrect and do not recite the Issue raised by the Petitioner. The Issue brought by this Petitioner is that the sentence imposed by this Honorable Court on this Petitioner was imposed without a "Trial by Jury" in direct violation of Article III, Section 2, Clause 3 of the Constitution.

The Government expends a great deal of energy in an attempt to convince this Honorable Court not to address the Issue raised by Petitioner, however, the Government's first sentence and authority citation are sufficient to sustain the Petitioner's Motion. It is well established in American Jurisprudence that the jurisdiction of a Court to impose sentence does not vest in the Court until a conviction is obtained. The Constitution requires that a conviction be obtained by a "Trial by Jury" in all Crimes at Article III, Section 2, Clause 3. In the absence of this conviction by a Jury the Court was without jurisdiction to impose a sentence. The issue raised by this Petitioner is certainly within the cognizance of a 2255 proceeding. *United States v. Addonizio*, 99 S.Ct. 2235, 2240 (1979).

A. The remainder of the Government's Response does not address the Issue raised by this Petitioner and is non-responsive, frivolous, and without merit. On Page 7, Line 18 of the Government's Response, the Government obviously agrees that "The Constitution requires a trial by jury of all crimes as stated in U.S. CONST. Art III, sect 2 cl. 3." And the Government does not offer that this requirement is an individual right.

It is the assertion of this Petitioner that the requirement that the Trial of all Crimes be by Jury is a requirement imposed on the Judicial Branch by the Constitution and neither the Government nor this Petitioner have the authority to waive this requirement. It is the assertion of this petitioner that no single individual may waive any of the requirements placed on the Government by Article III of the Constitution, with or without the Government's approval. It is the assertion of this Petitioner that the current practice of foregoing a Trial by Jury in all Criminal Cases is an unconstitutional amendment of Article III, Section 2, Clause 3. It is the assertion of this Petitioner that the absence of a con-

viction by Jury prevents the Court from obtaining jurisdiction to impose sentence.

It is the understanding and belief of this Petitioner that all Federal Judges have executed the Oath of Office required by Article VI of the Constitution binding all judicial officers to support the Constitution and that this Oath operates on this Honorable Court. It is also the understanding and belief of this Petitioner that it is not uncommon for current judicial officers to ignore the sanctity of their Oath in the name of efficiency and the orderly administration of the justice system. It is within the context of this understanding and belief that this Petitioner would most respectfully pray that this Honorable Court address the actual issue raised by this Petitioner.

It is remarkable that the Government either does not understand the Issue or purposely attempts to change the Issue to conform to existing case law and argument. The issue raised is one dealing with the Article III requirement placed on the Judicial Branch of the Federal Government to try all crimes by Jury, and where the authority to waive this requirement is granted and to whom is it granted.

The Government's argument focuses on the Individual Rights enumerated in the Amendments and the Right of the Individual to waive his or her Rights rather than addressing the fundamental question of who has the Right to waive the Article III requirement.

The Government exhibits a basic misunderstanding of exactly why the first Ten Amendments were added to the Constitution, by stating that "Trial by jury is conferred upon Petitioner via U.S. CONST. Amend. VI." Which would indicate that the right to a Trial by Jury in all criminal proceedings did not exist until the Amendments were passed rather than the fact that the Amendments enumerated pre-existing Rights possessed by the People and to be protected by the new government being created. The first three Articles of the Constitution create the three branches of the new government and grant powers and place restrictions on these three branches. The questions raised are specific to the restriction placed on the Judicial Branch of government: Where is the authority to waive the restriction that "The Trial of all Crimes . . . shall be by Jury"? And if this restriction can be waived by the Defendant and the Government, what other restrictions of the Constitution may also be waived by such combinations?

The history of the Article III requirement remained consistent for 140 years. In 1834 Mr. Justice Story indicated his view that the Constitution made Trial by Jury the only permissible method of trial, *United States v. Gibert*, 25 Fed Case 1287 (No. 15204) (CCD Mass 1834). In 1898 the Supreme Court expressed the view that the Constitution made jury trial the exclusive method of determining guilt in all federal criminal cases, *Thompson v. Utah*, 170 U.S. 343, 42 L. Ed. 1061, 18 S. Ct. 620.

However, in 1904 the Supreme Court exhibited a new tack for circumventing the Constitution, as interpreted in previous decisions, by changing the name of things, when it held that there was no constitutional requirement that petty offenses be tried by jury, *Schick v. United States*, 195 U.S. 65, 49 L. Ed. 99, 24 S. Ct. 826.

In 1930 the Supreme Court spoke of Jury Trial as a "privilege" not an "imperative requirement" in deciding a question of whether a criminal trial can continue to a finality with eleven (11) jurors after one juror has become incapacitated, *Patton v. United States*, 281 U.S. 276, 74 L. Ed. 854, 50 S. Ct. 253,70 ALR 263. The case did not involve a Trial by Judge alone, but the Court believed that trial before 11 jurors was as foreign to the common law as was trial before a judge alone, and therefor both forms of waiver "in substance amount[ed] to the same thing."

It was not until 1942 that the Supreme Court stated "one charged with a serious federal crime may dispense with his Constitutional right to jury trial," relying upon the dictum of *Patton* in *Adams v. United States ex rel McCann*, 317 U.S. 269, 277-278, 87 L. Ed. 268, 63 S. Ct. 2336, 143 ALR 435.

Finally, in 1965 the Court held that Rule 23(a), requiring the Government, the Defendant and the Court agree to waive a Jury Trial, was Constitutional, *Singer v. United States*, 380 U.S. 24, 13 L. Ed.2d 630, 85 S. Ct. 783. It was held in *Singer* "that the Federal Constitution neither confers nor recognizes the right of criminal defendants to have their cases tried before a judge alone," which does not directly address the issue raised in my Petition: Where Does The Authority Come From To Waive A Requirement Placed On The Government By The Constitution?

Constitutional unconstitutionality?

As of June, 1999, Senior District Judge Hudspeth has simply "sat" on Gary's original petition for over 17 months without giving a decision. Gary suspects his Petition has not been denied, affirmed or even heard because the consequences of his constitutional challenge may be too great for the court to consider.

For example, if plea bargains are unconstitutional in federal criminal cases, then 1) the federal government's criminal prosecution industry will be reduced by 90% or more, 2) criminal

prosecutions will become almost solely the province of the states, and 3) the withdrawal of federal involvement from criminal prosecutions will slow and possibly reverse the federal government's intrusion into local affairs and thereby tend to restore a measure of "state's rights" and individual liberty to this nation.

Although the court continues to ignore his original petitions, Gary believes that as news of his constitutional challenge to plea bargains reaches the federal prisons, federal courts will begin to see a host of similar challenges that may ultimately force government to confront the issue and, hopefully, reduce or even eliminate the application of plea bargains in federal criminal trials.

[1] **III. Argument and Authorities**

A. Petitioner raises issues not cognizable in a 2255 proceeding.

Relief under Section 2255 is generally authorized if the sentencing court "was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or otherwise subject to collateral attack." *United States v. Addonizio*, 99 S.Ct. 2235, 2240 (1979). Section 2255 "is reserved for transgressions of constitutional rights and for that narrow compass of other injury that could not have been raised on direct appeal, and would, if condoned, result in a complete miscarriage of justice." *United States v. Capua*, 656 F.2d 1033, 1037 (5th Cir. 1981). See also, *United States v. Werntraub*, 871 F.2d 1257, 1266 (5th Cir. 1989); *United States v. Smith*, 844 F.2d 203, 205-06 (5th Cir. 1988). Moreover, a district court's technical application of the Sentencing Guidelines does not give rise to a constitutional issue cognizable under Sect. 2255. *United States V. Lopez*, 923 F.2d 47, 50 (5th Cir.) cert. Denied, 500 U.S. 924 (1991).

Section 2255 does not reach errors that are not of constitutional or jurisdiction magnitude when those errors could have been reached by a direct appeal. *United States v. Stumpf*, 900 F.2d 842, 845 (5th Cir. 1990). For example violations of Rule 11 that could have been raised on direct appeal may not be presented in a collateral attack upon the defendant's sentence. See *United States v. Timmreck*, 441 U.S. 780, 783085 (1979); *Stumpf* 900 F.2d at 845. Likewise, claims that a trial court violated Rule 12 in the course of imposing sentence that could have been raised on direct appeal may not be brought forward in a Section 2255 proceeding. See *Winetraub*, 871 F.2d at 1266; *United States v. Prince*, 868 F.2d 1379, 1386 (5th Cir.), cert, denied, 493 U.S. 932 (1989); and *Smith*, 844 F.2d at 205-07.

Accordingly, Petitioner's claims are outside the proper scope of Section 2255 review. The sentence, on its face, is within the statutory maximum, and is not otherwise manifestly unjust. There are no other circumstances present in this case indicating that the sentence is a "complete miscarriage of justice," *nor is there any evidence of a transgression of constitutional or jurisdiction dimension*. Based upon the above authority and the need for the efficient and orderly administration of justice, it is respectfully urged that the court *not consider these issues* raised in the format of collateral review. [Emph. add.]

However, should this court be so inclined to consider Petitioner's motion, then it should be denied for the following reasons:

B. Petitioner pled guilty, thus waiving a subsequent challenge to that plea.

Petitioner pled guilty in the instant case. He admitted to all elements of a federal criminal charge, and waived all non-jurisdictional defects in the proceeding against him. *United States v. Owens*, 996 F.2d 59, 60 (5th Cir. 1993); *United States v. Bell*, 966 F.2d 914, 915 (5th Cir. 1992). Petitioner's guilty plea precludes him from making his claim at this juncture in the proceedings. The Supreme Court has ruled that:

[A] guilty plea represents a break in the chain of events which have preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the plea.

Tollett v. Henderson, 411 U.S. 258, 267 (19733). Accordingly, Petitioner's challenges are barred by his guilty plea. His claim should, therefore, be denied.

C. Petitioner entered a voluntary plea.

Without waiving the arguments above, the Government submits that Petitioner's motion should also be denied because Petitioner entered a knowing and voluntary plea. The judicial system "has a great interest in maintaining the finality of guilty pleas." *Theriot v. Whitley*, 18 F.3d 3311, 314 (5th Cir. 1994). It is well established that before a district court accepts a plea of guilty, it must personally address the defendant to determine that the plea is voluntary, and that the elements of the charge and the consequences of the plea are understood by the defendant. *McCarthy v. United States*, 394 U.S. 459, 464 (1969). In addition, the court must be satisfied that the defendant's conduct constitutes the charged offense. *McCarthy*, 394 U.S. at 467.

The arraignment proceedings are attached hereto as Exhibit A to demonstrate that Petitioner's plea was

in fact knowing and voluntary. The Court entered into its usual Rule 11 colloquy with Petitioner. Having been sworn to tell the truth, Petitioner acknowledged to the prosecutor and to the Court understanding the charge he was pleading guilty to (Plea Tr., 5-7). The Court informed Petitioner that the sentence he was facing, to include the possibility of facing consecutive sentences, instead of concurrent sentences (Plea Tr., 9).

Petitioner responded "yes" when the Court asked him if he entered his guilty pleas voluntarily (Plea Tr., 9). The Court asked Petitioner if anyone had used threats, force or coercion to make him plead guilty and Petitioner responded, "No, they have not." (Plea Tr., 10). The Court then asked Petitioner if he pleads guilty of his own free will and Petitioner responded, "Yes, your honor, I do." (Plea Tr., 10). The Court also asked Petitioner if he understood that by pleading guilty, he would be waiving his right to a trial, his right to cross examine and confront witnesses against him, his right to call his own witnesses to testify for him and his right to remain silent (Plea Tr., 10-11). Petitioner responded, he understood all that he was waiving (Plea Tr., 12). The prosecutor read the factual basis supporting the guilty plea (Plea Tr., 12-13). Petitioner agreed with the factual basis as read by the prosecutor (Plea Tr., 13). These assertions under oath are entitled to great weight. *Barnes v. United States*, 579 F.2d 364, (5th Cir. 1978). The representations made by a defendant, his lawyer, and the prosecutor at a plea hearing, constitutes a formidable barrier to any subsequent collateral attack. See, *United States v. Corbett*, 742 F.2d 173, 178 n.11 (5th Cir. 1984); *United States v. Patterson*, 739 F.2d 191, 195 (5th Cir. 1984).

The Fifth Circuit has identified three core concerns under Rule 11 which demonstrate that a defendant's plea was made knowingly and voluntarily: "(1) whether the guilty plea was coerced; (2) whether the defendant understands the nature of the charges; and, (3) whether the defendant understands the consequences of the plea." *United States v. Adams*, 961 F.2d 505, 510 (5th Cir. 1992) (citing *United States v. Shacklett*, 921 F.2d 580, 582 (5th Cir. 1991); *United States v. Bernal*, 861 F.2d 434, 436 (5th Cir. 1988), cert. Denied, 493 U.S. 872 (1989).

The District Court in the instant case indeed demonstrated the "core concerns" set out in *Adams*. *Adams*, 961 F.2d 510. The transcript is clear and confirms that Petitioner entered voluntary and knowing pleas, was not coerced, forced or induced into pleading guilty, understood the charges he pled guilty to and understood the consequences of those pleas. In addition, the Government would respectfully remind the Court that prior to the plea colloquy on January 21, 1997, the Court had an extensive discussion with the Petitioner concerning his waiver, and the "rights that go along with trial" (Plea Tr. 2-4). Additionally, the Petitioner was advised that everything was in place for the Government to proceed to trial, witnesses as well as the prospective jurors were all available. (Plea Tr. 4). The burden is on Petitioner to prove he is entitled to relief on the ground that his plea was not voluntary. Petitioner has failed to meet this burden. As shown by his testimony in open court, Petitioner's plea was voluntary, declared under oath, and as such, his testimony given during the guilty plea hearing carries a strong presumption of verity. *United States v. Abreo*, 30 F.3d 29, 31 (5th Cir.), cert, denied, 513 U.S. 1064 (1994), see, *Blackledge v. Allison*, 431 U.S. 63, 64 (1977).

The Constitution requires a trial by jury of all crimes as stated in U.S. CONST. Art. III sect 2 cl. 3. Trial by jury is conferred upon the Petitioner via U.S. CONST. Amend VI. It is well settled that the right to trial by jury can be waived by guilty plea if the plea and waiver are knowing and voluntary. *McCarthy*, 394 U.S. at 466, *Boykin v. Alabama*, 395 U.S. 238 (1969). Obviously, Petitioner did enter a voluntary and knowing plea and was fully advised of the rights (including the right to trial by jury) he was waiving upon his plea of guilty as evidenced by Exhibit A. Given the nature of the Petitioner's plea of guilty, it is clear his motion must fail.

WHEREFORE, premises considered, the Government respectfully prays that Petitioner's Motion under 28 U.S.C. Section 2255 be, in all things, denied.

"Evil Twin" Courts

by Alfred Adask

In previous issues of the AntiShyster, we've explored the idea that there is a dual system of identification and political status in this country. The first status is that of flesh-and-blood, natural man and member of the sovereign class "We the People". This first status enjoys the God-given, "unalienable rights" declared in the Declaration of Independence and guaranteed by the Constitution. Most Americans believe this is the only political status that exists in this nation, and it's shared equally by all.

However, there is growing evidence that government has created a second political status which is almost universally mistaken for the first "sovereign" status but is in fact a status for servants, subjects and slaves. This second, "subject" status is comprised of artificial entities (like trusts or corporations) created by Congress (not God) and thus absolutely subject to Congressional regulation and control. Unlike the first "sovereign" status, the second "subject" status has no unalienable rights – only temporary privileges which may be modified, ignored or revoked whenever government sees fit.

Apparently, government deceives members of the first sovereign status into accepting identification as members of the second subject status. So long as you unwittingly accept identification as a member of the second status, you will be treated as such and be denied any claim to the "unalienable rights," liberties and freedoms enjoyed by the first, sovereign status.

The average person will first find this theory incomprehensible and later absurd. After all, how could government trick us into trading our "first class" status as natural sovereigns for the "second class" status of some kind of artificial entity? More importantly, how could we *not know*?

Our hypothetical answer is not simple, but it is subtle. The natural, flesh-and-blood man born into the first political status is identified by a capitalized name (i.e., "Alfred Adask"). Then, we suspect that government creates an artificial entity that belongs to the second political status and is identified by an all-upper case name ("ALFRED N. ADASK). Because the names used to identify the natural man and artificial entity are so deceptively similar, one (ADASK) is easily mistaken for the other (Adask).

As a result, if Alfred Adask goes to court – and unwittingly allows the government to presume "ALFRED ADASK" has "appeared" – Alfred will probably experience some serious frustration. Without the protections of his unalienable rights in law, Alfred may be abused and mistreated by the court exactly as if he were ALFRED, an artificial entity with no more legal rights than a Negro slave in the pre-Civil War South.

To more effectively communicate the difference between the natural and artificial persons, I've started describing the artificial entity (ALFRED) as the natural man Alfred's "evil twin".

If the idea that government has tricked us into identifying ourselves as "evil twins" seems incredible, read on. It appears that government has also tricked us into appearing in a *second kind of court* that is designed to process "evil twins" but can't even "see" flesh-and-blood members of the sovereign class.

Despite Gary's Graham's intriguing insights in the previous article ("Are Federal Plea Bargains Constitutional?"), it's not necessarily true that all federal plea bargains are unconstitutional. Properly read, Gary only asserts that plea bargains are unconstitutional in *criminal* cases heard in federal courts created under *Article III* (Judicial Branch) of the Constitution.

However, not all courts are created equal. For example, state and county courts are created by state constitutions and are therefore not subject to the Article III "trial by jury" mandate. Thus, plea bargains may be constitutional in state or county courts.

But what if there were another *kind* of court that was still federal but wasn't created under the Article III, judicial branch of government? If there

were a second set of federal courts operating *outside* of Article III, could those courts take plea bargains? Theoretically, Yes.

And therein lies a clue to the great deception being perpetrated on the American people.

Government structure

If you read The Constitution for the United States of America (ratified 1789 A.D.), you'll see it 1) was created by We the People, and 2) contained seven basic "Articles" (additional amendments were added after 1791):

Article I created the *Legislative* Branch of government (the House of Representatives and Senate which make laws) and defined its duties and powers.

Article II created the Executive Branch (the Presidency and bureaucracy responsible for executing the laws passed by the Legislature) and defined its duties and powers.

Article III created the Judicial Branch (federal courts) and defined its duties and powers.

Article IV defined legal relationships between the States, between the federal government and the States and between the federal government and territories.

Articles V, VI, and VII defined the amendment and ratification procedures and listed General Provisions concerning financial obligations, the "supreme law of the land," and requirements to assume office.

However, this article is only concerned with differences between Article I (Legislative) and Article III (Judicial) branches of government. Based on the "separation of powers" doctrine, most Americans assume that every federal court is constituted under Article III (Judicial Branch) of the Constitution and is therefore separate from the powers, jurisdictions and direct controls of the other two Branches of government (Legislative and Executive). Even school kids know that, right?

Wrong. Absolutely wrong.

In addition to the "judicial" courts specified in Article III, we also have – surprise, surprise! – *Article I* courts which may be described as "legislative tribunals". (We probably have Article IV "territorial" courts, too, but we won't explore that possibility here.)

While Article III courts are directly bound by We the People and the Constitution, the Article I courts are directly bound by *Congress*. While Article III courts must support and defend the Constitution, Article I courts must support and defend the laws passed by Congress. Thus, if you try to challenge the constitutionality of any federal law in an Article I court (legislative tribunal), that court will virtually always rule against you.

No constitutional issues, please

Sound impossible? Read *Cochran et al. v. St. Paul & Tacoma Lumber Co.* (73 Fed Sup 288) decided on May 26, 1947. According to three of the case's headnotes provided by West Publishing:

"1. Constitutional law. The District Court cannot determine the wisdom or lack of wisdom in acts of Congress.

"2. Courts. A *United States* District Court is purely a creature of legislative branch of government, generally provided for by Constitution, but not a constitutional court in stricter sense, and its jurisdiction comes from Congress. [Emph. add.]

"3. Constitutional law. Courts' duty is to interpret statute so as to uphold, rather than find against, its constitutionality."

Before I pontificate on what these headnotes mean, understand that these are only headnotes. That is, even though they appear as "summaries" at the top of the published case, they don't count for diddly in law since they are merely the publisher's opinions of the case's principle points. The binding legal meaning will only be found in the text of the case which describes the judge's opinion.

Nevertheless, headnotes are prepared by professionals, and it's inconceivable that headnotes offering such extraordinary implications have been published in error.

The first and third headnotes explain that United States District Court

cannot determine the *constitutionality* of any law passed by Congress. Instead, it is the "Courts' duty" to *always* find (no matter how absurd the justification) that *any* law passed by Congress (no matter how ridiculous or overtly unconstitutional) is nevertheless "constitutional".

The second headnote explains why this seemingly absurd duty is lawful: unlike Article III courts (which are created by the Constitution/ We the People and therefore directly obligated to serve that creator-class), the *United States* District Courts are "creatures of" (created by) *Congress* and therefore not *directly* subject to the Constitution but instead duty-bound to serve the interests of their "creator" (the Congress).

The distinction is subtle since (according to the second headnote) the *United States* District Courts are "*generally* provided for by the Constitution" in the sense that their creator (Congress) was first created by Article I of the Constitution. However, because these *United States* District Courts are directly created *by Congress* (not by the Constitution/ We the People) they are "not a constitutional court in the stricter sense" of Article III, judicial courts.

At first reading, virtually everyone assumes the *Cochran* headnotes refer to *all* federal "district courts". But in fact, there are two *kinds* of federal "district courts". The first, "District Courts *of the United States*," operate under *Article III* of the Constitution and are intended to protect the unalienable rights the sovereign class of natural, breathing Americans.

The second kind of district courts are named "*United States* District Courts," are "purely creature(s) of legislative branch" and therefore operate under *Article I* (legislative branch) rather than *Article III* (judicial branch). These "*United States* District Courts" are intended to administer the affairs of persons who are the employees or voluntary subjects of Congress and/or artificial entities (corporations, trusts, "evil twins," etc.) that were created by Congress.

Remember the deceptively similar names for natural persons ("Adask") and artificial entities ("ADASK")? Note a similarly subtle difference between the proper names for the respective courts: "*United States* District Courts" (Art. I) and "District Courts *of the United States*" (Art. III). Most people assume that the two names can be used interchangeably because they identify the same "district" courts. I disagree.

"*United States* District Courts" and "District Courts *of the United States*" are two entirely different kinds of courts which decide cases according to entirely different sets of principles derived from two entirely different Articles of the Constitution. [Similarly, we also have two "Supreme Courts": the "Supreme Court *of the United States*" (Article III) and the "*United State* Supreme Court" (Article I). A similar dual-court system probably exists in all fifty states.]

As a result of this "dual" court system, We the People lose in federal courts because 1) our unalienable rights in Article III courts devolve into mere privileges in Article I courts and 2) we don't understand which *kind* of court we are in. Thus, constitutional arguments and challenges to federal statutes that might succeed in an Article III "District Court *of the United States*" will almost certainly fail in an Article I "*United States* District Court".

Therefore, while federal plea bargains (as explained in Gary Graham's previous article) may be absolutely unconstitutional in Article III courts, they may also be absolutely "legal" in Article I courts (aka "legislative tribunals") – if only because Article I judges are duty-bound to uphold all Congressional statutes, including those that authorize plea bargains.

Implications

First, if federal prosecutors offer you a plea bargain, that's prima facie evidence that your case is not being heard in an Article III court wherein you enjoy constitutionally-protected, unalienable rights.

Second, since Article III mandates that all "criminal" trials be by jury, whatever you might be charged with at the federal level it's probably not a true "crime" (damage to a natural person or his property). It may be an "offence" or a "violation" or something that "looks like" a crime, but if plea bargains are possible, it's not a true "crime".

Third, it certain that you are better off being tried in an Article III court where you enjoy unalienable rights – and conversely, you should strenuously avoid Article I legislative tribunals where your "rights" are mere privileges.

Fourth, it's unlikely that government has arbitrarily moved us into the pro-prosecution Article I court. Instead, government almost certainly relies on something unexpected, probably some sort of agreement we each entered into *voluntarily*, that changed our identification/ status from members of the sovereign class which the Constitution and Article III courts were intended to serve, to persons *subject* to the legislative jurisdiction of Congress and Article I courts.

This change in *our* identity/ status – from members of the sovereign class of We the People (the masters who government was intended to serve) – to "U.S. citizens" who are subject to and bound to serve Congress, is a central issue in our confrontation with government. Although we're told that we're "free" and "sovereign" and government

is composed of our "public servants," we are nevertheless treated as subjects, servants and serfs by the government that was ostensibly created to serve us. This contradiction between expectation and reality is evidence of a secret political revolution: the public servants have mysteriously become the public's sovereigns.

Unlike most revolutions, this one's been achieved through unspoken deceit rather than overt violence. And make no mistake, although deceptive, it's probably all legal since the primary cause for this revolution was not government treachery, but public ignorance. "We the People" (who are tried in Article III courts) have devolved into "We the Dum-dums" who will be administered like any other incompetents in the legislative tribunals of Article I. We haven't quite perished for lack of knowledge, but we've come close.

Applications for benefits

How government managed to deceive us into accepting the identification/status of one subject to Congress is not precisely clear. There may be several mechanisms, each of which can transform us from sovereigns to subjects.

For example, in government, any time you fill out an "Application," you are generally filling out an "application for *benefits*". Whenever you see the word "benefit," you can infer the presence of a trust. In order to receive a trust's benefits, you must necessarily accept the status of a "beneficiary".

By law, beneficiaries have no *legal* title to trust property and thus no *legal* (unalienable) *rights* relative to that trust. Also, the common law (which is largely the province of Article III courts) only recognizes natural people – not trusts and similar artificial entities. Thus, once you accept the status of "beneficiary" in a trust is created by Congress, any subsequent court case involving that trust, its grantor (Congress), trustees (government officials), trust property, benefits and/or *beneficiaries* (that's you) will probably be administered in an Article I "United States District Court". So, if the court sees any evidence that you are a congressional subject or "beneficiary," your case will be automatically heard in an Article I rather than Article III court.

Have you filled out an "Application" for Social Security? If you have, you are a "beneficiary" of the Social Security Trust created by Congress. If the system sees any evidence that you have a SSN, your case will probably be heard in Article I legislative tribunal. The "benefit" of having a SSN may deny you access to Article III courts and recognition of your "unalienable rights" granted by God, declared in the Declaration of Independence and protected by the Constitution.

Point: "Applications" (for benefits) may be hazardous to your health.

U.S. Citizens

The Constitution grants Congress (not We the People) exclusive jurisdiction over Washington D.C. (Article I) and also any "territory" (Article IV) owned by the federal government. If government can maneuver us into becoming de facto citizens of Washington DC and/or a federal territory, it can assume personal jurisdiction over us and reduce us from members of the sovereign class (We the People) to that of congressional subjects.

Some people suspect that when the 14th Amendment created "citizen(s) of the United States" and defined that status as anyone "born or naturalized in the United States and subject to the jurisdiction, thereof," it provided an opportunity for Congress to use birth certificates and/or voters registrations to reduce its former sovereigns to subjects. Others argue that "voluntary" use of Zip Codes provides evidence to support the presumption that we are residents of a federal territory (Article IV) administered exclusively by Congress and thus subject the jurisdiction of Article IV legislative tribunals.

Any or all of these devices (14th Amendment, birth certificate, SSN, voters registration, Zip Codes, FRNs and a host of others) might be sufficient to change your status in fact or by presumption from that of member of the sovereign class to congressional subject. As noted in the *Cochran* case *supra*, the danger in being a congressional subject is that no constitutional challenge (and implicitly, no individual's as-

sertion of unalienable rights) can succeed in an Article I court.

Therefore, while federal plea bargains (described in the previous article) may be absolutely unconstitutional in Article III (judicial) courts, they are absolutely legal in Article I (legislative) courts. Similarly, while a host of governmental actions may be patently unconstitutional, unless you can access an Article III court, your complaints will fall on the constitutionally deaf ears of administrative judges of the Article I "United States District Courts".

Counter-revolution

The revolutionary essence of the organic Constitution of 1789 (unseen in any government before or since) was that We the People were declared to be creators of (and therefore superior to) our government. *We* were the sovereigns; government was the servant. Generally, the only time government could interfere in our lives was when two "sovereigns" were at odds and government was called in to referee the contest. That relationship must still be honored in an Article III, "District Court of the United States" – *if* you can get into one.

However, in an Article I "United States District Court," that constitutional relationship is exactly reversed. We the People are reduced to subjects, beneficiaries and de facto slaves; Congress is elevated to the status of sovereign, master and ruler. Now Congress can interfere in our lives any time they like. Under Congress and Article I courts, when they say "Jump," our only legal recourse is to ask, "How high?"

Government can easily defeat Gary Graham's constitutional challenge to plea bargains in Article III courts. How? By simply by admitting that the federal court that heard Gary's "criminal" case and accepted his plea bargain was *not* an Article III *judicial* court (which can't accept pleas bargains) but was instead an Article I legislative tribunal (which can legally "bargain" all day). But making that admission would expose the government's deceit and dual court system. Such exposure would be politically incorrect since it would ultimately reveal whatever instruments (SSN, addresses, and other forms of personal "identification") and benefits are being used to "lure" Americans away from the protections of the Constitution and into the oppressive embrace of Congress.

We aren't being forced so much as tricked into Article I United States District Courts. Our cases are heard in Article I because we have voluntarily surrendered our status as members of the sovereign class of We the People to become servant-subject-slaves of Congress. We've traded our birthrights for bowls of government pottage.

The solution is not to change the courts (which are probably legal), but to understand and change *our personal status*. If you have a case or argument based on constitutional issues and/or your unalienable rights, you probably won't be able to prosecute that case successfully unless you first remove, revoke or protest any evidence or presumptions that allows government to treat you as if you are an artificial entity, "evil twin" or subject of Congress. We might not need to change government, but we absolutely need to change ourselves.

The key to avoiding the Article I tribunal probably involves a clear understanding of how our "identification" (I.D.) creates the presumption that we are artificial entities and/or persons "subject to" Congressional jurisdiction and Article I courts.

This struggle is far from over but we are nearing a clear understanding of both our adversary and our "selves". Once that adversary (and our relationship to it) is properly "identified" and understood, the solution to our loss of liberty should become quickly apparent. Unless our corporate government attempts to openly impose military control within the next twelve months, I believe we're on the verge of exposing the system's deceit and perhaps restoring primacy of constitutional government – including common access to Article III courts.

These times are not merely "interesting," they are exciting. We are closing in on the truth.

Banking Without Social Security

by J.D. Kingston

Virtually everyone in the Constitutionalist community senses that the Social Security Number (SSN) is far more than a device that allows government to track us and invade our privacy – it is one of the primary instruments by which we surrender our unalienable rights and become government's subjects rather than collective sovereigns. A number of strategies have been proposed to revoke our SSNs and regain our unalienable rights. Some of these strategies seem workable, others unlikely.

But usually, the decision to revoke one's SSN is compromised by our need for bank accounts. Yes, I may be able to free myself from the political disability of Social Security, but how can I stay in business if banks won't open accounts without SSNs? In other words, what good does it do me to regain my freedom if I can't cash any checks and am thereby relegated to a subsistence standard of living?

Our conflicting needs to bank and be free are so onerous and fundamental that a solution to the "banking without SSN" problem is very nearly the Constitutionalist's "Holy Grail".

In March 14, 1999, I received the following Email from J. D. Kingston, "a retired businessman and retired judge" concerning the mandatory use of Social Security Numbers to secure bank accounts. Those of you who are interested in banking without Social Security Numbers should find Mr. Kingston's opinions illuminating:

Dear Alfred,

You and your readers may be interested in the following series of e-mails. In Mid June, AD. 1998, I received a postcard from United Community Bank (UCB), 2100 FM 407, Highland Village, TX 75077. The postcard was an invitation for me to "Join Us For Our Opening And Dedication . . ." They were obviously a new bank looking for some business.

Since the postcard included UCB's e-mail address, I sent them an e-mail informing them that due to my sincere and truly held scriptural beliefs, I did not possess a social security number, and then asked them if they would accommodate me with a non-interest bearing account. The following are a series of e-mails between the bank's representative, Rick Shoemake, and myself [J. Kingston].

25 Jun 1998

Dear Mr. Kingston,

Thank you for your interest in our bank. Though we are a new bank, we are staffed with professionals with many years of experience. The services you made reference to are services that we do offer. However, by regulation we are required to have local forms of identification and a SSI # is not optional. While we respect your very strong convictions, we unfortunately must comply with the regulatory requirements.

Sincerely, Rick Shoemake
United Community Bank, N.A.
Member FDIC

25 Jun 1998

Dear Rick,

Thank you for your prompt reply. In your reply you stated that, ". . . by regulation we are required to have local forms of identification and a SSI # is not optional." I was totally unaware of that. Hope I didn't cause you any inconvenience. BTW, would you be so kind to give me the citation of the regulation of which you speak? Thanks again for your time.

Respectfully, JD Kingston

27 Jun 1998

Dear Mr. Kingston;

I would be happy to provide you the regulation reference for the requirement of the TIN # [Taxpayer Identification Number], The following are Federal Register references: 37 FR 13279 (6/30/72); 37 FR 26517 (12/8/72); Title 26, Section 6109 of the Internal Revenue Code; 38 FR 3341 (2/5/93); 38 FR 32336 (9/6/74)

Sincerely, Rick Shoemake

28 Jun 1998

Dear Rick,

Thank you once again for your prompt reply to my request. (And a "banker" answering email on Saturday!) :-) This indicates that the material printed in your brochure is not merely just more "propaganda" put out by business, but is the absolute truth. I appreciate you.

Respectfully, JD Kingston

2 Jul 1998

Dear Mr. Kingston,

Thank you for your kind words. Yes we do work on Saturdays! As a community bank we are here when the customer needs access to banking services. Have a good day.

Rick Shoemake

P.S. What line of work are you in?

5 Jul 1998

Dear Rick,

It's nice to see that some banks are concerned with their customers. Too few businesses today seem to forget that it's their customers who allow the bills to be paid. You're to be commended.

There's an old analogy about the railroads. They used to flourish. That's when they thought they were in the "people" business. They moved "people" and "people's" commodities. Then one day, the big shots decided they were not in the "people" business, but in the "railroad" business. The rest is history!

I'm a retired businessman and retired judge. My wife and I travel 99% of the time and we would like to make Texas our "home base," hence, our interest in your bank. We're the kind of people who like to support the "little guy," the "mom & pop" stores, and the "new kid on the block" so to speak.

We actually have a bank now who doesn't require a TIN from us, and I guess we'll have to stay with them. If you have any "age" under your belt (I'm 56), you probably know that bureaucrats "never" pass a statute or regulation that doesn't contain a loophole.

I'd be happy to share the "loophole" to 26 USC 6109 with you if you have any interest. Good luck with your bank, and to you personally.

J.D. Kingston

6 Jul 1998

Always interested in learning, what is the loophole in 26 USC 6109?

Rick Shoemake

12 Jul 1998

Re: 26 USC 6109 Part I

Dear Rick,

You would ask! :-) Sorry for the delay. Just got back from a two week trip. Had a great time. Supposed to leave again toward the end of the month. Hope I have enough time to satisfactorily answer your question before we have to leave.

Rather than write a 10 page e-mail, which is unnecessarily cumbersome and unwieldy, I will split the answer to your question into parts (this being part I).

I'll try to be brief, but that always isn't possible when trying to explain a convoluted law. E.g., 26 USC 6109 is comprised of subsections "(a)" through "(h)" as well as many sub-subsections–but–it has *two* subsections "(f)" and *no* subsection "(g)"!!!

The portion of 26 USC 6109 to which you referred is 26 USC 6109(a)(3) which is titled, "Furnishing number of another person." It states that, "Any person..." (i.e., the Bank–which is an artificial person under the law) "Any person required under the authority of this title to make a return, statement, or other document with respect to another person . . ." (i.e., your customer) ". . . shall request . . ." (notice the word "request" here – notice that Congress did not use a word like "demand" or "require"–but they used the word "request") ". . . shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person."

The word "request" was used here so this section would be found compatible to a myriad of other laws, including, but not limited to the Privacy Act. If a word like "demand" or "require" were used in this section, Congress ran the risk of having this section struck down by a court of law.

For a company to comply with 26 USC 6109(a)(3), said company must merely "request" an identifying number from a customer or an employee; but only if said company is required by law to make a return, statement, or other document. This "return requirement" would include virtually all corporations, most partnerships, and many sole proprietorships.

Pursuant to this section, a company is required to "request" a number. The company is NOT required to "receive" a number. Nor, is the customer required to give a number.

The "bad news" is, that if you are a company required to file a return and do not include all information (that includes identifying numbers for each of your customers) on the forms you send to an agency of government, pursuant to 26 USC 6721 and 6722, you can be fined $50.00.

The "good news" is, that there is a loophole for each of those sections also. I'll go into more detail, if you so desire, (i.e., if you're still interested in learning) in a subsequent "part," perhaps part II which will follow when time allows.

Respectfully, J.D. Kingston

12 Jul 1998

Thanks for the info. Keep it coming! Have a good day,

Rick Shoemake

19 Jul 1998

Re: 26 USC 6109 Part II

I've studied a little history and it seems that mankind has had an affinity for sleeping and eating for some 6000 years now! Guess it will always be with us. 8-) It's admirable to note that you've placed "spending time with your family" in the same category.

Your previous P.S. reminds me something my father told me when I was 17 years old. He said, "Son, you can be a success in any endeavor you choose, if every day, you will commit to working half a day–and it really doesn't matter which 12 hours it is!"

On to the subject matter at hand. In Part I, we learned that pursuant to 26 USC 6109, a company is required to "request" an identifying number from a customer/employee, but a company is not required to "obtain" an identifying number.

Now, suppose you have a customer with a "non-interest bearing" account and it's time to file a report with the banking authorities or some other entity. Suppose you enter the person's name on the report and leave blank the corresponding box that asks for that person's identifying number. Now what happens?

26 USC 6721 is titled "Failure to file *correct* information returns." (Emphasis added. Leaving off a number that *you never obtained* does not make the return "incorrect.")

26 USC 6721(a) Imposition of Penalty.

26 USC 6721 (a)(1) In general. In the case of a failure described in paragraph (a)(2) [below], by any person with respect to an information return, such person shall pay a penalty of $50 for each return with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $250,000.

26 USC 6721(a)(2) Failures subject to penalty. For purposes of paragraph (1), the failures described in this paragraph are —

26 USC 6721(a)(2)(B) any failure to include all of the information *required* to be shown on the return or the inclusion of incorrect information. [emph. add.]

So, if a company is "required" [26 USC 6721(a)(2)(A)] by its regulatory authorities, to include "information" (such as an identifying number) on a return, and it fails to do so (or makes an innocent mistake by "the inclusion of incorrect information"), the company can be fined $50 [26 USC 6721(a)(1)] for each failure but said fines shall not exceed $250,000!!! Whoa!

26 USC 6721(e) Penalty in case of *intentional disregard* (Emph. added–JK.).

If one or more failures described in 26 USC 6721(a)(2) are due to *intentional disregard* (Emphasis added – JK.) of the filing requirement (or the correct information reporting requirement), then, with respect to each such failure –

26 USC 6721(e)(2) the penalty imposed under subsection 26 USC 6721(a) shall be $100 . . .

26 USC 672l(e)(3) in the case of any penalty determined under paragraph 26 USC 6721(2) - 26 USC 672l(e)(3)(A) the $250,000 limitation under 26 USC 6721(a)(l) shall not apply . . .

So now, if you omit an identifying number with "intentional disregard" [26 USC 6721(e)] your fine (or penalty) is increased from $50 to $100 per occurrence. The maximum of $250,000 is lifted and you may now be fined an infinite amount!

It's no wonder companies don't "request" a number. They see these statutes and they *demand* a number. Who in their right mind would subject their company to such huge fines (and still expect to keep their jobs–so they can " sleep, eat, see my family, etc.")?

Sounds pretty grim–so far. I told you there was "good news" too. Maybe we'll get to it next time. Keep balancing the "customer service" with quality "family time." Wish I would have done better!

Respectfully, J.D. Kingston

25 Jul 1998

26 USC 6109 Part III

In Part II, we learned that any person who is required to submit a report that includes provisions for a TIN [or EIN (Employers Identification Number) or SSN], and omits that information, is subject to a fine of $50 per occurrence, but said fine shall not exceed $250,000 in any year! Now, the good news, aka the truth.

26 USC 6724 is titled, "Waiver; definitions and special rules."

26 USC 6724(a) "Reasonable cause waiver. No penalty shall be imposed under this part with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect."

The $50 penalty described and imposed in 26 USC 6721(a)(1) *will not* be imposed if your omission was due to "reasonable cause". Do you suppose that your failure to supply a number of a customer, who in turn failed to supply a number to you because it did not exist, would be considered " reasonable cause"? If you answered in the affirmative, you'd be correct.

Remember the term "shall *request*" in 26 USC 6109? If you *request* a number, and your request is denied (for whatever reason), you have, in part, satisfied the "reasonable cause" requirement of 26 USC 6724(a) and no fine/penalty can be imposed pursuant to law.

In the next "part," we'll examine portions of the Code of Federal Regulations (CFR) that pertain to this subject matter. For your "homework" you may study the following two definitions. : -)

"Code of Federal Regulations. The Code of Federal Regulations (CFR) is the annual cumulation of executive agency regulations published in the daily Federal Register, combined with regulations issued previously that are still in effect. Divided into 50 titles, each representing a broad subject area, individual volumes of the Code of Federal Regulations are revised at least once each calendar year and issued on a staggered quarterly basis. The CFR contains the general body of regulatory laws governing practice and procedure before federal administrative agencies." *Black's Law Dictionary*, 5th edition, pp. 233, 234.

"**Federal Register**. The Federal Register, published daily, is the medium for making available to the public Federal agency regulations and other legal documents of the executive branch. These documents cover a wide range of Government activities. An important function of the Federal Register is that it includes proposed changes (rules, regulations, standards, etc.) of governmental agencies. Each proposed change published carries an invitation for any citizen or group to participate in the consideration of the proposed regulation through the submission of written data, views, or arguments, and sometimes by oral presentations. Such regulations and rules as finally approved appear thereafter in the Code of Federal Regulations." *Black's Law Dictionary*, 5th edition, p.551.

Respectfully, J.D. Kingston

26 Jul 1998

Subject: 26 USC 6109 Part IV

Dear Rick,

In "Part III" we learned that no penalty can be imposed for failing to include a TIN on a report, if your failure was due to "reasonable cause". The "Code of Regulations" (CFR) sheds considerably more light on the subject. Before we look at the CFR in detail, let's examine why it exists.

The legislative branch of government is the only branch who possesses legislative (law making) powers. The executive and judicial branch of government possess no legislative powers. When the legislature passes a bill and the president signs it, the bill then becomes law, and it is recorded in a volume of books called "The United States Statutes At Large." They (the laws) are recorded in chronological sequence. If you want to read a law that was passed, you would have to know "when" it was passed so you could find it. As you can imagine, this could be anywhere from "cumbersome" to "impossible."

To remedy the problem of finding laws, the laws have been codified (or sorted) by subject matter. After being codified, they are recorded in a new volume of books called "The United States Code" (USC).

After a law has been passed, it is the responsibility of the executive branch of government to see that the laws are executed properly. When a department of the executive branch of government determines that they are responsible to see that a particular law that was passed is within their authority, they write "rules and regulations" for their employees to execute that law. The executive department employees must abide by these rules and regulations when executing the law.

"Laws" ("Statutes at large" passed by the legislature) are different from "rules and regulations" (passed by the executive department in order to implement the law). When the executive department writes these rules and regulations, they are required to publish them in the Federal Register. Thirty days after publication, the rules and regulations become valid. After becoming valid, they are published in a volume of books known as the "Code of Federal Regulations."

Of course, the rules and regulations should be compatible with all laws. If they are not, and they are challenged in a court of competent jurisdiction, they risk being struck down as being in contravention of some law.

Hope this isn't becoming to boring. In the next part, we'll examine the specific "rules and regulations" (CFR) that pertains to 26 USC 6124.

Respectfully, J.D. Kingston

27 Jul 1998

Thanks for the input, not boring at all.

Rick Shoemake

30 Jul 1998

Subject: 26 USC 6109 Part V

Dear Rick,

Thus far we saw that (1) a filer must "request" an identifying number; (2) that if the filer omits the number on a required report, the filer "may" be fined; (3) that the fine may be waived under certain (in fact, most) circumstances; (4) that the CFR (Code of Federal Regulations) does not contain "laws," but only "executive agency regulations"; and, (5) that the Federal Register is the medium the executive branch uses to disseminate executive agency rules and regulations to the public at large.

26 CFR 301.6724-1 (titled "Reasonable cause") goes into great detail to explain how one will not be penalized. Such great length in fact, it contains about 8,035 words!! I won't dwell on all of them here. (Was that a sigh of relief I heard?):-) You're probably beginning to see what I meant when I used the phrase "convoluted law" in a past e-mail. Just this one CFR could take 2 or 3 or even 4 e-mails!

26 CFR 301.6724-1(a) is titled, "Waiver of the penalty." The penalty for failure to provide information will be waived if it is determined that such failure is due to "reasonable cause," to wit:

26 CFR 301.6724-1(a)(1) "General rule. *The penalty* for a failure relating to an information reporting requirement (as defined in paragraph (j) of this section) *is waived* if the failure is *due to reasonable cause* and is not due to willful neglect." (Emphasis added.)

26 CFR 301.6724-1(c) is titled, and describes, "Events beyond the *filer's* [corporation's—JK] control—" (e.g., if a customer does not provide a SSN as requested because such number *does not exist*, it would certainly be deemed "beyond the filer's control".)

26 CFR 301.6724-1(c)(6) is titled, and describes, "Actions of the *payee* [customer—JK] or any other person. In order to establish reasonable cause under paragraph (c)(1) of this section due to *actions of the payee* [emphasis added—JK] or any other person, such as a broker as defined in section 6045(c), providing information with respect to the return or payee statement, the filer must show either—"

To Be Continued!!!

Kind a' like an old Alfred Hitchcock thriller! 8-)

Respectfully, JK

2 Aug 1998

Subject: 26 USC 6109 Part VI

We left off last time at: 26 CFR 301.6724-1(c)(6) which is titled, and describes, "Actions of the payee [i.e., customer—JK] or any other person. In order to establish reasonable cause under paragraph (c)(1) of this section due to *actions of the payee* (emphasis added—mine) or any other person, such as a broker as defined in section 6045(c), providing information with respect to the return or payee statement, the filer must show either—"

26 CFR 301.6724-1(c)(6)(i) "That the failure resulted from the *failure of the payee*, or any other person *required to provide information* necessary *for the filer to comply* with the information reporting requirements, to provide information to the filer..." (Emphasis added—mine.)

The other "either" [(ii)] pertains to "incorrect" TIN's and is not relevant to our discussion.

26 CFR 301.6724-1(e) talks about "Acting in a responsible manner—special rules for missing TIN's—"

26 CFR 301.6724-1(e)(1) "In general. A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure to include a TIN or an information return resulted from the failure of the *payee* to provide information to the filer (i.e., a missing TIN) only if the filer makes the initial and, if required, the annual solicitations described in this paragraph . . ." (emphasis added)

So if a company failed to include a TIN on a return, the penalty will be waived for reasonable cause, *if* the company makes an initial solicitation. (And in the case of "incorrect" TINs, a first annual solicitation and sometimes, a second annual solicitation. In the instant case, the 1st and 2nd annual solicitations are moot since we are not addressing "incorrect" TIN's.)

So, what's a solicitation"? Looking again at *Black's Law Dictionary*, 5th edition, p. 1249, we're informed that a solicitation is, ". . . Asking; enticing; urgent request . . ."

When do you make the "initial solicitation"? We find the answer in 26 CFR 301.6724-1(e)(1)(i) "Initial solicitation. An initial solicitation for a payee's correct TIN must be made at the time an account is opened. The term 'account' includes accounts, relationships, and other transactions.

26 CFR 301.6724-l(e)(1)(ii) "First annual solicitation..." pertains only to *incorrect* TIN's.

26 CFR 301.6724-1(e)(1)(iii) "Second annual solicitation. "likewise pertains only to *incorrect* TIN's.

BTW Rick, if you have any questions as we go along, just jump right in and ask. I promise to keep my answer shorter than the answer to your last question, "...what is the loophole in 26 USC 6109?"

Respectfully, JK

2 Aug 1998

Subject: RE: 26 USC 6109 Part VI

I find this most interesting, however, not having done my research of late on the subject, I believe I recall that my regulatory body has directed that we, as a bank, act assertively to secure the TIN and that without it we should not proceed with opening a relationship with the TIN holder. Hope you are staying cool!

Rick Shoemake

3 Aug 1998

Subject: 26 USC 6109 Part VII

By now, you've probably had enough exposure to the law to have guessed that there are "exceptions and limitations" to the 1st and 2nd annual requests, to correct an incorrect TIN. ?!? Most of those exceptions and limitations are beyond the scope of our discussion, and for the sake of brevity, will be avoided. (I can't believe I said "for the sake of brevity"! What is this, Part VII?!)

However, one exception is pertinent. If you do not pay a customer any monies (as will be the case with a non-interest bearing account), you need not make annual solicitations, to wit: 26 CFR 301.6724-1(e)(l)(vi) "Exceptions and limitations."

26 CFR 301.6724-1(e)(1)(vi)(B) "An annual solicitation *is not required* to be made for a year under this paragraph (e) with respect to an account *if no payments are made to the account* for such year or if no return as defined in paragraph (g) of Sec. 301.6721-1 is required to be filed for the account for the year." (Emphasis mine.)

In the next e-mail, we'll try to start wrapping this up.

Respectfully, JK

13 Aug 1998

Subject: 26 USC 6109 Part VIII

Tried to figure out how (to stay cool) for 30 days—then it dawned on us.. LEAVE TOWN (which we promptly did–and vowed not to come back until the high's would only be in the low 90's)! Now we're wondering why we came back so soon. 8-)

Where were we? Oh, yeah–"wrapping this up." What have we learned? Well, we learned that:

(A) You are to "request" an identifying number from me when you open my non-interest bearing account–26 USC 6109(a)(3)

B) Your request is deemed an "initial solicitation"–26 CFR 301.6724-1(e)(1)(i)

C) *You* cannot be penalized for *my* actions (or lack thereof)–26 CFR 301.6724-1(c)(6) (If I don't have a number, due to sincere and truly held Scriptural beliefs, or not, I can't fulfill your request.)

(D) You cannot be penalized for *your* actions that are due to a *reasonable cause* -26 CFR 301.6724-1(a)(1)

(E) The Code of Federal Regulations do not comprise the *law*. They merely contain the rules that regulate the *executive branch* of government.

(F) The Federal Register does not comprise the law. It merely contains proposed rules that may become part of the CFR.

(G) If it doesn't get any cooler, we're going north again! 8-)

There are two more Codes of which you should be aware. I'll address one of them in my next e-mail, and the other one in my final e-mail,

Respectfully, JK

16 Aug 1998

Subject: 26 USC 6109 Part IX

Rest assured, I am only presenting the following two codes for your information, education, and knowledge. That bears repeating. I am ONLY presenting the following two codes for your information, education, and knowledge.

Section 7(a)(1) of Public Law 93-579, entered at 88 Statutes At Large 1896, 1909 (12/31 / 1974), codified at 5 USC 552a in the Notes, states that: "It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number."

However, as a banker, your might say, "we're not a Federal, State or local government *agency*." But if you said that, you'd be wrong. Look at a legal encyclopedia (such as *American Jurisprudence* or *Corpus Juris Secondum*) under "agency" and you'll find a myriad of cases that prove the point.

Turning once again to *Black's Law Dictionary*, 5th edition, pp. 57 & *58*, we find: "Agency. Relation in which one person (like a corporation) acts for or represents another (like the gov't) by latter's authority, either in the relationship of principal and agent, master and servant, or employer or proprietor and independent contractor . . ."(Cases omitted; parenthesis added.)

Does the bank corporation act by government authority and deduct FIT and FICA and turn them over to the principal/ master/ gov't?

". . . The relation created by express or implied contract or by law (like a corporate charter), whereby one party (the gov't) delegates the transaction of some lawful business with more or less discretionary power to another (the corporation), who undertakes to manage the affair and render to him (the gov't) an account thereof" (Cases omitted; parenthesis added.)

". . . Or relationship where one person (the gov't) confides the management of some affair (like collecting taxes) to be transacted on his account, to other party (the corporation). Or where one party (the corporation) is authorized to do certain acts for, or in relation to the rights or property of the other (the gov't). But means more than tacit permission, and involves request, instruction, or command." (Cases omitted; parenthesis added.)

". . . The consensual relation existing between two persons, by virtue of which one is subject to other's control." (Cases omitted; parenthesis added.) Is the corporation subject to the government's control?

"Agency is the fiduciary relation which results from the manifestation of consent by one person (the gov't) to another (the corporation) that the other (the corporation) shall act on his (the gov'ts) behalf and subject to his (the gov't) control, and consent by the other (the corporation) so to act." *Restatement, Second, Agency* Section 1. (Parenthesis added.) Do you know any corporations with a fiduciary relation?

More next (and final–hopefully) time.

JK

16 Aug 1998

Subject: 26 USC 6109 Part X

Dear Rick,

The other law that you need to be aware of is 42 USC 1983. But let me repeat again what I stated in my last e-mail. I am *only* presenting these two codes for your information, education, and knowledge.

Title 42, Section 1983 is titled, "Civil action for deprivation of rights." It states:

"Every person (not many excluded here!) who, under color of any statute, ordinance, regulation, custom, or usage ('under color' means a deceptive appearance vs. that which is real—like "demand" v. "request"), of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person (not many excluded here, either!) within the jurisdiction thereof to the deprivation of any rights, privileges (is using a bank a right? a privilege?), or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper pro-

ceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia." (Parenthesis added.)

If you knew back in mid June, what you know now, and I informed you that I did not possess a social security number due to my true and sincerely held Scriptural beliefs, and I asked you if you would accommodate me with a non-interest bearing checking account, what would your answer have been?

Enjoyed writing to you. It keeps me sharp. Looking forward to your reply.

God bless you and yours.

Respectfully, JK

6 Sep 1998

Subject: 26 USC 6109 Part XI

Greetings,

Just returned from a three week trip. Why is it still hot??? My calendar reads "September"!

I must confess that I was somewhat disappointed when I found no reply from you when we returned. Hope all is alright with you. I can only surmise why a reply was not forthcoming.

The last time you replied was on 8/2/98, and in that reply, you stated: "I find this most interesting, however, not having done my research of late on the subject, I believe I recall that my regulatory body has directed that we, as a bank, act assertively to secure the TIN and that without it we should not proceed with opening a relationship with the TIN holder."

One other law you should be aware of is 42 USC 408(a)(8) which states in pertinent part: "Whoever . . . compels the disclosure of the social security number of any person in violation of the laws of the United States; shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than five years, or both."

For your own benefit, you may want to make sure that your regulatory body directives are in writing.

In the event you "can't" give me the courtesy of a reply, I understand. Everybody has a "boss"! I wish you well, my friend.

Respectfully, JK

8 Sep 1998

Sorry, No offense intended. Have been extremely busy, and out of pocket. The Year 2000 requirements and the regulatory protocol for documenting our preparedness has taken me away from being a banker and yadda yadda yadda. Will re-read your last couple of messages and get back with you.

Rick Shoemake

Mr. Kingston concluded his Email to the AntiShyster, writing:

I waited three weeks and Mr. Shoemake never did keep his word and get back to me. I have since left the area and will not pursue this issue any further with Mr. Shoemake. I will not offer a similar statement to any other bankster at this time.

Respectfully submitted,

s/ JK

P.S. If you deem the foregoing worthy to publish, please withhold my address. Thank you. ■

Do Lipton employees take coffee breaks?

What hair color do they put on the driver's licenses of bald men?

If it's true that we're here to help others, then what exactly are the OTHERS here for?

If you can't be kind, at least have the decency to be vague.

Ever wonder what the speed of lightning would be if it didn't zig-zag?

Nostalgia isn't what it used to be.

Implied, Resulting & Constructive Trusts

by Thomas Conyngton

I recently acquired a copy of Wills, Estates, and Trusts by Thomas Conyngton, published in 1921. Most people would find this book pretty dull, but if you're interested in trusts, this book is so clearly written, it's exciting. This book is a find.

Approximately 100 pages of the book offers the most straight-forward explanation of trusts that I've seen. More importantly, the section on trusts tends to support or clarify much of the speculation we've previously published in the AntiShyster "Trust Fever" articles.

For example, in AntiShyster Vol. 8, No. 2, logic led me to conclude that since Federal Reserve Notes (FRNs) are loaned into circulation, the FRNs in our wallets are legally owned by the Federal Reserve System (the trust headed by Alan Greenspan). If so, legal title (ownership and true control) to everything we purchase with FRNs goes to the Federal Reserve System and we merely purchase equitable title (the privilege of possessing or using the property). However unlikely that speculation seemed, it seemed logically irresistible. But I had nothing to support that speculation. Until now.

Conyngton's Wills, Estates, and Trusts reveals that in 1921, it was commonly understood that using another person's money to purchase property created a "resulting trust". So now, I've not only confirmed that using FRNs could theoretically produce a trust in which the purchaser only receives equitable title to property, I even know that kind of trust's proper name : "resulting trust". Knowing the name, additional research should progress much more quickly.

The text from Wills, Estates, and Trusts is reprinted in a black Times font; my comments are printed in a dark blue Helvetica font. Virtually all of the italicized text are my highlights.

356. Trusts – Definitions

A trust is a legal arrangement by which a person known as the "trustee" holds property for the benefit and advantage of another, known as the "beneficiary" or, in legal phrase, as the *cestui que trust.*

The parties to a trust are: (1) the creator, (2) the trustee, and (3) the beneficiary or *cestui que trust.*

The property or subject matter may be real estate or money, goods, chattels, or *choses in action*. Anything that can be held legally may be the subject of a trust.

Black's Law Dictionary (4th Rev'd) defines "choses in action" to include certain "personal rights". Thus, a trust might not only be used to contain physical property but could also be used to contain (or conceal) personal rights.

Wherever the legal estate or interest is in one person and the equitable interest is in another, a trust exists. It is called a "trust" because it is founded on trust and confidence in the trustee, that he will carry out the wishes of the creator of the trust as expressed in the will or the deed of trust.

A trust is not a contract and therefore no suit can be brought in a court of law for what is called a "breach of trust," but in a *court of equity* a trust can be enforced, and hence *all* litigation concerning trusts is conducted in the courts of equity or chancery.

A beneficiary or *cestui que trust* holds what is termed in law an "equitable title." To explain this requires that some definition be given of the legal and technical distinction between common law and equitable titles.

The vital distinction between trust estates and all other ordinary estates is that in every trust there are *two interests*. Both these interests are spoken of as estates. That of the trustee is known as the legal estate and that of the beneficiary as the equitable estate. As the legal owner of the property the trustee may be personally liable for any nuisance created by the property or conducted on the property. At the same time the trustee is not allowed to derive any benefit from the property or from the trust.

On the other hand, it is not in-

tended that the trusteeship should become a personal burden to the trustee. All the expense which the trusteeship involves, such as repairs, insurance, taxes, legal expense, etc., may be paid for ["deducted"?] out of the trust funds.

§ 357. Common Law Titles

The common law of England, from which most of our own law has been derived, was simple and direct. It did not recognize anything but direct ownership by the man in possession of property. If property were left by will to Arthur Howe, "in trust," to collect the rents and income and to pay them over to the testator's widow, the common law courts would not enforce the trust, and if Arthur Howe failed to pay over the profits to the widow the courts of common law could give no relief. So far as the common law was concerned, such a thing as property held "in trust" did not exist. It recognized that Arthur Howe had the *legal* title, and that was the *only* title the *common law* courts would enforce.

Because the common law would not assist the beneficiary of a trust, and because in many other ways it had no flexibility or adaptability to an advancing civilization, those who could not right their wrongs in the common law courts petitioned the king as the fountain of justice to give them relief. The king referred these various complaints as they arose to his chancellor. The king's chancellor was a *church dignitary* and was well pleased to administer the principles of the *Roman* or *civil* law in which all dignitaries of the church were trained.

§358. Courts of Equity

Gradually, many causes which the courts of common law would not hear were in this way brought to the attention of the chancellor and there gradually developed a widely extended system of jurisdiction, called, to distinguish it from the common law, "equity jurisdiction," and the courts in which it was administered were called from the chancellor, "courts of chancery or equity." Having two systems of legal relief in the same country was confusing and uneconomical but it came about in the course time, and for more than two hundred years the courts in England were divided into two distinct systems, one termed "law" and the other termed "equity." The terms so used add to the layman's confusion because the decisions of the courts of chancery are as much the law of the land as the decisions of the courts of common law, and neither court has any monopoly of the quality of equity.

When a lawyer says that a case is an equitable case, he means that it will have to be tried in a court of equity, and when he talks of a law case he means that suit must be brought in a court of common law and not in a court of chancery.

Equity procedure was at first simple and informal, but human nature loves forms and settled customs, and chancery procedure soon became more formal and complex than even the common law, and a chancery suit became proverbially slow.

[Is this the foundation of modern "administrative procedure"?]

Equity was brought to this country and, as in England, was used as a separate system to supplement the defects of the common law.

In some states the attempt has been made to combine law and equity and to have both legal and equitable cases tried before the same courts, but even where this is the case the legal profession has kept up the distinction between the two.

In fact, *it is not possible to understand our system of administering justice without a recognition of this difference between what is technically and arbitrarily called "law" and "equity."*

§ 359. Equitable Titles

As has been said, the courts of common law refused to give any relief to the person who was to benefit by property placed in trust, if the trustee refused to do his duty. The courts of chancery did give relief, and all litigation concerning trusts and their administration is to this day a most important function of chancery jurisdiction. It is *vitally* necessary to any study of the law of trusts that at least as much as has here been given in regard to the distinction between "law" and "equity" and the difference between "legal titles" and "equitable titles" should be understood.

§ 360. The Legal Title in the Trustee

An essential element in a trust is that the trustee has the legal title. If it is *real* estate, every feature of ownership, title on public records, actual possession, liability for taxes, right to sue for trespass, etc., is in the trustee. No one else has power to sell, mortgage, or lease. Every element of legal possession is in the trustee. In event of the death of a sole trustee, his heirs would take the property if it was *land*, and his executors or administrators if it was *personal* property. Those who thus take the legal estate would take it charged with the trust. Heirs and executors *cannot be compelled to act as trustees against their will*, and if they decline, the court having jurisdiction will appoint new trustees to succeed the original trustees. If there are several trustees, the title will pass to the survivors until no one is left.

§ 361. Equitable Title in the Beneficiary

As the legal title is in the trustee so is the beneficial interest entirely in the one for whose benefit the trust was created. Unless the instrument by which the trust is created provides otherwise, the beneficiary, if of age, can sell or dispose of his or her *equitable* estate [right of use, possession] in the property *as freely as can the owner of a legal title*.

In other words, the holder of equitable title (right of use) of a property can sell/transfer it to third party while the party holding legal title remains unchanged. Thus, if the state owned legal title to "your" car, you could still sell/transfer your equitable title to that car to me any time you liked. I, in turn, could also freely sell/transfer my newly purchased equitable title to the car to a brand new purchaser. But through this potentially endless series of transfers of equitable title, legal title would constantly remain in the state.

When it is desired to prevent anything of this kind, the deed or will may provide against it. Being an *equitable* title, any dispute concerning its terms or interference with the rights of the beneficiary will *have* to be settled in a *court of equity* instead of in a court of law.

§ 362. Creating a Trust

The purposes for which trusts are created are at this time diverse. Suffice it for the present to state that perhaps the most common and simplest illustration of the creation of a trust is afforded by the case of a man with wife and children, who makes his will and arranges that if he dies his property will be safe and the income be applied to the maintenance of those dependent on him. In such case it would be natural that he should select some capable business man or men, younger than himself, and leave the property to them, in trust, to handle it and care for it, and to pay over the income to his wife for herself and the children. This kind of transfer could be done by will or by deed or conveyance of some kind.

The effect would be to make his friend or friends trustees, and his wife and children would be beneficiaries. The legal estate would go to the trustees, and if it were necessary to prosecute *trespassers* or there were a suit *about the title to any part of the estate*, such a suit would be brought in a common *law* court. But if his friends died or became incompetent, his wife and children, [beneficiaries] having *only an equitable interest*, would go to a court of *equity* for relief.

This implies that if you want to escape the administrative tyranny of courts of equity, you might want to frame your case as a question of "trespass" or "title". Otherwise, virtually all cases involving trust property or trust relationships will be heard in courts of equity where the judge can do almost anything he wants.

A court of equity would have power to do *whatever was necessary* to be done. It could require the trustees to account, and show what they had done in managing the property, what income or profits had been collected, and what part had been paid over. If there had been *carelessness* or *fault*, the court could compel *restitution*. If the trustees were *incompetent* or *dishonest*, the court could remove them and appoint more reliable men. In short, a court of equity has power to do *whatever should be done* to make the trust effectual.

["Whatever should be done" implies the broad, unbridled powers of equity court judges.]

Whenever, by will or deed, the legal interest in real or personal property is placed in one person while the equitable or beneficial interest is in another, a trust has been created.

"It may be stated as a general proposition, that everyone competent to enter into a contract, or to make a will, or to deal with the legal title to property, may make such disposition of it as he pleases; and he may annex such conditions and limitations to the enjoyment of it as he sees fit; and he may vest it in trustees for the purpose of carrying out his intention. All persons, *sui juris*, have the same power to create trusts that they have to make a disposition of their property." (Perry on Trusts, § 28.)

Black's Law Dictionary defines "sui juris" as " Of his own right;

possessing full social and civil rights; not under any legal disability or the power of another or guardianship. Having capacity to manage one's own affairs; not under legal disability to act for one's self."

Beneficiaries and subjects of Congress are "under the power of another" and thus not "sui juris". As such, it appears that only freemen can form trusts while beneficiaries and subjects can only endure them.

§ 363. The Instrument That Creates a Trust

A trust may be created by will, by deed of trust, by declaration of trust, or if it concerned only *personal* property , theoretically a trust could be created orally. Practically, no trusts are created orally, but they always come into being by some written instrument.

If "oral" trusts are impractical, they are not impossible. I can't help wondering if there might be some trick words or questions used by lawyers, judges or even police to create "oral trusts" when we confront the government. If we replied innocently to such questions, could we be unwittingly reduced to the status of beneficiary?

According as trusts are created by will or by some other written instrument, they are classified as "testamentary trusts" or as "voluntary trusts." In neither case is there any *prescribed form of words* that is necessary to create a trust. It is usual and always advisable to use the words "in trust" to introduce the purposes of the trust and the disposition of the property and income placed in the custody of the trustee.

Because *no particular language* is required to create a trust, the only way a trust can be recognized is by the resulting *relationships* between parties and property. Since the average person has no understanding of trust relationships, and there is no required language that readily signals the presence of a trust, it is entirely possible for all of us to be unwittingly involved in any number of trust relationships – each of which can impose duties and obligations that are entirely unknown to us. Thus, as is the fundamental premise in "Trust Fever," government could easily use "semi-invisible" (or "implied") trusts to change our status from that of freeman, sovereign or Citizen with unalienable rights to that of beneficiary whose "rights" are reduced to privileges and whose issues may only be heard in courts of equity. The potential for oppression is enormous.

A "testamentary trust" is so called because it is created by a last will and testament. A "*voluntary* trust" is so called because it is in practically all cases created by a *voluntary* deed or instrument of transfer executed not under compulsion or to fulfil a contract obligation, but freely to secure some kindly or benevolent purpose.

So suppose your registered your car for the beneficicial purpose of preventing theft, or applied for Social Security benefits – could these acts create a trust and reduce you to the status of beneficiary? I think so.

§ 364. Express Trusts

Nearly all trusts are express or direct trusts – that is, they are created by wills or other instruments that directly and explicitly describe the property that is to be the subject of the trust, the person or persons who are to be trustees, and the persons who are to be the beneficiaries, and set forth what the trustees are to do with the property and the disposition that is to be made of the income and, finally, of the *fund* or property itself. If the language of the will or other instrument is not clear and explicit, a trust might be *implied* or *presumed* which, to distinguish it from an express trust, would be called an "*implied* trust."

An express trust in land must of necessity be in writing to conform to the provisions of the Statute of Frauds. In most states in this country it is possible to create an express trust in *personal* property by parol [verbal agreement].

§ 365. Implied Trusts

In some cases where the language will not create an express trust, the *court* will *imply* a trust from the *intentions* of the *creator*. It often happens in a will that a testator will leave property to a legatee and then add a wish, a hope, a

desire, or a request, that the legatee will give or transfer a certain portion to someone else. If it *seems* to the court that the intention was to *impose an obligation* on the legatee, it will be held to be an *implied* trust. If, instead, the intention seems to be merely to suggest a gift, leaving it to the discretion of the legatee, no trust will be implied.

Since, by definition, there is no "express trust" present, the creation of an "implied trust" does not rely on the *express* intentions of the creator, but on the court's interpretation of the creator's *presumed* intentions. Do you suppose that many of the legal *presumptions* we face in court are the result of implied trusts?

A *resulting* trust arises when property is purchased in the name of a party *who did not own the purchase money*.

Do you "own" legal title to the FRNs or Visa card in your wallet? Since government can seize your cash without due process, it appears possible that you do *not* own your FRNs. Likewise, if Visa or Master Card can "repossess" your credit card without due process, you must not be the true (legal) owner of those instruments. If so, legal title to any property you purchase with those instruments may not belong to you, but instead belong to the true owner of the FRNs' and Visa cards. Therefore, all you can "purchase" with those instruments is equitable title (use) of your various "possessions" while legal title (real ownership and control) of your house, car and savings may be held in a "resulting" trust in favor of the FRNs' and credit cards' true owner(s). (Probably the Federal Reserve System and/or national government.)

If a trustee took funds that he had in trust and bought land in his own name, a court of equity would *imply* a trust for the benefit of the one for whose benefit the funds were held. This case of *property deeded to someone other than the owner of the purchase money occurs frequently*, and the rights of the true owner are saved by the device of a resulting trust.

Do Certificates of Title "deeded" in your name only grant you equitable title (use) of "your" car, while "the rights of the true owner (the state) are saved by the device of a *resulting* trust"?

Another form of implied trust is where a *fraud* has been perpetrated and to rectify it the courts declare a *constructive* trust for the benefit of the person defrauded. If a guardian bought the property of his ward in fraud of the ward's rights, the *courts* would *imply* a trust and decree that he held it as trustee for his ward. This class of trusts arises in many forms and illustrates the *wide range of the powers* of a court of equity in correcting fraud.

Since FRNs have no substantial backing and therefore aren't true money, and since a seller can't be paid without use of true money, it might be argued that any transaction using FRNs is a fraud which allows the court to create a "constructive trust" and reduce some parties to the status of beneficiary.

§ 367. Powers of Trustees

It is not uncommon for land to be left to trustees, in trust, to sell and invest the proceeds in good, income-producing stocks, the income to be paid over, etc. In such case the exercise of the power is imperative, and must be carried into effect. In other cases the trustees are given an optional power, which they can exercise or not at their *discretion*. For instance, it might be provided that "said trustees may at their discretion sell the securities included in the trust property and buy other securities with the proceeds, and in the purchase of such other securities shall not be limited to securities by statute prescribed for savings banks and trustees."

In New York the statute prescribes that every trust power *must* be exercised unless its execution is made to depend on the will of the trustee.

Emphasis on the "discretionary powers" of trustees reminds me of the "discretionary powers" routinely exercised by judges. Do our judges always hear our cases "judicially" (in law) or are they also authorized act as trustees to administer trust property, duties and relationships in courts of equity?

§ 402. Resulting Trusts

A resulting trust is a trust raised by *implication* or construction of law, and *presumed* to exist from the *sup-*

posed intention of the parties and the nature of the transaction. When in order to do justice it is necessary to *imply* a trust, it is a *resulting* trust; that is, from the *circumstances* a trust results.

If a trustee used trust funds to purchase real estate in his own name, it is *presumed* that he holds that real estate as a trustee for the original *cestui que trust*. A trust results from his action.

Note that no paperwork, knowledge or agreement is necessary; a *resulting* trust can be instantly "created" without any of the immediate parties' knowledge or intent.

If a partner uses the firm funds to buy a piece of land and he takes title in his own name, there is a resulting trust in favor of the partnership. If an estate is taken in the name of one person, while the price is paid by another, there is a resulting trust in favor of the person who furnished the price, *unless* there is some good reason otherwise to explain the transaction.

The previous language describing "resulting trusts" suggests their existence is fragile since they are based on wispy implications and presumptions. So long as the underlying presumptions are unstated and therefore unchallenged by litigants, the "resulting trusts" will be presumed to exist by the courts and thus determine the outcome of a trial. However, if these "resulting trusts" could be identified, understood, and their underlying presumptions expressly denied – the "resulting trusts" might disappear, leaving the case to be heard in *law* (where litigants have unalienable rights) rather than equity (where we enjoy mere privileges).

§ 403. Constructive Trusts

Under certain circumstances of *fraud*, the courts, to right the wrong, construe a trust. That is, a constructive trust is a trust *forced* upon a party who has *obtained property by fraud* in favor of the person who has been defrauded.

If anyone, by fraud, deceit, or crooked dealing of any kind, secures a conveyance or transfer of another's property to himself, he will be held to have made himself trustee for the benefit of the one who has been defrauded, and a court of equity will force him to account for income or to do whatever a trustee could be compelled to do in similar case.

If a guardian bought property of his ward, a court of equity would construe it as *prima facie* fraudulent and would make the guardian a trustee of the property for the benefit of his ward. If an *attorney* had dealings with his client, they would be viewed with suspicion and *the* attorney might be held to be a trustee. If an agent employed to buy a property for his principal buys it for himself, he will be held to hold as a trustee for his principal. Broadly, no one will be allowed to hold a benefit acquired by fraud or a breach of his duty.

The cases where this doctrine has been invoked are manifold, and courts of equity *avoid closely defining* the fraud on which they will act, in order to prevent the ill-disposed from evading the letter of the definition.

"The leading principle of this remedial justice is by way of equitable construction to convert the fraudulent holder of property into a trustee, and to preserve the property itself as a fund for the purpose of recompense." (Perry on Trusts, Sect. 170)

Many people believe that our corporate government has employed one or more devices to deceive and otherwise deprive the American People of the unalienable rights which were granted by God, declared by our *Declaration of Independence* (1776) and protected by the *Constitution for the United States of America* (1789). If government has deprived us of any of our unalienable rights through fraud, then it might follow that government has created a "constructive trust" wherein government serves as trustees responsible for preserving the unalienable rights of the American people (beneficiaries) until such time as We learn enough about trusts to remove our unfaithful trustees, terminate the constructive trust and/or otherwise regain title to our unalienable rights.

"Trust Fever" is a subtle and challenging concept to grasp . But stick with it – once you really grasp "Trust Fever", you'll see it's h-o-t – *HHHOT!*

Hipshots

by Alfred Adask

Last refuge for scoundrels

Early in his Presidency, Clinton described the Constitution as a "radical" political document and implied that its "extremist" philosophy was no longer appropriate for our nation.

According to Ballint Vazsonyi (Director, Center for the American Founding):

"In his second Inaugural Address, President Clinton called for a new Constitution. He borrowed language from the *Declaration of Independence* where, in 1776, Thomas Jefferson argued for a new government. While Mr. Clinton did not refer to the Constitution in so many words, his meaning was clear. 'We need a new government for a new century,' he proclaimed on January 20, 1997. Unlike our present government, this new government would 'give' a number of benefits to the American people."

If a new constitution were installed to "give benefits" to all Americans, that constitution would relegate all Americans to the status of "beneficiaries" within a new national trust. By definition, all "beneficiaries" are without legal title to trust property or therefore without legal rights within the context of that trust. I.e., Clinton's new constitution dedicated to "giving benefits" to all Americans will first and foremost give us the "benefit" of serfdom and slavery without legal rights.

However, it's ironic and probably hypocritical, that during his impeachment, Clinton repeatedly insisted that the impeachment process be fully "constitutional". In other words, faced with personal troubles, Clinton suddenly sought to wrap himself in the folds of the same "radical" Constitution he'd previously disparaged. Still, although he used the Constitution to defend himself, Clinton remains shamelessly dedicated to diminishing or destroying the Constitution he allegedly swore to "support and defend".

Suing gun grabbers

There's a much publicized movement afoot to sue gun manufacturers for any deaths or injuries ultimately "caused" by their guns. Such lawsuits generally argue that the gun manufacturers (much like cigarette manufacturers) know their products can be used to kill people but nevertheless refuse to provide additional safety features necessary to stop those killings. Ultimately, these lawsuits are based on statistical evidence of gun use in the murders of innocent people, law enforcement officers, etc.

Well, maybe these gun-grabbers have a point. Maybe anyone who manufacturers a product that can be shown to cause the deaths of other people should be held accountable for those deaths, even if the manufacturer has no direct involvement with the use/mis-use of his product.

For example, there is emerging statistical evidence that those states and communities which have recently legalized handgun ownership and/or the right to carry concealed weapons have since enjoyed a significant *decrease* in rape, robbery, and even homicide. That is, just as gun-grabbers have statistics to "prove" guns cause deaths, the gun rights advocates now have statistical proof that guns *save* lives, prevent crimes, and reduce rapes. Therefore, if victims of guns can sue gun manufacturers, those unarmed persons who've been victimized by robbery, rape or murder might also be able to sue those organizations that "caused" gun-control and thereby increased public vulnerability to crime.

At first, the idea of holding an organization liable for political advocacy would seem to violate the 1st Amendment promise of Free Speech and Press. However, organiztions are not people, especially *non-profit* organizations. These organizations have charters or incorporation papers which define their purposes and thereby limit their activities.

For example, suppose a non-profit organization's charter declared that it would be used for charitable, educational or some other purpose intended to *benefit* the public. Could such an educational organization continue to disperse information that it knew to be false? I.e., could a gun-control organization continue to advocate gun-control if it had proper Administrative Notice of statistical evidence that gun-control *costs* lives while gun-ownership *saves* lives? Could a charitable organization chartered to help the public advocate gun-control if it had been properly Noticed that a disarmed public is more vulnerable to robbery, rape and murder as well as higher associated taxes and insurance rates? I don't think so.

Activists who *knowingly* operate in violation of their organization's charter do so in bad faith and may be personally liable. Organizations that *knowingly* violate their charter purposes can be dissolved.

Perhaps a clever gun rights advocate could use one of the anti-gun lawsuits as a template for suing gun-grabbers. Just find one or more "victims" of gun restriction laws (people who were robbed or raped or lost family members to murder in part because they were prevented from defending themselves by "negligent" political activists who *knowingly* worked to deprive them of their right to effectively defend themselves) and sue whatever private organizations advocated gun control in open violation to the Constitution and in willful defiance of proper Notice that guns *save* lives, reduce crime rates – and thereby even reduce our taxes. Since statistical evidence indicates gun control is bad public policy, any activist organization's charter that declares its purpose is to help the public may be prohibited from advocating gun control.

It shouldn't be too hard to find people who've been robbed or raped and are willing to testify that if only they could have owned or carried a gun either 1) they might not have been victimized and 2) they wouldn't continue to suffer anguish from knowing that, legally unarmed, they remain every bit as vulnerable today as they were when they were first assaulted. If large numbers of American lives are jeopardized by gun-control laws, such laws might even invite class-action suits.

If Smith & Wesson can be sued because someone improperly used one of their guns to commit murder (an act clearly not advertised or intended by the gun manufacturer), then gun control advocates whose activities have disarmed us and thereby increased our vulnerability to crime and violence should be similarly liable. In most cases, the primary reason why people are killed by firearms is not because a criminal had a gun, but because the victim did not.

Incidentally, if this sort of strategy could be developed and used to sue gun-grabbers, some of the gun manufacturers might be willing to subsidize the suit.

Chances are

The first headnote in *Kershaw et al. v. Julien*, U.S. Circuit Court of Appeals, 10th, 7/27/1934 (72 F 2d, 528) declares: "Fraud is never presumed, but it may be established by circumstantial evidence."

In other words, the courts always *presume* that no fraud took place in a particular case and therefore that presumption can only be overcome with proof. This "no fraud" presumption sounds much like a presumption of good faith; that is, the courts may always presume that government did not commit fraud or intend to deceive, and therefore acts in "good faith".

Fraud appears to be a prime example of "bad faith". If so, any evidence and express allegations of fraud might refute the presumption of "good faith" and resultant immunity and send government officials scrambling for (personal) cover.

Another headnote, same case:

"*Misrepresentation of facts* by bank officer. Statement by *experienced* banker to confiding customer that note was offered for sale when banker *knew* that it was not held *misrepresentation of fact* and *not* an expression of *opinion*."

Although this case headnote specifically applies to bankers, it seems probable that any "experienced" officer might be similarly obligated to know and therefore tell the truth. Note that an officer's personal liabilility depends on his level of "experience" (not new to his job) and his "knowedge" the true facts of the situation. Then, an experienced and knowledgable officer can't excuse his deception by arguing his comments were mere "statement of opinion".

Third headnote, same case:

"Duty to speak. When duty to speak exists, suppression of truth is actionable."

Hmm. Well, how could we establish a government official's "*duty* to speak"? I'd guess the laws are contrived so only a very few officials have a *duty* to speak (tell the truth).

However, there's a fascinating little definition in *Black's Law Dictionary* (4th Rev'd) which reads in part:

"LAST CLEAR CHANCE. The 'last clear chance doctrine' is that a party who has last clear chance to avoid damage or injury to another is liable. . . . that negligence of party having last opportunity of avoiding accident is sole proximate cause of injury . . . The doctrine means that an injured party may recover, notwithstanding negligence: if defendant could have avoided injury after discovering or knowing of peril . . . . [I]f, with knowledge of peril to plaintiff or plaintiff's property, another acts or omits to act and injury results . . . . [O]ther decisions hold that the doctrine applies if defendant, aware of plaintiff's peril or unaware of it only through carelessness, has later oportunity than plaintiff to avert the accident . . . ."

Does the "last chance doctrine" create personal liability for officials or attorneys who knowingly allow a common person to unwittingly damage himself or someone else? For example, does a lawyer violate the "last clear chance doctrine" by providing only a weak or ineffective defense for his client? And what if a lawyer and/or prosecutor knowingly entice a defendant to accept a plea bargain which would seemingly result in a minimum sentence, but instead results in an enormous, unexpected sentence – could that prosecutor or lawyer be sued for fail-

ing to exercise the "last clear chance" to warn and protect the defendant?

Could it be argued that a judge, prosecutor, attorney or even clerk who allowed a common person to file an "application for benefits" (without realizing he would suffer a consequent loss of his former private rights) is guilty of violating that doctrine? And isn't it theoretically possible that this "last clear chance doctrine" might create a "*duty* to speak" – especially if one charged with the *duty* to impliment justice (like a prosecutor), saw an injustice taking place, and failed to speak out?

Thus, the "last clear chance" doctrine seems to create a very special *duty* for *experienced* professionals like lawyers, prosecutors, judges and other government officials who knowingly allow private citizens to ignorantly damage themselves or others:

"You shoulda *warned* me, Judge [prosecutor, lawyer, etc.], that the choice you allowed [or encouraged] me to make was contrary to my interests and would damage me." (I.e., by violating your duty to speak, you acted in *bad faith*, lost your *good faith immunity* – and now I'm gonna sue your lights out.)

Licenses?! We don' need no stinkin' licenses!

On August 6, 1997, the Court of Appeals, Fourth Court of Appeals, District of Texas, San Antonio published the following Opinion (Appeal No. 04-95-00650-C) for the case of "Daniel C. ARTEAGA, Appellant v. The STATE OF TEXAS, Appellee." This Opinion reversed a previous conviction and acquited Daniel C. Arteaga for driving with an expired drivers license. Although the opinion was stamped, "DO NOT PUBLISH," the AntiShyster delights in publishing cases which help both public and government officials understand the law – especially those cases which are intentionally unpublished, pesumably to conceal the law.

This appeal is taken from a conviction for unlawfully driving a motor vehicle upon a public highway during a period in which the driver's privilege to drive was suspended. Appellant, Daniel Arteaga, entered a plea of not guilty but was convicted in a bench trial. His punishment was assessed at ninety days confinement in the county jail and a fine of $300. The imposition of the sentence was suspended and appellant was placed on community supervision for six months.

Appellant advances five points of error, the first being a challenge to the legal sufficiency of the evidence to support the conviction. On March 31, 1995, Balcones Heights Police Officer Danny Tomlison observed apellant driving a white 1980 Dodge pickup truck without a rear license plate. The officer initiated a traffic stop. Appellant was arrested and charged with driving a motor vehicle while his privilege to drive was suspended.

The statute at issue provides:

(a) A person commits an offense if the person operates a motor vehicle on a highway:

(1) during a period that a suspension of the person's driver's license or nonresident operating privilege is in effect under this chapter; or,

(2) while the person's driver's license is expired, if the license expired during a period of suspension imposed under this chapter.

TEX TRANS CODE ANN. Sect. 601.371(a)(1), (2) (Vernon Pamp. 1997)

To obtain a conviction under this statute, the prosecution must show either that the accused had an unexpired license which was suspended at the time of the alleged offense or that the accused's privilege to drive was suspended at or before the time his license expired by its own terms, and that the privilege remained suspended from the expiration date to the time of the alleged offense. *See Allen v. State*, 681 S.W. 2nd 38, 40 (Tex. Crim. App. 1984); *Smith v. State*, 895 S.W. 2d 449, 452 (Tex. App. Dallas 1995, pet. ref'd).

The evidence in the instant case showed appellant's driver's license expired on November 2, 1992. This Texas driver's license was suspended on July 14, 1993, and again on January 1, 1994, for failure to comply with the Texas Safety Responsibilities Act. Thus, it is clear that at the time of appellant's arrest, his driver's license had been suspended *after* his license had expired. The State confesses error and agrees that the evidence is legally insufficient to sustain the conviction. Point of error is sustained. In view of our disposition of this point of error, we not reach the other points of error. [Emph. add.]

The judgment of conviction is reversed and appellant is ordered acquitted. *See Burks v. United States*, 437 U.S. 1, 18 (1978); *Green v. Massey*, 437 U.S. 19, 24 (1978).

JOHN F. ONION, JR.
JUSTICE

The appellate court says it's legal to drive with an expired *drivers license in Texas if the license was* not suspended *at the time of expiration. Thus, the court confirms that a* current *drivers license is not mandatory to drive in Texas.*

What's in a name?

The Lord's Prayer begins, "Our father, who art in heaven, hallowed be thy *name* . . . ." I'll bet that 90% of the people who read this magazine have said that

prayer a thousand times. I'll also bet that less than 10% have any idea of what our God's name really is.

The Ten Commandments advise in part that "Thou shalt not take the Lord's *name* in vain"? How can you take God's name in vain, if you don't even know what that name is?

The Bible repeatedly advises that whatever we pray for in His *name*, will be granted. Does it follow that if you don't pray "in His name," your prayer will be ignored?

As I read the Bible, it appears that God is pretty particular about using His Name. And yet, virtually none of us know what that name is.

What kind of religion are we practicing, if our religious leaders don't teach (or even mention) our God's proper name? Can we truly believe in a God we can't even name? Conversely, will a God we can't even name "believe" in us?

"Legitimate interest"

According to the April 20,1999 *The Times Picayune* (Baton Rouge, Louisiana), when traffic police stopped Louisiana State Senator Cleo Fields, they discoved Senator Fields' car was uninsured, so they seized it and towed it off. Senator Fields challenged the state law under which his car was impounded, arguing in part that the police acted as judge, jury and executive agents when they seized his car, thus violating the separation of power doctrine and denying Sen. Fields due process.

District Court Judge Robert Downing sympathized with with Senator Fields but ruled against his constitutional arguments. Judge Downing noted that 1) the Louisiana Constitution also says the Legislature shall define and suppress "gambling" but lawmakers approved gambling anyway by calling it "gaming"; and 2) an appellate court recently ruled in a case that "or" means "and"! Judge Downing lamented, "It appears that everything I learned was wrong . . . just because words are in the statutes don't necessarily mean anything." (!)

The case went to the Louisiana Supreme Court, which upheld the impoundment law and ruled that, "driving is not a right and the state has a *legitimate interest* in removing uninsured cars from the road."

Most people suppose the state's "legitimate interest" in uninsured vehicles is just legalistic rhetoric or perhaps evidence of some sort of unwritten moral or ethical duty to protect the public. However, I suspect a key to understanding our traffic laws may lie in identifying the state's "legitimate interest" in cars. Does the state's "legitimate interest" lie in the fact that the state *owns* legal title to "our" cars?

In other words, the term "legitimate interest" may mean far more than mere "concern". Instead, does the state really have an "interest" (probably "legal title") in "our" cars? Based on that "interest" (ownership), can the state insist we insure the cars that the state owns but permits us to use? Can the state-owner legitimately declare that "driving (a vehicle owned by the state) is not a *right* (which would flow from legal title and ownership of the vehicle) but a *privilege* (an equitable title to drive the state's vehicle)." Yes.

See my point? We assume we *own* "our" cars. But if that assumption is false and the state (secretly) owns legal title to "our" cars, then we only have equitable title to "use" (drive) the *state's* cars – but we don't actually *own* "our" cars. If so, the state (as legal owner) has every right to impose any restrictions or requirements it likes (including drivers licenses and insurance) on those "permitted" to drive the *state's* vehicles.

We've touched on the issue of who actually owns "your" car in previous issues of the *AntiShyster*. But this is the first time I've begun to realize a key phrase in the state's case against any driver may be the "state's legitimate interest".

How would the state react if a "driver" used an Administrative Notice of Request for Information to compel the state to precisely specify its "legitimate interest" in "his" car? If the state actually owned the car, would they dare admit it publicly? Or would they rather dismiss the case?

Similarly, does the state have a "legitimate interest" in your children, guns or drugs? If so, can the state be compelled to precisely specify that interest?

Milosovic Indicted for Abusing Emergency Powers

by Alfred Adask

During a war, when our very survival may be at stake, constitutional protections for our God-given, "unalienable rights" are largely suspended to allow government to exercise whatever unbridled, dictatorial powers are necessary to win the war and ensure our survival. Essentially, protecting our rights takes second place to protecting our lives. When the war is over, constitutional protections should be restored.

The Great Depression threatened our economy but not our survival. Nevertheless, in 1933, President Franklin Roosevelt declared a National Emergency and asked Congress to grant him "emergency powers" equal to those he'd exercise during a wartime threat to our survival. Congress obliged and gave FDR executive powers far beyond the intent and limits of the Constitution to end the Depression. However, though the Depression ended with World War II, FDR's 1933 "national emergency" has continued unabated for sixty-six years.

In 1994, Dr. Gene Schroder exposed our unending "national emergency" and its anti-constitutional effect on our liberties. I.e., as a result of the 1933 "national emergency," our government still exercises enormous non-constitutional powers and We the People have only a semblance of our former constitutionally-protected rights. To date, no solution has been found to force government to admit the "emergency" is over, surrender its emergency powers and restore constitutional protections for all of our unalienable rights.

On May 27, 1999, the chief prosecutor at the International Criminal Tribunal for the Former Yugoslavia, indicted Yugoslavia President Slobodan Milosevic and four top aides for war crimes. Milosevic's indictment offers some surprising insight for ending America's own "national emergencies".

The first late-night TV report of Milosevic's indictment explained its legal foundation: Milosevic *personally* invoked a *national emergency* to suspend his country's constitution and gain "emergency" powers which he abused by implementing his policy of "ethnic cleansing". Under *international* law, since Milosevic personally invoked the "emergency," he is also *personally* responsible for whatever crimes or abuses are committed under "his" emergency. He and his four aides abused their emergency powers and were thereforce charged as a war criminals.

I've seen no further reference to the relationship between emergency powers, international law, and personal responsibility for officials who invoke emergencies since that first late-night TV newscast. I'm not surprised. I am amazed, however, that even one newscast let that cat out of the bag.

Those of you who study our own "national emergency" (invoked in 1933 and sustained by every succeeding President) might do well to study Milosevic's indictment. If, under international law, Milosevic is *personally* responsible for damages committed under an emergency he invoked, it follows that, under international law, Bill Clinton (the one person responsible for sustaining our current national emergency) might also be *personally* liable for any damages or crimes committed by our government while exercising "emergency (non-constitutional) powers".

This makes surprising sense: even though an "emergency" has been declared, *someone* must still be legally liable for whatever abuses take place under that emergency. (It's a little like shouting "Fire!" in a crowded theater; if there's no real fire, whoever declared the emergency is liable for any subsequent damages.) Until now, we'd assumed that once an emergency was declared, government not only gained enormous powers but also lost all accountability for abusing those powers. We therefore assumed we had no remedy to enforce our rights or hold *anyone* in government accountable for abuse.

However, if the President alone is empowered to initiate, sustain or terminate a "national emergency," it follows that the President may also be *solely responsible* for whatever abuses occur under "his" emergency. Thus, Milosovic's indictment implies

that the remedy for ending America's 66-year old "emergency," may be to sue our President in his *personal* capacity under *international* law for whatever damages have been sustained during his administration's "emergency".

International humanitarian law

Under its U.N. Security Council mandate, the Hague tribunal is authorized to prosecute four categories of *serious* violations of *international humanitarian law*:

- *Grave* breaches of the 1949 Geneva Convention;
- Violations of the laws and customs of war;
- Violations of the 1948 Genocide Convention; and
- Crimes against humanity.

Milosevic's Prosecutor (Louise Arbour) chose to prove three "crimes against humanity" and one "violation of the laws or customs of war." She avoided the more sensational charges of "grave breach of Geneva Convention" and "genocide" because,

1) "Grave breaches of the Geneva Convention" can only be charged during an *international* armed conflict. Despite two months of NATO bombing, the fighting in Kosovo was essentially an internal conflict between Serbs and Kosovar Albanians, all of whom are citizens of the *same* Federal Republic of Yugoslavia.

2) Genocide is difficult to prove because it requires the element of *intent* to destroy a group of people, in whole or in part, based on their national, ethnic, racial, or religious affiliation.

Many agree the Serbs' egregious behavior constitutes war crimes but doesn't fit the extremely precise definition of genocide. William Schabas (senior fellow at the D.C.-based United States Institute for Peace and author of a book called *The Law of Genocide*) explains, "When you drive people out of a country, you're committing ethnic cleansing, but it's not genocide."

Cultural genocide

Mr. Schabas also claims that when the 1948 Genocide Convention was being formulated, the United States strongly argued that forcing people to assimilate or *change their identity* – so-called *cultural genocide* – should *not* be included as part of the legal definition.[2] [Emph. add.]

I am intrigued by the idea that changing a people's identities might constitute "cultural genocide." In Volume 8 No. 3 and Vol. 9 No. 1, the *Anti-Shyster* hypothesized that 1933, our government has created an "evil twin" entity (identified by an all uppercase name like "ALFRED N. ADASK") and imposed that identity/status on each *natural* person (identified by a proper, capitalized name like "Alfred Adask"). If so, every natural person who accepts an "evil twin" persona surrenders his God-given, "unalienable rights" in return for government "benefits," civil rights and privileges. Worse, each natural person is thereby made subject to absolute control by its government-creator.

If our government has in fact created and imposed an "evil twin" identity/status on each of us, it would not be surprising for government to insist that a "change of identity" should not be included in the legal definition of "cultural genocide". To do so would admit that any systematic effort to "convert" natural Americans into artificial entities ("evil twin") would constitute "cultural genocide" – a criminal act. Nevertheless, it may be possible for charges similar to "cultural genocide" to be used by natural persons who object to being reduced to the status of artificial entities.

According to William Schabas, genocide jurisprudence was further refined in the 1960s when the Israeli court trying Adolf Eichmann determined that there was no genocide against the Jews prior to 1941 because the Nazi government was only trying to drive them out of Germany. It was only in 1941, when Germany *closed its borders* and decided to *eliminate the Jews physically*, that genocide began to occur.

I won't argue that the U.S. Government has decided to physically eliminate natural persons who refuse to accept the "evil twin" status/identification. However, it is arguable that since government effectively prevents natural persons from enjoying their former "unalienable," God-given rights (like traveling without an "evil twin" drivers license; *owning* rather than merely possessing property; or having access to Article III *judicial* courts) government has figuratively "closed its borders" to the presence of natural persons. In a sense, by changing our identity-status from natural persons ("Alfred") to artificial entities ("ALFRED"), government has figuratively "driven us" out of our natural "homeland" (The United States of America) and forced us to relocate like exiles into a corporate refugee camp called the "United States". As such, this change of identities and consequent political "deportation" seems virtually identical to "cultural genocide".

Customs of war

Milosevic and his four aides were indicted for individual murders as violations of the "laws and customs of war." Such violations are based on a set of standards first outlined at a 1907 Hague convention later recognized by the Allied powers and (corporate) U.S. at the post-World War II Nuremberg trials. These violations involve abuses by the military in how it wages war.[4]

Laws or customs of war, for example, forbid the use of poisonous weapons,[5] attacks against undefended towns, murder, and the plunder of private or public property. Until recently, such violations could only be invoked in an international conflict. But in 1995, the tribunal's appeals court ruled that *internal* conflicts were also subject to the laws or customs of war.

As previously argued in the *Anti-Shyster*, true ownership of private property may no longer be available to most Americans. If so, might be argued that government has "plundered" our private property (and the rights that flow from title to property) and thereby violated a "custom or law of war".

Crimes against humanity

"Crimes against humanity," first recognized at Nuremberg and directed more at civilian populations, is perhaps the broadest war crime charge and *does not require proof of an armed conflict*. According to Professor Theodore Meron of New York University School of Law. "Crimes against humanity are also the *easiest to prove*."[2]

However, unlike violations of the laws of war, which can be prosecuted for only a single act, crimes against humanity requires proving a "widespread or systematic" attack on a civilian population involving murder, deportation, torture, rape, and "other inhumane acts."

Milosevic and his four aides were indicted for three "crimes against humanity" – widespread murder, deportations and persecutions on political, racial, or religious grounds.

I don't have a more precise definition of "other inhumane acts," but I suspect "profiling" (the police tactic of detaining certain ethnic, racial or economic groups based on only their appearance) could be construed as a "systematic" and "inhumane act" directed against certain racial or ethnic groups. As such, "profiling" might be challenged under international law as a "crime against humanity".

Here in America, are natural persons who refuse to accept the identification/ status of artificial entities provided by Social Security Numbers and drivers licenses being subjected to political persecution? That argument might be made if natural persons can't get bank accounts, own legal title to property or drive safely without fear of arrest.

Could government's attempt to reduce all natural Americans to the status of artificial entities be construed as "widespread and systematic"? Yes. Could "moving" the population of natural Americans from the natural realm of the States of The United States of America into the artificial realm of the states and districts of the corporate United States constitute a kind of political "deportation"? Perhaps. If so, would that "deportation" constitute a "crime against humanity" under international law?

Religious persecution?

There is an ancient principle at the heart of the Bible which declares any entity is property of and subject to its *creator*. If I am God's creation, I am His property and subject to Him alone. My creator – whoever or whatever that may be – is my "master" and I am his servant/property until such time as he releases, sells or assigns me to someone else. This principle holds true today in our secular law insofar as any inventor, artist or other "creator" of physical and intellectual property is automatically said to be it's owner.

Both Old and New Testaments declare that man can serve but *one* master – and, at least initially, that master must be your Creator. But what if I apply for a government benefit and thereby accept the status of a creation of government ("ALFRED," a beneficiary and/or "evil twin") – have I compromised or even forfeit my title as "Alfred," the servant and natural property of my Biblical Creator? Have I jeopardized my immortal soul for a bowl of government pottage? If so, wouldn't that constitute an "inhumane act"?

I suspect that any attempt by government to deceive and deprive me of my *religious* (not merely political) *status* and identity as a natural man created by my God and in His image is a form of religious persecution. (It's a little like forcing Jews to attend High Mass.) If so, any "systematic" attempt to deceive me and others into surrendering our natural relationships to God

to become subjects of government might constitute a "crime against humanity" under the same international law used to indict Milosovic.

More unanswered questions

Everyone agrees that I have a constitutionally-protected right to practice my religion. But could I also claim an unalienable, God-given right to be officially *recognized* and treated as natural man created by my God rather than an artificial entity created of the state? According to our *Declaration of Independence*, "We hold these truths to be *self-evident* that all men are created equal, that they are endowed by their Creator with certain unalienable rights . . . ." If it's "self-evident" that all men are "endowed by their Creator with certain unalienable rights," then no amount of unstated "presumptions" should be able to overcome or otherwise refute our "self-evident" status as a creation of God who enjoys unalienable rights.

Nevertheless, our government seems unwilling to allow anything to "appear" in its courts except artificial entities which are "presumed" to have been created by government itself. Do our courts thereby deny us a unalienable right to be *recognized* as a creation of God?

At first, these questions may seem far-fetched, but suppose government deceived a tribe of Navaho Indians into accepting a legal status that compromised their relationship to their tribal religion. If such deception was shown to "trick" unsuspecting Indians out of their ancient religions, there'd be liberals screaming from coast to coast. And could that deception be condemned as a "crime against humanity"? Maybe.

But if tricking Navahos out their native religion is wrong, isn't it be equally wrong to "trick" Christians and Jews into accepting a legal status subject to a *creator-government* rather than to Yahweh, the Creator-God of the Bible, and "Nature's God" in our *Declaration of Independence*?

After all, the first of the Ten Commandments reads roughly, "I am Yahweh your God . . . Thou shalt have no other gods before me." I understand that Commandment to be deadly serious. *No* other gods; not even government.

I suspect it might give the government fits if a defense against government abuse argued that any attempt to change my identify or otherwise "deport" me from my status as a creation of God into the government-created realm and status of artificial entity constituted religious persecution. As a *political* defense, I'd expect this tactic to fail. But as a *religious* defense that claimed an unalienable right to not only *practice* my religion, but to be *recognized* by government as a natural man, created by Yahweh, the God of the Bible – this defense might be powerful. It would certainly be interesting.

Insights or delusions?

Milosovic's indictment hints at a host of improbable (but not impossible) insights that might be usefully applied to evade or resist government abuse. For example, closely studied, Milosevic's indictment may help confirm (or deny) whether Bill Clinton is *personally* responsible under international law for governmental abuses committed under "his" national emergency. The underlying principles of international law might also offer insight into the apparent conversion of natural Americans into artificial, corporate entities and whether that conversion can be challenged as an act of "ethnic cleansing," "cultural genocide," or political or religious persecution.

[1] "U.S. Evidence Enhances Case Against Milosevic" by William Branigin *Washington Post* Friday, May 28, 1999.

[2] ibid

[3] "War Crimes Prosecutor Takes Careful Aim at Milosevic," T.R. Goldman, *Legal Times* June 1, 1999

[4] Some American believe gold-fringed flags in our courts signify the presence of martial law. If so, the 1907 Hague convention might be used to challenge such martial law.

[5] The U.S. used an internationally-banned poisonous gas on the Branch Davidians in Waco, Texas

Letters

Dear Al,

Recently, I was poring over maps with my brother-in-law. He makes maps for the State of Oklahoma Department of Transportation. We were discussing a piece of land some friends were thinking of buying in Eastern Oklahoma. He said, "I guess you know who your neighbors are going to be. You remember that bunch out there with the trailer park and the church that was on the news, EEE-looo-heeem something or other." (He was talking about the **"Elohym City"** that was indirectly linked to the Oklahoma City bombing.)

"Oh, you're kidding," I said. "My friends are kinda new age; they're going to love it when they hear they're right next to AK-47 Central."

"Here's the trailer park;" he continued, "there's some kind of main building, and there's a symbol for church right here."

"I don't see any name telling you what it is," I said.

"Oh, you won't see that," he replied. "You've got to be *incorporated* to be on the map; those are our guidelines."

"Really," I said.

"Yeah, we don't record any unincorporated townships. You'd have to be a historical site or specifically request to be on the map, or you're not there. You've got to have a *birth certificate* or be a *registered voter* or you don't go down in the county population figure, either. Unless, they just happened to catch you in the census. That's why they want to approve estimated population numbers. . . . I don't imagine the census people would be too keen on knocking door to door out in that area."

So, that's the story. Nobody there but us chickens Or is it 14th Amendment citizens? Interesting, don't you think?

John G.
Dallas, Texas

Apparently, the State of Oklahoma does not normally record unincorporated entities on its maps, nor does it record natural persons who don't have birth certificates or voters registrations in its population figures. All of this is generally consistent with our previous speculation concerning artificial entity/ "evil twins". Our government seems to be a corporation rather than a Republic and seemingly can't recognize any entity which is not also incorporated and similarly artificial. If you're a natural person like Alfred Adask, the government can't "see" you. However, artificial entities like "ALFRED N. ADASK" can "appear" and be "seen" in our courts and bureaucracies.

There ain't nuthin' like a claim!

Dear Boss,

John Hamilton of Querro, Texas, recently related a series of events, which strengthen the concept that our Courts operate under Commercial Law (Uniform Commercial Code/ UCC). Mr. Hamilton's been in a Bankruptcy proceeding for about ten years, during which time the bankruptcy "trustee" has reduced his assets to nearly ZERO while not paying any creditors. Recently, the court instructed John to have his wife sign a document transferring title to a piece of property which John possessed for many years before marrying his wife. John refused and was told that if he didn't get his wife's signature, he'd be arrested. Ultimately, an arrest warrant (capias) was issued against John.

On June 3, 1999, John went to the Querro Justice of the Peace and asked if the J.P. had a "claim" against him. The J.P. twitched, hemmed, hawed, said "No" and advised John to go see the District Court Judge who signed the Order on which the arrest warrant was based. Curiously, once John started asking about the existence of a *claim* against him, John wasn't even threatened with arrest.

John went to the District Court Judge and asked him if he had a "Claim" against John Hamilton. This judge also danced around and finally admitted that he had no claim against John but that John needed to talk to the District Attorney. John went to the D.A.'s Office and asked the same question: "Do *you* have a Claim against me?" The D.A. also squirmed, finally admitted having no Claim against John and advised him to go back to see the J.P. again. John returned to the J.P. and told him that the District Judge and D.A. denied having a Claim against

John and since there appeared to be no Claim against him he wanted the J.P. to release the Order authorizing his arrest so he could be on his way. The J.P. obliged. John left the Court House with the original Court Order for the Warrant and the Arrest Warrant thus ending his liability to being arrested.

One persistent theory about our court system is that they operate as Courts of Equity, ruled by the commercial law (a.k.a. U.C.C.). If this theory is valid, then any action taken must be based on a *Claim* verified under the terms of the U.C.C. The U.C.C. requires the filing of a UCC-1 Form (Financing Statement) to verify the existence of any Claim against someone. The existence of a Claim under the U.C.C. is based upon the existence of a *contract* between two parties and the only reason for any court action is a controversy caused by one party's *breach of contract*. Filing a UCC-1 Form verifies the existence of a contract and a claim. The absence of such UCC-1 filing is evidence of the non-existence of any Contract or Claim and therefor NO CONTROVERSY CAN EXIST and the case should be dismissed.

Gary Graham

We've recently heard similar reports wherein an individual being tried for traffic ticket violations got the arresting officer on the witness stand and asked if the officer had a "claim" against the defendant or knew of anyone who had a "claim" against the defendant. The police officer admitted under oath that he had no claim and knew of no claim. The defendant reportedly moved the court to dismiss the case for lack of a claim, and the court obliged. It is believed that civil courts can't proceed without a true "claim" supported by an UCC-1 Form. If they do, the plaintiff or even the judge may incur some measure of personal liability that no government employee will knowingly assume.

This report is pure hearsay and unverified. Even if the report is accurate, it doesn't prove much since the judge might've dismissed for any number of other reasons.

Nevertheless, we're getting enough preliminary reports to suspect that a thorough understanding of "claims," UCC-1 Forms and their relationship to court actions may provide a strong defense against many government prosecutions. We invite anyone having addition information to confirm or deny these suspicions to please pass the word.

Count the cost

Hi Al,

I'm presently researching actual Federal prison costs. The feds claim a $35,000 per cost for each inmate. However, the annual federal inmate population for the past five years has averaged around 100,000 while the budget for the Bureau of Prisons has been averaging $10 billion. If you do the math, that roughly comes out to $100,000 per federal prisoner per year. I'm working with Congressman Joe Barton of the 8th District of Texas on getting exact figures.

Larry Cullum, Colorado

Congressional resistance

Congress of the United States
House of Representatives
Washington, DC 20515-4304

Mr. Rick Donaldson
Royse City, TX

Dear Rick:

Thank you for contacting my office to express your opposition to the United States' involvement in Yugoslavia. I always appreciate the opportunity to learn the views of my constituents, as I apply these views to my decision making process.

In my opinion, there are constructive ways to rectify the situation in Yugoslavia –and it's not by sending American troops. I was never in support of our military involvement in this situation for many reasons, one of which is our lack of compelling national interest. Because I regret suffering in the world, I do support diplomatic means to end such problems. Furthermore, I would support lifting certain embargoes, thus providing a way for those in conflict to arm and defend themselves and their families.

In addition, I cannot see a plan, or any end in sight, to Kosovo. The only thing I see for sure, is that Kosovo is a "no win" situation. In my opinion, there is no meaningful reason or national interest to risk American blood. I am not pleased with our role in the U.N. or NATO and I am opposed to the U.S. acting as the sole world policing authority – we cannot be the "911" for the rest of the world. As I said in a recent speech, if I had my wish, I would salute smartly, give Saddam to Russia, China and the U.N., go by Bosnia and Kosovo, retrieve our troops and bring them all back home.

Thanks again for contacting me. If I can be of further assistance to you in the future, please do not hesitate to call upon me.

Sincerely,
Ralph M. Hall
Member of Congress

It's nice to see that some members of Congress are openly critical of the U.N., NATO, the U.S.

serving as the "world's policeman" and Clinton's "dog-wagging".

Congressman Hall's comments on Kosovo "embargoes" also illustrates the dangers of gun control. If Kosovo had "easy access" to arms, would the Serbs have attacked? Would America be called to expend lives and resources to defend Kosovo? Probably not. An unarmed (or relatively unarmed) populace invites oppression by its own government. That's as true in Waco and Ruby Creek as it is in Kosovo and Red China. Every nation tends to trust its own government thinking, "It couldn't happen here". But history proves they're inevitably wrong. An unarmed America is every bit as vulnerable to violent government oppression as the people of Kosovo.

Plea "bargains"?

Dear Al,

I think you missed a salient point in the Angel Lerma letter ("Letters," AntiShyster Vol. 9 No. 1). You're right that, although Angel was caught with only 13 grams of pot, he *chose* to go to jail by voluntarily accepting a plea bargain for possessing 115 lbs. of pot which carries a 2 to 3 year sentence under the federal sentencing guidelines. But he was *sentenced* for 40,715 lbs of pot. As the guidelines are tied to the weight of "controlled substances," I believe 40,000 lbs carries at least a 10-year mandatory minimum (and perhaps 20 years). That's a big increase over 2 to 3 years. By signing a plea bargain, Angel gave up his right to appeal (most pleas are designed for that purpose). That's why the court won't answer his motions.

In a similar case, a friend of mine went to trial for "conspiracy to distribute" 4,000 lbs of pot (10 years mandatory minimum) and was found *not* guilty – but he was found guilty of "possession with intent to distribute 400 lbs (5 years mandatory minimum). I'd bet you'd never guess what weight he was sentenced for. That's right, he was sentenced for the *4,000 lbs* and got 10 years. A few months ago, the Supreme Court also refused to hear his case.

Richard Geer

According to Gary Graham, a question of Good Faith may come into play in application of "Sentencing Guidelines," especially in prosecutions for "conspiracy". For example, in his plea "bargain," Angel Lerma agreed to plead guilty and accept conviction for "possession" of 115 lbs of marijuana in return for a 2 to 3 year sentence. However, Mr. Lerma was sentenced to 10 years as if he were a "conspirator in the distribution" of 40,000 lbs – even though he was never convicted of that charge.

How is this possible? Everyone convicted in Federal Court undergoes a Pre-Sentence Investigation which will determine the sentence which is later imposed by the Judge. The Pre-Sentence Report lists the prisoner's "relevant conduct" and includes all available information gathered by investigators, prosecutors, co-defendants and even snitches – not just information from the trial, itself. Thus, even though Angel Lerma only pled guilty to possessing 115 pounds of marijuana, the original unproven charges were for over 40,000 pounds. The Pre-Sentencing report will reflect the original charge of 40,000 pounds and Angel Lerma (who pled guilty to avoid a lengthy sentence) was still sentenced as if he'd been convicted of possessing 40,000 pounds. In theory, if Angel had pled guilty to merely spitting on the sidewalk, he might still have been sentenced to ten years based on the unproven allegations that he possessed over 20 tons of pot.

In fact, Angel would've been better off to challenge the government in court and make the government prove it found 40,000 non-existent pounds of pot. Because he didn't go to court (where the 40,000 pounds could

be disproved and a sentence based on that quantity avoided), Angel allowed government to sentence him based on mere allegations, irrational allegations at that, and no evidence.

The effect of Pre-sentencing Reports can be especially dangerous in conspiracy cases, even if the "conspiracy charge" is defeated in trial or dropped in a plea bargain. In a drug conspiracy, the sentence is based on the total amount of drugs each alleged conspirator may have possessed during his/her involvement over the entire life of the conspiracy. This amount is calculated based on information from the other co-defendants, informants, and/or the investigators' "best guess estimates".

For example, suppose a drug conspiracy investigation lasts for six months. Based on the investigators' observations during the six months, the government may determine that the conspiracy had been on-going for as much as ten years. Then, if investigators see a suspect buying one ounce of cocaine per week during the six months, that defendant (who never had more than one ounce of cocaine in his possession at any time) may be ultimately charged for possessing 520 ounces (32 pounds) of cocaine (1 ounce per week times 52 weeks per year times the ten years of the alleged conspiracy's duration). Moreover, mere allegations by an informant or co-defendant can dramatically increase your sentence. In Angel Lerma's case, someone probably said something like, "I know Angel. He comes around two-three times a week and buys 100 to 200 pounds each time. Been doing it for a couple of years." Of course, the more information a co-defendant provides, the greater the reduction in his sentence. Thus, reduced sentences can subtly encourage and effectively "pay" co-defendants to provide exaggerated information used to sentence other defendants.

But the key point is this: just because a major charge (say, possession with intent to distribute 1,000 pounds) is defeated in court or dismissed by plea bargain, does not mean the underlying factual allegations will be ignored at sentencing for a minor charge. If a defendant pleads guilty or is convicted on just one minor charge, his final sentence can still be "enhanced" according to "relevant information" that he possessed the 1,000 pounds indicated in the previously dismissed major charge. Thus, a plea bargain may be no bargain if a defendant pleads guilty to a minor charge to avoid a major charge but still receives the maximum sentence called for by the alleged "facts" associated with the (dismissed) major charge. Prosecutors and defense attorneys know exactly how this system operates. When a prosecutor or defense attorney recommends a plea bargain for a relatively minor charge and implies that the final sentence will be based solely on that minor charge, they may be guilty of deception, incomplete disclosure of facts relevant to the agreement, fraud and even acting in bad faith. Though difficult to prove, such deception, incomplete disclosure, fraud and bad faith may create subsequent legal liabilities for the prosecutor and defense attorney.

Early news reports

Dear Mr. Adask,

I wanted you to know that my favorite TV show is *Early Edition* (you know, where the guy gets the newspaper a day early when the cosmic cat leaves it on his doorstep). And my favorite magazine (news & otherwise) is the *AntiShyster* BECAUSE the *AntiShyster* is the a *real* "Early Edition" as witness your articles on:

1) Congress declares Bible Word of God (1993)

2) Gulf War Syndrome (1995)

3) IRS Revelations (1995)

4) Politics of Fear (1996)

5) The Corporate/ Government corruption & Chinese Communist Connection (1999)

God Bless you for your Courage and Common Sense, both of which are in short supply these days.

Craig W. Fletcher

Irvine, California

By What Authority?

from Robert Fox & Gary Graham

Whenever we go to court, virtually everyone presumes that the opposing attorney has proper authority to represent the opposing side. After all, a lawyer wouldn't dare show up without proper authority (whatever that is), right? Right?

Maybe not. We're beginning to see that a significant percentage of lawyers may be representing parties in court without proper contractual authority. Until now, the lawyers have remained confident that no one (certainly no fellow lawyer) would recognize the fraud or dare to call their bluff. However, some pro se litigants are more aggressive about challenging a lawyer's authority. For those Texans who are sceptical about the opposing lawyer's authority to represent the opposing party, Rule 12 of the Texas Rules of Court reads as follows,

"RULE 12. ATTORNEY TO SHOW AUTHORITY. A party in a suit or proceeding pending in a court of this state may, by sworn written motion stating that he believes the suit or proceeding is being prosecuted or defended without authority, cause the attorney to be cited to appear before the court and show his authority to act. The notice of the motion shall be served upon the challenged attorney at least ten days before the hearing on the motion. At the hearing on the motion, the burden of proof shall be upon the challenged attorney to show sufficient authority to prosecute or defend the suit on behalf of the other party. Upon his failure to show such authority, the court shall refuse to permit the attorney to appear in the cause, and shall strike the pleadings if no person who is authorized to prosecute or defend appears. The motion may be heard and determined at any time before the parties have announced ready for trial, but the trial shall not be unnecessarily continued or delayed for the hearing."

Thus, it's possible to challenge an opposing lawyer's authority to represent your opposing party. If it turns out that the lawyer does not have proper authority, he will not only be prevented from representing his alleged client, all of his previous pleadings will be stricken from the court record. If all the pleading disappear, so does the case — at least until proper authority can be secured.

You wouldn't think this sort of challenge could possibly work, but you might be wrong. For example, when a California trust company tried to sue Daniel Boudreau (and Robert Fox, a fellow occupant at 336 Crooked Lane, Mesquite, Texas), Mr. Fox (who has an established reputation as a determined, won't back down, pro se litigant) prepared the following challenge to the authority of three Texas lawyers to represent the California trust company.

Robert Fox had already tried to discover the chain of authority that led from California to Texas, and had learned that chain included a woman allegedly named Janet Brown who had an answering machine in Kentucky which ultimately led to another answering machine in Cincinnatti, Ohio, that never responded to Fox's questions. Apparently, the California trust company had given Ms. Brown authority to represent them, and Ms. Brown in turn assigned her authority to the three Dallas lawyers.

The problem is that, apparently, a lawyer must have a contract/ agreement directly with the party he's representing. In other words, while the Texas lawyers apparently had an agreement to represent Ms. Brown, but she was not a party in the case, and therefore they had no direct agreement with the California trust company. Without that direct agreement between themselves and the California trust company, the three Texas lawyers lacked proper authority to represent that party in court.

Suspecting their authority to represent the California party might be inadequate, Boudreau and Fox filed the following sworn challenge:

NO. CC-99-879-b
COUNTY COURT AT LAW #2
DALLAS COUNTY, TEXAS

BANKER'S TRUST COMPANY OF CALIFORNIA, NA, AS TRUSTEE UNDER POOLING AND SERVICING AGREEMENT DATED AS OF SEPTEMBER 1,1992, FOR RTC SERIES1992-14 W1THOUT RECOURSE, Plaintiff,
Vs.
DANIEL A. BOUDREAU
AND ALL OTHER OCCUPANTS OF 336 CROOKED LANE, MESQUITE, TEXAS 75149

RULE 12 CHALLENGE
TO THE HONORABLE JUDGE
OF SAID COURT:

I, Robert James: Fox, alleged to be Defendant, file this my rule 12 challenge to wit:

RULE 12 CHALLENGE

1. Without waiving any other remedy or right, I state that I do not believe that Janet Brown, L.R. Tipton Jr., Stephen C. Porter, Tommy Bastian, and/or Barrett Burke Wilson Castle Daffin & Frappier, L.L.P., or any other alleged agents sent by such interlopers absent lawful authority, have the authority to act for the Plaintiff and demand proof pursuant to your Rule 12 of the Texas Rules of Civil Procedure. Janet Brown's Affidavit provides no mailing location and Kentucky directory assistance giving me a phone number referring me to a Cincinnati, Ohio phone number that only accessed an answering machine was of no help. I was unable to confirm that Janet Brown is anything other than a fictitious entity. It is further requested that citation be issued to the forgoing that they be ordered to appear and present evidence of their agency or why the pleadings filed on behalf of Plaintiff should not be stricken.

s/ Robert James: Fox, in propria persona
general delivery, Mesquite post office
Mesquite, Texas, North America

Rule 12 calls for the challenge to be sworn, so Fox attached the following:

VERIFICATION

I have read the forgoing Rule 12 Challenge and it is true and correct.
s/ Robert James: Fox, in propria persona

SUBSCRIBED TO before me, the undersigned authority this 26th day of April
s/ _____
Notary Public, State of Texas

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing RULE 12 CHALLENGE was sent by mail, postage prepaid, to L.R. Tipton Jr. at 11304-D Park Central Place, Dallas, Texas *75230* and Stephen C. Porter/Tommy Bastian at 1500 Surveyor Boulevard, Suite 100, Addison, Texas 75244 this twenty-sixth day April 1999. Janet Brown's Affidavit provides no mailing location and Kentucky directory assistance giving me a phone number referring me to a Cincinnati, Ohio phone number that only accessed an answering machine was of no help.

s/ Robert James: Fox, in propria persona

Based on this Rule 12 challenge, the three Texas lawyers were summoned to appear in court. Two didn't bother to show; the third appeared with insufficient evidence of his authority to represent the California party, so the court issued the following:

ORDER REGARDING
TEXAS RULE 12 HEARING

CAME ON TO BE HEARD IN A TEXAS RULE 12 HEARING ON MAY 10, 1999:

Attorneys Stephen C. Porter, G. Tommy Bastian, and L. R. Tipton were duly served citations by process server thereby commanding them to appear and show their authority to prosecute this cause of action.

Attorneys Stephen C. Porter and G. Tommy Bastian failed and neglected to appear.

L. R. Tipton did appear however he failed to present ~~testimony or actual~~ evidence of authority sufficient under the law of agency to prove that he acts for Banker's Trust Company of California; there was no appearance by any corporate officer of Banker's Trust Company of California.

Upon consideration defendants Robert James Fox and Daniel Alexander Boudreau are entitled to the relief afforded by the Texas Rule 1 2 Challenge wherefore the Plaintiff's pleadings are hereby stricken from the record, and this case is hereby dismissed without prejudice. All other relief not expressly granted is denied.

SO ORDERED this 21st day of May, 1999.

s/ Judge Carlos Lopez

With that, the California trust company's case simply disappeared, pending revival by Texas attorney's directly authorized to represent the California party and start the entire proceeding again from square one.

According to Robert Fox, the California trust company (the principal) is the only party that can verify its agent (the attorney) has proper authority to appear in a representative capacity. In other words, the attorneys themselves can't prove their authority — they must have testimony or affidavit from their principal – the party they claim to represent.

In most cases, especially if the opposing party is a private individual and the attorney is a sole practitioner, adequate proof of authority to represent is probably found in the lawyer-client's contractual agreement.

But the issue of proper authority may be more complex when a corporation like General Motors hires a world-renowned, 500-lawyer law firm like "Dewey, Skrum, & Howe" to represent GM in court. Suppose GM signs a contract with Dewy, Skrum & Howe, a corporation. Can a corporation represent a corporation in court? I don't think so. I believe that only a flesh and blood lawyer can represent a corporation/ artificial entity. So suppose Dewey, Skrum & Howe sends Bob Jones, Esquire (one of their 500 lawyers) to represent GM in court. Is that lawful? After all, when lawyer Jones appears in court, is he representing GM? Or is he representing his employer (Dewey, Skrum & Howe, Inc.)? If lawyer Jones doesn't have a direct contract with GM, his authority to represent GM is suspect.

Preliminary investigation suggests that if GM's contract with Dewey, Skrum & Howe specifies that lawyer Jones will handle the case, then the question of proper authority might be solved. But this kind of specification may not appear very often in contracts with big law firms since nobody really knows how soon a case will start or who precisely will be the representing attorney. What happens if that specific attorney quits? Dies? Is too busy or becomes unexpectedly tied up with another case? Does the contract with GM have to be renegotiated to specify another lawyer? What if lawyer Jones is specified in the contract, but he brings in two other lawyers not named in the contract who also represent GM. Do those other lawyers (unnamed in the contract) have proper authority to represent GM?

These questions of representational capacity can also be alleviated through the use of employment contracts drawn up with the various member lawyers of Dewey, Skrum & Howe, Inc., but even then, it might be necessary for those employment contracts to be referenced in the original contract with GM.

According to pro se litigant Gary Graham,

"In order for an Attorney to represent someone (something) in Court he must first obtain an Agreement (Contract) with that Client. The problem arises that most Attorneys belong to a "Law Firm" (Corporation) and it is this Firm that has a Contract with the Client. The Attorney must have an employment Contract with the Law Firm, which authorizes the Attorney to represent specific Clients of the Law Finn. This Employment Contract must also be recognized in the Contract between the Law Firm and the Client. If the Client does not specifically authorize the Attorney to represent him/her in Court the Attorney does not have the authority to do so."

"This situation is further complicated by the Corporate Status of most Law Firms in Texas. The Texas Business Code requires at least two individuals be listed as officers (President and Secretary) in any Corporation. While there may be more officers and even a Board of Directors, the Law requires at least these two positions be filled by different people. After examining several "Law Firm" Corporate Charters (secured from

the Texas Secretary of State), I've found that these firms have a habit of Incorporating with a Board of Directors but no Officers. If the Law Firm is not properly incorporated, it does not exist in the eyes of the Law. The validity of any contract entered into by such a Firm could then be questioned. Does the Attorney have an Employment Contract with a Law Firm if such Firm is not properly incorporated? Does a Client have a Contract with a Law Firm if such Firm is not properly incorporated? Can an Attorney who does not have an Employment Contract represent a Client who does not have a Contract?"

"If there is no document specifically naming the Attorney as the Representative of a Party in an Action, can the Attorney represent such Party? Is the Attorney representing the Law Firm or the Party/Client? Can a Law Firm represent a Party/Client if the Law Firm itself is a Corporation? Can a Law Firm or Attorney represent a Party/Client in the absence of a specific Authorization/ Contract? Can a Law Finn make Political Donations if such Firm is not properly incorporated? Can an Attorney hide behind the "shield" of a Professional Corporation if such corporate entity cannot appear in Court?"

The questions surrounding proper authorization to represent a party in court can be complex and sometimes sufficient to remove a given lawyer, or even a law firm, from a case. Those of you who are troubled by some annoying lawyer representing a third party might do well to look for a rule in your state similar to the Rule 12 challenge in Texas. Then you might want to closely examine the employment contract(s) and corporate charter for whatever firm or lawyer is troubling you. You might also want to closely study the rules of principal and agent. Properly employed, this information might give lawyers fits.

Widespread use of this challenge to authority might cause most mega-member law firms to dissolve or reorganize, and most court cases might once again be handled by sole practitioners who each contracted directly with their clients. Although unlikely, of successful, this hypothetical challenge could have revolutionary impact on the courts.

Biblical Proof of Insurance

from David Deck

As in most states, automobile insurance is mandatory in the State of Texas. As a result, auto insurance rates are unreasonably high, extortionistic, annoying to some and unaffordable for others. Although 20% or more of Texas drivers routinely drive uninsured, at least once a year we must all show documentary proof of insurance when we register our autos in the State of Texas. So if you don't have insurance for at least the month when you register, your registration will be out of date which invites official scrutiny, discovery that you may also be driving uninsured and traffic tickets that can run into hundreds of dollars.

As a result of high, mandatory insurance rates, some drivers simply drive "nekkid" and take their chances with accidents and the police; others support a growing market in forged insurance documents. But David Deck used a religious strategy that I've thought about superficially for several years, but never dreamed could actually work. (Oh, me of little faith, hmm?)

In essence, David claimed that he's insured by God, and therefore not only needs no additional secular insurance, but because of his religious principles, can not purchase secular insurance without violating his faith.

To the uninformed, this argument must seem absurd. Surely, it couldn't possibly work.

But it did.

From a spiritual perspective, Mr. Deck's argument makes perfect sense since most devout Christians and Jews understand that their faith mandates that they "trust in God" *exclusively* for their providence, prosperity and protection. No true believer is likely to purchase any kind of secular insurance without at least wondering if he's offended the living God by relying on false "gods" (insurance companies) for his protection.

I don't know that the State of Texas will ever again accept this spiritual exemption from purchasing secular insurance. But I know David Deck. I've seen his application for automobile registration. I've seen the approved registration sticker that was sent to David despite the fact that his only "proof of insurance" was a copy of Psalm 91.

What follows are the text of David Decks application, Psalm 91 and the relevant Texas laws. I've inserted my own [bracketed] and/or italicized text in the body of David's paperwork to clarify his meaning or purpose.

Cover sheet

David opens his application with a short cover letter. No threats, no long-winded explanations. No conclusions. Simply a list of enclosed documents and instructions for filling out the attached affidavit.

June, 2nd 1999

Dear Sirs, Enclosed, you will find the following,

#1 - Vehicle Registration Renewal Notice

#2- Check in the amount of 62.70

#3- A copy of my proof of insurance Policy # Psalms 91

#4- A copy of your laws Sec. 106.001, Sec. 106.002, & Sec. 106.003.

#5- An affidavit, to be filled out and signed and returned along with the entire contents of this notice within 15 days of the receipt of this notice, if you are unable to renew registration under these conditions.

Until then I am
s/ David Deck
David Deck
P.O. Box 92861
Southlake Texas 76092-0861

Item #1 (the "Vehicle Registration Renewal Notice") is a standard form used by the State of Texas; it's not reproduced in this article. Likewise, the check (#2) paying the required registration fee is also not reproduced here. However, items #3 (proof of insurance), #4 (State of Texas laws concerning religious discrimination), and #5 (an affidavit to filled out by anyone who rejects David's application for Registration) are reproduced below:

Proof of insurance

Psalm 91

1 He that dwelleth in the secret place of the most High shall abide under the shadow of the Almighty.

2 I will say of the LORD, He is my refuge and my fortress: my God; in him will I trust.

3 Surely he shall deliver thee

from the snare of the fowler, and from the noisome pestilence.

4 He shall cover thee with his feathers, and under his wings shalt thou trust: his truth shall be thy shield and buckler.

5 Thou shalt not be afraid for the terror by night; nor for the arrow that flieth by day;

6 Nor for the pestilence that walketh in darkness; nor for the destruction that wasteth at noonday.

7 A thousand shall fall at thy side, and ten thousand at thy right hand; but it shall not come nigh thee.

8 Only with thine eyes shalt thou behold and see the reward of the wicked.

9 Because thou hast made the LORD, which is my refuge, even the most High, thy habitation;

10 There shall no evil befall thee, neither shall any plague come nigh thy dwelling.

11 For he shall give his angels charge over thee, to keep thee in all thy ways.

12 They shall bear thee up in their hands, lest thou dash thy foot against a stone.

13 Thou shalt tread upon the lion and adder: the young lion and the dragon shalt thou trample under feet.

14 Because he hath set his love upon me, therefore will I deliver him: I will set him on high, because he hath known my name.

15 He shall call upon me, and I will answer him: I will be with him in trouble; I will deliver him, and honour him.

16 With long life will I satisfy him, and shew him my salvation.

By presenting a copy of Psalm 91, David Deck served notice that he is a true believer in the God of the Bible and that he believes (as stated in Psalm 91) that his God will protect him from harm — thus making secular insurance unnecessary. David implies that because his God demands his followers trust in Him alone, by purchasing secular insurance, David would demonstrate a lack of faith in his God. A demonstrated lack of faith would compromise David's relationship to his God and perhaps even invite God's wrath. Therefore, secular insurance is not only unnecessary for a man of God, it is an intolerable blasphemy since such insurance betrays a lack of faith. Thus, if government forced David to purchase insurance, it would violate his religious beliefs.

Relevant law

Next, David lists laws of the State of Texas which prohibit discrimination based on religious beliefs and also list both remedy and punishment for any government official or employee guilty of religious discrimination.

Note that David provided photocopies of the pages of the Civil Practice & Remedies Code carrying the relevant law as additional "proof" of this is truly the "law". Although retyping a statement of the law might provide proper notice, I suspect that a verified photocopy provides even stronger, less refutable notice.

State of Texas Civil Practice & Remedies Code
Chapter 106. Discrimination Because of Race, Religion, Color, Sex or National Origin.
Section 106.001. Prohibited Acts

(a) An officer or employee of the state or of a political subdivision of the state who is acting or purporting to act in an official capacity may not because of a person's race, *religion*, color, sex, or national origin:

(1) refuse to issue to the person a license, permit or certificate;

(2) revoke or suspend the person's license, permit or certificate;

(3) refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the state or a political subdivision of the state;

(4) refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the state or a political subdivision of the state;

(5) refuse to grant a benefit to the person;

(6) impose an unreasonable burden on the person;

(7) refuse to award a contract to the person.

. . . .

Section 106.002. Remedies

(a) If a person has violated or there are reasonable grounds to believe a person is about to violate Section 106.001, the person aggrieved by the violation or threatened violation may sue for preventive relief, including a permanent or temporary injunction, a restraining order, or any other order.

(b) In an action under this section, unless the state is the prevailing party, the court may award the prevailing party reasonable attorney's fees as a part of the costs. The state's liability for costs is the same as that of a private person.

Acts 1985, 69th Leg., ch. 959, Sect. 1, eff. Sept. 1, 1985.

Section 106.003. Penalties

(a) A person commits an offense if the person knowingly violates Section 106.001.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than one year; or

(3) both the fine and confinement.

Acts 1985, 69th Leg., Ch. 959, Sect. 1, eff. Sept. 1, 1985.

Note that Section 106.003(a) declares that "A person commits an offense if the person *knowingly* violates Section 106.001." In other words, unless a state officer or employee *knows* that:

1) that you are a religious person;

2) your failure to comply with a particular statute is based on your religious beliefs; and

3) there is a law (Section 106.001) which prohibits government officials and employees from discriminating (denying licenses, benefits or use of public facilities) against individuals whose nonconformist behavior is based on religious beliefs.

Therefore, just because religious discrimination is prohibited doesn't mean it can't happen or will necessarily be punished. Government officers and employees will not incur any personal liability for religious discrimination against you unless you provide him with proper *administrative notice* (cause him to "know") that:

1) you are religious;

2) your behavior is based on your religious beliefs; and

3) the particular government official or employee is prohibited from (and may be personally liable for) discriminating against you for religious reasons according to sections 106.001, 002, 003.

The key to enforcing this law is proper *notice* (see "Bad Faith Immunity" and "Administrative Notices," this issue). Without proper notice of *all* relevant facts and law, a government official and/or employee could probably commit an act of religious discrimination and still avoid personal liability so long as they could argue they "didn't know" what they did was wrong. However, once an official or employee receives proper notice (comes to "know"), he can't proceed against you without incurring serious *personal* liability.

If you decide to try registering your car without secular insurance, I suggest you keep multiple, verified copies of the relevant Bible passages and state laws in your car so you can provide any officer who stops you with instant and proper administrative notice that your behavior is an expression of your religion and thus his normal enforcement procedures against secular "drivers" may rise to the level of religious discrimination if applied against you. However, if you can't present proper paperwork sufficient to persuade a reasonable person that your actions are justified by your religion and protected against government's religious discrimination, you shouldn't be the least bit surprised if all your verbal protests are ignored all the way to the slammer. Proper administrative notice is your shield.

Affidavit

Last, Mr. Deck attaches a homemade affidavit for the convenience of whatever government official or employee decides to reject Mr. Deck's application for auto registration for lack of proof of secular insurance:

AFFIDAVIT

DATE: _____

TO: David Deck
P.O. Box 92861
Southlake, Texas 76092-0861

Dear Mr. Deck,

We are unable to renew vehicle registration at this time because _____ .

The statutes and implementing regulations [*which justify refusing to renew the vehicle registration*] can be found in_____.

Signed under penalty of perjury.

s/_____
Typed or Printed Name: _____
Title: _____
Identification No. _____
My Physical Address is _____
Date Signed: _____

Deck's affidavit is short, simple and seemingly innocent – but potentially devastating. Can anyone provide adequate legal foundation for ignoring sections 106.001, 002, and 003? Probably not. But anyone who dares to sign his name to this affidavit "under pen-

alty of perjury" automatically becomes the principle target for prosecution for religious discrimination.

If no one signs the form, what possible reason can government give for refusing to register Mr. Deck's car? If he's misguided and he has no real religious reason to refuse to purchase secular insurance, why not tell him the laws that nullify his application? After all, he's simply asking for help. And in a sense, he's giving the government an opportunity to proved him with a sworn "administrative notice" of why he must purchase secular automobile insurance.

If there's one flaw in David Deck's application for vehicle registration, it might be a failure to send the application by registered mail. By sending his application through ordinary mail, it's possible for government to "deny" the application by simply tossing it in the trash and claiming it was never received. But if the application is sent by registered mail and David gets a signed "green card" back to prove someone in the correct government office received his documents and notice, I don't think government's got much wiggle-room. They must then either approve the registration without secular insurance, or they must deny it and give reason for doing so. Either way, Deck wins.

More speculation

David Deck relied primarily on Section 106.001(a)(1) to argue that the state could not refuse to register his vehicle because of his religious objections to insurance.

However, it seems to me that Section 106.001(a)(3) ("refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the state or a political subdivision of the state;") might also be used by anyone whose religious principles prohibited securing a drivers license. After all, if the streets and highways are "facilities open to the public," perhaps the state can't lawfully prevent the devout from driving thereon even if they're unlicensed.

However, I wouldn't bet that these sections 106.001, 002 and 003 could directly excuse a refusal to register an automobile since virtually all automobile's previously registered in the State of Texas appear to be property of the state (not private property of the driver).

According to the State of Texas Transportation Code,

Title 7. Vehicles and Traffic
Subtitle A. Certificates of Title and Registration of Vehicles
Chapter 501. Certificate of Title Act

Subchapter A. General Provisions

Section 501.004(a) "This chapter applies to a motor vehicle owned by the state or political subdivision of the state."

In other words, the entire Chapter 501 (Certificate of Title Act) applies *only* to "vehicles owned by the state or political subdivisions of the state." This implies that either 1) all vehicles carrying a current Texas license registration are presumed to be property of the State of Texas; or 2) property of a "political subdivision of the state" (which presumably identifies some incorporated city or municipality like the City of Dallas or the City of Fort Worth). In either case, it appears that any vehicle registered in the State of Texas is presumably owned by the state or local government.

But when David Deck's application for vehicle registration was approved, the Texas Department of Transportation sent back a standard "Registration Renewal Receipt". This "Receipt" read in part:

"OWNER NAME AND ADDRESS
"DAVID W DECK
"PO BOX 92861
"SOUTHLAKE, TX 76092-0861"

Although I'm highly confident that "my" car is actually owned by the State of Texas, I have to admit that unless David's Receipt was written in fraud, it appears that the car's "OWNER" is not the corporate State of Texas (as I have believed) but DAVID W DECK.

Unfortunately, such ownership seems to violate the law since according to State of Texas Transportation Code Section 501.004(a) "This chapter applies to a motor vehicle owned by *the state* or *political subdivision of the state*." DAVID W DECK is clearly not "the state". Likewise, DAVID W DECK is not an incorporated city, county or municipality (political subdivision) of the State of Texas.

The only explanation I can see is that maybe the term "political subdivision of the state" includes much more than incorporated cities and municipalities. Perhaps "political subdivision" includes *any* artificial entity that's been incorporated/ created by "the state".

In other words, perhaps the "OWNER" of a vehicle registered in the State of Texas is not a natural person (David Deck), but the artificial entity/ "evil twin" (DAVID W DECK) which was created by "the state" and might therefore be properly described as a "political subdivision of the state"? (This speculation is not so farfetched since every corporation is legally an agent of its state-creator. I.e., technically, GM and IBM are agents of their government-creator.) Therefore, it might not be absurd to wonder if the

artificial entity DAVID W DECK might also be a "political subdivision of the state" that created him.

But even if DAVID W DECK were a "political subdivision of the state," the "evil twin" hypothesis has so far rested on the assumption that the artificial entity "DAVID" was created by the *federal* (not state) government (probably through use of the birth certificate and/or SSN). Therefore, the idea that DAVID W DECK is a "political subdivision" of the corporate State of Texas rather than the corporate United States simply doesn't "feel" right. If DAVID W DECK is a political subdivision of the State of Texas, then (since I was born in Illinois), my "evil twin" (ALFRED N ADASK) might be a "political subdivision" of the corporate State of Illinois (even though I currently live in Texas). And you, born in Ohio, raised in New York, and currently residing in Florida might be a "political subdivision" . . . of what??

No. The idea that DAVID W DECK or ALFRED N ADASK might be "political subdivisions" of any one of the fifty commonly recognized states strikes me as ridiculous. Too many wheels within wheels. If the "evil twin" hypothesis is valid, there can only be a single corporate creator for those artificial entities, and that creator must be the *federal* (not state) government.

OK, if the artificial entity DAVID W DECK can't be a "political subdivision" of the State of Texas, maybe the problem is that I don't understand the correct definition of "the state". Remember Section 501.004(a): "This chapter applies to a motor vehicle owned by *the state* or political subdivision of *the state*"? Virtually everyone on earth would presume "the state" means the "State of Texas". But what if that presumption were wrong?

"This state" or "the state"?

However, there is another possible explanation. One researcher I respect has told me repeatedly for most of a year that whenever you see the term "this state" in a state law, regulation, etc., the term does not signify a de jure State like "Texas" but instead always represents to the local, *corporate* "State of Texas" (or State of Oklahoma or State of California, etc.).

For most of a year, I've found the assertion that "this state" exclusively signifies the local corporate state both unconvincing and – even if true – unimportant. But maybe I misjudged. What if "this state" truly signifies the local corporate State of Texas, State of Oklahoma, etc., while "the state" identifies the "mother of all corporations" – the corporate United States?

If so, the term "political subdivision of *the state*" used in Section 501.004(a) might not mean a corporate city or municipality located in "this state" (the corporate State of Texas) – it might mean an artificial entity created by "the state" — the corporate United States. Then the artificial entity DAVID W DECK could be both the OWNER of "its" truck and a "political subdivision of the state" (corporate U.S.).

Yes, this is pure conjecture based on the flimsiest of evidence. Nevertheless, I gotta admit the idea that the artificial entity/ evil twin is a "political subdivision of the state" feels intuitively correct. Moreover, I like that idea because, so far – although I am convinced that DAVID W DECK and David Deck are two entirely different kinds of entities – I have yet to find a "comfortable" explanation for the kind of artificial entity that is identified by all upper-case names. I am 98% sure that David Deck is a natural person while DAVID W DECK identifies an artificial entity. But what *kind* of artificial entity? A trust? Corporation? DBA? Although elements of all of those entities or capacities may be present in DAVID W DECK, none of them has yet provided me with a satisfactory understanding of the "evil twin's" true nature.

But I am intrigued by the possibility that our "evil twins" may be "political subdivisions of the state" (corporate United States). This possibility is a long shot and unlikely, but I like the smell of it. I like the feel.

Keep your eyes peeled for evidence of the meaning of "political subdivision of the state" (Black's Law Dictionary has apparently overlooked that topic). If any of you have any pertinent information that might illuminate this topic, please let me know.

In the meantime, you should all cheer for David Deck and his remarkable success at compelling the State of Texas to register his truck without proof of secular insurance. It appears that Mr. Deck may truly be "in good hands."

Etc.

A bus station is where a bus stops. A train station is where a train stops.

On my desk, I have a work station.

I married Miss Right. I just didn't know her first name was "Always".

You never really learn to swear until you learn to drive.

True Stories

DOUGH-BOY WANTED FOR ATTEMPTED MURDER (AP) After San Diego resident Linda Burnett, 23, left the supermarket, several customers noticed her sitting in her car with the windows rolled up and both hands behind the back of her head. After a while, one customer became concerned and approached the car. He noticed Linda's eyes were open but she looked very strange. He asked if she was okay, and she replied that she'd been shot in the back of the head, and had been holding her brains in for over an hour.

Paramedics arrived and broke into the car because the doors were locked and Linda refused to remove her hands from her head.

When they finally got in, they found that Linda had a wad of bread dough on the back of her head. A Pillsbury biscuit canister had exploded from the heat, making a loud noise that sounded like a gunshot, and the wad of dough hit Linda in the back of her head. When she reached back to find out what it was, she felt the dough and thought it was her brains. She initially passed out, but quickly recovered and tried to hold her brains in for over an hour until help arrived.

And, yes – Linda is blonde.

The Darwin Awards are given each year to those individuals who exhibit exceptional incompetence. Two of 1998's nominees were discovered in the *Arkansas DemocratGazette* which reported:

Thurston Poole, 33, of Des Arc, and Billy Ray Wallis, 38, of Little Rock, are listed in serious condition at Baptist Medical Center. An accident occurred Sunday night as the two men were returning home after a frog gigging trip. Their pick-up truck's headlights malfunctioned when the fuse burned out. They had no replacement fuse but Wallis noticed that a bullet from his pistol fit perfectly into the fuse box next to the steering column. Sure enough, on inserting the bullet, the headlights turned on again and the two men continued driving home. After driving another twenty miles and just before crossing a bridge, the bullet apparently overheated, discharged and struck Poole in the right testicle.

The vehicle veered sharply to the right, exiting the pavement and striking a tree. Poole suffered only minor cuts and abrasions from the accident, but will require surgery to repair his other wound. Wallis sustained a broken clavicle, was treated and on release, stated, "Thank God we weren't on that bridge when Thurston shot his balls off or we might both be dead."

According to Woodruff County deputy Dovey Snyder, "I've been a trooper for ten years, but this is a first for me. I can't believe that those two would admit how this accident happened."

Upon being notified of the wreck, Lavinia, Poole's wife asked how many frogs the boys had caught and did anyone get them from the truck.

When a woman reported her house burglarized, the Baltimore Police Department responded by sending a K-9 unit that was already patrolling close to the scene. As the K-9 officer approached the house with his dog on a leash, the woman ran out on the porch, clapped a hand to her head and moaned, "My God! I come home from work to find all my house robbed – I call the police for help, and who do they send? A *BLIND* policeman!"

A young woman was pulled over for speeding. As the motorcycle officer walked to her car window, flipping open his ticket book, she said, "I bet you're gonna sell me a ticket to the Highway Partrolman's Ball."

The officer replied matter-of-factly, "Highway Patrolmen don't have balls."

There was a moment of awkward silence while she smiled and he realized what he'd just said. He then closed his book, got back on his motorcycle and left.

She was laughing too hard to start her car for several minutes.

Possibly true stories

A barber cut a priest's hair but refused the priest's payment saying, "I can't take your money for you're a good man who does God's work." The next morning the barber found a dozen bibles at the door to his shop.

A policeman came in for a haircut, and again the barber refused payment saying, "I can't take your money for you're a good man who protects the public." The next morning the barber found a dozen doughnuts at the door to his shop.

A lawyer came to the barber for a haircut, and again the barber refused payment saying, "I can't take your money for you're a good man who serves the justice system." The next morning the barber found a dozen more lawyers waiting for haircuts.

A man was forced to miss a day from work to appear for a minor traffic summons. He grew increasingly restless as he waited all day for his case to be heard. When his name was finally called, the judge adjourned court until the following day.

The man yelled, "*What for?!?!?*"

The judge, equally irked by the tedious day and sharp query, roared out, "Twenty dollars contempt of court! That's *what for!*"

Then, noticing the man checking his wallet, the judge relented: "Ohh, that's all right – you don't have to pay right now."

The man replied, "I know. I'm just checking to see if I have enough for two more words."

I haven't talked to my wife in 18 months.

She gets mad if I interrupt her.