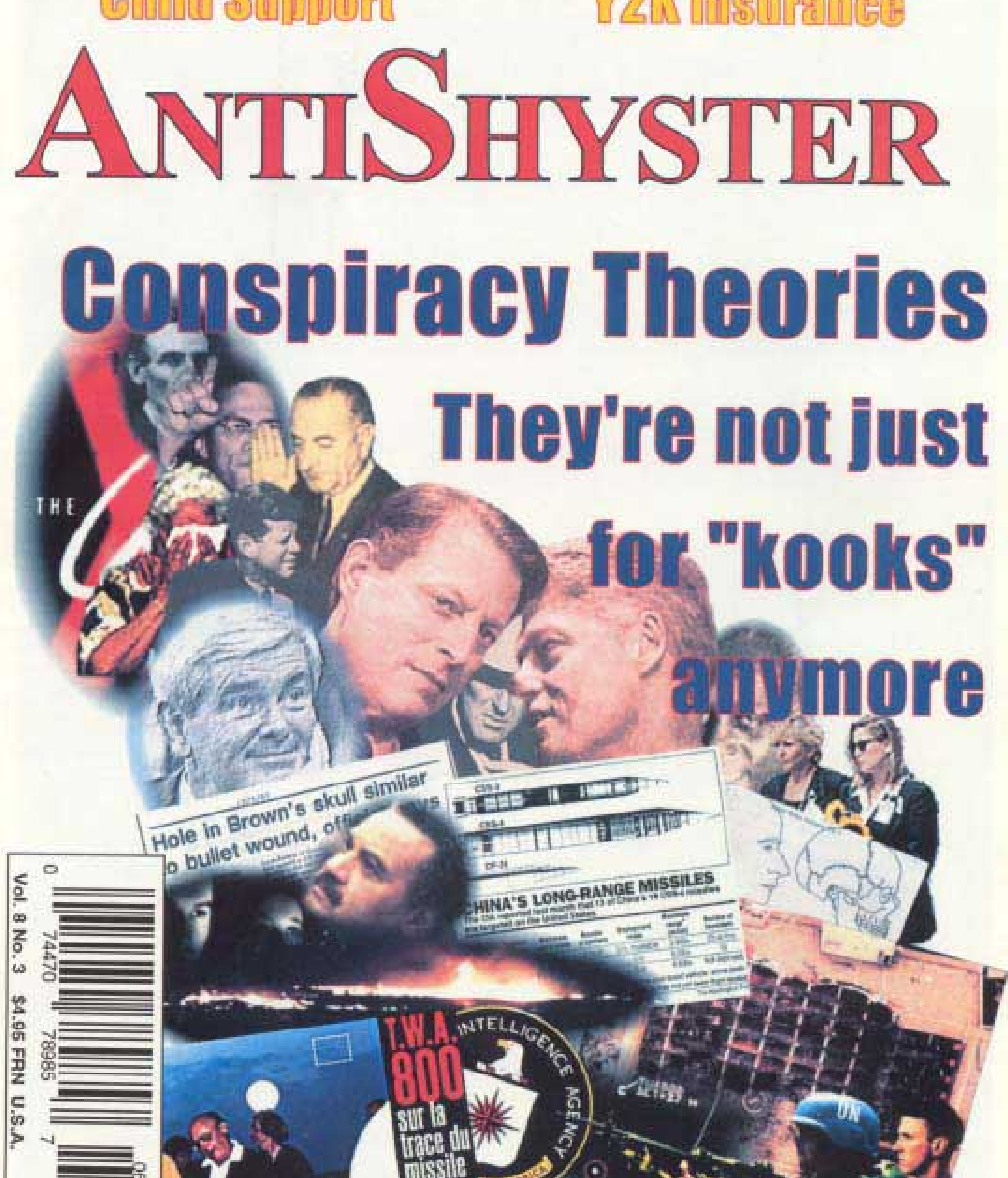
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Creator, Editor & Publisher
Alfred Norman Adask, TTEE

Democracy Spawns Conspiracy Theories 3

Interim Report on the Crash of Flight 800 10

Secrecy's End 16

Comprehensive Annual Financial Report II 20

Pleading Conspiracy 26

Land Mine Legislation 27

The Case Against Child Support 33

Administrative Child Support Process Unconstitutional 38

Child Support Meets an "Evil Twin" 44

Letters: Trust Fever or Fetish? 53

Duress Is No Defense 60

Y2K Insurance 62

In God We Trust? 68

Etc. 73

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— *Samuel Adams*

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Democracy Spawns Conspiracy Theories

by Alfred Adask

I grew up in the 1950s and 1960s pledging allegiance "to the flag of the United States of America and to the *Republic* for which it stands. . . ." Today, I'm not sure anyone takes that Pledge anymore and, strangely, the last President to publicly call this nation a "Republic" was John F. Kennedy. Since JFK, all Presidents have referred to our nation as a "democracy".

Coincidentally, widespread public belief in conspiracies began with JFK's assassination in 1963. Between the "single bullet theory," Oswald's murder, and the statistically improbable number of witnesses who died in the first few years after the assassination, it's clear to most Americans that the whole truth was intentionally concealed by the *Warren Report*.

Before the JFK assassination, virtually all Americans automatically trusted government. Since the *Warren Report*, that trust has soured into wariness. As we are assaulted by one unsolved "mystery" after another (Waco, Oklahoma City, Vince Foster, Flight 800), public distrust has grown until today, government (actually the economy) may win our approval but never our trust. For many Americans, it's simply taken for granted that government is corrupt, scheming, and when necessary, conspiratorial. Always has been.

For others, especially those in positions of power, the public's conspiracy theories are routinely dismissed as delusions or fabrications by "right-wing extremists".

Unfortunately, both sides are at least partially right. Conspiracy theories *are* valid because government *is* corrupt and scheming. Conspiracy theories are also invalid because they often express the paranoid delusions of extremists or cynical exaggerations of special interests – both within and without government.

However, even when conspiracy theories sound like the work of wackos, they can take on a life of their own animated primarily by fear. As a result, those people who are most fearful are also most susceptible to conspiracy theories. On the other hand, people who are "well-adjusted", have good jobs, homes and families are least likely to believe conspiracy theories.

Unfortunately, whether we are well-adjusted or raving paranoiacs has little bearing on whether a particular conspiracy theory is true. Sometimes the nicest, friendliest people are too blinded by their own prosperity to see the truth. Sometimes the loonies are right – even more than they fear.

Conspiracy theories are strangely fascinating because they're based more on belief than observation. Why? Because, inevitably, conspiracy theories depend on information that's not available. Somebody (typically in a position of power) refuses (or appears to refuse) to tell us the truth, denies obvious truths and, in sum, sustains a level of *secrecy* that average people can't penetrate. The CIA (almost) never confirms or denies. The Pentagon hides behind "national security". Prosecutors use evidence provided by undercover officers or snitches who "can't be identified without risking their lives". Denied access to facts, our imagination (and fears) can run wild and paint conspiracy theories as bizarre as Dali's dreams.

There is more to conspiracy than secrecy, but secrecy is essential. As a result, any government or institution that insists on operating in secret guarantees that – right or wrong – it will be accused of conspiracies. Likewise, people denied access to truth inevitably become suspicious, distrustful and inclined to believe in conspiracies.

Let's examine a few conspiracies and see if we can tell which are real, fabricated, or absolutely nuts:

Blacks lose right to vote

Here's an amusing little conspiracy theory reported by Sam Fulwood in the *L.A. Times*:

"WASHINGTON–For more than a year, Internet messages have raised alarms among blacks that Congress plans to repeal the Voting Rights Act in 2007.

Educational materials on natural nutriceutical substances have been presented at professional forums. These educational materials indicate that special dietary supplements can reverse body composition, blood parameters, and symptoms associated with: **Arthritis, Obesity, Diabetes, Asthma, ADD, ADHD and Aging.**

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"During 1997, Black lawmakers received hundreds of calls from blacks who were genuinely alarmed . . . . The rumor *became so credible* among Blacks, that Black lawmakers took the unusual step of publicly denying it. They explained that a portion of the 1965 [voting rights] law . . . [will] be reviewed in 2007, and then extended, perhaps up to 50 years. However, Congress has no plan or power to repeal the Blacks' right to vote." [Emph. add.]

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The rumor that blacks would lose the right to vote in 2007 displays several elements common to conspiracy theories:

First, the rumored conspiracy is based on a *grain of truth* (the 1965 Voting Rights Act *will* be modified in 2007).

Second, the alleged conspiracy is *threatening* because, if fully implemented, it will deprive us of something *we* want or value (in this case, the right to vote). I.e., conspiracies must be *personally relevant* to be regarded as truth. Being White, it's easy for me to dismiss Black conspiracy theories as nonsense. This doesn't mean the Black's are wrong, it merely means that it's their problem, not mine. I see no *personal* threat and thus no "conspiracy".

However, if Blacks look silly in their breathless embrace of a voting rights conspiracy, few Americans are immune to similar infatuations. Remember the Cold War? The Soviet Union's "Evil Empire"? How 'bout the National Teachers Association's conspiracy to "dumb-down" American youth or the conservative Baptists' conspiracy to seize control of the Baptist church? These are just a few of the conspiracy theories that populate our lives and – right or wrong – all of us believe some of them.

Third, the conspiracy is executed by people and forces *more powerful than ourselves.* A good conspiracy theory leaves us with an "abused child" feeling of helplessness. (Somebody's always pickin' on us little guy, hmm?)

As a result, any minority group (racial, political or religious) is naturally susceptible to conspiracy theories. For example, Jews, Blacks, and Constitutionalists are all minorities who share varying degrees of persecution complex and are thereby predisposed to embrace conspiracy theories. But technically, even Republicans, Democrats and the ACLU are minorities (special interest groups) who are similarly convinced that "they" are out to get "us".

Fourth, *facts are not available* to refute the conspiracy theory. Often, the facts are intentionally shrouded in secrecy ("national security"). However, because the alleged "conspiracy to suppress Black voting rights" can't be enacted until 2007, it can't be disproved until 2007, either. Since none of us can absolutely say what will really happen in 2007, who can absolutely refute the Black's conspiracy theory? The facts are concealed by time itself.

Fifth, *you can't prove a negative*. If I (or government) declare there's a conspiracy, under the rule of logic, you can *not* prove a conspiracy does *not* exist. Conspiracy theories are thus immune to reason, often take on a superstitious quality and, become articles of faith – almost a religion – within some groups.

Sixth, conspiracy theories have a peculiar "democratic" quality in that they are defined by the number of people who believe them. I.e., if one person has a crazy idea, he's nuts; if two people share a crazy idea, they're conspiracy theorists. If one million people believe a conspiracy theory, it's becomes a political issue. If 30 million believe, it's a political party.

As ye believe, so be it

Remember Jonestown in British Guyana? Led by Pastor Jim Jones, several hundred men, women and children voluntarily consumed cyanide-laced Koolade and died. Clearly, their faith in God was overcome by a belief in conspiracies.

In fact, belief in conspiracy theories is often the glue that binds some groups together. Members of the Klu Klux Klan may dream Congress would cancel Black's voting rights, but otherwise dismiss that Black conspiracy fears as absurd. Why? Because . . . the Klan knows Congress is secretly plotting to restrict the voting rights . . . of all *White* people – that's why!

Ironically, a belief in a conspiracy against Blacks unites Black radicals while a simultaneous belief in a virtually opposite conspiracy against Whites helps unify the Klan. Is this an example of universal stupidity? The cynical use of conspiracy theories by extremists to unite their followers? Or evidence of a sophisticated government conspiracy to rule by dividing us into easily conquered minorities and special interests?

Your answer depends on which

conspiracy theories you choose to believe. I cling to my conspiracy theories, you to yours, and generally no amount of facts will convince either of us that the other side is right. As a result, every conspiracy takes on a "home team" flavor similar to a football rivalry between two high schools.

According to this next conspiracy theory (promoted over the Internet), "Juno" (an Internet Service Provider which is presumably one of "their" agents) is out to "get" people who merely *believe* in conspiracies. That is, by showing *any sign* that you *believe* in conspiracy theories, you become one of "their" targets (whoever "they" might be):

"WARNING TO CONSPIRACY THEORISTS! If you are a conspiracy theorist or run a conspiracy page, BEWARE of [ISP] Juno. Several conspiracy sites have been shut down, the defining characteristic in all cases is each webmaster received a message from someone on Juno.com. The most widely reported E-mail address associated with the Juno conspiracy, is snakeyes14@juno.com (who has disappeared recently). . . . Although so far the only sites to be shut down are ones that carry this link, it could spread to another site. Good luck."

Somebody believes Websites are being mysteriously "shut down" merely because they espouse conspiracy theories. It's almost too bizarre.

Curb your journalist

Not all conspiracy theories are amusing, harmless or absurd. For example, according to Sherman H. Skolnick, the editor and publisher of *Conspiracy Times*,

"WHITE HOUSE TO MUZZLE PRESS. Using little-known special teams, the Clinton White House intends to muzzle members of the press corps who have put interesting and incriminating details in their reports. Clinton White House senior advisor Rahm Emanuel, a reported top operative of Israeli intelligence, the Mossad, has ostensibly ordered the following:

"1) An intensive review of the psychological profiles of reporters assigned to the White House. Any so-called "flaw" in their background will be leaked to press outlets friendly to Clinton. . . .

"2) Pressed into service . . . are special teams of FBI Division Five, counterintelligence, in the past accused of "dirty tricks," as well as little-known teams of Defense Industrial Security Command (DISC) . . . . In foreign press reports, DISC, in the name of nuclear facility security, has engaged in apparent assassinations of dissidents."

Mr. Skolnick's allegations are backed up with enough names, times, and facts to seem plausible. Still, it's impossible to say if his allegations are true, false or mixed. After all, the heart of any good conspiracy theory is secrecy, restricted information. As a result, *by definition*, the facts necessary to prove or disprove any conspiracy can't be found. Surely, President Clinton will not admit instituting a program to harass his critics. In fact, given all his recent troubles, it's hard to imagine that Clinton would be dumb enough to cause more problems with plans to "get" the press. On the other hand, Clinton is emotional, undisciplined and given to unpredictable tantrums, so maybe Mr. Skolnick is right.

Theorists find facts

If government secrecy and TV programs like the *X-Files* were all we saw, virtually all conspiracy theories would be dismissed like Hollywood monster movies. They'd be seen as a little too scary for kids, but otherwise entertaining and harmless fun for adults. However, some conspiracy theorists are not content watching the *X-Files*. Instead, they actually study the law and often find curious, even suspicious anomalies.

For example, one Email attributed to Ralph Winterrowd II advises:

"Go to the United States Code (regular or annotated) and proof that the Bill of rights is DEAD is there for all to see in the front part of the code, under BILL OF RIGHTS AND AMENDMENTS. There, each Amendment (Article) is listed as: Article [I], Article [II], Article [III], etc. up to Article [XII], and then changes to Article XIII, Article XIV, Article XV, Article XVI, and changes back to, Ar-

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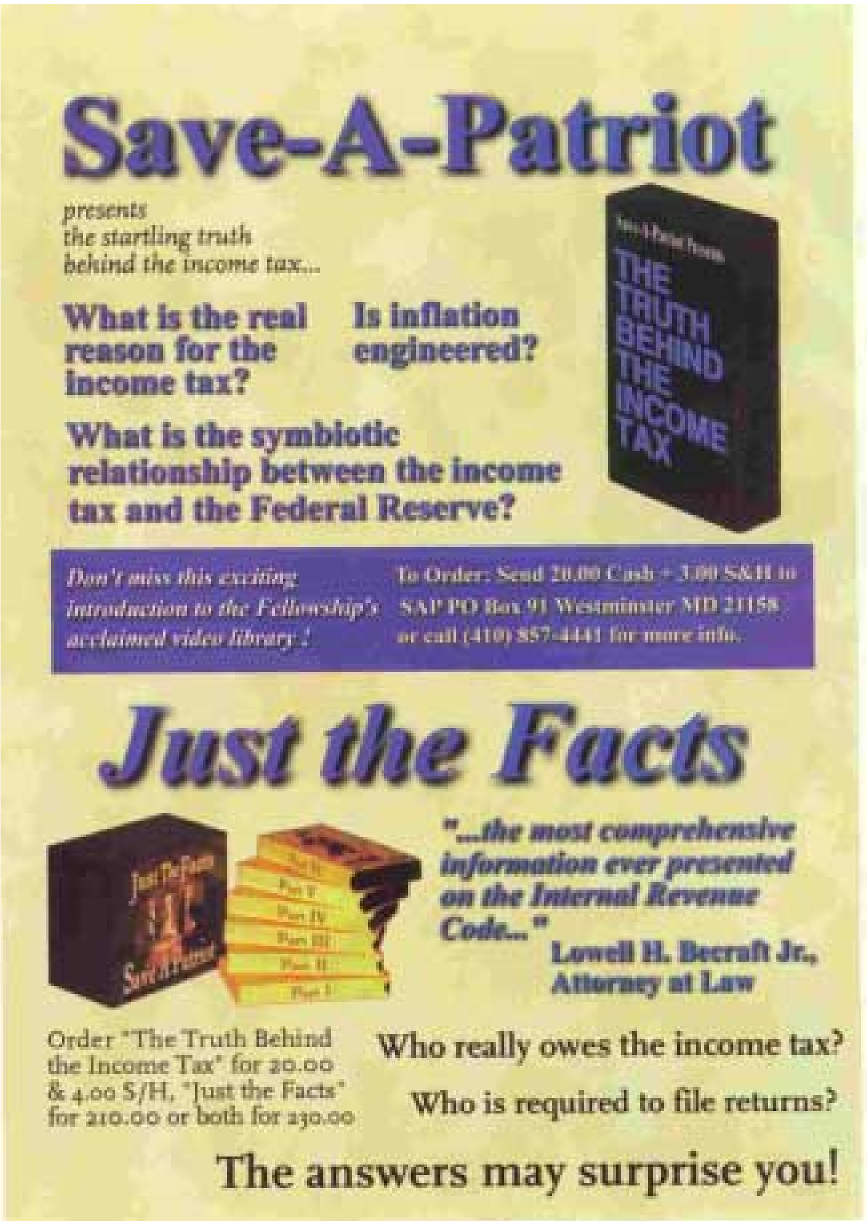

ticle [XVII], Article [XVIII], etc."

"Note that some of the Amendments are identified in [brackets]; others are not. According to the government style manual, legal secretary manuals, dictionaries, etc., bracketed text is used in law only for informational purposes or deletions. While bracketed information may help readers to understand the total document, *bracketed text is not considered to be a legal part of the official document. . . .*"

"Those Amendments that are bracketed appear to have been *deleted* from the legal portion of the official document. I.e., bracketed amendments are still published as historical artifacts of the original Constitution, but carry no legal effect within the United States Code."

Well, maybe Yes and maybe No. It's hard to believe that government would openly publish evidence that portions of the original Constitution have been suspended. On the other hand, if the bracketing convention does not apply in the U.S.C., why are some Amendments bracketed when others are not? The brackets must signify *something*, so what is it?

We can give our secretive government the benefit of the doubt and assume there's no dark meaning behind bracketing some (but not all) Constitutional Amendments. But even so, how smart do officials have to be to realize that they can't tamper with the text of the Constitution (no matter how innocent their reasons) without inciting public distrust and conspiracy theories?

National security spawns X-Files

In a recent episode of TV series *X-Files*, one of the characters explained, "FEMA allows the White House to *suspend* constitutional government upon declaration of a national emergency. It allows creation of a *nonelected* government. Think about that, Agent Mulder."

The *Washington Post* made fun of the TV claim, and dismissed those who believe in "conspiratorial government power" as kooks. According to a FEMA spokesman:

"It is not realistic to think that we can convince them [the conspiracy theorists] otherwise and it is advisable not to enter into debate on the subject. [We] emphatically state that FEMA does not have, never has had, nor will ever seek, the authority to suspend the Constitution."

In response, the *Progressive Review* published "Mind Wars: X-Files Gets It Right; Post Gets It Wrong". This article reports that FEMA's denial of authority to suspend the Constitution, "is just plain untrue. Not only have there been past plans for FEMA and the military to assume an extra-constitutional role, but a recent presidential directive suggests that it is still a possibility not far from the Clinton administration's thoughts. Presidential Decision Directive #63 on 'critical infrastructure protection' specifically assigns FEMA the task of 'continuity of government services,' the precise term used in previous plans for an *anti-constitutional takeover in a time of crisis*. Further . . . the Clinton order is stunningly silent on any role in such an emergency for the legislative and judicial branches or for state and local government." [Emph. add.]

So the X-Files (and constitutionalists) might not be so "kooky" after all.

Yer in the Army now!

Parameters is the journal of the Army War College. According to that publication:

"Strategic leaders can take solace in the lessons learned from military participation in domestic disaster relief, for the record indicates that *legal niceties* or *strict construction of prohibited conduct* will be a minor concern. The exigencies of the situation seem to *overcome legal proscriptions* arguably applicable to our soldiers' conduct. Pragmatism appears to prevail when American soldiers help their fellow citizens."

Read closely, the *Parameter* comment seems like a tongue-in-cheek, wink-wink, joke for "insiders". Are we to understand that our "strategic leaders" secretly long for a time when "legal niceties" and "strict construction of prohibited conduct" will be a "*minor* concern"?

Because government routinely operates in secrecy, we will never really know if the *Parameter* article exposed the military's contempt for law or was simply a poor choice of words. But if government must operate in secrecy, then government must learn to be precise in everything it writes. Any imprecision, ambiguity or insensitivity can lead to socially destabilizing reactions (conspiracy theories).

For example, in response to the *Parameter* claim that, "Pragmatism appears to prevail when American soldiers help their fellow citizens," the *Progressive Review* asked, "Will this be the same sort of 'help' that was provided to the college kids at Kent State in 1970, the Weaver family at Ruby Ridge, and to the Branch Davidians in Waco?"

We don't know if the Army is up to something, but in our modern democracy of special interests (the Army being one), they *could* be. And that's a huge problem: the inevitable competition and conflict between special interests makes all conspiracy theories, no matter how bizarre, *possible*.

The New World Lobby

Historically, most conspiracies occurred in secret. However, under a democracy, some conspiracies have been sufficiently legalized to operate openly.

For example, in a democracy, the inevitable goal of all political lobbyists is to secure unearned advantage for their special interest at public expense. Since the public who would not knowingly provide that advantage, lobbying is often so dependant on public ignorance (a form of secrecy) that it becomes indistinguishable from conspiracy. However, in appearance (by acting *mostly* under the color of law) lobbyists enjoy a presumption of innocence that evades the technical label of "conspiracy"– but still makes most folks' eyes narrow.

For example, according to July 15, 1998, *Washington Post*: "Representative Bob Ney, R-Ohio, said an official of Proctor & Gamble 'in no uncertain terms' threatened to cut off contributions to his campaign because he cast votes against Fast Track and Most Favored Nation (MFN) trade status for China. Rep. Ney accused [lobbyist] Scott Miller, who heads the Proctor & Gamble's political action arm, of trying to 'extort or intimidate' him into voting for Fast Track and MFN trade status for China."

If conspiracies to coerce Congressmen seem unlikely, they are indirectly confirmed by conspiracies of foreign nations. In early 1998, the media buzzed with reports that in 1996 the national Democrat Party and Clinton administration accepted huge political campaign contributions from the *Red Army of Communist China*. Later, secret technology was released to Red China, which enabled their nuclear missiles to strike the USA. The Clinton administration denied any linkage between China's political contributions and the subsequent release of top secret technology, but any conspiracy nut worth his salt knows Clinton engaged in treason.

Columnist William Safire (7/16/98) agrees:

"Attorney General Janet Reno told the Senate Judiciary Committee's Arlen Specter yesterday she was prepared to take – and in reality evade – his questions about Chinese penetration of the White House 'until hell freezes over'. . . . [E]ven after the FBI reported a connection to Beijing intelligence, the Reno Justice Department

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hid its head in the sand. . . . . [The Justice Department] indicted small fry identified earlier in press reports but then hastily bailed out as the trail led into the White House."

And so, while Ken Starr struggled to prove Clinton lied about Lewinsky, no one investigated the more damning evidence of treason. Can anyone watch this farce and not suspect another government conspiracy?

Not just for kooks anymore

Of course, government officials dismiss virtually all of the public's "government conspiracy theories" as work of fanatics, extremists or the mentally unbalanced. Nevertheless, government is quick to use conspiracy theories to justify its own unconstitutional acts. For example, allegations of child abuse were used to justify the Waco assault on the Branch Davidians. Were those allegations true? Were they sincere? (After all, government ultimately killed many of the children it allegedly sought to protect). Or was the whole child abuse scenario just part of a conspiracy to kill the Davidians? And in a larger, more dangerous sense, to what degree are the former Cold War and current "terrorist" threats just "conspiracy theories" created by government to promote increasingly unconstitutional laws and a slide to fascism?

If anyone thinks conspiracy theories can be routinely dismissed as the work of disenfranchised wackos, consider Hilary Clinton's comments on NBC's "Today Show" (Jan. 27, 1998) that there is:

". . . this vast right-wing conspiracy conspiring against my husband since the day he announced for President. A few journalists have kind of caught on to it and explained it, but it has not yet been fully revealed to the American public."

Ah-hahhh . . . a "vast, right-wing conspiracy," hmm? That conspiracy theory *is* absurd. What the Clinton's felt was not a right-wing conspiracy so much as a spontaneous expression of populist disgust. Although people critical of Clinton tend to congregate on the right side of the political spectrum, they no more "conspired" to "get" Bill than miners of the 1849 Gold Rush "conspired" to invade California – people merely respond similarly to identical stimulus or information. If the media reports gold at Sutter's Mill, a lot of folks will move to California. If the Internet reports offal in the Oral Office, a lot of folks will demand the White House be cleaned. Reacting simultaneously does not prove acting in conspiracy.

Nevertheless, the fact that the First Lady promoted a conspiracy theory validates the public's belief in conspiracies.

And Hilary's not alone. Washington is full of conspiracy advocates. For example, Representative Henry Hyde heads the Judiciary Committee which voted to launch official impeachment proceedings against President Clinton. Prior to that vote, Rep. Hyde was "exposed" for having an adulterous affair *30 years ago*. Rep. Hyde (and several other Congressman) angrily dismissed this exposure as the result of a brazen *White House* conspiracy to discredit or stop the impeachment hearings.

Clearly, conspiracy theories aren't just for kooks anymore. Men, women, Blacks, Jews, Constitutionalists, Democrats, Republicans, Congressmen and even the President and First Lady all agree: you better watch it 'cuz "they" (the various conspirators) are absolutely out to get "us".

We all believe in conspiracies. We just disagree about who "they" and "us" really are.

Democracy's whirlwind

I've pledged my allegiance "to the flag of the United States of America and to the *Republic* for which it stands," so I'm no fan of our current "democracy". A Republic tends to guarantee broad personal freedoms and minimal government that serves all of us equally. But once a government dispenses a reasonable level of justice and services for all, it can only grow by offering special advantages to limited special interests. Democracy's big government is not a massive monolithic bureaucracy that treats us all like clones. Big government is a carnival midway of individual bureaucracies, each hustling suckers into special interest constituencies with promises of easy money. But the us-against-them nature of special interests ultimately encourages social fragmentation and personal isolation. Conspiracy theories are symptom of that fragmentation and isolation.

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Those who nevertheless advocate democracy should at least recognize its cardinal principle is not the right to vote but the right to *know*. Without complete information on a particular issue, our votes are meaningless. Insofar as government secrecy deprives the electorate of information necessary to cast an informed vote, that secrecy is antidemocratic.

However, secrecy is not the primary cause of our modern susceptibility to conspiracy theories. In our multicultural, special interest democracy, we're all pitted against each other in a battle for benefits. As a result, we've lost the secure feeling of common interests and "community" provided by a Republic's limited capacity for special interest legislation. Under a Republic, it's difficult to pass special interest legislation and thereby divide the body politic into anxious competitors. Thus, in a Republic, conspiracy theories are improbable.

But in a democracy's scramble for benefits, we're divided into hundreds of thousands of special interests each competing – and effectively conspiring – to gain advantage at our neighbor's expense. In a democracy, the conspiracies of special interests aren't prohibited, they're *expected*. If you're not conspiring to exploit someone, you're bound to be exploited by everyone.

How many special interest groups do you belong to? Three? Five? Twenty? It doesn't matter; your handful of memberships are arrayed against *thousands* of competing special interests. You are so badly outnumbered that you'd have to be nuts not to be paranoid. Democracy inevitably makes each of us feel isolated, alienated, threatened and anxious because we have no protection against "them". If "they" vote to take our homes, jobs, money or kids, "they" can do it. And we don't even know who "they" are.

Are Republicans conspiring against you? Sure. Right this minute, Republicans are conspiring in Washington to fool you into voting for them in the 2,000 election. And so are the Democrats, Communists, Catholics, Jews, Elks, CIA and Boy Scouts. Insofar as each of these groups sees itself as a special interest, they necessarily see themselves as isolated from the nation at large. That isolation not only reduces any moral reluctance to exploit the nation, it actually mandates that exploitation. After all, if they don't build up their own power by exploiting others, it's just a matter of time before the "others" with exploit them. Special interests is a kind of addiction. The more advantages you have, the more someone will want to take them from you. And so, to protect yourself, you must gain even more advantages, which makes you a bigger target, which . . .

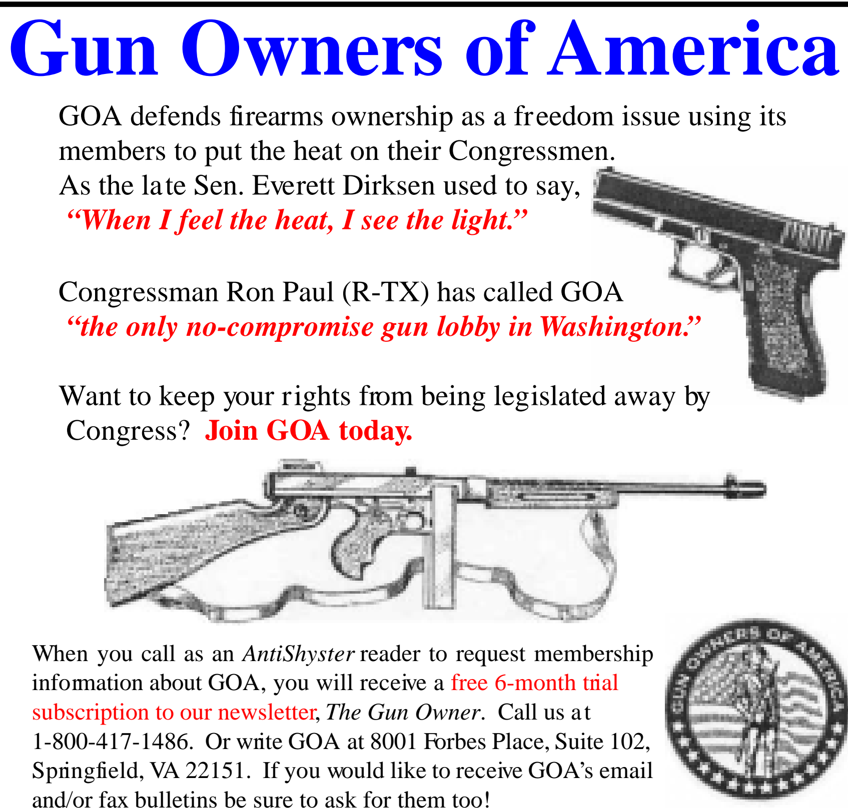
Worse, although democracy is supposedly based on "majority rule," I don't believe there is a majority anymore – silent, moral or otherwise. The "majority" hasn't decided a national election in my lifetime. In the 1992 three-way election, Bill Clinton was elected by less than *half* the people who bothered to vote, and less than a *quarter* of those eligible to vote. Is this democracy's "majority rule"? No. This is rule by some unknown special interests, rule by "them".

As a democracy, this nation has disintegrated into a mob of special interests competing for preferential legislation. Every time our democracy passes another law, it's not to serve the nonexistent majority but rather to exploit them to serve some minority. If Washington passes 10,000 laws this year, how many will serve *you*? Almost none. How many will serve the entire nation? Zero. So is it surprising if we become obsessed by the idea that "they" are out to get "us"? It's not a conspiracy *theory* – it's a *fact* and inevitable consequence of the politicized "special interest" competition spawned by our democracy.

If we live in a democracy, "they" *will* be out to get "us".

Just as "we" will be out to get "them".

Anyone who disagrees is obviously conspiring against us. ■



Interim Report on the Crash of TWA Flight 800

by Commander William S. Donaldson III, USN Ret.

Major Fred Meyer became a naval aviator in 1964 and spent two years in Viet Nam combat rescuing downed American pilots from North Vietnam. During his tour of duty, Major Meyer was repeatedly exposed to small arms fire, surface to air missiles, and even flak. The man *knows* high explosives and military ordnance. Today, he is a lawyer and at the time of the TWA 800 crash, he was a helicopter pilot in the New York Air National Guard, 106th Aerospace Rescue group.

On the evening of July 17, 1998, Major Meyer was flying an Air National Guard Blackhawk helicopter off Long Island, New York, waiting to practice some night maneuvers when he witnessed the TWA Flight 800 disaster.

As you assess the validity of Major Meyer's observations, note that he saw a series of *three* explosions and proceeded to the crash site so quickly that he arrived *before* all of the debris had finished falling from the sky. This is good evidence that his eyewitness observations deserve serious consideration and respect.

Speaking publicly on March 12, 1998, Major Meyer explained:

"I saw a streak of light moving very rapidly that resembled the path of a shooting star that you'd see at night–except it was red-orange in color and I saw it in broad daylight. One does not see shooting stars in broad daylight.

"There was a break–where it stopped–and then for an instant I saw nothing–and then suddenly right there I saw an explosion–high velocity explosion–military ordnance!–looked like flak in the sky–and I've seen a lot of flak–ours and theirs. It was military ordnance!

"A second and a half to two seconds later–farther to the left but down–I saw a flash once again–high velocity explosion–brilliant white light–like the old fashioned flashbulbs that we used to get one picture out of it and then it was gone–brilliant white light. A second and a half to two seconds after that–farther to the left but even lower–I saw, but I'm not certain, either one or two nearly concentric detonations and from those detonations emanated this huge, slowly forming, low velocity explosion fireball. It was four times the size of the setting sun at that time. Of course it was much closer but it was huge, it filled the sky."

"We flew at max speed directly toward the point on the ocean where we could guess that the fireball was going to impact the ocean. When it impacted the ocean– threw a wave out–and continued to burn. This was a lake of fire, probably three acres in size, burning with flames fifty feet high. As we proceeded toward the fireball I could see more debris falling from the sky. I told my helicopter pilot to flare it and slow down so that we would allow the debris to fall in front of us–we wouldn't fly under it and get it meshed in our rotor system. . . ."

"The NTSB says the fuel tank exploded and that's what brought the aircraft down. The fuel tank explosion is the *third* event in the series. It could not have *initiated* anything. The first thing was a high velocity explosion of military ordnance–the second was another high velocity explosion of some brilliant white light–I don't know what it was. The third thing–three to five seconds later–was the fuel tank explosion and the Commander (Donaldson) has explained that the only way you get that fuel to–not even explode–but to burn rapidly is to shake it up as though you had atomized it as you would in a diesel engine. And that's basically what happened. That fuel was shaken by, I believe, the warheads of two missiles and the break up of the aircraft caused by the damage from those missiles and that's what shook that fuel so that ultimately something ignited it."

"When you fly a helicopter at 120 knots over North Vietnam in the iron triangle–in the most heavily defended airspace in the history of warfare–you

see a lot of missiles–you see a lot of flak–and I did–I saw a bunch of it–I know what it looks like. My purpose is to tell you that what I saw explode in the sky on July 17, 1996 was *military* ordnance . . . It's no accident–somebody shot this aircraft down"

Of course, our government denies Commander Donaldson's allegations. Virtually all Federal investigating agencies have concluded that while they don't know what actually caused Flight 800 to crash, they know absolutely that the cause was *not* a missile.

Frankly, I don't understand how anyone can absolutely tell me what *didn't* cause a crash unless they can tell me what absolutely *did*. For example, if I swear I saw Flight 800 fly into a flock of flying pink elephants, my testimony may sound absurd, but you can't absolutely disprove it until you can prove what actually happened. And if scores of other eyewitnesses also swear they saw the flying elephants – until you find proof to the contrary – you'd better start watching the sky for pink.

Similarly, Cmdr. Donaldson's 109-page report states, "There are *hundreds* of eyewitnesses who are convinced they saw a missile shoot down Flight 800." If government investigators don't know what caused Flight 800 to crash, how can they reasonably reject reports by *hundreds* of eye-witnesses that the disaster was caused by one or more missile(s)?

In fact, anyone who looks closely at the evidence must conclude: 1) Flight 800 was destroyed by one or more surface to air missiles; and 2) there is a government conspiracy to conceal the true cause and perpetrators of the Flight 800 disaster.

Which leaves several more questions:

1) Who fired the missile? Government or terrorists?

2) If terrorists fired the missile, why won't the government report them?

3) If rogue elements or incompetent military personnel of our own government fired the missile, why won't our government report them?

The following is a summary of a 109-page report by ex-Navy Commander William S. Donaldson III, USN Ret. – a former Navy pilot and military airplane crash investigator.

As with Major Meyer, I'm encouraged to see another former high-ranking military officer provide credible evidence that Flight 800 was destroyed by a missile. Cmdr. Donaldson's background as pilot and crash investigator refutes the idea that only "kooks" believe conspiracy theories about TWA Flight 800.

Interim Report on the Crash of TWA Flight 800 and the Actions of the NTSB and the FBI

Summary

The preponderance of facts in this report support the following conclusions:

1. TWA FL800 was intentionally destroyed by a powerful, proximity fused, airbursting, antiaircraft weapon, launched from a position approximately one nautical mile off shore and three nautical miles east of Moriches Inlet, Long Island, New York.

2. TWA FL800 was also engaged, seconds later by a second missile, fired from a closer position to the south of TWA FL800's track.

3. Senior FBI agents were close eyewitnesses to the shoot down. Those FBI Agents believed the aircraft was shot down [but] did not file eyewitness reports . . . .

4. No evidence has yet been developed that implicates the US military as participants in the loss of TWA FL800.

5. The United States Justice Department moved on 24 July 1996 to suborn Title 49 U.S. Code by denying access of Parties to the Investigation and NTSB Investigators to eyewitness and real evidence.

6. The White House's early public statements, made without justification, impugned or ignored eyewitness statements to discredit missile sighting reports.[1]

7. Terrorist communiques in the Mideast that predicted the time of the

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attack on the United States, were also treated with contempt as being totally unfounded by White House spokespersons.

8. The United States was under specific threat of terrorist attack against airports and airliners in the New York area in retaliation for the conviction of the World Trade Center conspirators.

9. The Administration was aware that a sighting of a probable unguided missile was made on the evening of 17 November 1995, [eight months before Flight 800 crashed] by two airline crews from Lufthansa and British Airways at altitude near Long Island.

10. FBI Agents have not specifically identified surface radar targets that were at the geographic points eyewitnesses indicate as the source of the missile fire.

11. One unidentified surface radar target fled the scene of the shootdown at 30 knots. When TWA FL800 exploded, the contact was only 2.9 nautical miles away.

12. The 30-knot surface target avoided visual contact with other surface targets on a heading of 203 (degrees), and did not stop or turn to provide assistance.

13. FBI counter-terrorism Agents briefed the NTSB Operational Factors Group, including the Parties to the Investigation, in January of 1997, specifically pointing out where a missile was launched.

14. The FBI is in possession of eyewitness testimony that proves, without doubt, TWA FL800 came under missile attack and refuses to release this information.

15. The FBI is in possession of high explosive chemical residue evidence on interior and exterior parts first identified by bomb sniffing dogs at Calverton [where the remains of Flight 800 are stored], then verified as a specific high explosive by chemical sniffers at Calverton.

16. FBI leadership attacked the validity of their own chemical residue findings after using the same FBI Laboratory personnel who were responsible for falsifying laboratory evidence in hundreds of previous cases.

17. The FBI is in possession of shrapnel removed from the bodies of victims, and is holding laboratory findings secret.

18. The FBI contrived a plausible excuse for the presence of high explosive residue in the aircraft as having been contaminated by bomb sniffing dog training alleged to have been done in St. Louis on 10 June 1996.

19. The FBI had no answer as to why the dog's handler's placement of training samples in the aircraft did not match the locations where the contamination was found on aircraft parts.

20. NTSB leadership began a public media campaign in April 1997, despite overwhelming evidence to the contrary, that a center wing fuel tank explosion caused the mishap.[2]

21. NTSB officials directed a NASA laboratory to immediately stop testing when nitrates (explosive residues) were found on critical early debris.

22. A TWA employee caught an NTSB official falsifying the Debris Field data record in the placement of aircraft seats.

23. When evidence of this act was provided to the Chairman of the NTSB (including pictures taken by the NYPD), in a letter written by TWA attorneys, Mr. Hall insisted the TWA employee be removed and that she be targeted for investigation and indictment.

24. NTSB officials have been relentlessly and persistently eliminating or rewriting findings in the database that cannot be explained in their theory.

25. The NTSB refused to accept the testimony of Captain Mundo, the flight engineer on the flight previous to FL800, who stated that he left ZERO fuel in the center wing tank.

26. The tail of the aircraft failed shortly after the nose came off, which proved a massive outside force brought down FL800.

27. The NTSB refuses to release Debris Field information or the Bruntingthorpe explosive test data to the parties to the investigation, because both contain powerful exculpatory evidence refuting a center wing fuel tank initiating event.

28. Because of the results of the Bruntingthorpe tests, the NTSB lead-

ership has refused to allow the CVR Analysis Group to reconvene.

29. NTSB leadership, now in possession of redacted eyewitness forms from the FBI, refuses their own investigators access to them.

30. NTSB leadership has oddly shown absolutely no interest in eyewitness testimony despite the fact eyewitnesses have information vital to the airborne breakup sequence and placement of floating debris.[3]

31. It appears the Justice Department delayed seven months to file frivolous criminal charges and arrest Captain Stacy and Mr. and Mrs. Sanders in order to threaten and subdue disgruntled investigators immediately prior to the Baltimore NTSB Public Hearing.

32. It appears the FBI intentionally tried to arrest the Sanders family while they were outside of New York in order to place them in the limbo of the criminal transportation system.

33. It appears that there was prosecutorial misconduct in the Sanders and Stacey cases that include a threatened raid of CBS headquarters in New York and seizure of exculpatory evidence by the FBI as well as the removal of similar evidence from Calverton [where the remains of Flight 800 are stored].

34. Non-government investigators who are members of the Principal Parties cannot go to Calverton without Government escort.

35. The Government refused the help of professional ocean salvage operators who had equipment on site on 18 July 1996. Even though Weeks Marine and AT&T, who both routinely contracted with the Government in the past, had equipment to support divers, robot submarines, lift and storage capability far superior to the Navy's, already onsite, their assistance was refused.

36. The CIA contrived with the FBI, a knowingly false crash scenario, alleged to have been drawn from eyewitness statements, produced a false video, and released it to the mass media.

37. FBI officials are now refusing to release eyewitness statements back to the eyewitnesses who gave them. These eyewitnesses are now filing Freedom of Information Act requests in hope of obtaining their own statements.

38. The White House, by categorizing the shootdown of FL800 as a *potential crime*, instead of a political *act of war*, has been able to keep military experts totally isolated from the case.

39. The White House has ignored a call for a congressional inquiry by a past Chairman of the Joint Chiefs of Staff.

40. This report provides "clear and credible evidence" that officials in the Clinton Administration are guilty of criminal wrongdoing and that Attorney General Reno should be compelled to appoint a Special Prosecutor to investigate the actions of the NTSB and FBI in covering up evidence that a missile shot down TWA Flight 800.

According to an 8/2/98 *Pittsburgh Tribune-Review* column by Christopher Ruddy ("Ex-Navy Official Seeks Hearings Flight 800 Missile Theory"):

"On July 17, 1998, Cmdr. Donaldson issued his 109-page report to the House Committee on Transpor-

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tation and Infrastructure and its subcommittee on aviation. Donaldson and a media watchdog group, *Accuracy in Media* are calling for congressional hearings on Flight 800.

"Donaldson's report received scant media attention, [gee, there's a surprise] but his arguments have won some converts. Dr. Vernon Grose, a former board member of NTSB and a frequent television commentator defending the NTSB's ruling on the crash, has changed his mind and has joined with Donaldson in challenging the government's conclusions."

In fact, Cmdr. Donaldson insists, "Every damn bit of data that comes from that airplane fits with a missile burst."

Nevertheless, if you analyze Cmdr. Donaldson's 40 allegations, you'll see the cause of the crash is relatively unimportant. For example, in terms of,

Technology

* Four allegations (items 1, 2, 9 & 26) indicate TWA Flight 800 was destroyed by one or more surface to air missiles.

* Three allegations (10, 11 & 12) indicate the perpetrators may have used a high speed boat.

Perpetrators identity:

* Two allegations (7 & 8) suggest Mid-East terrorists may have caused the disaster.

* Three (4, 38, 39) declare there is no evidence "yet developed" to suggest the U.S. military caused the disaster.

Government conspiracy

To conceal the cause and perpetrators of the tragedy:

* One allegation (36) implicates the Central Intelligence Agency.

* Three (5, 31, 33) implicate the U.S. Department of Justice.

* Five (6, 7, 38, 39 & 40) implicate the White House.

* Thirteen (3, 10, 13-19, 32, 33, 36 & 37) implicate the FBI. And,

* Thirteen (13, 20-25, 27-30, 34 & 35) implicate the National Transportation and Safety Board (NTSB).

Judging from the frequency of the various allegations in Cmdr. Donaldson's summary, the conclusion that Flight 800 was shot down by one or more missile(s) is shocking but relatively unimportant. Likewise, whether Flight 800 was destroyed by our own military, foreign terrorists, or a twisted troop of Boy Scouts is also unimportant.

The real significance of Cmdr. Donaldson's study is that 35 of his 40 allegations implicate several *federal* agencies as *co-conspirators* in an effort to obstruct justice by concealing the cause of the Flight 800 crash and the identity of the perpetrators responsible for the deaths of 230 passengers and crew.

America can survive missiles, foreign terrorists, rogue elements of government and incompetent military personnel who accidently launch missiles. But we can't survive widespread government conspiracies that include the FBI, CIA, NTSB, Justice Department and White House. Nor should we try to endure such treason. In the end, the threats of Stinger missiles and foreign or domestic terrorists is trivial compared to the threat of government conspiracies.

If one or more missiles destroyed Flight 800, *every single government employee and official* – from the lowest clerk right up to the President – who knowingly conspires to conceal that truth should be tried, convicted and jailed for the balance of their natural lives. No exceptions, no excuses, no crap. Every single one.

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But today, although Commander Donaldson's report receives "scant media attention," it's being broadly circulated over the Internet. The number of real conspiracies (Flight 800, Waco, Ruby Ridge, JFK, Vince Foster) grows every few months. But the number of people who *know* these are not just "kook" theories but, in fact, *real* conspiracies – is growing almost geometrically.

We live in an electronic age wherein government can no longer reliably control public opinion. We are fast approaching a time when the American people, freed from the mainstream media's propaganda, will discover enough of the truth to stand up and start hollering for justice and retribution. If that time comes, it won't be much fun to be a government employee, agent, or official who's helped sustain conspiracies against the American people. And I'm not talking about twenty years from now. Thanks to the Internet, within twelve months conspiracies across the nation just might begin to be *officially* exposed, prosecuted and proved.

The times, they are a-changin'. And at revolutionary speeds. Theories are becoming facts, conspiracy "nuts" are becoming respectable, and soon, real conspirators just might be heading for jail.

According to Major Meyer, "We know there are people in the NTSB who have more to say than is being said. We don't know who it is–the only reason we're here is to say it's no accident–somebody shot this aircraft down–we want to know who–we want to know the truth."

"But we're not going to find it by ourselves–*you* people have to pick up those pencils and paper and write those representatives and tell them *you* want to know too."

"That's all I have."

NOTE: The following footnotes were primarily derived from the Christopher Ruddy article, supra*:*

[1] According to Donaldson, "there are hundreds of eyewitnesses who are convinced they saw a missile shoot down Flight 800." Among those witnesses are two off-duty FBI agents, a former Navy gunnery officer, and an Air National Guard helicopter pilot. All described a light or flare racing across the sky, striking Flight 800 and apparently causing an explosion.

[2] TWA 800 was using Jet-A kerosene aviation fuel, a stable fuel that is difficult to explode. No Boeing-built plane using Jet-A fuel has *ever* had an explosion caused by mechanical failure. The NTSB concluded some 600 pounds of jet fuel remained in the center fuel tank after the plane's flight from Greece to New York. The NTSB theorizes the tank became *super*heated while waiting on the runway in New York, vaporizing some of that fuel. Vaporized fuel is much less stable than liquid fuel. But Donaldson argues the fuel was not *super*heated. Indeed, he tested the temperature inside the center tank of a 747 that had just arrived at JFK from Europe and was scheduled to return. The temperature was 69 degrees, just one degree above outside ambient temperature.

[3] After the explosion severed the nose section of fuselage forward of the wings, the nose section fell into the sea at what later was identified as the "red area" – that debris area *closest* to JFK International Airport, where the flight had originated. However, the remaining majority of the plane continued flying eastward (minus the nose section) for two more nautical miles and then dropped virtually intact into what investigators later labeled the "*green* debris field" – the region of debris *farthest* from JFK International Airport and where divers located almost all of the wreckage.

But early in the recovery, parts of two seats were found in the "red area"– that part of the search area *closest* to JFK (where the *front* 60' of fuselage fell). These seat parts were clearly identified as having come from the *rear* of the plane (which wreckage was found in the *green* area), raising some serious problems with the NTSB's version of how the aircraft disintegrated.

An NTSB document acknowledged that these seat parts, from rows 46 and 48, were recovered at least one nautical mile closer to JFK than where the main wreckage was found. No explanation has been offered for how, in the NTSB's scenario, these back-of-the-plane parts could have broken off first.

Donaldson also notes that the center fuel tank was one of the *last* items to fall into the sea, in the green debris area *farthest* from JFK. But he argues that if the fuel tank was the source of the explosion, it should have been among the "red" debris found *closest* to JFK airport. Further, if the fuel tank exploded with sufficient force to shear through the entire circumference of the 747's fuselage and airframe (causing the 60' of nose section to shear completely off) – why wasn't the fuel tank virtually disintegrated by the blast? ■

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Secrecy's End

by Alfred Adask

Those of us with websites spend a lot of time trying to figure out how to get rich quick on the Internet. If you provide information, Internet publishing costs are negligible, the overhead is trivial, and with luck and the right marketing program, your potential audience can easily number in the millions. The opportunity for generating huge wealth in "E-commerce" (electronic commerce over the Net) is enticing and frustrating as a mirage. You can see the water, but how do you get a drink?

The Internet is filled with masses of information. But that information is so easily copied and republished, that the Information Age has become the Information Glut. Today, the pertinent question for website "visitors" is: "Why buy the cow, if the milk is free?" That is, why pay to read a paper magazine or newspaper (with all its ads and extraneous articles that don't personally interest you) when, in just minutes, you can download–for *free*–more information on topics *you* particularly like than you can read in a year?

Fortunately, as yet not all the world is on the Internet (I understand there are three people in Africa, and eighteen in China who have not yet logged on). Some of us still rely on tangible, hard-copy (paper-based newspapers and magazines like the *AntiShyster*) for our information. So long as that's true, I can survive (even prosper) selling my "old-fashioned," paper-based magazine. But none of this changes the fact that information is now so plentiful it is fast becoming a glut on the market.

Despite all the hype about "E-commerce," very few websites make much money. Instead, much like the North American wilderness of the 1600s, the Internet's real significance is not commercial – it's *political*. For the first time in history, virtually all people can have access to information, even truth, without the economic restraints previously mandated by conventional publishing costs (paper, ink and distribution) or the political restrictions imposed by government censors. The Internet is a revolution and renaissance rolled into a single incandescent moment potentially greater than the first American Revolution. The truth is no longer "out there," agent Mulder – it's right here, in your house and mine, as close as our PCs and telephone lines.

Finally – freedom of the press

In 1791, America enshrined "Freedom of the Press" in the First Amendment to our Constitution. But for 200 years, that freedom remained more of an ideal than a reality since it could only be enjoyed by those few who actually owned a large, clunky, expensive printing press. But thanks to computers, desktop publishing and now the Internet, virtually everyone can now enjoy "Freedom of the Press". Why? Because *anyone* with $500 in computer hardware, software and an Internet connection has sufficient resources to compete head-on with the *New York Times*, *Wall Street Journal* and even the *AntiShyster*.

The primary criteria for success in publishing is no longer financial wealth, but individual talent. If you can gather information efficiently, perceive its significance, and quickly express that significance in a way that's concise and/or entertaining, then you can potentially attract as many readers on the Internet as any mainstream media columnist in the world. The resultant political implications are extraordinary.

For example, before the Internet, mainstream media might not have published the Clinton follies, or if they did, would've watered it down to the point where is was a one-week curiosity rather than a yearlong death by a thousand cuts (or jokes if you watch Jay Leno).

But with the Internet, all that suddenly changed when a formerly unknown, would-be journalist named Mat Drudge got hold of secret information concerning Clinton and published it on his website (the "Drudge Report") while *Time*, *Newsweek*, et al. (who had access to the same information) were pussyfooting around, wondering whether they should blow the whistle on Bill. Once Drudge let the truth out of the bottle, *Time* and *Newsweek* were *forced* to publish, and publish *quickly*. Result? Clinton's presidency was badly shaken.

The Internet (almost) destroyed a President. Think about that.

And it wasn't information that (almost) killed the beast, 'twas Internet. Why? Because Bill Clinton, the Rhodes Scholar genius, was so busy chasing interns and hustling campaign contributions from Red China that he failed to see he was caught in a cyberspace revolution that rendered his secrets vulnerable to massive public exposure. Like most Presidents before

him, Bill relied on mainstream media to conceal rather than publish his secrets. Bill assumed that even if he exploited his White House personnel, he could still count on their silence since, if they dared to tell the mainstream media: 1) the media probably wouldn't print the story, 2) the media would probably reveal the leak to Clinton, and 3) Bill Clinton is a dangerous man to cross (ask Vince Foster). But Clinton's reliance on mainstream media's protection is now as antiquated as France's reliance on the Maginot Wall in the 1930s to stop a Nazi invasion. The Germans devised a new strategy called "Blitzkrieg" that rendered ancient fixed defenses obsolete.

Likewise, today, the Internet Blitzkrieg is making "controlled" media obsolete. More and more, media that won't tell the truth (and quickly) will be read less and less–which may explain why mainstream media market share is declining steadily. Further, as market share declines, the media becomes less able to influence public opinion, and so the government's urge to control the media also declines. As media control and market share (profits) wither, media will be forced to publish truth (not propaganda) or perish. The Internet is wiping out "politically correct" media much like that asteroid once wiped out dinosaurs.

Hunters become the hunted

A lot of patriots are deeply concerned about the loss of privacy (secrecy) brought on by the computer age. But when you stop to think about it, who has more to fear from public exposure? Ordinary Americans or high government officials?

Frankly, m' dear, I don't give a damn if the government taps my phone or even wires my home. Sure, they might catch me talking to myself, ranting and raving when I think I'm alone. The exposure would be embarrassing (even humiliating), but no big deal. In fact, I'd gladly allow government to secretly spy on me with phone taps in return for preserving the Internet's ability to openly publish whatever the public finds out about government. I'll guarantee that Clinton, Congress and the FBI are more worried about open publication of their secrets on the Internet than you and I are about taps on our telephones.

Because the Internet is glutted with info, nobody really cares about my peccadilloes. I'm too small, too anonymous. The only information that's still prized, profitable and likely to attract attention is that which is held "secret" by celebrities and high officials. As a result, secrets of the rich and powerful are the Internet's natural prey and therefore *most likely to be exposed*. Increasingly, the most politically dangerous act any high official can now commit is to engage in secrecy.

This is unprecedented. The world is being stood on its head. Conventional wisdom is changed to folly. The Internet is turning secrecy–the primary asset of governments, powerful men, and conspirators throughout history–into a primary *liability*.

Where anyone can grow up to be President?!

For example, here in Texas, George Bush Jr. (son of the former President) is both Governor and national front-runner for the Republican nomination for President in the year 2000. But recently, George Jr. has expressed misgivings about running for the White House. Reportedly, Geo. Jr. was quite the "party animal" before his dad bought him the Governor's mansion. Today, seeing the beating Clinton's taken over his foibles, Jr.'s realized that becoming President guarantees that his playboy past will be publicized. Worse, once folks start probing Jr.'s old party pals, they may also discover some shady business deals or even criminal activities. So Jr. is now pondering how many "little people" he's crossed over the years who might resurrect his indiscretions on the Internet like so many "Ghosts of Christmas Past".

More importantly, if old habits die hard, we can assume that George Jr., the playboy of yesteryear, will be similarly inclined to "play around" once he wins the White House and all its attendant temptations. But, alas, how will a po' country boy from Texas be able to discern between a loyal intern who truly wants to "pleasure him" and a deceitful intern looking to seduce him into a story to hype her website or to trade for a cushy job in the Pentagon? In short, the threat of Internet exposure condemns our next President to sleep *exclusively with his own wife* (!) for the duration of his term in office. (As Charlie Brown might say, *aargh!)*

Except for Jimmy Carter, most modern Presidents could endure enforced marital fidelity only if the White House chef laced the mashed potatoes with salt peter. Would JFK have run for the Presidency if he knew his only romantic interest therein would be Jackie? Not likely. Would LBJ (who reportedly boasted that, as President, he had sex with more women than JFK) have hustled, cheated and connived his way into Oval Office if he had to cuddle exclusively with Lady Bird for four years? Not a chance. How 'bout George Bush Sr.? Do you think you could force him into the White House with a shotgun if he could only have sex with Barbara for *four years*? . . . I don't think so, Tim.

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And who (assuming he was foolish enough to be elected in the first place) would run for reelection? Every time an incumbent President's supporters started chanting "Four more years! Four more years!" the poor Prez would probably break into hysterical sobbing, pleading for just ten minutes with a sympathetic intern.

It may sound funny or improbable today, but soon the unbridled threat of Internet exposure (true Freedom of the Press) may weed out most dishonest and secretive politicians. Since secrecy can no longer be guaranteed and is therefore a liability, only a crazy man would run for office unless he were honest and moral. The Internet is giving us a Presidency that can only be survived by the elderly, eunuchs, and honorable men who truly love their nation and their spouse.

See what I mean about an unprecedented revolution? *Honest* Presidents?! Who would've thought such a thing possible? The world *is* standing on its head.

And while this revolution may start in the Oval Office, it's sure to spread all the way down to the local dog catcher. In another year or two (after most of the secrets of the Congress, Senate, and Supreme Court have been exposed), all the Governors should be next. And then the state legislators. And then the state judges! Even state prosecutors! Cops!! It boggles the mind and hardly seems possible, and yet it appears that the Internet (a/k/a, Freedom of the Press) just might give us an honest government.

Another endangered species

By rendering secrecy virtually impossible and therefore a liability, the Internet is also driving government conspiracies toward extinction. Think of the implications for the CIA, FBI, IRS and Justice Department. While they strain to devise new and improved methods of (secretly) monitoring American's personal, financial, and political affairs — the Internet makes their secrecy self-destructive. For example, new bugging devices and secret dossiers on every American are dangerous plans, but thanks to the Internet, the danger is now primarily for the conspirators, not the public.

See, if any official dares implement a plan that is secretive (and therefore criminal, unconstitutional or at least immoral), *every* man or woman involved in implementing that conspiracy becomes a potential publisher by virtue of handling the Internet's hottest commodity: *secret* information. Plus — since secrets are only valuable once (when they are *first* exposed), the last man to expose a plot will get nothing–no fame, no fortune, no vengeance. Even the second man to blow the whistle won't get much. In fact, if you participate but aren't the first man to expose the plot, sooner or later (when the plot is exposed), you will be viewed by your family and neighbors as a dishonorable co-conspirator or coward. Only the *first* man to reveal the secret conspiracy will win riches, fame, and public honors (or at least, get even with his boss). That means the Internet is creating an *incentive*, a pressure, to be the *first* to expose your boss's secret politics and perversions.

As a result, what high official dares insult an employee? Who can be safely passed over for promotion or sexually harassed? Who can use sex to advance their career? Who can be robbed, exploited, or subjected to injustice?

It'll take 'em a while to figure it out, but so long as the Internet remains, virtually no high official will dare betray the public trust.

It ain't over 'til the fat lady publishes

God made all men, and the Internet just might make them equal. Today, if just *one* cantankerous little man gets wind of your plot and publishes on the Internet, yer busted, baby!

The Internet has not only empowered little men; it's also empowered little women. After all, who ultimately trashed the Clinton administration? Linda Tripp; the lady with the telephone tapes. And why? Because she worked for Vince Foster–the President's alleged buddy and White House counsel who was murdered and dumped in a Washington D.C. park in an ineptly choreographed "arkancide".

I have no evidence other than logic and intuition, but I don't doubt

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for a minute that Clinton caused or approved of Foster's murder. Likewise, I suspect Linda Tripp also holds Clinton responsible. Linda *liked* Vince Foster. Respected him. Maybe even (secretly) loved him. So when Foster died, Linda determined to avenge his death.

A lot of people make fun of Ms. Tripp. For example, in September, I watched supermodel Cindy Crawford and aging author-editor Helen Gurley Brown disparage Ms. Tripp on the "Politically Correct" TV show. Ms. Tripp is overweight and unattractive; she could never be a super-model or a celebrity. But unlike the supermodel (who hasn't had an original thought in this life) and Ms. Brown (who hasn't had a significant thought in several decades), the unattractive, overweight Linda set her mind to *bringing down a President*, and she did just that. While Cindy Crawford and Helen Gurley Brown sold cosmetics and planned their next plastic surgery, Linda Tripp changed the course of history. I have more respect for Linda Tripp's brains, character and determination than I do for all the "super-models" in the world.

Without a speed-induced 24-inch waist or double-D breast implants, one physically unremarkable woman gathered enough evidence to trash a President. *One woman*. Probably a woman who fixed a lot of coffee for her various bosses. Probably a woman who was the butt of several office jokes. Just one nondescript, overweight, unattractive woman who was almost invisible in the office environment brought down a President. Plus the Internet. She gathered the evidence, and Matt Drudge published it. That's gotta scare every corporate executive and government official in the world. The little people are being empowered. The eyes of Texas (and America) are upon us all. The veils of secrecy are disappearing.

It's almost funny to watch the fascists try to trash the Second Amendment and seize our guns, while the real threat to their racket is the First Amendment and Internet. The knee-breakers just don't get it: The pen *is* mightier than the sword and the Internet's the biggest pen the world's ever seen. Big, coercive, secretive government? Ha! As Bugs might say, "Whadda m'roooon!"

Of course, government has begun to catch on and work hard as Elmer Fudd to catch the information wabbit before it can be published on the Internet. So far, the primary control strategy seems based on unusual applications of copyright and patent laws to restrict Internet publication. But how they will enforce these restrictions remains to be seen. I don't think they can stop the 'Net. The Internet is more than an "idea" whose time has come; it's a new language, a new way of thinking, almost a fifth dimension that offers unprecedented levels of government accountability and personal freedom.

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Every silver lining has one

If all this projected official honesty and individual freedom sounds grand, it is also strangely scary. That is, while I'm sure that *I* deserve (and can be trusted with) great personal freedom, I'm a little anxious about entrusting the same degree of freedom to *you*. (And I bet you feel the same way about me.) Although we complain about oppression and exploitation, it's somehow comforting to have an oppressor because we at least know where we stand, who we are, how to behave. In the final analysis, sheared sheep bleat but also find secret benefit in being sheared. If it weren't for the farmer, the sheep wouldn't be fed, protected from (other) predators, and given antibiotics in their food. Given the opportunity, not all sheep would trade the farmer's pen for the uncertainty and self-dependence that comes with freedom. It follows that, faced with the freedom (and uncertainty) the Internet offers, we can anticipate a significant backlash against the Internet from those Americans who are too timid or computer-illiterate to compete on the Brave New 'Net.

No matter. Gutenberg's printing press intensified a scary period of dramatic change we now honor as the "Renaissance". In the early 1900's, the Industrial Revolution caused serious social dislocations and scared the poo out of a lot of folks–but today, it's praised. The Internet Revolution will be likewise delightful and terrifying, but in the end will be praised like any other institution we come to depend upon.

Is the Internet as irresistible as the printing press and assembly line? Absolutely . . . but it's not yet inevitable. That is, if the Y2K problem is as serious as some suspect, the Internet may fail (at least temporarily). But unless Y2K precipitates another "Dark Ages", the Internet may soon render secrecy obsolete.

Confucius sez

An ancient Chinese curse reads, "May you live in 'interesting times'."

We do.

Most people don't realize it, but the world is entering what may be the most extraordinary two years in human history. Just about the same time the Internet is promising to usher in a revolution in freedom, the world's economy is flirting with collapse and Y2K is threatening Western civilization itself. One way or another, it's all gonna happen (or not) in the next eighteen months. We are on the edge of something glorious or dreadful.

If it gets more "interesting" than this, God help us all.

Comprehensive Annual Financial Reports II

by Walter J. Burien Jr.

Government "Budgets" are regularly in the news. Two years ago, Republicans and Democrats couldn't agree on a Federal Budget, so the Federal government was briefly shut down. Politicians and public alike rely on the Budget as the factual foundation for all debates on government finance.

However, Budgets are inherently unreliable because they only estimate *future* revenue (each year's Budget is prepared in the *preceding* year; i.e., the 1999 Budget is prepared in 1998). Politicians may ordain on the Budget *exactly* how much money will be spent next year on welfare, defense, particular projects, and cigars for the President. But unless politicians enjoy the gift of prophecy, Budgets can only "guesstimate" tax *revenue* for the next year.

If Congress overestimates total revenue for next year and comes up financially short (a deficit), it will borrow money to pay for the expenditures they voted to provide on the Budget. If Congress underestimates next year's tax revenue (as recently happened) and collects more money than they need to pay for agreed Budget expenditures (a surplus), politicians will then engage in a mad scramble to spend the extra money (rather than restore it to the public).

Point: Although Budgets can precisely declare the expenditures for the coming year, they can only *estimate* next year's *revenues*.

CAFR

Federal law[1] requires all state and local governments to track their finances using a Comprehensive Annual Financial Report (CAFR). Unlike the Budget (which is prepared *before* a particular year begins), the CAFR is prepared *after* that year is ended. The Budget *estimates* how much will be gained as revenue and spent as expenditures. Then, after that year ends and all the actual bills and revenues are compiled, the CAFR reports the year's *actual* expenditures and revenues.

The Budget's "foresight" is always imprecise (especially concerning revenue). The CAFR's "hindsight" is always accurate. As a result, since government *expenditures* are mandated by law, the expenditures listed in the Budget and reported in the CAFR may be identical. However, the *revenue* anticipated in a Budget and later reported in a CAFR are certain to disagree.

This disparity is fairly innocent since we can't expect a Budget to precisely predict *future* revenue. However, we should reasonably expect government economists to predict future tax revenues within 10% of the true final sum. For example, if the Budget for the STATE OF TEXAS estimates the total revenue for a particular year will be $39.5 billion and the state actually collects $39.9 (or $39.1) billion, that's "close enough for government work."

Unfortunately, revenue report accuracy is compromised since state legislatures may prohibit "anticipating" revenue from certain state "profit centers" (like toll roads or port authorities) on the Budget. Instead, these laws can mandate that some profit center revenues be reported *only* on the (largely unknown) CAFR.

For example, a state might prohibit reporting the entire annual revenue of a particular toll road from being "anticipated" on the Budget and mandate it only be reported on the CAFR. If that toll road collected $2 billion one year, that entire $2 billion in revenue would not even be mentioned on the Budget. If a state had several toll roads or scores of other "profit centers," it could conceivably collect an enormous amount of revenue that was "unanticipated" on the Budget and therefore virtually invisible to the public. The potential for abuse is large.

However, since revenue prohibited from inclusion in the Budget must later be reported on the year's CAFR, you'd think there's no chance to "cook the books" and conceal revenue. Nice theory.

But. Revenue reporting is further complicated because CAFR allows "excess" revenue to be deposited into trust funds earmarked for *future payment* of existing debts. That seems reasonable, but any "excess" revenue deposited into a "future debt" trust fund can be instantly deducted from the state revenue figures *as if* the money was *actually paid* to the creditor. The *deposit* counts as a *deduction*. (How'd you like to list all your bank deposits as deductions? Wouldn't have to pay much income tax, would you?)

This is a little like writing a check for your mortgage, deducting it from your check ledger, and then putting the

check in your desk drawer rather than mailing it. Anyone who read your books would think you'd paid the rent and your checking account balance was low. Only those smart enough to ask whether the check had cleared the bank and in fact been paid would realize you were actually stashing a "hidden" saving account in your desk.

In the case of a government, suppose our toll road is obligated to repay it's construction bond at the rate of $500 million per year but actually collects $2 billion per year in tolls. Rather than pay all $2 billion on the bond, the toll road authority can just pay $500 million (as required by law) and deposit the "excess" $1.5 billion into a trust fund reserved for *future* payment of toll road debt. Because funds deposited into that trust fund are treated as a *current expense*, the toll road's books will show it collected $2 billion in revenue but also paid out the *entire* $2 billion in expenditures, resulting in *no gain*. Unless you were a very astute accountant, you would not suspect that, in fact, someone stashed $1.5 billion in a trust which is virtually invisible to the public.

If that trust fund accumulated $1.5 billion in "excess" revenue each year for ten years, there could be $15 billion in the trust. Annual interest on $15 billion could approach $1 billion. What happens to that interest?

If a state used scores of "future debt payment" trust funds, it could conceivably accumulate enormous sums of money – possibly *trillions* of dollars – from institutionalized *excess taxation* of the public.

Evil's roots

The social, economic, and political implications are monstrous. First, such an accounting system could conceal that fact that Americans are being systematically impoverished by their own government. Second, government power and corruption would be enormously increased by the presence of all that "hidden" money.

For example, suppose a particular trust held $50 billion that was invested in the stock market with a single stock broker. During the Bull Market, that trust would probably generate an additional $8 billion per year, and the stock broker might earn about $250 million managing the account. Suppose the lowly $75,000-a-year bureaucrat who controls that trust walked in to the stock broker's office and said, "I need a $50 million unsecured loan for my brother to open a ranch in Brazil – or I'll have to transfer my account to a different broker." Would the stock broker (who makes $250 million off this account each year) refuse to provide the loan? No. Then the brother could take the $50 million, default on the unsecured loan, and keep it without consequence. That's an extraordinary amount of power for an unremarkable, $75,000-a-year bureaucrat.

Suppose the bureaucrat administering the trust was a member of the CIA or some other semi-sinister government agency. Could that agency have access to enormous sums of unaccountable money to fund its "black" operations? Seems possible.

Suppose all the government trusts across the nation containing "hidden" revenue could be coordinated to buy or sell stocks in a particular company or industry. Could these trusts exert enough financial leverage to cause a company or industry to become suddenly profitable or bankrupt? Yes. By acting in concert, could these trusts cause the entire stock market to rise – and thereby create an illusion of prosperity necessary to diffuse growing social unrest? Yep. Could these trusts sell stocks all at once and thereby cause a recession, depression, or even enough social chaos to make Americans cheer for martial law? Seems so.

Generally speaking, all of those ominous possibilities are being raised by Walter Burien Jr. based on his study of Comprehensive Annual Financial Reports (CAFR).

For example, Mr. Burien reports he first learned of CAFR by studying the 1989 finances for the STATE OF NEW JERSEY. He discovered that the 1989 New Jersey Budget reported roughly $17 billion in costs and projected only $17 billion in revenue. Based on the Budget's $17 billion revenue *projection*, New Jersey politicians argued they must raise taxes to provide more services to the people.

However, buried on page 174 of New Jersey's 1989 CAFR report, Mr. Burien found the "Waste Water Treatment Trust Fund" that listed the state's true total revenue for 1989 as *$87 billion*. While the state told the public their anticipated total revenues were "only" $17 billion – and they therefore must (regrettably) raise taxes – the state's real total revenue was $87 billion – *$70 billion more . . . five times* as much as was projected on the state Budget.

The implications are mind-boggling. If New Jersey anticipated $17 billion but actually collected $87 billion, their professed need to raise taxes was absurd, even fraudulent. Instead of raising taxes, they could've eliminated *all* of the ordinary taxes that New Jersey citizens were used to paying (state income tax, sales tax, property tax, etc. which provided the $17 billion revenue anticipated on the Budget) and still had enough money left over to provide *twice* as many government services – and give a $36 billion refund to the people of New Jersey. The social and economic benefits for the people of

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New Jersey would've been unprecedented, unimaginable, perhaps as great as a Biblical Jubilee.

Conversely, the economic oppression of a government that collects five times as much revenue as it anticipates on the Budget is, according to Mr. Burien, evidence of "syndicated organized crime".

Seeing is confusing

When I first read Mr. Burien's allegations, I couldn't believe them. Assuming it was even *possible* for any American government to routinely underestimate (conceal) 80% of its revenue, where could all that money come from? Independent reports from people in Alaska, Oregon, Wyoming supported Mr. Burien's claims but I was still skeptical.

Then I got a copy of the 1996 STATE OF TEXAS CAFR. It's not a "secret" document. I called the Texas Comptroller's office, asked for one, and they sent it, no hassle and no charge. Slick cover, 314 pages, about half text and half accounting figures.

The first eight pages of the 1996 Texas CAFR presents several pie diagrams which show the state's Total Assets were $131 billion, Total Liabilities $30.5 billion, Fund Balances and Retained Earnings $99.7 billion, Total Revenues $40.3 billion, and Total Expenditures $39 billion. In sum, those numbers roughly indicate the state has about $200 billion in assets and $40 billion in annual revues and/or expenditures.

I skimmed through the 150 pages of accounting figures, and though I'm no accountant, so far as I could see virtually all the numbers were of a magnitude that "fits" within the $200 billion total assets and $40 billion total revenue figures. With one exception.

On page 157, the section on "Agency Funds" lists eleven trust funds, including: "The Texas Local Government Investment Pool (Tex Pool) . . . a local government investment pool administered by the Texas State Treasury." On page 158, the Tex Pool fund's assets and liabilities are presented in four columns labeled: 1) "Beginning Balance Sept. 1, 1995", 2) "Additions", 3) "Deductions", and 4) "Ending Balance Aug. 31, 1996".

Tex Pool's Total Assets had a Beginning Balance of "$3,354,400,000" ($3.3 billion) and an Ending Balance of "$4,207,630,000" ($4.2 billion) for fiscal 1996. Nothing remarkable there. Although the fund grew by 25% ($850 million) over the year, the Beginning and Ending Balance figures and growth rate "fit" comfortably with the state's $200 billion total assets, and $40 billion total revenue.

However, Tex Pool's Total Asset "Additions" are $1,996,828,345,000 (almost $2 *trillion*) and the Total Assets "Deductions" are "$1,995,975,115,000" (also, almost $2 *trillion*). Viewed in perspective, $2 trillion is *ten times* as much as the state's Total Assets of $200 billion, and *fifty times* as much as the state's Total Revenue of $40 billion.

So now I've seen evidence of Walter Burien's claims with my own eyes. I still don't know what I'm looking at, but I do know that – whatever it is – it's a big one. How can any state agency handle *fifty* times – *FIFTY TIMES* – as much "Additions" and "Deductions" as the state reports for its "Total Revenue" and "Total Expenditures"? There may be a plausible explanation for all this, but it'll have to be a dilly.

Local taxes

The STATE OF TEXAS administers the "Tex Pool" investment trust fund, but the $2 trillion reported as "Additions" and "Deductions" on the 1996 Texas CAFR are not derived from *state* taxes. Instead, these funds are invested by the cities, counties, and school and water districts of Texas. In other words, the $2 trillion appears to be the "excess" revenue accumulated from taxes imposed on Texans by the thousands of *local* Texas municipalities.

Curiously, the 1996 population for Texas was (roughly) 20 million. If you divide $2 trillion "Additions" by 20 million Texans, you get a *$100,000* investment in "Tex Pool" for *every* man, woman and child in Texas. But how can the cities and counties of Texas collectively invest $100,000 for every Texan, when the average annual income is (roughly) $20,000 a year? That $100,000 average investment appears to be *five times* the public's average annual income. *Where's all the money coming from*?

Again, I'm not an accountant, and there may be a simple accounting explanation for this $2 trillion figure – but I can hardly wait to hear it.

Whatever the explanation, I'm still "boggled" by CAFR. What follows are some of Mr. Burien's most recent comments on CAFR and our governments' collective urge to overtax Americans by concealing enormous sums of tax revenue.

Federal "CAFR"

When the Federal government passed the 1982 law requiring all state and local governments to use the CAFR accounting system, the Feds exempted themselves. However, the Federal government also keeps a "second" set of books (in addition to their Budget) which is similar to the states' CAFR. This second Federal accounting system is called the "Federal Government Combined Financial Statement".

To download the US Federal Government Combined Financial Statements for 1995, 1996, and 1997 go to http://www.fms.treas.gov/cfs/index.html. If you get one of these Statements, read the last page first. It lists government agencies that excluded from the accounting figures. You'll see that those excluded (CIA, Federal Reserve, Army PX commissaries, etc.) are often the primary cash and investment agencies. As a result, even the Fed's Combined Financial Statement is incomplete and does not reveal the government's true total revenue or investments. Is this information withheld for "national security"? Or is government worried that a true and complete balance sheet would show positive assets in the trillions?

I've added up the CAFR investment totals for the governments of all fifty states, all counties, all cities and the Feds for the past ten years. Collectively, our governments own about $32 *trillion* in stocks, $8 *trillion* in insurance company equity participation (ever wonder why auto insurance is required by law?), $5.5 *trillion* in bond surety investment accounts, and $60 *trillion* in liquid (cash) investment funds. That's over $100 *trillion* in investments.[2] Compare that to the total personal income for all Americans in 1996 of roughly $6.5 trillion. As you can see, if every American gave every cent they earned to government for 10 years, it still wouldn't equal the sum our collective governments have amassed in their investment accounts.

Principle of operation

If you want to investigate your own state or local government's true revenue, get a team together including a friend or two that are CPAs to study your state's CAFR. To get some of the CAFR reports available for downloading go to this Internet site: http://financenet.gov/financenet/state/cafr.htm

If your state or county is not listed, send an email to a *neighboring* state saying that you have their state CAFR report and would like to do a comparison study of your state's CAFR. Ask them to please email you the departments, telephone numbers and contact names in *your* state, counties, and large cities to get their CAFR report. The States all share each other's CAFR reports for comparison.

Add up the financial totals for the cities, counties, state and Federal ownership within your state. Don't forget to look at other cities, counties and states CAFRs for comparison. When you see the total moneys, you can backtrack to see where they came from and where they are currently being used.

What is important here is understanding the *principle of operation* that lead to this financial takeover. When seen, you will understand the motives and propaganda that is rammed down your throat by the mainstream news media and Government which keeps you looking in right field as they conduct their criminal "business as usual" activities in left field. However, the intentional refusal by government and mainstream media to make simple and conspicuous mention of the Comprehensive Annual Financial Reports and the combined revenue it reveals can be classified under the RICO Act as "perpetuating and assisting a criminal syndicate". It's not impossible that government officials and mainstream media might be civilly or even criminally liable for concealing CAFR.[3]

Shot heard round the world

Recently the citizens of Arkansas overwhelmingly passed an initiative calling for the abolishment of property taxes. However, the Arkansas government utilized its leverage in the courts to invalidate the initiative, stating that they'd have to shut down schools if the initiative was effected.

In August 1998, I was interviewed on Lee Tibler's radio show in Hot Springs, Arkansas and explained CAFR to the people of Arkansas. The 1996 Arkansas CAFR showed that while the 2.5 million people of Arkansas owned about *$18.3 billion* in property, the *state* government alone (not cities or counties) owned over *$14 billion* in liquid investment funds. As a result, the state government alone owns almost as much property as the entire population of Arkansas.

During Lee Tibler's radio show, I called on the citizens of Arkansas to determine if the citizen's owned the government or if the government owned the citizens. I proposed that the citizens of Arkansas demand an emergency special initiative to change the principle

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of operation for city, county and state governments of Arkansas as follows:

1. Reappropriate 25% of all Arkansas state and local governments' revenue into a *Citizen's Trust Investment Account*. Once 25% of all government revenues were deposited in the *Citizen's Trust Investment Account,* it would be the largest investment fund in Arkansas, with the citizens as principle "beneficiaries" – not "insiders" from government and their special interests.

Based on the interest and dividend yields, any citizen who participated in the *Citizen's Trust Investment Account* for twelve years would not only have no further state or local tax liability, but would even start receiving a dividend check. This annual dividend would increase throughout the remainder of his life. Citizens would get their biggest checks in their last year of life. As a result, the elderly could look forward to growing richer as they age rather than poorer. That's *real* social security.

2. Create a *Citizens Appointed Review Panel* consisting of 250 individuals to administer the *Citizen's Trust Investment Account*. This *Citizens Appointed Review Panel* should be composed of electricians, plumbers, school teachers, housewives, and other common people, with none having an income over $75,000 per year. They should have full discovery powers and disclosure rights and a small team of accountants. Members of the Review Panel will not include lawyers, government employees – or politicians who "inexplicably" spend millions of dollars to be elected to their $75,000-per-year jobs. (Does CAFR explain why $75,000-a-year jobs are worth millions?)

3. All city, county and state government employees will be offered 1/3 of 1% as a finders fee for reporting government revenue which is "not directly benefiting the citizens" and redepositing that revenue into the *Citizen's Trust Investment Account*. For example, if a government employee finds $150 million held in a fund that does not directly benefit the citizens, his finder's fee (1/3 of 1%) would be $500,000. That's a strong incentive to report all financial "waste".

4. All governments would operate under the principle of "No Further Debt Enacted" – all purchases would be "cash and carry". Existing debt payments will be increased until canceled, from 15% of the interest and dividend allocation from the Citizen's Trust Investment Account.

5. Any organization, governmental agency or department which intentionally concealed or otherwise tried to circumvent placement of revenue or investment funds into the *Citizen's Trust Investment Account* would be subject to criminal prosecution.

More roots

When the Citizens Trust Investment Account initiative goes for the vote of the citizens of Arkansas, it will be a new Woodstock or Boston Tea Party. People will camp out five days in advance just to be the first through the door to cast their vote. Citizens who never voted before will register for the first time. I believe it will be the largest voter turnout in that states history.

I think the founding fathers might be smiling right about now. Once CAFR is understood by most Americans, it'll be hard for "Insiders" to continue "Business as Usual" with 340 Million Americans watching over their shoulders to see where every $1 is spent, invested or moved.

More importantly, once a *Citizens Trust Investment Account* was established, government corruption, graft and payoffs would disappear overnight. Remember, the root of all corruption is *hidden* revenue. Once the CAFR rev-

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enue structure is exposed, the beast will die of starvation.[4]

When we really understand CAFR, We The People will again become the true beneficiaries of the wealth *we* produce in the greatest country on Earth. Chains of debt and oppression will be broken, and citizens will be free and prosperous beyond their expectations.

Call your neighbors, friends and business associates and pass the word. Focus on Arkansas, for that is the start of the new beginning for us all.

God speed and a wake up call to you.

For further information contact: Walter J. Burien, Jr., CEVI, PO Box 11444, Prescott, AZ 86304; (520) 717-1994; E-Mail: cevi2000@AOL.COM

[1] To see the Federal Regulation submitted in 1979 requiring local governments (City, County and States) not already having a CAFR to prepare a CAFR report go to this Internet site: http://www.financenet.gov/data/welcome/statloc/prof/gfoa/policies/accounting.gop

[2] In 1933, due to its own bankruptcy, the Federal government declared a Bank Holiday closing all banks, seized all privately owned gold, and declared a "National Emergency" which has remained in force ever since. This alleged National Emergency is the cornerstone of government's ability to legally bypass the Constitution and exercise quasi-dictatorial powers. This 65-year old "emergency" is based on the belief that the government is broke, bankrupt. However, if Mr. Burien's claims and calculations are accurate, the government is not broke or bankrupt and therefore the emergency can be proved to be false, unsustainable, and therefore null and void. Point: A thorough study of the CAFR reports just might provide enough legal evidence to end the National Emergency and government's quasi-dictatorial powers. In fact, it's not impossible that the real reason for overtaxing Americans and concealing huge wealth in trust funds might be to maintain the illusion of the 1933 bankruptcy and government's emergency powers.

[3] Some Arizona case law about disclosure obligations and nondisclosure (silence) being fraud are as follows:

- "Silence can only be equated with fraud when there is a legal and moral duty to speak or when an inquiry left unanswered would be intentionally misleading." *U.S. vs. Prudden*, 424 F. 2d 1021, *U.S. vs. Tweel*, 550 F. 2d 297, 299-300.
- "Fraud may be committed by failure to speak, but a duty to speak must be imposed." *Dunahay v. Struzik*, 393 P.2d 930, 96 Ariz. 246 (1964).
- "Fraud" may be committed by a failure to speak when the duty of speaking is imposed as much as by speaking falsely." *Batty v. Arizona State Dental Board*, 112 P.2d 870, 57 Ariz. 239. (1941).
- "When one conveys a false impression by disclosure of some facts and the concealment of others, such concealment is in effect a false representation that what is disclosed is the whole truth." *State v. Coddington*, 662 P.2d 155, 135 Ariz. 480. (Ariz. App. 1983).
- "Suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation." *Leigh v. Loyd*, 244 P.2d 356, 74 Ariz. 84. (1952).
- "When one conveys a false impression by disclosure of some facts and the concealment of others, such concealment is in effect a false representation that what is disclosed is the whole truth." *State v. Coddington*, 662 P.2d 155, 135 Ariz. 480 (Ariz. App. 1983).
- "Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as from speaking an untruth." *Morrison v. Acton*, 198 P.2d 590, 68 Ariz. 27 (Ariz. 1948).
- "Damages will lie in proper case of negligent misrepresentation of failure to disclose." *Van Buren v. Pima Community College Dist.* Bd., 546 P.2d 821, 113 Ariz. 85 (Ariz.1976).

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- "Where one under duty to disclose facts to another fails to do so, and other is injured thereby, an action in tort lies against party whose failure to perform his duty caused injury." *Regan v. First Nat. Bank*, 101 P.2d 214, 55 Ariz. 320 (Ariz. 1940).
- "Where relation of trust or confidence exists between two parties so that one places peculiar reliance in trustworthiness of another, latter is under duty to make full and truthful disclosure of all material facts and is liable for misrepresentation or concealment." *Stewart v. Phoenix Nat. Bank*, 64 P.2d 101, 49 Ariz. 34. (Ariz. 1937).
- "Concealing a material fact when there is duty to disclose may be actionable fraud." *Universal Inv. Co. v. Sahara Motor Inn, Inc.*, 619 P.2d 485, 127 Ariz. 213. (Ariz. App. 1980).

[4] There is even some CAFR evidence to show that some judicial pension funds guarantee State and Federal Judges to receive up to $8 million after serving only two years in office. (Now you know why the laws are enforced as they are throughout the country?)

"Agree" to nothing

Pleading Conspiracy

by David Grossack, Attorney

In the early days of the American Republic, the common law of conspiracy was formulated in Massachusetts and survives today. In 1821, *Patten v. Gurney*, (17 Mass. 182) upheld the proposition that conspirators can be held liable for the damages caused by their conspiracy *even if the planned actions were never completed*.

Today, in criminal cases, conspiracy charges can increase a prison sentence enormously. In fact, conspiracy charges are routinely used by prosecutors to force defendants to plead guilty to lessor crimes (even when there is a defendable case) and receive a relatively light sentence – rather than risk a 20-year prison term for a conviction on even a weak conspiracy allegation.

A conspiracy may be a continuing relationship; actors may drop out, and others drop in; the details may change over time; the members may not know each other or each other's roles. A member need not know all the details of the plan or the operations – however, he must know the *purpose* of the conspiracy and *agree* to become a party to a plan to effectuate that purpose. See *Craig v. U.S.* 81 F2d 816. In fact, it has been said that the essence of conspiracy is an "*agreement*" to do an unlawful act, in which at least one overt act is executed.

Further, it is absolutely unnecessary to show that a conspirator was aware of the entire scope of the conspiracy, or all of its details, or the identities of its members in order to hold the conspirator liable. Each conspirator can have altogether different motives than other conspirators, can play a very minor role, join the conspiracy late – and still be subject to both civil and criminal liability.

The elements of a civil conspiracy claim include:

1. A combination of persons who (a) plan an unlawful purpose; or (b) utilize an unlawful means.
2. Obtaining a power of "coercion" as a result of the conspiracy from the actions of two or more persons which would be greater than one person acting alone.
3. Damages.

However, the common law in many states will permit *you* – as a private person – to plead a civil damage count for injuries suffered as a consequence of a conspiracy. Civil or racketeering cases, common law fraud, civil rights cases and cases of tortious conversion are instances where one may use a conspiracy allegation to good advantage. A count for conspiracy can stand alone or be alleged as a civil tort in connection with another tort (civil wrong) to seek joint liability. Two or more acts in furtherance of a conspiracy to *obstruct justice* are sufficient to make a Racketeering (RICO) case if you can also allege that there was some kind of connection to a "legitimate business". (See Title 18 U.S. Code 1964, et. seq.)

Proving a conspiracy may require extensive use of discovery tools. A deposition in which a defendant is asked to name persons who assisted or who had knowledge of the events which transpired, and what their role was, what their knowledge was and who they spoke to, what the conversations consisted of and similar questions along these lines will be necessary. Interrogatories can also be used.

In theory, facts gathered in a civil suit can later be used in a criminal case, so any admission to being part of a conspiracy (even in civil court) can lead to jail time. Therefore, be discreet when you phrase your interrogatories. I.e., using the terms "conspiracy" or "coconspirator" can be counterproductive. You may use those terms in your complaint, but asking a defendant for an admission about his fellow "conspirators" is too obvious to be answered by anyone who has half a brain. So your discovery questions must be carefully thought out.

For example, when trying individuals for conspiracy, the government seldom asks defendants if they "conspired". Instead, the government will "merely" ask each defendant if he "*agreed*" or "entered into an *agreement*" with any of the other defendant(s). If just *one* unwary codefendant fails to recognize the legal implications of the terms "agree", "agreement", etc., and casually admits under oath to "agreeing" or "entering into an agreement" with the other defendant(s), the existence of a conspiracy is virtually proved. If the other defendant(s) fail to individually refute their participation in the admitted "agreement," they are also vulnerable to conviction.

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Land Mine Legislation

by Claire Wolfe

The pen is not only mightier than the sword, it is enormously more dangerous when wielded by unaccountable legislators. This next article exposes our legislators' tendency to hide legislation in a way that – despite Congressional immunities – seems clearly conspiratorial. As you'll see, we have more to fear from politicians who plant "word bombs" in our laws than from terrorists who plant explosives on our airplanes.

I'd like to think it's merely ironic that politicians responsible for this surreptitious fascism also talk most passionately about "freedom" and "individual rights" – but in fact, I'm used to deceit and find it far less surprising than integrity.

In fact, I'd like to believe I'm just a poor cynic whose mind is so twisted that I can't help misinterpreting much of what I see as something perverse. See, if I were a cynic, my problem with unpleasant perceptions would lie entirely within my own mind. The fix would then be simple. I wouldn't need to change the world, only me. A couple trips to the shrink, a bottle of pills, and I could be as "well-adjusted" as any subscriber to Time magazine.

Unfortunately, unlike cynicism, objectivity is not so easily corrected. Oh sure, you can use drugs, lobotomies or even bullets to conceal those nagging compulsions to actually "see". But those remedies don't solve the problem of perception – they merely mask it like a good, Saturday-night drunk.

As a result, the real irony is this: Once you can see, you dare not look away. The only remedy for unpleasant observations is to look further, see even more, until finally you see through the unpleasantness, find its true cause – and then share that truth with others, so together, we might cause positive change.

Let me run by you a brief list of items that are "the law" in America today. As you read, consider what all these have in common:

- A national database of employed people.[1]
- 100 pages of new "health care crimes," for which the penalty is (among other things) seizure of assets from both doctors and patients.[2]
- Confiscation of assets from any American who establishes foreign citizenship.[3]
- The largest gun confiscation act in U.S. history – which is also an unconstitutional ex post facto law and the first law ever to remove people's constitutional rights for committing a misdemeanor.[4]
- A law banning guns in ill-defined school zones; random roadblocks may be used for enforcement; gun-bearing residents could become federal criminals just by stepping outside their doors or getting into vehicles.[4]
- Increased funding for the Bureau of Alcohol, Tobacco and Firearms, an agency infamous for its brutality, dishonesty and ineptitude.[4]
- A law enabling the executive branch to declare various groups "Terrorists" – without stating any reason and without the possibility of appeal. Once a group has been so declared, its mailing and membership lists must be turned over to the government.[5]
- A law authorizing secret trials with secret evidence for certain classes of people.[5]
- A law requiring that all states begin issuing drivers licenses carrying Social Security numbers and "security features" (such as magnetically coded fingerprints and personal records) by October 1, 2000. By October 1, 2006, "Neither the Social Security Administration or the Passport Office or any other Federal agency or any State or local government agency may accept for any evidentiary purpose a State driver's license or identification document in a form other than [one issued with a verified Social Security number and 'security features']."[6]
- And my personal favorite – a national database, now being constructed, that will contain every exchange and observation that takes place in your doctor's office. This includes records of your prescriptions, your hemorrhoids and your mental illness. It also includes – by law – any statements you make ("Doc, I'm worried my kid may be on drugs. . . . Doc, I've been so stressed out lately I feel about ready to go postal") and *any* observations your doctor makes about your mental or physical condition, whether accurate or not, whether made with your knowledge or not. For the time being, there will be zero (count 'em, zero) privacy safeguards on this data. But don't worry, your government will protect you with some undefined "privacy standards" in a few years.[7]

Burying time bombs

All of the above items are the law of the land. Federal law. What else do they have in common?

Well, when I ask this question to audiences, I usually get the answer, "They're all unconstitutional." True.

My favorite answer came from an eloquent college student who blurted, "They all *suuuck*!" Also true.

But the saddest and most telling answer is: They were all the product of

the 104th Congress. Every one of the horrors above was imposed upon you by the Congress of the Republican-Revolution – the Congress that pledged to "get government off your back."

All of the above became law by being buried in larger bills. In many cases, they are hidden sneak attacks upon individual liberties that were neither debated on the floor of Congress nor reported in the media.

For instance, three of the most horrific items (the health care database, asset confiscation for foreign residency and the 100 pages of health care crimes) were hidden in the Kennedy-Kassebaum Health Insurance Portability and Accountability Act of 1996 (HR 3103). You didn't hear about them at the time because the media was too busy celebrating this moderate, compromise bill that "simply" ensured that no American would ever lose insurance coverage due to a job change or a Pre-existing condition.

Your legislator may not have heard about them, either. Because he or she didn't care enough to do so. The fact is, most legislators don't even read the laws they inflict upon the public. They read the title of the bill (which may be something like "The Save the Sweet Widdle Babies from Gun Violence by Drooling Drug Fiends Act of 1984"). They read *summaries*, which are often prepared by the very agencies or groups pushing the bill. And they vote according to various deals or pressures.

It also sometimes happens that the most horrible provisions are sneaked into bills during conference committee negotiations, *after* both House and Senate have voted on their separate versions of the bills. The conference committee process is supposed to simply reconcile differences between two versions of a bill. But power brokers use it for purposes of their own, adding what they wish. Then members of the House and Senate vote on the final, unified version of the bill, often in a great rush, and often without even having the amended text available for review.

Ironically, you may recall that one of the early pledges of Newt Gingrich and Company was to stop these stealth attacks. Very early in the 104th Congress, the Republican leadership declared that, henceforth, all bills would deal only with the subject matter named in the title of the bill. When, at the beginning of the first session of the 104th, pro-gun Republicans attempted to attach a repeal of the "assault weapons" ban to another bill, House leaders dismissed their amendment as not being "germane." After that self-righteous and successful attempt to prevent pro-freedom stealth legislation, Congress people turned right around and got back to the dirty old business of practicing all the anti-freedom stealth they were capable of.

I have even heard (though I cannot verify) that stealth provisions were written into some bills after all the voting has taken place. Someone with a hidden agenda simply edits them in to suit his or her own purposes. So these time bombs become "law" without ever having been voted on by anybody. And who's to know? If Congress won't even read legislation *before* they vote on it, why would they bother reading it *afterward*? Are power brokers capable of such chicanery? Do we even need to ask? Is the computer system in which bills are stored vulnerable to tampering by people within or outside of Congress? We certainly should ask.

Whether your legislators were ig-

norant of the infamy they were perpetrating, or whether they knew, one thing is absolutely certain: The Constitution, your legislator's oath to it, and your unalienable rights (which precede the Constitution) never entered into anyone's consideration.

Stealth attacks in broad daylight

Three other items on my list (ATF funding, gun confiscation and school zone roadblocks) were also buried in a big bill – HR 3610, the budget appropriation passed near the end of the second session of the 104th Congress. No legislator can claim to have been unaware of these three because they were brought to public attention by gun-rights groups and hotly debated in both Congress and the media. Yet some 90 percent of Congress voted for them including many who claim to be ardent protectors of the rights guaranteed by the Second Amendment. Why?

Well, in the case of my wrapped-in-the-flag, allegedly pro-gun, Republican Congressperson: "Bill Clinton made me do it!"

Okay, I paraphrase. What she actually said was more like, "It was part of a budget appropriations package. The public got mad at us for shutting the government down in 1994. If we hadn't voted for this budget bill, they might have elected a Democratic legislature in 1996 – and you wouldn't want THAT, would you?"

Oh heavens, no! I'd much rather be enslaved by people who spell their name with an "R" than people who spell their name with a "D". Makes all the difference in the world!

Justifying sneak attacks

The Republicans are fond of claiming that Bill Clinton "forced" them to pass certain legislation by threatening to veto anything they sent to the White House that didn't meet his specs. In other cases (as with the Kennedy-Kassebaum bill), they proudly proclaim their misdeeds in the name of bipartisanship – while carefully forgetting to mention the true nature of what they're doing.

In still others, they trumpet their triumph over the evil Democrats and claim the mantle of limited government while sticking it to us and to the Constitution. The national database of workers was in the welfare reform bill they "forced" Clinton to accept. The requirement for SS numbers and ominous "security" devices on drivers licenses originated in their very own Immigration Control and Financial Responsibility Act of 1996, HR 2202. Another common trick, called to my attention by Redmon Barbry, publisher of the electronic magazine *Fratricide*, is to hide duplicate or near-duplicate provisions in several bills. Then, when the Supreme Court declares Section A of Law Z to be -unconstitutional, its kissing cousin, Section B of Law Y, remains to rule us.

Sometimes this particular form of trickery is done even more brazenly; when the Supreme Court, in its *Lopez* decision, declared federal-level school zone gun bans unconstitutional because Congress demonstrated no jurisdiction, Congress brassily changed a few words. They claimed that school zones fell under the heading of "interstate commerce." Then they sneaked the provi-

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sion into HR 3610, where it became "law" once again.

When angry voters upbraid congress people about some Big Brotherish horror they've inflicted upon the country by stealth, they claim lack of knowledge, lack of time, party pressure, public pressure, or they justify themselves by claiming that the rest of the bill was "good".

The simple fact is that, regardless of what reasons legislators may claim, the U.S. Congress has passed more Big Brother legislation in the last two years – more laws to enable tracking, spying and controlling – than any Democratic congress ever passed. And they have done it, in large part, in secret.

Redmon Barbry put it best: "We the people have the right to expect our elected representatives to read, comprehend and master the bills they vote on. If this means Congress passes only 50 bills per session instead of 5,000, so be it. As far as I am concerned, whoever subverts this process is committing treason." By whatever means the deed is done, there is no acceptable excuse for voting against the Constitution, voting for tyranny. And I would add to Redmon's comments: Those who do read the bills, then knowingly vote to ravage our liberties, are doubly guilty. But when do the treason trials begin?

Bills for an ugly agenda

In truth, these tiny, buried provisions are often the real intent of the law, and that the hundreds, perhaps thousands, of surrounding pages are sometimes nothing more than elaborate window dressing. These tiny time bombs are placed there at the behest of federal police agencies or other power groups whose agenda is not clearly visible to us. And their impact is felt long after the outward intent of the bill has been forgotten.

Civil forfeiture – now one of the plagues of the nation – was first introduced in the 1970s as one of those buried, almost unnoticed provisions of a larger law. One wonders why on earth a "health care bill" carried a provision to confiscate the assets of people who become frightened or discouraged enough to leave the country. (In fact, the entire bill was an amendment to the Internal Revenue Code. Go figure.)

I think we all realize by now that the database of employed people will still be around enabling government to track our locations (and heaven knows what else about us, as the database is enhanced and expanded) long after the touted benefits of "welfare reform" have failed to materialize.

And most grimly of all, our drivers licenses will be our de facto national ID card long after immigrants have ceased to want to come to this Land of the Once Free.

Control reigns

It matters not one whit whether the people controlling you call themselves R's or D's, liberals or conservatives, socialists or even (I hate to admit it) libertarians. It doesn't matter whether they vote for these horrors because they're not paying attention or because they actually like such things.

What matters is that the pace of totalitarianism is increasing. And it is coming closer to our daily lives all the time. Once your state passes the enabling legislation (under threat of losing "federal welfare dollars"), it is YOUR name and Social Security number that will be entered in that employee database the moment you go to work for a new employer. It is YOU who will be unable to cash a check, board an airplane, get a passport or be allowed any dealings with any government agency if you refuse to give your SS number to the drivers license bureau. It is YOU who will be endangered by driving "illegally" if you refuse to submit to Big Brother's procedures. It is YOU whose psoriasis, manic depression or prostate troubles will soon be the reading matter of any bureaucrat with a computer. It is YOU who could be declared a member of a "foreign terrorist" organization just because you bought a book or concert tickets from some group the government doesn't like. It is YOU who could lose your home, bank account and reputation because you made a mistake on a health insurance form. Finally, when you become truly desperate for freedom, it is YOU whose assets will be seized if you try to flee this increasingly insane country.

As Ayn Rand wrote in *Atlas Shrugged*, "There's no way to rule innocent men. The only power government has is the power to crack down on

criminals. Well, when there aren't enough criminals, one makes them. One declares so many things to be a crime that it becomes impossible for men to live without breaking laws."

It's time to drop any pretense: We are no longer law-abiding citizens. We have lost our law-abiding status. There are simply too many laws to abide. And because of increasingly draconian penalties and electronic tracking mechanisms, our "lawbreaking" places us and our families in greater jeopardy every day.

Stopping runaway government

The question is: What are we going to do about it? Write a nice, polite letter to your congressperson? Hey, if you think that'll help, I've got a bridge you might be interested in buying. (And it isn't your "bridge to the future," either.)

Vote "better people, into office? Oh yeah, that's what we thought we were doing in 1994.

Work to fight one bad bill or another? Okay. What will you do about the 10 or 20 or 100 equally horrible bills that will be passed behind your back while you were fighting that little battle? And let's say you defeat a nightmare bill this year. What, are you going to do when they sneak it back in, at the very last minute, in some "omnibus legislation" next year? And what about the horrors you don't even learn about until two or three years after they become law? Should you try fighting these laws in the courts? Where do you find the resources? Where do you find a judge who doesn't have a vested interest in bigger, more powerful government? And again, for every one case decided in favor of freedom, what do you do about the 10, 20 or 100 in which the courts decide against the Bill of Rights?

Perhaps you'd consider trying to stop the onrush of these horrors with a constitutional amendment – maybe one that bans "omnibus" bills, requires that every law meet a constitutional test or requires all congress people to sign statements that they've read and understood every aspect of every bill on which they vote. Good luck! Good luck, first, on getting such an amendment passed. Then good luck getting our Constitution-scorning "leaders" to obey it.

It is true that the price of liberty is eternal vigilance, and part of that vigilance has been, traditionally, keeping a watchful eye on laws and on lawbreaking lawmakers.

But given the current pace of law-spewing and unconstitutional regulation-writing, you could watch, plead and struggle "within the system" 24 hours a day for your entire life and end up infinitely less free than when you begin. Why throw your life away on a futile effort?

Face it. If "working within the system" could halt tyranny, the tyrants would outlaw it. Why do you think they encourage you to vote, to write letters, to talk to them in public forums? It's to divert your energies. To keep you tame. 'The system" as it presently exists is nothing but a rat maze. You run around thinking you're getting somewhere. Your masters occasionally reward you with a little pellet that encourages you to believe you're accomplishing something. And in the meantime, you are as much their property and their pawn as if you were a slave. In the effort of fighting them on their terms and with their authorized and approved tools, you have given your life's energy to them as surely as if you were toiling in their cotton fields, under the lash of their overseer. The only way we're going to get off this road to Hell is if we jump

off. If we, personally, as individuals, refuse to cooperate with evil. How we do that is up to each of us. I can't decide for you, nor you for me (unlike Congress who thinks they can decide for everybody). But this totalitarian runaway truck is never going to stop unless we stop it, in any way we can. Stopping it might include any number of things: tax resistance; public civil disobedience; wide-scale, silent noncooperation; highly noisy noncooperation; boycotts; secession efforts; monkey wrenching; computer hacking; dirty tricks against government agents; public shunning of employees of abusive government agencies; alternative, self-sufficient communities that provide their own medical care and utilities.

There are thousands of avenues to take, and this is something most of us still need to give more thought to before we can build an effective resistance. We will each choose the courses that are right for our own circumstances, personalities and beliefs.

Whatever we do, though, we must remember that we are all, already, outlaws. Not one of us can be certain going through a single day without violating some law or regulation we've never even heard of. We are all guilty in the eyes of today's law. If someone in power chooses to target us, we can all, already, be prosecuted for something.

And I'm sure you know that your claims of "good intentions" won't protect you, as the similar claims of politicians protect them. Politicians are above the law. YOU are under it. Crushed under it. When you look at it that way, we have little left to lose by breaking laws creatively and purposefully.

Yes, some of us will suffer horrible consequences for our lawbreaking. It is very risky to actively resist unbridled power. It is especially risky to go public with resistance (unless hundreds of thousands publicly join us), and it becomes riskier the closer we get to tyranny. For that reason, among many others, I would never recommend any particular course of action to anyone – and I hope you'll think twice before taking "advice" from anybody about things that could jeopardize your life or well-being. But if we don't resist in the best ways we know and if a good number of us don't resist loudly and publicly – all of us will suffer the much worse consequences of living under total oppression.

Whatever courses of action we choose, we must remember that this legislative "revolution" against We the People will not be stopped by politeness. It will not be stopped by requests. It will not be stopped by "working within a system" governed by those who regard us as nothing but cattle. It will not be stopped by pleading for justice from those who will resort to any degree of trickery or violence to rule us.

It will not be stopped unless we are willing to risk our lives, our fortunes and our sacred honors to stop it. I think of the words of Winston Churchill: "If you will not fight for the right when you can easily win without bloodshed, if you will not fight when your victory will be sure and not so costly, you may come to the moment when you will have to fight with all the odds against you and only a precarious chance for survival. There may be a worse case. You may have to fight when there is no chance of victory, because it is better to perish than to live as slaves."[8]

[1] Welfare Reform Bill, HR 3734; public law 104-193 on 8/22196; see § 453A.

[2] Health Insurance Portability and Accountability Act of 1996, HR 3103; became public law 104-191 on 8/21/96.

[3] Health Insurance Portability and Accountability Act of 1996, Ibid; see §§ 511-513.

[4] Omnibus Appropriations Act, HR 3610; became public law 104-208 on 9/30/96.

[5] Antiterrorism and Effective Death Penalty Act of 1996; S 735; became public law 104-132 on 4/24/96; see all of Title III, esp. §§ 302 and 219; also see all of Title IV, esp. §§ 401, 501, 502 and 503.

[6] Began life in the Immigration Control and Financial Responsibility Act of 1996, §§ III, II 8, 119, 127 and 133; was eventually folded into the Omnibus Appropriations Act, HR 3610 (which was itself formerly called the Defense Appropriations Act - but we wouldn't want to confuse anyone, here, would we?); became public law 104-208 on 9/30/96; see §§ 656 and 657 among others.

[7] Health Insurance Portability and Accountability Act of 1996, *supra*; see §§ 262 -264, among others. The various provisions that make up the full horror of this database are scattered throughout the bill and may take hours to track down. This one is stealth legislation at its sneakiest.

[8] And one final, final note: Although I spent aggravating hours verifying the specifics of these bills (a task I swear I will never waste my life on again!), the original list of bills at the top of this article was NOT the result of extensive research. It was simply what came off the top of my head when I thought of Big Brotherish bills from the 104th Congress. For all I know, Congress has passed 10 times more of that sort of thing. In fact, the worst "law" in the list – #9, the de facto national ID card – just came to my attention as I was writing this essay, thanks to the enormous efforts of Jackie Juntti and Ed Lyon and others, who researched the law. Think of it: Thanks to congressional stealth tactics, we had the long-dreaded national ID card legislation for five months, without a whisper of discussion, before freedom activists began to find out about it. Makes you wonder what else might be lurking out there, doesn't it?

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■

The Case Against Child Support

by Alfred Adask

From the moment a child is weaned, the most important parent in that child's life is not his mother, but his biological father. I believe a child's relationship with his biological father is both the primary indicator and determinant for a child's future success in life. If the child-father relationship is positive, the child will likely reach his full potential as a reasonably happy, semi-sociable and productive adult. If the relationship is negative or nonexistent, the child's future will tend toward misfortune.

My opinion on the relative value of fathers vs. mothers is not politically correct, but it's still true. The proof is as close as our TV talk shows. For example, I recently watched Jenny Jones interview five twelve- and thirteen-year old girls who were sexually active with multiple sex partners. Jenny, her audience, and the girls' mothers all advised, pleaded, wept, warned and finally yelled to stop the girls from fornicating around. The girls refused to listen.

While Jones, her audience, and the mothers grew increasingly frustrated and angry over their inability to inhibit the girls' sexuality, no one noticed the central problem: While all five girls appeared with their mothers, their fathers were not only missing but unmentioned. (That's a clue, folks.)

I'll bet that every one of those little girls was raised in a "single-parent" home. We all recognize that "single-parent" families are hazardous, but few realize the fundamental problem is not the mathematical disability of having only one parent instead of two – but more importantly – that those children are missing their *fathers*. For all practical purposes, "single parent" is synonymous with "fatherless".

For reasons I sense but can't explain, the primary source of almost every child's self-esteem is approval from his biological father. Regardless of whether the mother is present, perfect or dysfunctional, if the biological father is missing or abusive, the child's self-esteem will be stunted and his life characterized by misfortune. Without self-esteem kids grow up depressed, angry, violent, promiscuous and self-destructive. They tend to be not only unproductive, but dangerous to themselves and society.

The little girls on the Jenny Jones show weren't looking for sex, they were looking for fathers. They know instinctively that there's a hole in their psyche where the "self-esteem" should be that can only be filled by a father's approval. So they went looking for the next best thing – boyfriends who might give them the approval they need to feel whole. Of course, the apparent approval of boys and young men is easily found if you're willing to have sex. Unfortunately, promiscuity breeds contempt and leads to less (not more) self-esteem . . . which increases the need for approval, which leads to more . . . you get the idea.

And make no mistake, boys are just as dependent as girls on their father's approval and therefore just as vulnerable to sexual exploitation. Pederasts know exactly how to trade their appetite for children for a fatherless child's hunger for approval. Result? Well, for one thing, thousands of fatherless boys have grown up only to die young of AIDS.

Does misfortune follow all fatherless kids? Of course not. But on average, you show me ten fatherless kids, and I'll show you eight whose lives will be at least diminished (less happy, less prosperous, more troubled than they might've been), probably dysfunctional (promiscuous, addictive or violent) and possibly self-destructive.

Feminists will groan, but if they survey the strippers, whores, homosexuals, drug addicts, alcoholics, criminals, suicides, neurotics, depressed, psychotics, and virtually any other class of dysfunctional personalities – they'll find a common denominator at the heart of most unhappy lives: a dysfunctional relationship to the *biological* father.

Need more evidence? Look at the African-American community. It's a near-perfect laboratory for studying the effects of fatherless homes: promiscuity, prostitution, violence, drugs, criminal behavior, illiteracy, alcoholism, poverty, suicide, psychosis – where's this list of curses end? I don't know. But I do know where the list begins: fatherless homes.

In 1960, about 20% of all African-American children were born out

of wedlock and into fatherless homes (white illegitimacy ran about 3%). Although black illegitimacy was high, it was relatively "manageable". In fact, until 1964, the African-American community was closing the economic gap with whites. However, once the Feds decided to pick up the white man's burden and provide welfare for impoverished black mothers, that economic gap between whites and blacks began to grow.

Why? By requiring black mothers to eject black males (unemployed husbands or boyfriends) from their homes as a prerequisite for receiving government support, welfare created a financial *incentive* to produce "single parent" (fatherless) black families. Without the example and authority of a continuously present father, black children lost their primary source of self-esteem and respect for authority and slipped into a culture both savage and self-destructive.

Black America's decline reminds me of the Garden of Eden. Satan offered Eve a chance to "be like gods" if she'd just take a bite of his apple. Eve bit, and both she and Adam were bounced out of paradise.

Five thousand years later, Uncle Sam came to Harlem and offered black women a chance to be – not "like gods," but at least "like men." That is, if dey'd agree t' toss dey ol' black tomcats outen de house, they could have their own source of income, escape dependence on men, and thereby become "like men," even superior to the often unemployed brothers. And just like Eve, those dumb, black broads bit. They traded their children's fathers for a rich Uncle Sam.

And make no mistake – it wasn't just dumb black women who were responsible, so were those dumb black males who surrendered their rights and responsibilities as fathers for an unbridled shot at the "good life" of self-indulgence and promiscuity.

Once blacks took a bite out of Sam's apple, just like Adam and Eve, they were also bounced out of paradise. Of course, the inner cities of the 1960s may not have seemed like much of a paradise – except compared to inner cities of today.

So, how'd it all work out? Is everybody happy? Once the incentive to procreate in fatherless families took hold, the 20% illegitimacy rate grew until today, 70% of all black kids are born out of wedlock. Given modern divorce rates, most of the remaining 30% of blacks born to married parents will probably lose their fathers through divorce. If so, no more than 10% of today's black children are likely to even know their biological fathers.

Results? Roughly 25% of all young black males are in prison or on probation and their mortality rate exceeds that of American soldiers during the Viet Nam war. Poverty, violence, gangs, promiscuity, etc. – it's all up and it's all bad. For two generations, black America has been dying in an orgy of self-destruction. Despite claims to the contrary, the black culture is far from beautiful. And it all flows – not from race or even "single parent" families – but from *fatherless* homes.

Further, effective parenting is not learned through formal education so much as "emulated" according to the example set by our own parents. If one parent is missing, there's no positive example to emulate. As a result, there's no generally effective compensation (not money or stepfathers) for the loss of a biological father.

Yes, we can read books about being fathers, and yes, even fatherless boys can forge themselves into good fathers. Nevertheless, fatherless boys seldom learn how to be good fathers. Worse, fatherless girls seldom learn to value men possessing the characteristics of good fathers and instead prefer the flash, excitement and sometime violence of hustlers and one-night stands.

Point: It's not *welfare* families that are self-perpetuating, it's *fatherless* homes. Welfare might even work if there were no requirement to eject fathers from the recipient's home. It might work well if welfare paid a premium to those recipients who *kept* their husbands in the home. However, welfare conditioned on ejecting fathers guarantees another generation of fatherless kids, a higher rate of illegitimacy, and even more violence and victimization.

Frankly, I don't see how the African-American community can save it-

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self. I can't conceive of any social program to compensate for the cumulative effect of two generations of black fatherless homes. As an act of self-preservation, those blacks who have fathers or otherwise achieved a measure of self-esteem will probably emigrate from urban black communities and integrate into the white culture. Those blacks who remain in fatherless urban cultures will probably keep sliding into self-destruction and oblivion.

Point: If I wanted to commit genocide without resorting to the overt violence of murder, concentration camps or war, I can't imagine a more effective method than bribing the women of the race or nation I despised to help sever the relationships between children and fathers. I would dress my genocide in skirts of welfare, equal rights and maternal presumptions to make it appear benign and beneficial. It's a perfect "divide and conquer" strategy. So long as half the population (women) seem to receive an advantage, the other half (men) would be unable to cause meaningful political change (legislatures won't address a 50-50 split in the body politic). And all the while I'd laugh, knowing that while this form of genocide may take a few generations, once fatherless families are institutionalized, I wouldn't need to bloody my hands killing my adversaries, since they'd soon be killing themselves.

OK, now that I've had my little rant about welfare (was it good for you, too?) – what's this got to do with child support?

Well, contrary to what most folks suppose, government statistics indicate women (not men) file the majority (about 70%) of all divorces. According to some men's groups, women file about 90% of all divorces. Whatever the real percentage, it's undeniable that, compared to men, women are at least twice as likely to file for divorce. That means women are also twice as likely to destroy child-father relationships, deny children their primary source of self-esteem, and thereby predispose children to grow up with all the fine character traits usually found in kids raised in Watts.

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Why are women at least twice as likely to file for divorce as men? Answer: "maternal presumption". Sounds nice, doesn't it? It means our courts presume children are more dependent on mothers than fathers and fathers are therefore of minor importance in a child's life. So, "in the best interests of the child" [an equity term], divorce laws are structured to sever the child-father bond. Those laws are lunacy.

In fact, the maternal presumption is just another one of Uncle Sam's shiny red apples. And just like the dumb black broads bit on welfare, the dumb white broads bit on pro-female divorce laws. And just like those dumb black men surrendered their rights and responsibilities as fathers, so did the dumb white men (including me).

So, for about two generations (about same time span as black welfare) our divorce courts have bent over backwards to (seemingly) accommodate mothers and incidentally (?) ruin fathers. Although there's been some change, virtually everyone knows it's rare for a man to achieve equality, let alone advantage, in a divorce court. We know that if mom files for divorce, dad's goose will not only be cooked, but microwaved. Mom will get at least half the family's assets (if there are any, after the lawyers are paid). Dad will get the bills (especially his wife's attorney fees) plus an order to make monthly alimony and/or child support payments to his ex-wife.

The justifications for child support, alimony, and welfare are all similarly heart-rending and shortsighted. *We mussst take care of the chil-drennn!* Uh-huh.

But just like 1960s welfare, child support, alimony and all the other advantages promised to women by modern divorce laws create financial *incentives* to divorce and destroy child-father relationships. In the final analysis, alimony and child support are just *privatized* welfare.

For poor people (like blacks), government welfare has provided an incentive to destroy the family. For the middle class, divorce laws compel the victim (usually the male) to provide the financial incentive (child support, alimony) to destroy the family.

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For those of you who enjoy conspiracies, one theory might run like this: Government can't offer enough welfare to entice middle class (white) women to give up their husbands. Middle class white women won't sell out as cheap as the blacks and would probably want a minimum post-divorce annual support level of $20 - $25,000. If government gave that much money to white women, they'd have to give that much money to black women, too. An', Honey, dey ain' no way dis gumint gonna give $25,000 to no black broads.

So, if government were truly conspiring to cripple families, an alternative source of financial incentive would have to be legalized. Hey – why not find all men guilty and then order 'em to pay child support and alimony?! (Sure, they probably won't pay for long, but who cares so long as that incentive is enough to cause dumb white broads to file for divorce?)

If the idea of a government conspiracy against families seems far-fetched, bear in mind that lawyers and the associated "divorce industry" profit from laws that incite divorce. Every time one woman files for a divorce, two lawyers (hers and her husband's), plus a platoon of CPA's, shrinks and social workers may get paid. Conversely, laws that inhibit divorce would impoverish divorce lawyers and all their little friends. I guarantee that Divorce Bar Associations conspire to enrich themselves by passing laws that ease, encourage, and reward divorce. Whether the reasons for this conspiracy against families and fathers go beyond mere avarice remains to be seen.

Of course, whether welfare and divorce laws are stupid or conspiratorially sinister is debatable. But in either case, while 1960s-style welfare and child support may look different superficially, their effects (creating incentives to destroy child-father relationships) are equally lethal.

Back in 1960, when blacks had a 20% illegitimacy rate, the rate for whites was about 3%. Today (thanks to welfare) black illegitimacy runs about 70%. Shame, shame, hmm? But the rate of white illegitimacy has jumped to about 30%. Given modern divorce rate of 50%, it's unlikely that more than one white child in three will have a even chance at a positive relationship with his biological father.

If my notions about the link between fathers, children's self-esteem, and positive or dysfunctional behavior are valid, the rise in white illegitimacy does not bode well for America. It's unclear whether white America has reached the "critical mass" of "fatherless-ness" necessary to make fatherless homes self-perpetuating. Nevertheless, white illegitimacy already guarantees social chaos in suburbia similar to that once seen only in the urban inner cities.

Perhaps the most dangerous effect of fatherless homes was observed by Don Smith (a Phoenix Arizona paralegal and activist who was mysteriously murdered). Don noticed that he'd never known an adult raised in a fatherless home who was able to fight for himself in court (or in any other arena). Without self-esteem, kids can't value themselves enough to defend themselves. What better way for a government to minimize the threat of public resistance, than by rendering the people unable to fight in their own behalf?

Government insists that we should get tough on deadbeat dads and jail 'em all if necessary. Their premise is that kids need money more than fathers. That premise is criminally insane. I suspect the real reason to "git tuff" is to at least maintain the appearance that fathers will be forced to continue to provide the financial incentive for middle-class women to divorce. But except in cases of abuse, no law helps kids by separating them from their fathers. Even if you jail every dad in North America, while they're in the slammer, their kids have lose money *and* fathers – and the taxpayers pay the additional costs for incarceration. That's a no-win situation guaranteed to ultimately cause more social chaos.

I say we'd do better by eliminating the financial incentives for divorce.

Despite modern psychological crap to the contrary, virtually all children are better off in an intact family where the parents fight but stick it out than they are in some single-parent

panacea. Why? Because parents who sacrifice their own happiness to provide a stable home for their kids set an example that most kids can't miss. Dad stuck it out, Mom stuck it out, and when I get married, I'll stick it out, too. Result? Another generation of kids who are reasonably healthy, sociable, productive, and even civilized.

If your only reason to file for a divorce is your own discontent, tough. Despite all the conditioning we've received from TV sit-coms and romantic novels, the purpose of marriage is not for spouses to "live happily ever after" – it's to raise strong, healthy, productive and civilized kids.

Parents who divorce ultimately set but one example: look out for No. 1 and to Hell with everyone else, including your own kids. Should we be surprised if the children of such parents grow up to be angry, unproductive and self-destructive?

Parents who file "pretext" (no fault/ irreconcilable differences) divorces clearly don't care about their spouses, kids, or wedding vows to God. That sort of self-indulgence should not be rewarded with primary custody of the kids unless the other parent voluntarily agrees.

Should there be child support? Yes. If one parent poses a clear threat to the other spouse and/or children, give child support to the parent who takes the kids and flees for safety. However, child custody (and child support) should never be granted to the parent who initiates and files a "no fault" or "irreconcilable differences" divorce. Society is too dependent on the quality of its children to sacrifice their mental health to a parent's urge to self-indulgence.

It is an unpleasant and unromantic truth that the essence of good parenting is self-sacrifice. The essence of bad parenting is self-indulgence. That is, bad parents sacrifice their spouse, their children and even their society's welfare in order to indulge themselves alone. Pretext divorces are prime examples of self-indulgence and bad parenting and antisocial behavior.

Parents must be discouraged from filing pretext divorces by denying them custody, child support and alimony. More importantly, no parent should be enticed into filing a divorce with promises of child support or alimony, and every effort must be made to support and reward the parent who is most willing to continue the marriage and do his/her job: raise healthy children.

No responsible society should provide a financial incentive (welfare, alimony, or child support) to fragment families and deprive children of their fathers. Societies that provide such incentives sow the wind and will reap the whirlwind.

Any law promoting the destruction of families is bad public policy and should be revoked. Any institution or special interest group that profits from – and therefore promotes – the destruction of families should be disciplined or destroyed.

The next two articles ("Administrative Child Support Process Unconstitutional and "Child Support Meets an Evil Twin") are presented for the express purpose of destroying child support as an incentive for divorce and destruction of child-father relationships. ■

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Administrative Child Support Process Unconstitutonal

by Minnesota Court of Appeals

On June 12, 1998, the STATE OF MINNESOTA IN COURT OF APPEALS *ruled on three post-divorce cases concerning child support issues —* Holmberg v. Holmberg *(C7-97-926),* Kalis-Fuller vs. Fuller, *(C8-97-1132 & C9-98-33), and* Carlson vs. Carlson *(C7-97-1512).*

One case involved a homestead lien, another concerned social security payments, but all three cases ultimately hinged on whether Minnesota's administrative child support process was constitutional. Based on this common interest, the three cases were consolidated into a single appellate case which rendered several verdicts applicable to the individual cases, and one overall verdict applicable to all Minnesota child support cases:

"The administrative child support process governed by Minn. Stat. § 518.5511 (1996) is unconstitutional because it violates the separation of powers required by Minnesota Constitution, art. III, § 1."

I was impressed by this ruling, in part because it's fairly well written, not too difficult to understand, and almost every word seems to carry legal significance. Close study of this decision reveals a lot about the judicial sausage maker.

Although focused on child support, this ruling also offers insight into the "separation of powers" doctrine and how that doctrine might be used to challenge the constitutionality of other state and federal administrative agencies, like municipal traffic courts and even the Fed-state Multi-Jurisdictional Taskforce.

The entire decision is too lengthy to fully reproduce here, but is presented in a shortened (less than a third of the original content), edited form. The entire document is published in full on the AntiShyster website (www.antishyster.com) and can be downloaded at no charge. [Bracketed comments are my insertions.]

Opinion

These consolidated cases are considered by an expanded panel of judges from this court. Each appeal is from a post-judgment child support order issued by an administrative law judge (ALJ) and raises constitutional challenges to the administrative child support process governed by Minn. Stat. § 518.5511 (1996). We address the separation of powers issue and conclude that the administrative child support process constitutes an impermissible transfer of judicial power to the executive branch, in violation of the separation of powers required by Minn. Const. art. III, § 1. We therefore reverse each of the support orders and remand for consideration by the district court.

Facts

In 1987, the legislature established a pilot project in Dakota County to address child and medical support issues and certain maintenance obligations in an administrative process if the county represented a party or was a party to the proceedings. 1987 Minn. Laws ch. 403, art. 3, § 80 (codified at Minn. Stat. § 518.551, subd. 10 (Supp. 1987)). The legislature approved a restructured administrative child support process in 1994, and expanded the process to all counties designated by the commissioner of human services to use the new contested hearing process. 1994 Minn. Laws ch. 630, art. 10, §§ 1-4 (codified at Minn. Stat. § 518.5511 (1994)). In 1995, the process was again expanded to include parentage orders when custody and visitation are uncontested. 1995 Minn. Laws ch. 257, art. 5, § 1. These appeals involve the administrative child support process as it existed prior to 1997.

Issues

I. Does the administrative child support process governed by Minn. Stat. § 518.5511 (1996) violate the separation of powers required by Minn. Const. art. III, § 1?[1]

Analysis

A. Propriety of Addressing Constitutional Claims

Appellants did not challenge the constitutionality of the administrative child support process during the administrative proceedings or in the district court. Generally, an appellate court will consider constitutional issues only if raised and litigated before the district court. However, an administrative agency lacks subject matter jurisdiction to decide constitutional issues because those questions are within the exclusive province of the ju-

dicial branch.[2] Although precluded from raising their constitutional claims in the administrative proceedings, appellants might have "commenc[ed] an action or [brought] a motion"[3] in district court to raise any "issues outside the jurisdiction of the administrative process." Minn. Stat. § 518.5511, subd. 1(b) (1996).

Dismissal of these constitutional claims would only delay the processing of child support cases and perpetuate uncertainty for parents and children throughout the state. Moreover, the separation of powers issue, in particular, would not necessarily benefit from development of a district court record or additional briefing. *See* Minn. R. Civ. App. P. 103.04 (appellate court may address any issue as justice requires) [sounds like equity]; *in re Jury Panel for Dakota County,* 276 Minn. 503, 507, 150 N.W.2d 863, 866 (1967) (addressing issue not properly before court because "clear-cut[,]" "fully briefed and argued," presented on complete record, and "[n]o useful purpose would be served" by not addressing issue). Therefore, we will address the separation of powers issue.

Merits of separation of powers claim

The powers of government are divided among the branches of the government, and no member of one branch is allowed the power of any other branch "except in the instances expressly provided" in the Minnesota Constitution. Minn. Const. art. III, § 1. The constitution gives district courts original jurisdiction in all "civil" cases, and dissolution proceedings are civil actions. Minn. Const. art. VI, § 3. [4] The issue here is whether the statute governing the administrative child support process constitutes an impermissible invasion of the original jurisdiction of the district courts. Although a statute is presumed constitutional, we will declare it unconstitutional "when absolutely necessary."[5] By adopting Minn. Stat. § 518.5511 in 1994, the Minnesota legislature responded to the large number of children receiving child support services and federal developments encouraging efficient establishments and collection of child support obligations. See 42 U.S.C. (Supp. V 1983) (addressing establishment and collection of child support); 45 C.F.R. § 303.101 (1993) (same). To address these concerns, the legislature delegated to non-judge members of the executive branch broad authority over matters traditionally determined by the judicial branch.

Under this statute, when the public authority is a party or is providing services to a party, the administrative child support process is the forum for actions "to obtain, modify, and enforce" orders involving child and medical support, or modification of spousal maintenance if combined with a child support proceeding. Minn. Stat. § 518.5511, subd. 1(a), (b). A county may unilaterally expand the process to include contempt motions and actions to establish parentage. *Id.,* subd. 1(b). Although the statute presumes that all counties will participate, if the commissioner of human services does not "designate" a county for the process, contested hearings "shall be conducted in district court." *Id.,* subd. 4. Thus, individual counties and the commissioner of human services effectively determine which litigants will have access to the district courts and which must pursue administrative remedies.

Once the administrative child support process is triggered [how?], broad judicial authority is granted [by whom?] to the ALJs determining these matters. In particular, the ALJs have "all powers, duties, and responsibilities conferred on judges of district court to obtain and enforce child and medical support and parentage and maintenance obligations [trust purpose?]," including the power to issue subpoenas, to conduct proceedings according to administrative rules (as well as applying the rules of family court and civil procedure), and to conduct administrative proceedings in available courtrooms. *Id.,* subds. 1(e), 4(d), 4(e), 6. Perhaps most importantly, the ALJs make findings of fact, conclusions of law, and "final" decisions, which are appealable

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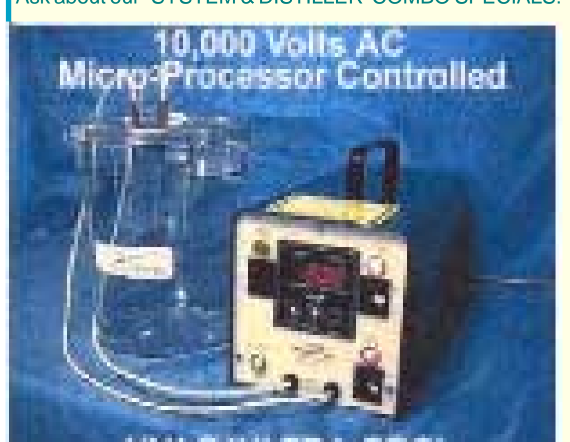

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to this court "in the same manner as a decision of the district court." *Id.*, subds. 4(f), (h). Because many support orders and all maintenance orders originate in district court, the administrative child support process thus places the ALJs in the constitutionally untenable position of reviewing and modifying judicial decisions.[6]

Our supreme court has reviewed challenges to the constitutionality of other legislative initiatives involving the administrative exercise of quasi-judicial powers, and their opinions guide our analysis here. In *Breimhorst v. Beckman,*[7] the court held that the workers' compensation system did not violate separation of powers. The court explained that the vesting of quasi-judicial powers in an agency was not unconstitutional, "as long as the [agency's decisions] are not only subject to review by certiorari, but lack judicial finality in not being enforceable by execution or other process in the absence of a binding judgment entered thereon by a duly established court."

[In *Wulff v. Tax Ct. of Appeals*] The supreme court later characterized these requirements as marking "the outside limit of allowable quasi-judicial power in Minnesota."[8]

Decisions made in the administrative child support process are not subject to review by certiorari, but are appealable "in the same manner as a decision of the district court." Minn. Stat. *§ 518.5511,* subd. 4(h). We therefore apply the same standards of review on appeal to these ALJ decisions that we apply to district court decisions.[9] Further, these ALJ decisions are enforceable without any intervening ruling or binding judgment of a district court. Thus, the administrative child support process goes beyond the "outside limits of allowable quasi-judicial power" set forth in *Breimhorst*.

The finality and appealability aspects of decisions made in the administrative child support process distinguish them from decisions made by a typical ALJ, which are usually reviewed within the relevant agency before judicial review is sought. Thus, the deference traditionally afforded an agency decision due to its expertise and required by separation of powers is not afforded ALJ decisions in the administrative child support process.[10]

These decisions are also unlike those of traditional family-court referees, whose recommended decisions are initially reviewed by the district court.[11] By shifting the initial burden of judicial review to this court, the administrative child support process encroaches upon the original jurisdiction of the district courts.

In *Wulff*,[12] which upheld as constitutional the creation of the tax court, the supreme court expressed reluctance "to approve * * * a legislative scheme" that allowed agency "decisions, upon filing, [to] automatically become orders of the court." Nevertheless, the court concluded that there were "additional factors" that gave it "more latitude" to approve the creation of the tax court, despite the apparent violation of the limits established in *Breimhorst*. Those "additional factors" included the peculiarly legislative nature of taxation, the discretionary nature of the district court's ability to refer cases to that [administrative tax] court, the preservation of taxpayers' "option to file in district court," and the "ultimate check on administrative power in the form of review" by appeal to the supreme court. The court warned, however, that its decision should not be read "to imply * * * that any and all legislative delegation of judicial power subject to judicial review is constitutionally permissible."[12]

By contrast, the area of family law requires a *district court* to exercise its inherent power to grant *equitable* relief.[13] Because the administrative child support process limits certain parties' access to district court, the district court is deprived of its inherent power to do equity in those cases. [This implies that only the Judicial branch may lawfully exercise the powers of equity. If so, administrative agencies of the Executive or Legislative branches cannot lawfully exercise equitable powers, at least without the direct involvement of the courts. Although our status as "beneficiaries" may still condemn us to administrative process, perhaps that process must be based on *strict* rules and procedures without any trace of equitable "discretion" by the administrative agency.] The

administrative child support process lacks the "judicial checks" and "additional factors" identified in *Wulff,* which characterized a taxpayer's ability to elect a judicial determination as "crucial" and "perhaps the saving feature" of the statute.

We also recognize that workers' compensation and taxation are unique and require extensive, constitutionally valid, legislative supervision, but for different reasons. "Taxation is primarily a legislative function" and court involvement is a matter of convenience.[14] Thus, the legislature could delegate this non-judicial function to an agency without encroaching upon the judicial branch's authority. The workers' compensation system, on the other hand, is an integrated, comprehensive system created in response to increased industrialization and rising disability rates.[15] With few exceptions, it covers "all employers and employees," and requires both employers and employees to give up certain rights "to assure the quick and efficient delivery" of benefits to injured employees "at a reasonable cost to the employers." Minn. Stat. §§ 176.001, .021, subd. 1 (1996)[16] Thus, although workers' compensation does not involve a peculiarly legislative function like taxation, as an integrated system "mandated" to meet a series of "important social issues," the workers' compensation system was, and is, unique in its own way, justifying the delegation of judicial power to an agency.[17]

[However] The administrative child support process does not serve a peculiarly legislative function and it is not unique. Instead, the administrative child support process selectively usurps the district court's inherent equitable powers. And while it can be argued that the process was intended to meet certain social needs, it is *not* an integrated, comprehensive approach for deciding all child support issues in all cases. Rather, the administrative child support process applies only to limited types of cases where public monies are involved and only to certain issues in those cases. Parties may be involved in concurrent proceedings in the district court on property or custody issues outside the scope of the administrative child support process—which is precisely what occurred in *Holmberg*—and child support proceedings before an ALJ. The introduction of additional decisionmakers, the concomitant risk that decisions may be inconsistent or not easily reconciled, and the inefficiency of requiring consideration of overlapping or identical evidence and multiple appeals stand in contrast to the integrated and comprehensive nature of the workers' compensation system. [18]

Other courts on both the state and federal level have similarly ruled that certain transfers of judicial authority to administrative agencies violated separation of powers under either state or federal constitutions. While each state's constitution and the federal constitution differ somewhat from the Minnesota constitution, these foreign decisions reinforce the importance of a careful examination of any delegation of judicial functions. [19]

Finally, we reject the dissent's claim that *Mack v. City of Minneapolis*[20] changed the outside limit of quasi-judicial power in Minnesota. While the dissent reads *Mack* as reducing the test for separation of powers to a simple

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question of whether appellate judicial review is provided, we reject that analysis. That view would permit the legislature to transfer any traditional judicial function, wholesale, to autonomous ALJs who are members of the executive branch, without requiring any agency or district court review, so long as the "final" ALJ decisions are appealable to this court. Moreover, *Mack,* which involved limitations on attorney fees in workers' compensation cases and allowed the agency to initially set the amount of attorney fees,[21] relied heavily on the "nearly uniform practice throughout the country of assigning responsibility for attorney fees to compensation commissions. . . . Given this uniform approach, [the supreme court] decline[d] to invoke the separation of powers as a basis for invalidating the statute."

We recognize that in the area of family law the volume of cases is large, many children receive child support services from a public authority, and the current administrative child support process lessens the burden on limited district court resources. We must conclude, however, that the administrative support system represents an improper attempt to transfer broad judicial power to the executive branch. This attempted transfer violates the rule announced in *Breimhorst* and the limits of our state constitution, and it does not fit within the exceptions carved out in *Wullf* or *Breimhorst.* We therefore hold the administrative child support process governed by Minn. Stat. § 518.5511 unconstitutional because it violates the separation of powers required by the Minnesota Constitution.

Appellants also raise due process and equal protection claims, based on the selective nature of the administrative child support process. The process denies litigants access to the district court while limiting the use of the administrative process, all based on whether public monies are involved, counties make certain elections, or the commissioner of human services designates a county for the administrative process. Conditioning litigants' access to a constitutional court based on financial considerations and on independent decisions made in the executive branch or individual counties is troubling, both from the perspective of equal protection and fundamental fairness, and because of the precedent it sets. Because the factual and evidentiary record before this court is not fully developed on the due process and equal protection claims, we decline to rule on these issues. [That last sentence implies this may be a very hot issue the courts do not wish to address.]

Finally, our ruling that the administrative child support process is unconstitutional is prospective only, and does not affect the validity of existing support obligations, which remain in effect unless and until a court grants relief.[22] Our decision will not be final until the period for a petition for review to the supreme court has passed or any proceedings therein have been resolved.[23]

Decision

The administrative child support process created by Minn. Stat. § 518.5511 (1996) is unconstitutional because it violates the separation of powers required by Minn. Const. art. III § 1. We reverse the support orders and remand for consideration by the district court of the child support issues in each of the consolidated cases. . . .

Affirmed in part, reversed in part, and remanded.

s/ Klaphake 6/12/98

[1] This consolidated case also ruled on two more issues: "II. Did the district court err by modifying Sandra Holmberg's homestead lien?" and "III. Should a disabled child support obligor be credited for social security disability benefits paid on behalf of the child for whom the support obligation is owed?"

[2] *Neeland v. Clearwater Mem. Hosp.,* 257 N.W.2d 366, 368 (Minn. 1977).

[3] However, the exact nature of the action or motion by which constitutional challenges might be raised is unclear.

[4] *Christenson v. Christenson,* 281 Minn. 507, 521-24, 162 N.W.2d 194, 203-04 (1968) (discovery rules and privilege against self-incrimination available in divorce action, as in any other civil action).

[5] *Estate of Jones by Blume v. Kvamme,* 529 N.W.2d 335, 337 (Minn. 1995).

[6] *In re Lord,* 255 Minn. 370, 372, 97 N.W.2d 287, 289 (1959) ("the executive shall have no power to interfere with the courts in the performance of judicial functions").

[7] *Breimhorst v. Beckman,* 227 Minn. 409, 432-33, 35 N.W.2d 719, 733-34 (1949)

[8] *Wullf v. Tax Ct. of Appeals,* 288 N.W.2d 221, 223 (Minn. 1979).

[9] *Lee v. Lee,* 459 N.W.2d *365,* 368-69 (Minn. App. 1990), *review denied* (Minn. Oct. 18, 1990).

[10] *Meath v. Harmfid Substance Compensation Bd., 550* N.W.2d 275, 281 n.2 (Minn. 1996) (noting "limited and deferential review" provided by certiorari "ensures that the judiciary does not encroach" on powers of other branches of government). [This implies that use of certiorari to secure a judicial remedy may guarantee a defeat since, by definition, certiorari compels the courts to *defer* to the judgment of the executive or legislative branches of government. This seems consistent with

reports from one prisoner who's trying to use a habeas corpus to compel the U.S. Supreme Court to release him; in his case, the S.C. clerk insists they can't accept a "habeas corpus" per se, but can only receive a habeas corpus argument presented *as* a request for certiorari. Perhaps use of certiorari to demand one's rights gives the court a procedural foundation to ignore the demand.]

[11] Under a pilot project, some decisions made by referees in the Second Judicial District are not being reviewed by district court judges. We note, however, that this pilot project is confined to a single district, is of limited duration, and is a joint effort of all three branches of government (authorized by the legislature, approved by the governor, and implemented by the supreme court). *See* 1996 Minn. Laws ch. 365, § 2 (authorizing Second Judicial District pilot project and setting expiration date); *in re Second Judicial Dist. Combined Jurisdiction Pilot Project,* No. CX-89-1863 (Minn. Apr. 10, 1996) (implementing pilot project). The advisability of foregoing review in the district court remains to be seen. *See Kahn v. Tronnier, 547* N.W.2d 425, 428 (Minn. App. 1996) (district court review of referee's order not prerequisite to appeal, but analogous to motion for amended findings or new trial and affects scope of review on appeal), *review denied* (Minn. July 10, 1996). [A "combined jurisdiction" sounds a lot like Multi-Jurisdictional Task Force, no? Perhaps that entity is also subject to constitutional challenge for violation of separation of powers.] See *Peterson v. Peterson,* 308 Minn. 297, 304, 242 N.W.2d 88, 93 (1976) (district court has "full Authority" to adopt referee's order "in whole or in part").

[12] *Wulff, supra* at 224-225

[13] *Johnston v. Johnston,* 280 Minn. 81, 86, 158 N.W.2d 249, 254 (1968); *see also In re Welfare of R.L.W.,* 309 Minn. 489, 491, 245 N.W.2d 204, 205 (1976) (contempt is part of court's inherent power, independent of statute).

[14] *State ex rel. Cent. Hanover Bank & Trust Co. v. Erickson,* 212 Minn. 218, 225, 3 N .W.2d 231, 235 (1942).

[15] *Breimhorst,* supra at 733.

[16] *Boedingheimer v. Lake County Transp.,* 485 N.W.2d 917. 923 (Minn. 1992) (noting uniqueness of workers' compensation system, including legislative oversight).

[17] *Wulff, supra* at 223.

[18] We also note that the symbiotic relationship between current funding of ALJs and their duty to collect back child support may create a conflict of interest which may be the type of tyranny that the separation of power doctrine is designed **to** check.

[19] *See, e.g., Northern Pipeline Constr. Co. v. Marathon Pipe line Co.,* 458 U.S. *50,* 102 S. Ct. 2858 (1982) (appointment of bankruptcy judges violated Constitution where only oversight was by way of appeal); *A.L.W. v. J.H. W.,* 416 A.2d 708 (Del. 1980) (to avoid constitutional infirmity, statute creating family court masters construed to require judge approval of master decisions); *State, ex rel. Smith v. Starke Cir. Ct.,* 417 N.E.2d 1115 (Ind. 1981) (invalidating legislatively created commission with jurisdiction over probate, civil, and criminal cases); *Drennen v. Drennen,* 426 N.W.2d 252 (Neb. 1988) (state statute drafted in response to same child support laws that prompted Minnesota statute, deprived district court of original jurisdiction, and violated state constitution).

[20] *Mack v. City of Minneapolis,* 333 N.W.2d 744, 752-53 (Minn. 1983),

[21] The power to regulate the bar, and hence attorney fees, "was intended to be vested *exclusively in the supreme court." Sharood v. Hatfield,* 296 Minn. 416, 425, 210 N.W.2d 275, 280 (1973) (emphasis added) (citation omitted). Because the supreme court retains the power to review attorney fee decisions, the statutory provision limiting attorney fees in workers' compensation proceedings does not divest the supreme court of its authority on the subject; it simply gives the supreme court the opportunity to defer to the Workers' Compensation Court of Appeals. Thus, *Mack* is consistent with *Wullf* because a statute that does not require a court to defer to an agency, but merely gives a court an opportunity to relinquish its authority to the agency, is not a violation of the separation of powers. *See Wullf,* 288 N.W.2d at 224-25 (statute allowing, but not requiring, district court to refer cases to tax court did not violate separation of powers because it "takes nothing from the district court that it does not voluntarily relinquish").

[22] *See State v. Olsen,* 258 N.W.2d 898, 907 n. 15 (Minn. 1977) (criteria for determining retroactivity or prospectivity include "reliance" and "effect on the administration of justice").

[23] *See Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.,* 418 N.W.2d 173, 176 (Minn. 1988) (this court's decision final when supreme court denied petition for further review); *see also* Minn. R. Civ. App. P. 117, subd. 1 (party has 30 days to seek review of this court's decision in supreme court); Minn. R. Civ. App. p. 136.02 (entry of judgment on this court's decision stayed pending petition for review). Thus, persons seeking relief from existing support orders are not discharged of their obligation to satisfy the statutory criteria for modification.

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Child Support Meets an "Evil Twin"

from Jeff Penley

In 1987, Jeff Neely and Julia Gray gave birth to a baby girl. In 1990, Jeff agreed in a court-sanctioned contract to pay $220 a month in child support for their daughter.

According to Jeff, the child's mother later gave their daughter to be raised by the child's grandparents. During 1990, Jeff paid approximately $2,000 in child support, but then stopped paying. The grandparents raising the child expressed no concern.

Recently, the mother regained custody and/or responsibility for raising the child from the grandparents and apparently initiated child support enforcement procedures against Jeff Neely for approximately $28,000 in back child support.

On August 7th, 1998, a Notice to Show Cause addressed to "JEFF D NEELY" was "Issued at the request of ATTORNEY GENERAL OF TEXAS-INTERSTATE." This Notice stated that "JEFF NEELY" was to appear in court on September 18th, 1998 to respond to a pleading "IN THE INTEREST OF *KRISTA GRAY* A CHILD".

The attached ORDER TO APPEAR AND SHOW CAUSE warned that "Failure to appear may result in the issuance of a Capias for the arrest of *JEFF D NEELY*, entry of a default order, or both."

A Texas Assistant Attorney General filed a MOTION FOR ENFORCEMENT (UIFSA) which asserted that "JEFF D NEELY failed to pay court ordered child support . . . [with a] Total arrearage as of 6/30/98 [of] $31,246.43," and that he "committed a separate act of contempt by each indicated failure to pay child support in full on or before its due date." The MOTION asked that JEFF D NEELY be punished "by a fine of not more than $500.00 and/or commitment to the county jail for not more than six months. Additionally, the Court should order *JEFF D NEELY* committed to the county jail until *he* pays the child support arrearage, accrued interest, reasonable attorney fees, and court costs."

So far as I know, Jeff owns no property and is only marginally employed. It's unlikely that he can pay even a fraction of the alleged $30,000 arrearage or afford to hire a lawyer. He therefore seemed headed for an indeterminate sentence in the debtor's prison we call county jail.

However, Jeff had attended the Dallas "Citizens for Legal Reform" meetings for several years and heard a bit about law, equity, and dealing with government without benefit of a lawyer. He also had friends who shared experiences on how to avoid prosecution and incarceration. Based on what he'd heard, read, and his friends' counsel, Jeff devised a strategy to extricate him from his problem.

As I understand it, the heart of Jeff's strategy was an application of the "Evil Twin" theory previously proposed in the *AntiShyster*. In short, that theory suggests that "Jeff Neely" is a natural, breathing flesh and blood member of We the People who created government and are not automatically subject to government jurisdiction – and JEFF D. NEELY (the "Evil Twin") is an artificial entity created by the government and therefore subject to government jurisdiction, regulation and control. Essentially, Jeff bet his freedom on the idea that the child support obligation and liability was not imposed on *him* (the breathing, natural man) but on *it* – JEFF D. NEELY – the statutory artificial entity.

I'm interested in this story because it tests the Evil Twin hypothesis. Unfortunately, that testing is impure and not yet absolutely confirmed. That is, Jeff's biological father's name was "Penley" but his mother divorced, remarried, Jeff grew up using his mother's second husband's surname ("Neely") even though he had not been legally adopted. Jeff has recently returned to using his birth name ("Jeff Penley") and seriously compromised any automatic association with JEFF D NEELY.

Further, Jeff sent a series of Petitions to the Texas State Legislature and filed for an "Identity Hearing" to determine if the corporate entity JEFF D NEELY is a corporation licensed to do business in the state of Texas. In short, Jeff is using several strategies simultaneously. That makes it virtually impossible to determine which strategy(ies) is(are) valid, which is(are) half-cocked, worthless or even counterproductive.

Nevertheless, all or part of his

strategies appears to be working since Jeff says that shortly after he implemented his strategy:

"My Show Cause Hearing was removed from court. The Cause-Case file was removed from the 330th District Court's Records office and sent to the Attorney General's office. I went to the 330th Court's file office to review the contents of the Cause file and was informed that 'the Attorney General intervened on [his own] motion to enforce'."

For now, at least, the AG's office has backed out of Jeff's case. On September 10, 1998 the AG's office sent a certified letter which closed with a statement that the AG would "attempt in good faith to resolve contested issues in this case by *alternative dispute resolution* without the necessity of court intervention." [Emph. add.] Apparently, the AG does not want to try Jeff Penley's case in *court*.

Since alternative dispute resolution can't put anyone in jail, it appears that Jeff has (at least temporarily) stopped the AG's attempt to enforce child support collection and kept himself out of jail.

Although all or part of his strategy worked, his success doesn't prove the "Evil Twin" argument is valid. But if it were not valid, I'd expect the AG's office to use it in court as a device to make Jeff "look stupid," tear down his other arguments, and gain a conviction.

Whatever the explanation, the steps and documents involved in Jeff's strategy are too lengthy to reprint here in their entirety, but here's part of Jeff's summary:

It was necessary to cancel my Voters Registration (V.R.) to use this procedure, as the V.R. is a corporate contract. When one cancels V.R., he can no longer be considered a resident of the county, which is a form of corporate jurisdiction. I took my card to the V.R. office, the clerk said to write on the back of the card that I no longer wanted to participate in voting and sign the card next to my statement. I did and received a receipt to prove that my registration had been cancelled."

"Also, I'm told it's necessary to cancel the Social Security card . . . [but] I haven't done this yet. However, canceling these contracts strengthens one's lawful status under the Texas Constitution and other laws that are used in the additional documents."

Jeff also sent several Petitions to the Texas State Legislature concerning his case and even filed a Notice that because the attorney who implemented the original child support contract had died, that contract was no longer valid.[1]

In the recent "Evil Twin" article, the *AntiShyster* hypothesized that each of our *all uppercase* names ("JEFF D NEELY") identifies a statutory trust which, by virtue of being created by government, is absolutely subject to government taxation, regulation, etc. While Jeff and his friends agree that uppercase names identify artificial entities, they believe those entities are *corporations* rather than trusts. Based on that belief, Jeff stopped using the surname "NEELY" (the name of his mother's second husband who raised, but did not legally adopt Jeff) and began using his biological father's surname, "Penley". According to Jeff, he did so because "JEFF D NEELY" is "the name the government has incorporated" and thereby made him subject to the government corporate jurisdiction. In other words, without a government-certified, sanctioned, or registered "NAME," government has no automatic administrative jurisdiction over you.

On August 21, 1998, Jeff filed three brief documents that made the AG jump. These documents allege or imply that 1) the STATE OF TEXAS is a corporation; 2) JEFF D NEELY is a corporation that is not registered with the Texas Secretary of State and therefore can't transact business, sue or be sued in Texas; 3) Jeff Penley is a natural, breathing man – not a corporation – and is therefore *not* subject to the jurisdiction of the TEXAS District (corporate) courts; and 4) if Jeff Penley should be tried, it must be as a natural man in the (virtually unused) County Constitutional Court as per the Texas Constitution. (All of the following footnotes and bracketed comments are my additions.)

Date: August 21, 1998
To: CORPORATE ATTORNEY FOR
THE STATE OF TEXAS
3400 CARLISLE STE 410
DALLAS TEXAS
From: Jeff Penley
c/o 5910 Oram #7
Dallas, Texas [75206]

NOTICE

Your Presentment is Refused for Dolus Malus,[2] Capricious and Arbitrary Actions. Your firm has no Jurisdiction and/or venue concerning Jeff Penley. You have invaded my Privacy without permission. I do not have a contract with THE STATE OF TEXAS and/or with the 330TH DISTRICT COURT OF THE CORPORATION OF DALLAS COUNTY, TEXAS.[3]

You, CORPORATE ATTORNEY FOR THE STATE OF TEXAS[4] are guilty of attempted extortion of Jeff Penley under Color of Law. I, Jeff Penley am a native-born American and not a statutory person. The attorneys of CORPORATE ATTORNEY FOR THE STATE OF TEXAS have committed barratry against Jeff Penley.[5]

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Your Notice is further evidence of fraud. The Notice is dated August 3, 1998, the Notice gives a deadline of 20 days, and the Notice was August 7th, 1998 as DELIVERED.

If the CORPORATE ATTORNEY FOR THE STATE OF TEXAS CORPORATION is silly enough to arrest me with an unconstitutional Capias Warrant,[6] of which they have been notified by the Supreme Courts rulings given to them, I will be more than happy to include CORPORATE ATTORNEY FOR THE STATE OF TEXAS in my major lawsuit against them.

CORPORATE ATTORNEY FOR THE STATE OF TEXAS, you have 3 days from receipt of this Notice to respond in writing and produce the contract signed with pen and ink that I, Jeff Penley have with CORPORATE ATTORNEY FOR THE STATE OF TEXAS and with THE STATE OF TEXAS and/or any other STATE.[7]

Respectfully submitted,
S/ Jeff Penley
Jeff Penley

Jeff's second document notifies the STATE that he is not "incorporated" and that by alleging, implying or presuming otherwise, the STATE's agents are *intentionally* disenfranchising (depriving) him of one or more of the Rights that are guaranteed in the Texas Constitution.

Jeff demands an "Identity Hearing" to determine the truth or falsity of the STATE's implicit allegation that Jeff Penley is part of the corporate JEFF D NEELY. Jeff warns that if the STATE's officers and agents fail to prove their point, Jeff will file a counterclaim.

Date: August 21, 1998
Cause No. 88-18701-Y
THE STATE OF TEXAS
A CORPORATION
CORPORATION ATTORNEY
OF TEXAS
3400 CARLISLE STE 410
DALLAS, TEXAS 75204

Jeff Penley
c/o 5910 Oram #7
Dallas, Texas [75206]

NOTICE AND DEMAND FOR IDENTITY HEARING

Now comes, Jeff Penley demanding an Identity Hearing within 10 days. The court record shows that Jeff Penley has been Incorporated into a Corporation called JEFF D NEELY. The record shows that the Secretary of STATE OF TEXAS has no record of Jeff Penley being incorporated into a corporation by the name of JEFF D NEELY. The Secretary of State of the STATE OF TEXAS has no record of the Corporation of JEFF D NEELY paying any corporate tax.

Notice: Jeff Penley demands strict proof of Jeff Penley's incorporation into a CORPORATION called JEFF D NEELY per the DISTRICT COURT/COUNTY OF DALLAS records. Jeff Penley has reason to believe and does believe that the STATE OF TEXAS the CORPORATION and the COURT CLERK OF DALLAS COUNTY have and did falsify the records disenfranchising Jeff Penley of his unalienable rights and from Article 1 Section 29 of the 1836, 1845, and 1876 Texas Constitution in violation of the Reconstruction Act[8] guaranteeing him the right to never be disenfranchised of Article 1 Section 29 of the Texas Constitution. Notice is hereby given to this STATE OF TEXAS CORPORATE ATTORNEY, THE DISTRICT COURT/COUNTY OF DALLAS CORPORATION its' officers and agents, that the STATE OF TEXAS officers and agents bring forth the contract that Incorporated Jeff Penley into and/or under the Public Policies of the STATE OF TEXAS.

In event the STATE OF TEXAS is unable to produce the corporation papers/documents that incorporated Jeff Penley into the corporation called JEFF D NEELY, then Jeff Penley brings forth this counterclaim for arbitrary and capricious acts, libel and slander, extortion, false and misrepresentation and demands a trial under Article 1 Sections 3, 8, 9, 10, 13, 15, 16, 17, 19, 26, 29 and 30 of the 1836, 1845, and 1876 Texas Constitution, the 7th amendment of the 1787 Constitution of the united States of America and the 1869 Reconstruction Act.

Jeff Penley prays for damages for rights violations for 100,000 Dollars for each right under Article 1 Section 29 of the 1836, 1845, and 1876 Texas Constitution against each officer and agent of the STATE OF TEXAS CORPORATION including but not limited to all Attorneys, ADMINISTRATIVE OFFICERS (I.e. JUDGE), and COURT CLERKS and any and all other damages that Jeff Penley should ask for and failed to do so because he is not learned in the statutes of the STATE OF TEXAS and all other just compensation this court has knowledge of that is due him; Jeff Penley prays this cause be referred to the Dallas County Attorney to be presented to the Grand-Jury for rights violations by THE STATE OF TEXAS CORPORATION, its officers and agents against Jeff Penley.

Respectfully Submitted,
S/ Jeff Penley
Jeff Penley

CERTIFICATE OF SERVICE

A true and correct copy of this NOTICE AND DEMAND FOR IDENTITY HEARING was served upon the ATTORNEY FOR THE STATE OF TEXAS 3400 CARLISLE STE 410 DALLAS, TEXAS 75204 by delivery to its office this 21st day of August 1998.

By: s/ Jeff Penley

Finally, Jeff's third document demands his case be removed from the corporate DISTRICT COURT of the COUNTY OF DALLAS (INC.) (where it was scheduled to be heard on Sept. 18, 1998) to the proper County Court as spelled out in the Texas Constitution. It's interesting that the proper "Constitutional County Court" is not only virtually unused, but in Dallas, not even clearly occupied (the judge elected to that bench seemingly abandoned it to judge elsewhere). Nevertheless, Jeff argues that the County Court is the constitutionally mandated court for natural, breathing men and women.

August 21, 1998
THE STATE OF TEXAS
A CORPORATION
CORPORATION ATTORNEY
OF TEXAS
3400 CARLISLE STE 410
DALLAS, TEXAS 75204

Jeff Penley
c/o 5910 Oram #7
Dallas, Texas [75206]

PETITION FOR REMOVAL TO THE COUNTY CONSTITUTIONAL COURT UNDER ARTICLE 1 SECTION 29 OF **THE TEXAS CONSTITUTION**

Now comes, Jeff Penley and gives notice of Constitutional violations by agents and officers of the DALLAS COUNTY COURT a STATE OF TEXAS Corporation and of removal of Cause No. 88-18701-Y to the County Constitutional Court as provided for under your laws the Texas Civil Practice and Remedies Code pursuant to Section 154.001 and the 1836 and 1876 Texas Constitution. Jeff Penley gives notice of Libel of his good name and reputation, by acts of Dolus Malus by agents and officers of the STATE OF TEXAS CORPORATE ATTORNEY, THE DISTRICT COURT/COUNTY OF DALLAS CORPORATION AND AGENTS. Jeff Penley gives notice and demands that Cause No. 88-18701-Y henceforth be removed to the County Constitutional Court under Article 1 Section 29 of the Texas Constitution.

Jeff Penley gives notice and demands a Trial by Jury as preserved by the Texas Constitution by Article 1 Sec. 15 and 19. Jeff Penley gives notice that he has been deprived of life, liberty, and property by agents and officers of the STATE OF TEXAS CORPORATE ATTORNEY, THE DISTRICT COURT/ COUNTY OF DALLAS CORPORATION AND AGENTS and demands removal of this Cause No. 88-18701-Y from the STATE OF TEXAS CORPORATE ATTORNEY, THE DISTRICT COURT/COUNTY OF DALLAS CORPORATION, to the County Constitutional Court and demands a Trial by Jury in the due course of the law of the land, the common law, as preserved by Article 1 Section 19 and 29, of the 1836 and 1876 Texas Constitution.

Respectfully submitted:
S/ Jeff Penley
Jeff Penley

CERTIFICATE OF SERVICE

A true and correct copy of this PETITION FOR REMOVAL TO THE COUNTY CONSTITUTIONAL COURT UNDER ARTICLE 1 SECTION 29 OF THE TEXAS CONSTITUTION was served upon the CORPORATE ATTORNEY FOR THE STATE OF TEXAS 3400 CARLISLE STE 410 DALLAS, TEXAS 75204 by delivery to it's office this 21st day of August 1998.

S/ Jeff Penley

On September 10, 1998, the Attorney General responded with his "Original Answer". Bear in mind that this is a legal document prepared by and for the AG's office to defend the AG and several assistants against being sued. We can reasonably assume that every "t" is properly crossed, every "i" precisely dotted. No letter, number, word or phrase should be presented improperly.

But as you read, observe how each name is spelled as either uppercase ("JEFF PENLEY") or capitalized ("Jeff Penley"). In fact, "JEFF D NEELY" is used once; "*JEFF D NEELY*" (italicized) twice; "JEFF PENLEY" (italicized) four times; "Jeff Penley" five times; and "*Jeff Penley*"

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(italicized) once.

These mixed name formats can't be explained away as random typing errors or irrelevant inconsistencies on a legal document. Instead, they support our suspicion that different name formats identify different kinds of legal entities:

NCP Name: *JEFF D NEELY*
CP Name: *JULIE GRAY*
OAG Number: UR00091201
CAUSE NUMBER *8818701Y*

IN THE INTEREST OF *KRISTA GRAY*
A CHILD

IN THE 330TH DISTRICT COURT
OF DALLAS COUNTY, TEXAS

THE ATTORNEY GENERAL'S NOTICE OF DEFECTIVE SERVICE, MOTION TO QUASH SERVICE, AND RESPONSE TO: RESPONDENT'S[9] PETITION FOR REMOVAL TO THE COUNTY CONSITUTIONAL [sic] COURT UNDER ARTICLE 1 SECTION 29 of the TEXAS CONSTITUTION, NOTICE AND DEMAND FOR IDENTITY HEARING, and NOTICE

TO THE HONORABLE JUDGE
OF SAID COURT:[10]

NOTICE OF DEFECTIVE SERVICE
AND MOTION TO QUASH

1. Jeff Penley attempted to serve the Office of the Attorney General, Child Support Division, Dallas unit 0410E, as the "corporate attorney for the State of Texas." The undersigned knows of no such person or entity. If Respondent were seeking to serve Dan Morales, Attorney General of Texas, the agent for service of process is Adrian Vasquez who resides in Austin, Texas. Unit 0410E is not authorized to accept service on behalf of the Attorney General and any attempted service on this unit for the Attorney General would be and is defective. The Court should quash all such attempts at service.[11]

GENERAL DENIAL

2. The Office of the Attorney General, representing only[12] the interests of the State of Texas under the authority of Chapter 231, Texas Family Code, enters a general denial as to Jeff Penley's pleadings and demands strict proof.

SPECIAL EXCEPTIONS

3. The Office of the Attorney General specially excepts to all claims by Jeff Penley that he has been wrongfully incorporated into the corporation by the name of Jeff D Neely.[13] The Office of the Attorney General is unable to determine what Jeff Penley means by that and is therefore unable to adequately prepare a defense to these claims.

4. The Office of the Attorney General specially excepts to all claims by *Jeff Penley* for attorney fees or other monetary relief because *he* has not plead the following matters with requisite specificity:

a. the identity of the persons or entities against whom *JEFF PENLEY* seeks such relief;[14]

b. whether *JEFF PENLEY* seeks such relief against the persons in their official or individual capacities;

c. the factual basis of the claim;

d. the statutory basis for such relief;

e. the factual or statutory basis of any claimed waiver of sovereign immunity from suit; and

f. the factual or statutory basis of any claimed waiver of official or quasi-judicial immunity from such relief.

5. Because of this lack of specificity the Attorney General is unable to adequately prepare a defense against such claims.

6. The Court should sustain these special exceptions and strike *JEFF PENLEY'S* claims for attorney fees or other monetary relief, subject to *his* right to promptly replead such claims with requisite specificity.

AFFIRMATIVE DEFENSES

1. In their official capacities, Dan Morales – Attorney General of Texas, Jorge Vega – First Assistant Attorney General, Adrian Vasquez – Deputy IV-D Director, and all Assistant Attorneys General participating in this cause have sovereign immunity from suits for claims for attorney's fees or other monetary relief.

2. In their individual capacities, Dan Morales – Attorney General of Texas, Jorge Vega – First Assistant Attorney General, Adrian Vasquez – Deputy IV-D Director, and all Assistant Attorneys General participating in this cause have official or quasi-judicial immunity from liability for attorney's fees or other monetary relief because they were acting in good faith and within the discretion, course, and scope of their official duties as State officials at all times relevant to *JEFF PENLEY's* claims.[15]

PRAYER

The Attorney General prays that the Court grant all relief requested herein. The Attorney General prays for general relief.

Statement Concerning Alternative Dispute Resolution

" I Am Aware That It Is The Policy Of The State Of Texas To Promote The Amicable And Nonjudicial Settlement Of Disputes Involving Children And Families. I Am Aware Of Alternative Dispute Resolution Methods Including Mediation. While

I RECOGNIZE THAT ALTERNATIVE DISPUTE RESOLUTION IS AN ALTERNATIVE TO AND NOT A SUBSTITUTE FOR A TRIAL AND THAT THIS CASE MAY BE TRIED IF IT IS NOT SETTLED, I REPRESENT TO THE COURT THAT I WILL ATTEMPT IN GOOD FAITH TO ABSOLVE BEFORE FINAL TRIAL CONTESTED ISSUES IN THIS CASE BY ALTERNATIVE DISPUTE RESOLUTION WITHOUT THE NECESSITY OF COURT INTERVENTION."

Respectfully submitted,
DAN MORALES
Attorney General of Texas
JORGE VEGA
First Assistant Attorney General
ADRIAN VASQUEZ
Deputy IV-D Director
S/ Mary B. Stanley
Mary B. Stanley
Assistant Attorney General
Child Support Division
Texas Bar No. *19046550*
CHILD SUPPORT UNIT 041 0E
1600 PACIFIC AVE. #110 0
DALLAS TX 752 01
Telephone No. *(214) 965-6600*

VERIFICATION OF AFFIRMATIVE DEFENSES

I solemnly affirm and declare the foregoing to be a true statement.[16]

S/ Mary B. Stanley

State of Texas
County of Dallas

Before me, a notary public, on this 10th day of September, 1998, personally appeared Mary Stanley, known to me to be the person whose name is subscribe to the foregoing document and being by me first duly sworn, declared that the statements therein contained are true and correct.

S/ Barbara C. Boardman
Notary Public

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been serve don the below listed parties or their representatives pursuant to Rule 21a, Texas Rules of Civil Procedure, on the 10th day of September, 1998.
S/ Mary B. Stanley
Mary B. Stanley
Assistant Attorney General
Party:
JULIE GRAY

JEFF D NEELY aka Jeff Penley
5910 ORAM
APT 7
DALLAS, TX 75206

Generally, the AG's office claimed or implied that Jeff's entire claim was wacko. But if Jeff's wacko, why did the AG's office cancel the hearing scheduled for September 18th? Why abandon the "moral imperative" to enforce child support? Why waste all that energy declaring their immunities and defenses against a nut? Why move the case from Court (where Jeff might be jailed) to an "Alternative Dispute Resolution" hearing, that might not even happen? If Jeff's claims and arguments are fundamentally invalid, why not just take him to court on September 18th, let him show the judge and jury how nuts he is, and

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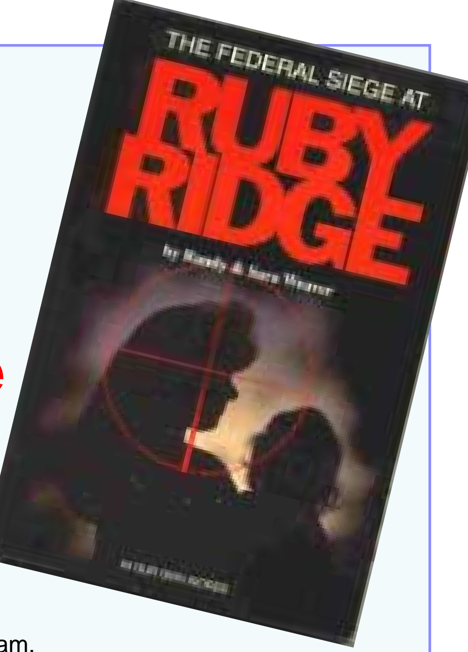

I am scared to remember those horrible days in August of 1992. It's private and personal, but it's not. I have no privacy left. It was gone with the first reporter, gone with the first camera. It was gone with the first journalist out to get the big story. The problem is, they don't know the story. No one does except my family. We lived it. With a heavy heart I began the task of sharing our story with the world. Even now, sometimes my mind tricks me into believing it was all a dream. I am afraid that once I put it all down on paper my mind will never trick me again. – *Sarah Weaver*

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then sentence him to jail?

The most plausible explanation seems to be that Jeff's on to something. While it's likely that Jeff's paperwork is not perfect or even entirely valid, it's pretty clear that Jeff's touched on something that the AG's office does not wish to face or publicly expose.

The mixed use of the UPPERCASE and Capitalized names appears repeatedly in the AG's Answer. However, this use of the upper case, italicized "*JEFF D NEELY*" immediately followed by capitalized, normal text "aka Jeff Penley" and then uppercase, italicized address "*5910 ORAM*" etc. is a perplexing example of "multiple" name formats. Note that "*JEFF D NEELY*" is uppercase, italicized and "aka Jeff Penley" is capitalized normal text (*not* italicized).

It takes two separate typing "commands" to change from all uppercase italics to capitalized normal text. (First, you shift out of the "caps lock" key on your computer keyboard; then you terminate the italics command.) Then, when the AG's office shifted back from "aka Jeff Penley" (capitalized normal text) to "*5910 ORAM*" etc. (uppercase italicized text), the typist had to make two more intentional acts: 1) hit the "caps lock" key to shift back into all uppercase letters and 2) hit the italics command to cause text to be italicized.

The variations are especially perplexing on a *legal* document wherein the AG and several assistants are establishing a defense against being sued. I can't imagine why the names "JEFF D NEELY" and "Jeff Penley" should not be both printed in the same format on the same line unless there is a fundamental difference in *kind* (not degree) between the two entities. That is, "NEELY" and "Penley" may not belong to the same *class* of entities. They may be as different as animals, vegetables and minerals – or artificial entities and real persons.

However, what that precise difference is, remains to be proved. Both Jeff and I agree that uppercase "NEELY" identifies an artificial entity (like a trust or corporation), while capitalized "Penley" indicates a natural, breathing man. But Jeff and I disagree on the nature of the artificial entity. Jeff believes "NEELY" is a corporation, but because that corporation is not registered with the Texas Secretary of State, it can't sue or be sued in Texas. I, on the other hand, suspect "NEELY" is a trust.

Since Jeff is actually *using* his corporation argument (not speculating, as I do with trusts) with apparent success, it seems likely that the artificial entity/ Evil Twin "NEELY" may, in fact, be a corporation rather than a trust.

However, I still cling to trust analysis because:

1) Trusts need not be identified by specific language, only by their form, i.e., by the relationship that exists between several parties. For example, I can create a trust that places me in the relationship of Trustee to all my readers who will be my trust's beneficiaries – and I need not even notify those beneficiaries of their new status. I need never use the terms "grantor", "trust", "trustee" or "beneficiary" and *still* the beneficiaries are expected to discern their new status from the *form* of our relationship (maybe I send 'em free copies of the *AntiShyster*). If I can do it, so can the government. Because it is up to the beneficiaries to recognize the status that's been imposed on them, trusts have a stealth factor that no corporation can match. That is, so far as I can tell, I can't be incorporated without my knowledge, but I can be "beneficiarized" and never have a clue.

2) Unlike statutory corporations, trusts need not be registered with as state's Secretary of State to transact business. Therefore, each of us could easily be subject to (beneficiaries of) scores of trusts whose names are difficult to even discover. This gives trusts a phantom quality that, compared to corporations, allows them to operate almost invisibly.

If you are subjected to administrative procedures (not due process of law) because of your unwitting involvement in a trust, how do you even prove it? If you don't know the name of the trust that's rendered you a beneficiary, and (like most Americans) you wouldn't recognize a trust relationship if you were buried in them (which you well may be), only the most astute in-

dividuals will recognize, identify and defeat the presumptions and obligations that can be mysteriously imposed by trusts. The rest will be "handled" like little kids, and emerge from court in a complete state of bewilderment.

Still, Jeff may be right. Maybe the upper case name only identifies corporations, not trusts. But even if Jeff is wrong, perhaps by merely raising the identity issue, he scared the AG off. That is, since Jeff claims "JEFF D NEELY" is a corporation, the AG's office will have to specifically disprove that claim. Even if "NEELY" is not a corporation, the AG will have to offer evidence of what "NEELY" really is to disprove Jeff's claim. If the "Evil Twin" argument is valid, the government must be reluctant to address that issue in any form. If Jeff declared that "NEELY" identified a Martian and demanded an Identity Hearing, the government might still have to retreat rather than risk revealing what "NEELY" really is.

This analysis strikes me as especially probable since Jeff has not only raised the issue of Identity but also implicitly threatened every lawyer (and judge) on the case with charges of Barratry[5] if they enter any false or fictitious pleadings into the court. If Jeff only asked for an Identity Hearing, the average lawyer might try to trick Jeff with a series of cleverly constructed lies into believing that there's no difference in kind between "NEELY" and "Penley". In other words, Jeff's demand for an Identity Hearing might not necessarily reveal the truth about "NEELY" if the lawyer could safely lie to conceal that truth. But once Jeff mentioned Barratry, the lawyers knew they couldn't lie without risking their license.

So. It's only conjecture, but if they don't dare expose the truth about uppercase names in an Identity Hearing (or they might publicly expose the whole scheme) and they don't dare lie to conceal that truth (or they might be disbarred), what can the AG's office do? It seems to me that if they can't tell the truth or lies, their only choice is to stay out of court. Which is exactly what the AG's office appears to have done.

Of course, the AG's retreat proves nothing. They might come after Jeff with a vengeance next month, and overcome his arguments. So we still don't have proof that the Evil Twin (whether corporation or trust) hypothesis is valid. But circumstantial evidence continues to suggest that we're on the right track.

Editors Footnotes

[1] Although Jeff's Petitions may play a powerful role that indirectly caused the AG to retreat, their direct impact is unclear. Full copies are available on the *AntiShyster* website (www.antishyster.com).

Jeff's argument that his child support contract is now void because the lawyer who prepared the contract has died strikes me as, at best, fanciful. If contracts could be nullified by the death(s) of participating lawyer(s), Shakespeare's famous comment, "First thing we do is kill all the lawyers," would take on an exciting and previously unsuspected utility. Virtually no lawyer would live past age 25, and no woman would marry one since they couldn't get life insurance. The "dead lawyer argument" is unlikely. Still, despite the apparent improbability of some of Jeff's arguments, the AG's office still ran. Something in Jeff's paperwork must be powerful.

[2] Jeff refused the STATE's original presentment of documents for "Dolus Malus" (there are alternate spellings) which means "deceit". That's a no-no, folks. That is, Jeff alleges that the STATE's agents are not sending improper documents by mistake or accident, they're *intentionally* sending documents that they *know* to be improper or fraudulent. If it's *intentional*, it's a *criminal* no-no – which, technically, rises to the status of a "not-not" (very serious). If Jeff's allegation can be sustained, the STATE's agents lose any claim to "good faith" immunities and may even be subject to *criminal* prosecution.

[3] Jeff refers to the local District Court as a corporation court of the corporate entity called DALLAS COUNTY [I wonder if it might be more correct to identify the county corporation as the COUNTY OF DALLAS]; Jeff denies the existence of any *contract* with the corporate STATE OF TEXAS and/or the DISTRICT COURT OF THE CORPORATION DALLAS COUNTY, TEXAS believing that without an underlying contract the *corporate* STATE or COUNTY may have no jurisdiction over Jeff Penley.

[4] Jeff asserts that the Texas Attorney General is the "CORPORATE ATTORNEY FOR THE STATE OF TEXAS";

[5] Jeff doesn't merely whine about the state's actions, he fires one of the strongest shots you can aim at any Texas lawyer: Barratry. In Texas (and perhaps other states) barratry includes "entering false or fictitious pleadings into a court," that is, telling lies in or to a court by written or oral statements. Each lie constitutes a single act of barratry. Lies are fact issues that are easily proved before a jury. As I understand it, in Texas, the first and second convictions for barratry result in misdemeanors; the third is a felony and being repeated, demonstrates "moral turpitude" which can cause a lawyer to be *disbarred*. Barratry convictions add up over a lawyer's *entire career*. If, at any time, a particu-

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lar lawyer accumulates his third barratry conviction, he can be disbarred, no matter whether it takes thirty years to hit the magic number, or one day. In theory, you can have three separate lies not only in a single career, single case, or single hearing, but in a single *paragraph*. Three strikes and they're *out of the Bar* and forced back to working for a living (something they've probably never done). Reportedly, if you want to see lawyers jump like a vampires at sunrise, whisper "barratry". They run like Hell.

[6] Jeff warns that he knows Capias Warrants (though still in use) have been ruled unconstitutional by the Texas Supreme Court. If they've been ruled unconstitutional, how come they're still in use? I don't know, but I suspect a Capias Warrant is still appropriate for an *artificial* entity like JEFF D NEELY, but totally unconstitutional for a natural, breathing man like Jeff Penley.

[7] Jeff closed by giving the STATE OF TEXAS three days to figuratively "get out of town" – or to respond in writing and produce whatever contract they have subjecting Jeff to the STATE's corporate jurisdiction.

[8] The Reconstruction Acts only apply to those southern States that were members of the Confederacy; the Reconstruction Act readmitting Texas back into the Union prohibits the government from ever depriving any citizen of Texas of any of their rights and privileges as they existed in 1870. Properly used, the Reconstruction Act may be a powerful deterrent to abuse by the STATE. For further information, see *AntiShyster Runs for the Texas Supreme Court, 1992*.)

[9] It's not clear that Jeff Penley is a "respondent"; the AG's office may be making an assertion based on assumptions rather than facts that should be specifically denied.

[10] Jeff didn't petition the District Court, he petitioned the incorporated STATE OF TEXAS.

[11] Note that the AG's office refers to "Jeff Penley" (not JEFF PENLEY). The assertion that Jeff "attempted to serve the Office of the Attorney General" is either a conclusion (which is unacceptable in Notices) or a lie. If it's a conclusion, it's based on unknown information (Jeff's intent); the target for Jeff's service was the "CORPORATE ATTORNEY FOR THE STATE OF TEXAS" (not the "corporate attorney" etc.) who may or may not be the AG. In fact, the AG implicitly admits they *don't know* who Jeff was "attempt[ing] to serve" when they state "*If* respondent were attempting to serve Dan Morales . . . ." The "If" indicates their first assertion is not a fact but a conclusion. Further, the "undersigned" is *only* Ass't AG Mary B. Stanley; although she *doesn't know* of the CORPORATE ATTORNEY, note that she does not deny his existence, either.

[12] The AG's original Motion For Enforcement (UIFSA) was styled "In the Interest of Krista Gray A Child"; now, the AG is "representing *only* the interests of the State of Texas".

[13] Lawyers in particular and the government in general are known to use word tricks to intentionally deceive unwary litigants. Jeff Penley did not claim to be wrongfully incorporated into "Jeff D Neely," he claimed he was incorporated into "JEFF D. NEELY".

[14] In item "4", we have "Jeff Penley"; in item "4a" we have JEFF PENLEY. Is this an error or an intentional attempt to deceive Jeff into implicitly assenting to be/ use the name "JEFF PENLEY" (the Evil Twin)?

[15] The claims were made by "Jeff Penley," not "JEFF PENLEY". Since the name "Jeff Penley" has been used elsewhere in this document, there should be no reason to change and confuse the issue, even by accident. Further, given the "slickery" for which lawyers are famous, it's hard to avoid the suspicion that the AG's office is intentionally creating false presumptions by the use of upper case names.

[16] Although the AG complains elsewhere that Jeff's claims lack adequate specificity, the AG's Original Answer is also somewhat imprecise. At first glance, most people would assume that when Ms. Stanley affirms, " the foregoing to be a true statement," she was swearing that AG's entire Answer is true. However, her affirmation is curiously ambiguous. For example, while all the various sections in the AG's Answer *seem* to be "statements", only the very last section ("Statement Concerning Alternative Dispute Resolution") is specifically identified as a "statement". Is the Notice of Defective Service a "statement" – or a "conclusion"? Is the "Prayer" a "statement" or a request? Is the "General Denial" a statement – or a standard legal strategy? (As word-wrangler President Clinton recently weaseled, "It all depends on what the definition of 'is' is.") Further, to affirm the "foregoing is a true statement" does not mean the same thing as saying the "foregoing statement is true." For example, "I know that the moon is made of green cheese," is truly a "statement" (rather than a question or an dangling participle) even though the statement itself is not true (judging by all the holes, the moon's not made of green cheese, silly, it's made of Swiss). Is it possible that Ass't. AG Mary Stanley is trying to create the *impression* that the AG's entire Answer is "true" when in fact, the only part she'll really stand behind is the quote on Alternative Dispute Resolution? It all depends on what the definition of "is", is . . . hmm?

Trust Fever or Fetish?

Gentlemen:

I've been reading Vol. 8, No. 2 containing a tremendous amount of speculation re. trusts, capitalization, etc. I find identical examples given by various speculators and authors, whether on taped radio broadcasts, video, memos, etc.. Wouldn't it be efficient and therefore helpful, to find some authoritative source, somewhere, who can and would provide something other than speculation?

Surely, there must be some 'authority', or some organization, who/which could provide non-speculative, concrete answers. If there are no absolute answers, i.e., if every judge/court would treat any given set of identical circumstances differently, then, speculation is fruitless.

Would it make sense to ask each subscriber to contribute, say, 10 FRN'S; employ, for example, one or more former law-school deans, or retired high-court justices, and pay for a comprehensive study, analysis and report on the subjects by individuals who could provide 'chapter and verse'– academic/experiential/empirical – information rather than guesses and 'what-ifs'? Then, send a copy of the results to the contributors?

We may be on to something, but we surely don't want to be in the (Biblical) category of "– silly women – who are – never able to grasp the truth."

Again: if there are no palpable answers, we're wasting valuable time and resources.

I always enjoy the publication. Keep up the good work.

Sincerely,
Albert Nathaniel, Baxter

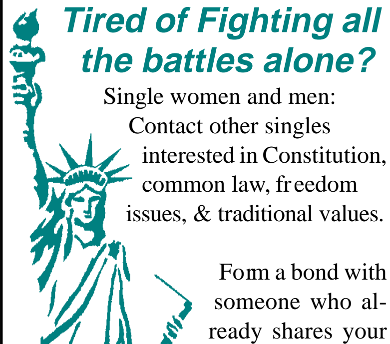
First, it's not true that there might be "no absolute answers". There are always absolute answers, although they may be hard to find and ever harder to believe. Public speculation is one method to sort through possible "absolute answers" and then evaluate those possibilities based on other people's feedback.

Despite my long-winded editorials, this publication is not a monologue but a dialogue. I find an intriguing idea, publish it, sit back and wait. I inevitably receive letters or phone calls from folks who help me better understand my ideas and speculations. Some letters praise my ideas and offer supporting proof or anecdotes, a few disparage. Depending on the feedback, I abandon, modify or accelerate the particular line of speculation. But all the while, the process of speculation/feedback/more speculation moves me (and my readers) toward a clearer understanding of our own questions and perhaps even truth.

Second, your idea about each sending $10 to hire a competent authority to answers our questions is good, but subscriptions to the AntiShyster have been doing just that for eight years. I don't mean to say that I am competent to answer legal questions, but I am competent to distill the hundreds of comments submitted by thousands of readers into a relatively few questions that are sufficiently articulate to be answerable.

In a sense, it's taken eight years for this movement and publication to evolve to a point where our questions are sufficiently articulate to be answerable by anyone, including competent authorities. Eight years ago, all we had were inarticulate moans. Today, we have fairly concise questions. Subscriptions paid for that evolution.

But could $10 from each of our readers pay to hire a competent authority to answer our questions? Theoretically, yes. But who shall we rely on as a "competent authority"? A retired judge? Some law professor? A famous lawyer? But if our would-be authority is competent to answer our questions, would he tell us the truth? Or would



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he conceal a bit of it? So long as we *don't understand the law, how would we* know *if our hired "authority" was telling us the truth, the whole truth, and nothing but the truth? Besides, if our questions have any validity, why haven't the "competent authorities" already posed and answered them?*

The reason we're in this mess is that we have collectively trusted "competent authorities" for so long, that the average American doesn't have a clue to what's going on. So far as I know, God never said, "My people perish for lack of competent authorities." He said, "My people perish from lack of knowledge" and I believe He meant personal *knowledge. The attributes of laziness, ignorance and dependence on authority are synonymous. It is our ignorance/ "authority dependence" that has weakened us and allowed us to be exploited by our own "authorities". Hiring more/better "authorities" will not eliminate our fundamental problem – that is the problem*

Therefore, I believe that the best, long term solution to our problem will come from common people who speculate improperly, do shoddy research, pay fines or go to jail, gain some understanding, share their information, speculate again, do better research – and slowly grow in knowledge and character to a point where they both understand and are worthy of Liberty. It may take a little longer to find our own answers, but the results will last longer, too. The answers will improve government. Finding the answers will improve us.

When God said "my people perish for lack of knowledge," I doubt that He meant knowledge we were technically incapable of understanding (like nuclear physics or the space-time continuum). I believe he meant knowledge we are quite capable of understanding, if *we are willing to* make the effort *required to find, study and comprehend that knowledge. I am less afraid of being like a "silly woman who can't grasp the truth" than being like a man who is quite capable of grasping the truth but was simply too lazy to do so.*

So for now, speculation and the distillation of questions will continue in the AntiShyster. As you'll see from some of the following letters, that process seems to work pretty well.

This next letter is from "Ber nard J. Sussman, J.D., M.L.S., C.P." who I assume is a licensed attorney. Mr. Sussman has criticized my articles for years. Generally speaking, his critiques have been particularly annoying in that he is articulate, knowledgeable, backs his criticisms with research and often seems to be right (which means I'm wrong). Initially, I not only disliked Mr. Sussman's letters, I almost feared them.

Today, however, I look forward to Mr. Sussman's letters. Because he never attacks more than one or two ideas/ articles in a particular issue of the AntiShyster, I've come to regard his failure to criticize most articles as indirect evidence that they may be essentially valid.

For example, in this next letter, Mr. Sussman ridicules a hypothesis presented in the AntiShyster concerning upper-case names. I.e., a capitalized name ("Alfred Adask") identifies a natural person while the corresponding upper case name ("ALFRED ADASK") signifies an artificial entity like a trust or corporation. I don't agree with Mr. Sussman's criticism, but even if he's right, Vol. 8 No. 2 contained so many other potentially powerful ideas, that if the only serious mistake we made was the upper-case name – hey, I'm golden. Mr. Sussman didn't *criticize our ideas concerning money, Federal Reserve Notes, equity courts, the IMF, Y2K or Comprehensive Annual Financial Reports – all of which may be much more important than the legal significance (if any) of upper-case names. Therefore, I am encouraged that those ideas may be fundamentally valid.*

However, after several years of reading Mr. Sussman's criticisms, I've noticed a growing problem that deserves criticism: His early letters were scholarly, erudite and without trace of animosity, but lately his letters have grown increasingly contemptuous, even bitter, and his once-pure scholarship has become slightly mean-spirited.

Perhaps his change in tone reflects our relative growth. Five years ago, our articles were so inferior that relatively speaking, Mr. Sussman's superiority seemed irrefutable. Today, however, the quality of our articles has improved to a point where Mr. Sussman's superiority is no longer so obvious. Perhaps his urge to ridicule is based on a growing awareness that we're closing the gap. Whatever the reason, he seems more intent on maintaining his elitist status than sharing truth. If so, while Mr. Sussman's research may be technically superior, he's forfeit any claim to moral superiority.

In any case, Mr. Sussman's criticism helps me to better understand my own ideas, and that makes his comments valuable. (I've inserted my replies as italicized text within Mr. Sussman's letter.)

Dear Editor,

In Volume 8, issue 2, in "Fever Feedback", you acknowledge getting one letter in opposition to your notion about the significance of upper-case lettering of names, and you belittle its arguments as flimsy because the author

didn't bother including the citation of the cases he mentioned, but even so you imagined how the arguments in those cases had gone. It only shows that your own legal research talents are so very limited.

The *Liebig* case he mentioned is that of *Liebig v. Kelley-Allee* (ED NC 1996) 923 F.Supp 778, 77 AFTR2d 96-989. And the argument wasn't anything like what you had fantasized (it wasn't about IRS jurisdiction or a trusteeship, and he wasn't trying to prove a negative statement), it was his lawsuit against the Branch Banking & Trust Company. At the very beginning of its decision the Court says in a footnote: "Plaintiff objects to having his name printed in all capital letters." The decision describes the history of the suit, including Christoph Liebig's mistypings and malapropisms, including: "On January 25,1996, plaintiff sought to have the court "squash" BB&T's motion . . . because BB&T improperly identified him in its motion by spelling his name in all capital letters. Neither ground has merit."

But who or what is the "plaintiff"? That's our fundamental question. If the court understands the plaintiff "LIEBIG" to be an artificial entity (like a trust or corporation), then I'd agree that Mr. Liebig's objection to spelling that trust's name with all capital letters has no merit. Mr. Liebig may represent *the LIEBIG trust (much like an attorney) but he and it are still two separate legal entities (one real, the other artificial). Therefore, Mr. Leibig can't complain that "his" name is being misspelled since "LIEBIG" is not* his *name – it's the* trust's *name. Judging by "Christoph Liebig's mistypings and malapropisms," it appears that he is not a sophisticated litigant. So* if *Mr. Liebig didn't understand that "LIEBIG" was not a misnomer but actually signified an* entirely different *legal entity, then his arguments on this point are bound to be technically invalid.*

The fact that one or more pro se litigants have failed to argue this point successfully does not necessarily disprove the fundamental theory about upper-case names; it only illustrates their inadequate understanding and legal expertise. Hopefully, rather than pointing to case law of dubious merit, Mr. Sussman's next letter will provide statutory *evidence to prove conclusively that the difference between capitalized, upper-case (or even lower case) names carries no legal significance and may be used interchangeably in any court.*

As for the mention of *Elvick*, I assume this is Roger Elvick, a mountebank who peddled an expensive kit of "redemption" instructions for harassing IRS agents. I could not find a reference to upper case lettering in any of the several published court decisions involving him and his scheme, but I wouldn't be surprised if he had included that bit of fetishism in his instruction kit. The last I heard of him, all his farfetched arguments had failed, and if he was ever finicky about how his name was typed that quibbling has been settled by putting him, for several years, in an environment where he will be identified by a number and I am sure that he will emerge from that experience a lot less anal retentive.

In his first paragraph, Mr. Sussman criticized my "limited, legal

research talents" because I only "imagined" how the arguments in these cases had gone. Well, I've never claimed to have any *legal research talent and freely admit that whatever talent I have is at best limited. And yet, the grand high imperial legal researcher Bernard Sussman J.D., M.L.S., C.P., seems to make the same mistake he criticized: "assuming" and guessing about the kind of "fetishism" Elvick used in an imagined case Mr. Sussman can't even find. Why the double-standard?*

There are, however, some other court decisions closer on point. For example, *US v. Washington* (SD NY 1996) 947 F.Supp 87, 80 AFTR2d 97-7857, 97 USTC ¶50129, mentions on the last page:

"Finally, the defendant contends that the indictment must be dismissed because 'KURT WASHINGTON', spelled out in capital letters, is a fictitious name used by the Government to tax him improperly as a business, and that the correct spelling and presentation of his name is 'Kurt Washington'. This contention is baseless."

As President Clinton recently said, "It all depends on what the definition of 'is' is." In other words, the "baseless contention" in U.S. V. Washington *depends on how the terms are precisely interpreted. For example, like the court, I doubt that KURT WASHINGTON "is a fictitious name used by the Government to tax him [Kurt Washington] improperly as a business." I'd say 1) "KURT WASHINGTON" might not be a* "fictitious *name" but rather a* real *name of an artificial (or fictitious) entity; and 2) the purpose of that upper-case name is not to "tax him (Kurt Washington, the man)* improperly *as a business" but rather to* properly *tax "it" (the KURT WASHINGTON trust) as a statutory artificial entity (i.e., a creature of the state that is legitimately subject to state regulation and taxation).*

Similarly, in *Russell v. US* (WD Mich 1997) 969 F.Supp 24, 79 AFTR2d 97-2387, 97 USTC 1150494, the court said: "Petitioner has raised one new argument in that he claims because his name is in all capital letters on the summons, he is not subject to the summons. As to this argument, this Court will follow the Eighth Circuit when it responded to an argument of similar merit when it stated 'these issues are completely without merit, patently frivolous, and will be rejected without expending any more of this Court's resources on their discussion'."

Just because a court refuses to expressly answer an argument does not disprove the argument. Frankly, whenever a court uses it's "frivolous" defense and justification argument, I assume that signals the pro se litigant is close to an issue the courts regard as too dangerous to consider or expose. But assuming Russel's argument was *absurd, it's still strange that lawyers and judges are so superior that they don't even have to answer a litigant's argument but can instead treat all "commoners" to the gross contempt of a "frivolous" write-off.*

Of course, given my "limited legal research talents," I could be wrong, but I seem to recall reading something

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*somewhere about "We the People" being "*sovereign*" while government officials and employees were our* servants. *If that were true, then contempt of the sort shown by judges who refuse to expressly answer or refute a litigant's arguments is not only bad public policy (since it increases public confusion) it's also unconstitutional. Further, if arrogant judges bothered to show enough respect to explain the truth rather than contemptuously dismiss a litigant and his arguments, a large number of future pro se litigants (and courts) might be spared even more "expenditures of court resources" on the upper-case name issue. In other words, if the upper-case name argument is bogus, it is being repeated in part because the courts themselves won't expressly address the issue.*

In a very recent case where this fetish about capital letter was raised, the court decided to let the baby have its bottle; in *Smith v. Kitchen* (10th Cir. 12/12/1997) which appears in 98 USTC ¶50107 and will shortly be printed in F.3d, the case had the caption "*Michael Duane, Smith v. Millie R. KITCHEN . . .*" and the court said in its first footnote,

"During the proceedings below, the appellant vigorously objected to the district court's practice of captioning all documents in this case with Smith's full name in all capital letters. In light of the fact that *Smith* actually *received notice* of all materials filed in this case, we cannot see what prejudice Smith suffered as a result of the district court's practice. Nevertheless, we see no reason why the caption in this case cannot be amended to reflect Smith's preferred typography, including a comma after the middle name. As a result, the court has directed that the caption in this appeal be modified." It didn't help Smith, he lost on every issue anyway. The same quibbling has also been rejected with even less discussion in other cases such as *Boyce v. CIR* (9/25/1996) Tax Ct Memo 1996-439 aff'd (9th Cir 1997) 122 F3d 1069(t); *In re Shugrue* (Bankr., ND Tex. 5/26/1998) 221 Bankr.Rptr 394; *Sadlier v. Payne* (D. Utah 1997) 974 F.Supp 1411; *Rosenheck & Co. v. US* (ND Okla 4/9/1997) 79 AFTR2d 97-2715; and on and on. The reason is that typing the name in all capitals is a long-standing secretarial practice which does not work any alchemy to change the nature of the named person and this was said clearly in *Jaeger v. Dubuque County* (ND Iowa 1995) 880 F.Supp 640 at 643. Some years ago you could find this practice recommended in all manuals for legal secretaries and even now it is mentioned in current secretarial manuals as a very common custom. But you won't find a statute book, law book, or a court case that says that typing someone's name in all capitals somehow changes their status from what it previously was. . . .

Ohh, so the real culprits are those darn ol' secretaries who've set up their own procedure for captioning names on legal documents? I seeee . . . the judges and lawyers don't determine legal forms anymore – their secretaries *do, hmm . . . ?*

I agree that we "won't find a statute book, law book, or a court case that says that typing someone's name in all capitals somehow changes their status from what it previously was." I suspect that "ADASK" and "Adask" are two separate legal entities – but I know *that merely* typing *the name of one will not change the status of the other. I am Adask, flesh and blood and will remain*

so as long as I live. I have never been, nor will I be ADASK for that (I suspect) is an artificial entity.

However, it may be that I (Adask) serve as the flesh-and-blood trustee (or in some other representative capacity*) for the artificial entity/ trust ADASK. Although my status may be changed to that of "trustee" by my relationship to ADASK, that change is probably based on my signature on an application (for benefits) or registration form in which I (Adask) (unwittingly) became trustee for ADASK. But, as you say Mr. Sussman, my status could not be changed by someone merely "typing" my name. (Thanks for this helpful insight.)*

I am going to the bother of writing this lengthy letter because there are people out there who have been told to ignore court papers and the like if their names are typed in upper case lettering, and when they follow that advice they get into very real trouble.

Sincerely,

Bernard J. Sussman, J.D., M.L.S., C.P.

I appreciate Mr. Sussman's concern for the welfare of pro se litigants, but I believe part of the solution is for lawyers and judges to show enough respect for the public to provide straight, unambiguous answers in their decisions. Court decisions prior to 1933 were often wonderfully clear. Today, court decision are amazingly ambiguous. It appears that modern court cases are often intended to obscure rather than illuminate Law. The legal profession's elitism and arrogance helps perpetuate public ignorance.

The other part of the solution is for common people to show enough self-respect to actually study their government and legal system and work diligently to correct its defects. If we don't care, surely they won't, either.

I also suggest Mr. Sussman read "Child Support Meets the Evil Twin" in this issue of the AntiShyster. That article reports how the Texas Attorney General's office declined to prosecute a defendant who raised the upper-case name issue (among others). Further, in their Original Answer to the defendant's paperwork, the AG's office used 1) upper-case names, 2) capitalized names, 3) italicized upper-case names and 4) italicized capitalized names – and in one instance mixed two different name formats on the same line of text. If these multiple formats for names have no legal significance, why did the AG's office use them? Is the AG's office so incompetent that they don't understand that mixing multiple name formats only creates confusion and, as such, is bad public policy?

If there's no difference in legal significance between upper-case and capitalized names, someone in authority must say so in unambiguous terms. If the courts are incapable of complete and unambiguous answers to the questions of common people, then the courts must bear primary responsibility for any unnecessary "expenditures of court resources" to confront this issue.

Again, the case for or against upper-case names has not yet been made in this publication. Excerpts from case law mean little. Where's the statute? Until I see unambiguous evidence that the upper-case name is insignificant, the speculation will remain conditionally positive.

Dear Alfred,

Regarding the "Trust/trustee" strategy, a gentleman from Pendelton Oregon was arrested after not appearing for a trial after a magistrate refused to serve him as a "trustee" who'd only appear in good faith and in his fiduciary capacity to accept service for the trust named in the complaint.

In essence, he was not "personally" arraigned, had no preliminary hearing, and therefore, had no opportunity for discovery. Nevertheless, he was ordered (service by mail) to trial in a court over two hundred miles from where he lived (Inconvenient Jurisdiction). We'll keep you updated.

As for successes. In three different traffic stops , the following scenario was used. "No officer, the DMV has never issued *me* a license, however, it has issued a license to a fictitious entity as evidenced by a corrupted version of My name styled in ALL UPPER CASE letters, and which by its nature, appears to spell my name on this laminated card that the state has entitled as an 'OREGON DRIVERS LICENSE'. It is my good faith understanding that 'what' the license has been issued to, is a federally created living trust which has been "registered" with the U.S. Department of Commerce, Bureau of Vital Statistics, and which puts Myself in a fiduciary relationship to said trust. So, if you are going to issue a citation, please be sure that it is issued in such manner as to identify the entity as styled and evidenced on the license. If I am required to sign the citation, I will sign it in my trustee capacity as 'Trustee'."

This approach has rendered 100% no citations issued, and a cheerful "Have a nice day" from the traffic officer after a quick check for priors, and some legal advice on how to deal with the challenge.

Frank Austin, England, III

These undecided contests and small victories don't prove much, but they do suggest that the Trust Fever hypothesis may be valid.

Dear AntiShyster,

I haven't had a traffic ticket for nearly 14 years, but here's something worth considering if you ever get into a speed trap. An attorney told me this procedure works in any state. If you get a traffic ticket that could cost points off your license, there's a method to ensure that you DO NOT lose *any* points.

When you get your fine, send in the check to pay for it. But if the fine is, say, $79, make out the check for $83 or some small amount above the fine amount. The System will then have to send you a check for the difference, but here's the trick! DON'T CASH THE CHECK!!

Throw the check away! Points are not assessed to your license until *all* the financial transactions are complete. If you do not cash the check, then the transactions *are not complete*. However the system has gotten its money so it is happy and will not bother you any more.

Sincerely,

Jack Dawson

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Interesting strategy. Can't see any harm in trying it. After all, is there a law against sending government too much money? I think not. How 'bout a penalty for failing to cash government check? Again, doubtful. I wouldn't bet this strategy would work, but since there's no obvious risk, I can't see a reason not to try.

Dear Al;

Your remarks in "Fever Feedback" (Vol. 8, No. 2) about the logical impossibility of proving a negative in court ("I'm *not* ELVICK" or "I'm *not* guilty") ring the bell. If every statement is positive and you never cooperate with a court of equity in any way, they will dismiss and probably never bother you again.

Back in 1981, Gail Sanocki was indicted on 4 counts of tax evasion and 4 counts of willful failure to file. She began with the Magistrate at the bail hearing, "I am a free and independent sovereign American individual and because I'm free I'm not compelled to perform involuntary servitude as though I am a United States slave." After more of the same during 27 hearings, the indictment was withdrawn in the interest of Justice, Rule 46.

No American individual who claims his sovereignty over himself in the same positive manner and refuses to cooperate with the equity court can ever be punished.

HAIL VICTORY!
Byron Foote

I wouldn't go that far. Courts of equity are empowered to do almost anything the judge orders, and no single approach is absolutely certain to stop that kind of excessive power and potential for abuse.

And here's a little something from the Internet:

Committee on Professional Conduct
Justice Building, Room 2200
625 Marshall Street
Little Rock, Arkansas 72201

Re: Bar Complaint Against William Jefferson Blythe Clinton

Dear Committee:

Please consider this as my formal request that you determine whether a formal ethics complaint against the above Arkansas-licensed attorney is warranted.

It may be that you will want to hold this matter in abeyance pending the report of Independent Counsel Kenneth Starr, which many anticipate will include a referral to the House Judiciary Committee.

I file this complaint now, however, because there is already probable cause that Bill Clinton has a) committed perjury in his deposition in *Jones v. Clinton*, b) suborned a perjurious affidavit of Monica Lewinsky, c) attempted to suborn the perjury of Linda Tripp through the "talking points memo," d) obstructed justice by directing his secretary Betty Currie to receive gifts back from Monica Lewinsky in order to avoid their production pursuant to a lawful subpoena, e) obstructed justice by various means too numerous to mention herein, f) made false public pronouncements about the above and other matters, g) involved Bruce Lindsey and other Arkansas-licensed lawyers in these efforts (about which I have personal knowledge and for which I have already executed an affidavit filed at the request of Paula Jones's attorneys in *Jones v. Clinton*), and h) exposed his genitals to a state employee in violation of Arkansas Statute 5-14-112.

Such unethical conduct violates at least Arkansas Bar Rules 3.3, 3.4, and 8.4.

Finally, I should like to note that President Richard Nixon was disbarred permanently by the State of New York from the practice of law (see: *In the Matter of Richard M. Nixon, an Attorney*, at 53 App Div 2d 881, 385 NY2d 373 (1976).

There are striking parallels in the illegal conduct of both lawyers, with the exception that no one accused Richard Nixon of revealing his shortcomings in the Excelsior or any other hotel.

Please advise me when the grievance file is opened.

Best,
John B. Thompson,
Florida Bar #231665

As a little boy, I wondered (expected, actually) if I'd grow up to be President some day. After all, we've heard it for years – any boy can. Why not me? But there was never a day in my life, drunk or sober, when I wanted to grow up to be like President Clinton.

Although Clinton may never be impeached or convicted of a crime, he still seems destined to spend his life fighting indictments, disbarments and scandals. I suspect Bill's "luck" is like that of the mythical Flying Dutchman: He may never die, but he won't ever really live, either. I don't envy him. His adrenal glands must pump 24-7 and I can't help wondering if he ever really sleeps.

Clinton is a perfect President Nero to preside over the age of Jerry Springer's Circus Maximus. Together, Clinton and Springer remind me of a chapter from the Rise and Fall of the Roman Empire. Might throw in the "siliconized" actress Pamela Lee. Clinton, Springer and Lee: a secular "trinity" for the 90's, hmm?

Duress Is No Defense

from Free Enterprise Society News

Some people believe that the voluntary use of your signature or even a ZIP code can create a legal presumption that you assent to the government's jurisdiction. For example, suppose you sign a traffic ticket — some people believe your signature grants jurisdiction to the municipal court and virtually eliminates any subsequent attempt to deny that court's jurisdiction. Similarly, use of a ZIP code in your mailing address is believed to create the presumption that you are somehow tied to the federal government and therefore automatically subject to its jurisdiction. Once jurisdiction is established (even by presumption), the court can slap you around however it likes.

To defeat the presumption that they assent to government jurisdiction, a substantial number of patriots append the phrase "under threat, duress or coercion" (or its abbreviation: "TDC") after their signatures (on traffic tickets or 1040 forms, for example) or after the ZIP codes on their mailing addresses. These patriots believe that using "TDC" defeats any presumption that their signature and/or ZIP code were given or used voluntarily. *If the signature or ZIP code were not used* voluntarily*, then the automatic presumption of jurisdiction is defeated and the court forced to* prove *(not presume) jurisdiction before it can slap you around.*

It's rumored that "proving" jurisdiction creates such an "unpleasantness" for government that some cases will be dropped to avoid addressing the jurisdiction issue. Essentially, the TDC strategy postulates that by using TDC after your signature or ZIP code, you can technically sign a document or use a ZIP code and still avoid personal liability *for operating within government jurisdiction.*

Although the voluntary use of your signature or ZIP code may truly create some presumptions that can hurt you in court, it has never been clear that using "TDC" will defeat those presumptions.

The following article originally appeared in the May-June 1998 issue of the "Free Enterprise Society News" (746 W. Shaw Ave., #205, Clovis, California 93612; 209-294-0665) and deals with the validity of using the "duress" defense to evade jurisdictional presumptions. Although this article only applies directly to the "duress" defense in California, the logic and reasoning may be valid throughout the U.S.A. Those who rely on "TDC" to save you from dangerous presumptions and personal liability should read carefully:

We've heard a lot lately about individuals signing government forms "under duress," claiming that the duress arose because the individual felt that if the form wasn't signed, something bad might happen. The two operative words in the last sentence are "thought" and "might." However, a recent court decision from the California First Appellate District should shed some light on the duress defense. The case (*People v. Metters*) can be found in the *Daily Appellate Journal* at 98 D.A.R. 2445.

Metters was convicted of robbery. On appeal Metters contended that on June 13, 1994 he was forced to commit the robbery only because of duress and out of necessity. The duress was created when drug dealers to whom he owed money threatened to "do a drive-by" on Metters and his family if he didn't pay them what he owed by 9:00 PM that night.

The court refused to instruct the jury on the duress and necessity defenses because the *factual* situation did not support the legal defense of duress and necessity. The appellate court upheld the conviction with the following reasoning:

First, to constitute duress (which would negate the *intent* or capacity to commit a crime) in establishing his defense, the defendant must show he acted under an *immediate* threat or menace, and that he reasonably believed his life would be endangered if he refused. The duress defense is not available if the threat is *not immediate*. "Because of the immediacy requirement, a person committing a crime under duress has only the choice of imminent death or executing the requested crime." The perceived immediacy and imminence of the threatened action cannot arise from a

phantasmagoria of future harm. *People v. Otis* (1959) 174 Cal. App. 2d 119, 125. There must be a present and active aggressor threatening immediate harm. Relevant cases addressing this defense reveal that the temporal requirement of immediacy is measured as of the time the crime is committed, not when the threat occurs. *People v. Lo Cicero* (1969) 71 Cal. 2d 1186, 1190; *People v. McKinney* (1986) 187 Cal. App. 3d 583, 585. Therefore, the appellate court found that Metters was not under an *immediate* threat of death or harm at the time he committed the crime.

Second, to establish the defense of duress the defendant must show that the threat or menace "must be accompanied by a direct or implied demand that the defendant commit the criminal act charged." *People v. Steele* (1988) 206 Cal. App. 703, 706. The court found that the drug dealers did not require Metters to commit the burglary, rather only that Metters pay his debt to them by 9:00 p.m.

The "necessity" defense differs from the "duress" defense as it provides justification for the crime when the situation is "of an emergency nature, threatening physical harm, and lacking an alternative, legal course of action. The defense involves a determination that the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented." *People v. Heath* (1989) 207 Cal. App. 3d 892, 900-901.

To establish the necessity defense one must show that he violated the law: "(1) to prevent a significant and imminent evil, (2) with no reasonable legal alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief that the criminal act was necessary to prevent the greater harm, (5) with such belief being objectively reasonable, and (6) under circumstances in which [he] did not substantially contribute to the emergency." *People v. Kearns* (1997) 55 Cal. App. 4th 1128, 1135 review denied. The appellate court found that Metters not only had many legal alternatives available to him but that he substantially contributed to the emergency when he purchased the illicit drugs on credit.

Starting to get the picture? If not, let me give you a few illustrations. You are sitting over tax Form W-4 and your employer tells you that you won't be hired unless you fill it out and sign it. Therefore, to get the job, you fill out the W-4 as an "exempt" individual and sign it under penalty of perjury with the notation that you signed under "duress". First, there is no threat of immediate death present. Second, you are not being requested to commit a crime; since the employer did not require you to claim exempt status, you have reasonable legal alternatives available. Third, you have time to formulate a reasonable and viable alternative course of conduct. Is duress really present?

Let's take a more startling example: You are in prison and the biggest, meanest, baddest guy in the joint (Big Bad Bob) has recently physically assaulted you with a ball-peen hammer. You're a 98-pound weakling. Other inmates tell you that Bob said the next time he sees you be is going to kill you. The inmates also tell you to settle the matter with Bob, and warn you not to seek protective custody or they will kill you. You are subsequently warned that Bob is going to attack you with a "shank" at 3:00 PM on Friday in the exercise yard. Add to this the fact that you have reported Bob's attack on you to the prison authorities, and they have done nothing to protect you.

Now, imagine it is 2:59 PM Friday afternoon and you are in the exercise yard. From across the yard you see Big Bob coming your way and he is coming with an attitude. You're not stupid; it doesn't take a rocket scientist to figure that, just then, Bob bears a remarkable resemblance to the angel of death. So, being pumped up with your own adrenaline, you exercise the only option available to you at the moment: you jump over the prison wall and escape from prison and, more important, from Big Bob.

When you are caught and the authorities charge you for escaping from prison, you recite the above circumstances and claim you acted under duress and out of necessity to protect yourself. Are either one or both of these defenses available to you as a matter of law, based upon the facts set forth above?

Well, I'm sure not going to tell you, but one of the previously mentioned court cases will. If you choose wisely you will only have to read one of the cases to find out; but if you choose poorly, you may have to read them all.

Now, is that duress or not?

Most of you aren't under sufficient "duress" to research and read the relevant cases, but still, this much is clear: You are not under "duress" unless someone is actively threatening your life at the moment you sign a document or use a ZIP code. Therefore, the routine use of the "TDC" defense appears improper and about as reliable as attaching a rabbits foot to your 1040s. ■

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Y2K Insurance

by Alfred Adask

When we talk about professional gambling operations, most of us think of the casinos in Las Vegas or various race tracks. But the biggest gambling operation in the world is the insurance industry and your insurance agent is little more than a well-dressed bookie.

After all, what is insurance except a wager? For example, when you take out life insurance, you bet you're going to die, and the insurance company bets you won't (at least not until you've paid in more money in premiums than they'll have to return when you "cash in"). You pay them (bet) because you're afraid you'll die. The insurance industry takes your fear-motivated "bet" because they know that a person of your age, weight, medical history and smoking habits might be afraid of dying (might even be *encouraged* to fear dying) but generally that fear is irrational. Because the insurance industry has extraordinary statistical analyses of mortality rates and causes, they know that, on average, you will probably live another particular number of years. They calculate the premiums you'll probably pay over those years, offer you an insurance return that is less than those premiums (and their projected return on investment), and keep the balance as profits.

Insurance actuaries (statisticians) are pro's. They never allow sentiment or wishful thinking to influence the minimum premiums (wagers) they will accept for a particular bet. They will not bet (issue policies) unless they are statistically *guaranteed* to win.

As if the threat of a worldwide economic recession/ depression in 1999 was not enough, we are also staring down the barrel of the "Y2K" (Year 2,000) computer problem which is scheduled to debut as early as April, 1999 (when some industries may hit "fiscal" 2000) and no later than January 1, 2000.

As most of us are learning, due to a 50-year old oversight in fundamental computer programing and chip design, the majority of computers process dates in a two-digit format (computers enter "98" for 1998) and assume the first two digits for all year entries are always "19".

For example, the computer sees the date data entry "98" and assumes "1998". It sees "99" and assumes "1999". It sees "00" (for the year 2000) . . . and assumes "1900" – and that's the Y2K problem. On January 1, 2000, an enormous number of computers will make their calculations based on the date January 1, 1900. That logical impossibility may cause thousands, perhaps millions, of computers around the world to simultaneously crash.

Big deal, hmm? Our personal computers crash all the time. All we do is reboot 'em and get back to work, right? Therefore, "Y2K" sounds like a triviality that could be easily fixed and avoided.

It's not. For various technical reasons, it appears certain that the Y2K problem will not be solved by the end of 1999. The social implications (outlined in the Volume 8 Number 2 of the *AntiShyster*) may be catastrophic. As one U.S. Department of Justice subcontractor confided, within the DOJ it is commonly held that in a "worst case scenario" (the nation's entire power grid is shut down in midwinter by Y2K computer failures), there may be millions of American *fatalities*. Millions.

Will that "worst case scenario" take place? Probably not. Besides, anyone who believes rumors emanating from government must be nuts, anyway – right?

Maybe. But Y2K "rumors" are also emanating from the foundation of American commerce: the insurance industry.

What follows is a September 21, 1998 form letter sent from Sleeper, Sewell & Company (a Dallas, Texas independent insurance agency) to its clients concerning the "Y2K Problem". At first glance, the letter might seem unremarkable. But read closely, there are startling implications. [I added the italicized highlights.]

"Dear Client:

"One cannot avoid the predictions of doom in connection with the 'Y2K' problem – the computer bug which makes computers think that '00' is the year 1900 instead of 2000.

"Many insurers are concerned that this problem might expose them to paying property or liability claims which weren't foreseen when the policies were drafted. For example, if a machine stops because of the glitch, is this really a "casualty" that should trigger a business interruption insurance

claim? What about products liability if your client's computers stop?

"Here's what we see on new and renewing policies:

"On 'all risk' policies covering your property (with all the exclusions and conditions), a claim of loss as a result of Y2K will be *excluded*.

"The answer to the business interruption claim? *No coverage*.

"What about your services to someone else? General liability or professional liability insurance *won't cover* the Y2K risk either, and the insurers are making sure of it by special endorsement.

"It appears the insurance companies don't know what to make of this risk, so they apparently haven't designed affordable coverages for you. For the most part, coverage is simply *not available*.

"But each case is different. The principal message is that we'd be glad to talk to you about your own special needs. In the meantime, though, we recommend that you address the Y2K problem early and completely, in view of the fact that your traditional insurance policies probably won't help."

"Cordially,

"William E. Sleeper"

Curiously, the insurance industry can assess the risk and therefore insure rockets that launch satellites, submarines to search for the Titanic, and the legs (or other anatomical features) of various Hollywood starlets. Historically, if the price is right, the insurance industry has "assessed" virtually ever imaginable risk and provided insurance on almost anything.

Nevertheless, according to the form letter, because "insurance companies don't know what to make of this [Y2K] risk" the insurance industry can't calculate the correct bet (premium), and is therefore (regrettably) refusing to provide new Y2K insurance. (Sounds like insurance industry's head actuary is Butterfly McQueen: "Ahh don' know nuthin' 'bout assessin' Y2K risks, Miz Scarlet.")

I don't buy it. Insurance industry bean counters can assess the risk that the fly in your kitchen will buzz into your bedroom and land on your nose at midnight. But the poor little dears "don't know what to make of this [Y2K] risk"?

Bunk.

In fact, since the insurance industry has declared that "all" risk, business interruption, general liability and professional liability insurance will *not* cover Y2K, it's clear that they have assessed the Y2K risk. After all, why would the insurance industry refuse to provide all these traditional forms of insurance against the *specific* Y2K problem – unless they had *specifically* assessed the Y2K risk and found it to be both credible and too great to be sustained?

Further, "Y2K" will probably be the single hottest marketing device in the history of the world. At least until January 1, 2000, virtually anything that can be sold as a "Y2K" survival product will be a money maker. If you can sell baseballs in 1999 that are certified "Y2K Compatible" (able to keep working despite Y2K) you can probably get rich. And if you can sell "Y2K Certified" food, water, hand tools, toilet paper, grain grinders, solar-, wind-, gas- and water-powered generators, you *will* get rich.

During this period of panic and preparation, the Y2K "logo" will be more omnipresent than the Nike "swoosh" and Y2K fortunes will be made. (I'm not sure what good these fortunes may be after January 1, 2000 – but fortunes *will* be made.)

And yet, in the midst of what may be history's biggest consumer buying-frenzy, the insurance companies claim they "don't know what to make of this risk," and therefore won't participate in Y2K gold rush . . .? Are we to believe the insurance industry will ignore on the biggest marketing opportunity since Sutter's Mill because they "don't know what to make of the risk"?

I don't think so, Tim.

Obviously, the insurance industry *has* assessed the Y2K risk right down to the last thousandth of a percent, and concluded the odds are prohibitive, they can't win, and therefore won't bet (issue policies). This implies that insurance industry actuaries classify Y2K right up there with a handful of other events they won't insure – nuclear war, civil unrest (riots), terrorism and Acts of God.

The implications are not encour-

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aging. If the insurance industry won't insure against Y2K, then the odds are high that Y2K may be catastrophic.

The insurance agency's letter states clearly states that no new or renew insurance policies will cover Y2K. However, it also hints that at least some insurance companies will not honor Y2K claims based on *existing* policies: "Many insurers are concerned that this problem might expose them to paying property or liability claims which *weren't foreseen* when the policies were drafted." These insurance companies seem to be arguing that since Y2K was "unforeseen," they should not be held liable to compensate clients for Y2K losses.

But Y2K is not like a meteor strike or an act of war. Y2K is a man-made, technological problem that's been coming at us for over two generations, and from what I understand, serious warnings were sounded and ignored as early as the 1980s. In any case, just because the insurance industry overlooked or underassessed the Y2K threat when they created their actuarial tables is no reason for them to renege on existing insurance contracts. (It's just like roofing. If I contract to roof your house but neglect to include the cost of shingles in my contract, I'm still obligated to install the roof at the agreed-on price.) Similarly, if the insurance industry screwed up, tough. Let 'em take their lumps.

But judging from the letter, the insurance industry is arguing that since Y2K was "unforeseen," then "ipso facto, e plur-i-bus un-um" (as the Wizard might say), the insurance industry should not be held liable for this "unforeseen" risk.

Well, if the insurance industry only insured risks that could be "foreseen," they wouldn't sell "*all* risk" insurance, would they? Further, if we could foresee *all* of our problems, we wouldn't waste money on insurance. We'd simply hire an actuary to "foresee" (much like an ancient soothsayer) our individual problems, and then spend whatever time and money were required to prevent those specific problems.

However, since our individual problems can't be precisely foreseen, we buy insurance. In fact, the primary purpose for all insurance is to provide some measure of protection against "unforeseen" problems. Therefore, the insurance industry can't renege on existing contracts to insure against "*all* risks" (which, by definition, must include some "unforeseen" risks) without also refuting the logical foundation for all insurance. This refutation is incomprehensible unless the insurance industry *knows* that Y2K may cause *ruinous* claims on their assets. To avoid its own ruin, the insurance industry is apparently allowing its clients to be ruined. Rather than paying off on a long shot that hits, your bookie's skipping town.

I read the independent insurance agent's letter as an initial attempt to weasel out of any liability for Y2K problems. They are placing their customers (who may not yet realize the seriousness of the Y2K threat) on Notice that, Ohh, incidently, when we sold you that expensive "all risk" insurance policy, we meant "all" *except* Y2K. Yer in good hands, baby.

However, the insurance letter does suggest it is not entirely unwilling to provide Y2K insurance. The letter leaves the door open by saying "each case is different" and they'd be "glad to talk . . . about your own special needs." In other words, some Y2K insurance might be available in a special deal – IF 1) you can afford a huge premium and 2) you are extremely gullible.

After all, the insurance industry is as dependant on computers as you are on your heart. So if Y2K goes "worst case" and your business fails, it's unclear that any insurance industry will remain to compensate you for your loss. In other words, you might be able to insure your business against Y2K, but how do you insure that the insurance *industry* will survive Y2K, hmm? If Y2K collapses the insurance industry computers, all of your insurance policies will be about as valuable as Confederate money.

The letter concludes, ". . . we recommend that *you* address the Y2K problem early and completely, in view of the fact that your traditional insurance policies probably won't help."

In other words, expect no help from your insurance company. It's every man for himself. If *you* want to survive, it's entirely up to *you* to discover and implement whatever measures are necessary.

The insurance industry's apparent refusal to provide Y2K insurance signals that the Y2K threat is potentially *unprecedented*. That means if Allstate

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won't insure you, you've only got two other sets of hands to turn to: your own and Yahweh's. I suggest you fill your hands with survival supplies and your God's hands with whatever righteousness you can manage.

Here's a another interesting Y2K possibility. Remember your neighbor's nice dog? Oh, he's big and looks scary, but he's really just a big, adorable clown. Everybody loves that dog.

Uh-huh. Well, what do you suppose will happen if Y2K gets serious and your neighbor can't feed his dog? I'll bet he won't kill the "lovable, big clown," so he'll turn him lose to fend for itself. (Maybe he'll survive catching rabbits or raccoon, hmm?)

Could be. Or maybe he'll do what dogs have done instinctively since the beginning of time: form packs to hunt game. How many kinds of game do you suppose are immune to attack by dog packs? Any? Properly motivated, a dog pack can kill just about anything. Even people.

When you stop to think about all those millions of "lovable clowns" Americans keep as pets, and then wonder what those clowns will do when we run out of Ken-L-Ration, it does give one pause, no?

Y2K illuminates a profound insight into social organizations and civilization itself. To illustrate this insight, imagine a sundial representing America of the pre-computerized 1950s and a sophisticated Swiss chronometer representing the computerized America of the 1990s. Both sundial and chronometer tell time, but the sundial only works in daylight, is too large to keep in the house, and only tells the approximate hour of the day. The chronometer, on the other hand, fits in our pockets, can tell the time to the hundreth of a second, and even tells us the day, date, and phase of the moon. Compared to the ancient sundial, the highly integrated, superefficient chronometer is a virtual miracle.

However, the sundial does have a couple of advantages. You can leave it out in the rain, snow, summer heat, etc., without adverse effect. And while a chronometer's usefulness depends on its batteries, a well-made sundial can last almost forever, "powered" only by the sun. Plus, while the physical abuse of wind, dust and rain have almost no effect on sundials, a tiny fleck of dust, a serious shock, or a defective surface on an intrinsic gear can stop the sundial cold.

On reflection, compared to the 1950s, our modern, computer-dependent society is just as highly integrated and super-efficient as the chronometer – and just as vulnerable to flecks of dust or tiny intrinsic defects.

For example, consider supply systems for industrial corporations like General Motors. In 1950, GM filled its on-site warehouses with engine blocks, windshield wipers, brake shoes and all the various components necessary to build cars. If a supplier went out of business, who cared? GM had enough parts on hand to make cars for months, maybe years before a replacement absolutely had to be found. The problem with the 1950s supply system was that it cost a lot of money to buy land for the warehouses, build the warehouses, and store and inventory all those parts.

Along came the computer revolution, and it showed GM how to not only keep up-to-the-*second* inventories, but also how to free up all those financial resources previously tied up in warehouses, acres of engine blocks, etc. By using computers and sophisticated electronic communication systems, GM was able to "integrate" its subcontractors into a "just in time" supply system that guaranteed that inventories could be kept low because new supplies of every car part would arrive from suppliers at GM's factories "just in time". Rather than keeping 50,000 engine blocks in the warehouse, GM ordered just enough engine blocks to last til next Tuesday afternoon, because on Tuesday morning, another shipment of engine blocks would arrive "just in time".

The financial gains under the superbly efficient "just in time" (computerized) supply system were huge and allowed GM to both increase its profits and cut the cost of cars for consumers.

Hooray for computerization!

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But, as GM's computerized efficiency eliminated its warehouse inventories, GM became increasingly vulnerable to supply problems. This vulnerability was dramatically illustrated in early 1998 when a seemingly insignificant plant manufacturing GM's "just in time" brake pads decided to go out on strike. Within *days*, GM was out of "just in time" brake pads and therefore had to shut down its entire assembly line. Moreover, since there were no longer any warehouses to store inventory, GM also had to stop ordering "just in time" engine blocks or turn-signal lights. As a result, not just GM, but all of its subcontractors and suppliers – and all of *their* subcontractor and suppliers – were suddenly out of work. The social and financial costs of having just one little "fleck of dust" (unhappy brake pad workers) in the GM "chronometer," caused the entire time piece to stop ticking.

This GM shutdown illustrates an extraordinary insight: *Increasing levels of efficiency and integration necessarily increase the probability of systemic, even catastrophic failure.*

Lookit GM. Most of its "just in time" efficiencies were achieved by reducing GM's formerly massive and expensive inventory. But that inventory

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was more than a collection of parts, or a financial cost – it was GM's insurance policy against unforeseen errors.

If the UAW went on strike at the engine block factory in 1950, who cared? GM had stored enough engine blocks in their warehouses to keep building cars long after the striking UAW workers were starved into submission. And the idea that GM could be crippled in 1950 by one little plant making brake pads was ludicrous. GM's inventory was its insurance policy against unforeseen errors. In the final analysis, the inventory was GM's *margin for error*.

Closely examined, all highly efficient organizations ultimately extract their efficiency from their former *margin for error.* As that margin diminishes, the organization becomes increasingly, even inevitably, vulnerable to collapse caused by increasingly insignificant errors. "Just in time" necessarily means that unless additional parts arrive *exactly* on schedule, within just days or even hours, the plant will have to stop production. That's a very small margin for error and illustrates that efficiency is based as much on calculated risk as technology. As efficiency and associated risk rise, some sort of collapse becomes increasingly likely.

Another good example of the dangers of increased efficiency is America's food supply. When I was boy, there was enough corn and wheat stored in American grain silos to feed this country for a year or two. Over the years, we have "efficiently" reduced our food inventories to the point where we now have just thirty days supply of some staples.

Over the next decade, our lust for "efficiency" will inevitably drive us to reduce our food inventory even further. By 2010, we might only have enough food on hand to last a week, but thanks to our "just in time" food distribution system, our supplies of bananas from Mexico, coffee from Brazil, and rice from China, etc., will be computer-guaranteed to keep us fat.

Uh-huh. But what if our divine weathermen somehow miss another El Nino (or some other natural phenomenon) that strikes with sufficient intensity and duration to not only exhaust the food stockpiles in America, but cripple our suppliers as well? Once efficiency has eliminated most of our food inventory (our *margin of error*), the *tiniest* disruption in our social system could cause disaster.

Now look at Y2K. Perfect example. If Y2K had happened in 1950, no one would know or care. If it happens just fifty years later in 2000, millions may die. The difference is that our society is now so highly computerized, integrated, and so *efficient* that we no longer support a healthy margin for error. As a result, a very small problem can have an enormous impact.

In fact, it's remotely possible that if Y2K gets really down and dirty, it could collapse Western civilization (much like the brake pad people almost collapsed GM) and send the few remaining survivors back to an impoverished life in a medieval culture. That outcome is admittedly unlikely but it is theoretically possible

Which brings UFO's, space aliens, and radio telescopes to mind. Scientists have scanned the skies for decades with huge radio telescopes looking for radio signals from alien civilizations (there must be millions of 'em) in other solar systems. Surprisingly, no electronic evidence of alien civilizations has been reported. In fact, some religious conservatives are beginning to view the silence from space as proof for the Biblical implication that we *are* the only civilization in God's universe.

Well, I don't know if there are or aren't alien civilizations in outer space, but Y2K suggests that finding radio signals from such civilizations is not as likely as some imagine. After all, what is a UFO if not evidence of a civilization so incredibly efficient and highly integrated, that it makes our computerized society look as primitive as the sundial? But if *increasing levels of efficiency and integration necessarily increase the probability of systemic, cata-*

strophic failure – isn't it unlikely that any civilization might evolve to the level of efficiency necessary to engage in meaningful space travel? How could any highly integrated civilization reach into space without encountering a glitch as seemingly trivial as brake pads or Y2K that collapses the entire society?

See my point? Y2K illustrates a "Tower of Babel" effect that might place a limit on the evolution of all civilizations. I.e., we decide to create a magnificent tower that will reach to the heavens. We spend years on the design, and decades cutting and polishing the beautiful blocks of marble. We mix the mortar, and start assembling our marble blocks higher and higher until we realize that Omigod! the ugly old mortar that holds our tower together is not cement – it's *sand* (or in our case, defective *silicon* computer chips) and the whole tower/ civilization collapses.

After a "Tower of Babel" collapse, we lose lives, technology, books, science, and pretty soon the few survivors are back to grunting in caves. Over the next several centuries or millennia, they slowly advance until they rediscover electricity, computers, etc., and start rebuilding another tower/ civilization

But just like us, their first computers are so expensive that they cut every corner to reduce memory costs – including using two-digits (rather than four) to identify their years. Then – just about the time they're ready to put the capstone on their tower – they realize their civilization depends on two-digit years in a four-digit world, and Bang! Another Y2K collapse sends us back to the caves, erases our technology, etc., until – centuries later – future generations repeat our pattern of social and technological evolution, develop two-digit year formats, and – BANG! – another Y2K collapse.

The same process could effect every emerging civilization in the universe. And maybe that's why our scientists can't find any radio signals from alien civilizations. Maybe, shortly after they invent radio, they invent computers, overlook the Y2K glitch, and collapse back into their stone age.

Of course, the technological glitch doesn't always have to be using two-digit years in a four-digit world. In fact, the Y2K problem may be fairly primitive and easily solved compared to the unexpected glitch necessary to wipe out a highly integrated, efficient civilization on the verge of real space travel. Nevertheless, Y2K illustrates the dangers of rapidly increasing efficiency and social integration (as with the New World Order) that must affect all emerging civilizations. Increasing efficiency inevitably reduces margins for error to levels that virtually guarantee organizational collapse.

Y2K also raises another peculiar question: What other glitches, defects and "specks of dust" are currently hiding in the watchwork of our civilization? I'll bet we're more likely to find another "Y2K" in our technology than we are to encounter a real space alien. And what happens when we hit the next "Y2K"? And how 'bout the one after that. . . ?

Curiouser and curiouser, hmm?

By January 1, 2000, the USA will probably have become the world's greatest warehouse of survivalist food and paraphernalia. We'll be buying horses and sleighs (up north) or buckboards (down south) for transportation. We'll have all the world's candles, kerosene lanterns, generators and toilet paper.

Still, it's entirely possible that on January 1, 2000, the only thing we'll really need is "Y2K Certified" Bloody Mary mix to ease the hangovers from the world's most memorable New Years Eve party.

I hope so. We may skate right past Y2K, and if we do, those who stock up on survival products (rather than something sensible like beer) may be ridiculed as kooks and clowns. So you might waste your reputation as well as your money if you buy survival products now.

Still, I suggest you risk ridicule and stock up because Y2K is like Russian Roulette. Maybe there's only one bullet in the revolver, so your odds of being unharmed are good – but on the other hand, the gun *is* pointed at your head. Assess the Y2K risk probability any way you like, but its potential is still too lethal to ignore. Remember what the DOJ subcontractor told me? "Worst case scenario. . . midwinter power grid failure . . . millions of fatalities." Those millions could include you, your spouse, your kids. Although the "worst case scenario" is *unlikely*, prudent people should prepare.

And don't delay. It's just like being on the Titanic. There are not enough lifeboats. The last to wake up will be least likely to survive. The demand for survival foods has already exceeded the survival food industry's production capability. We are fast approaching a three-month delay between orders and shipments. That delay is growing. As early as Spring 1999, survival foods may be so scarce or unaffordable as to be virtually nonexistent. By June, you might not find kerosene lanterns. By September, candles.

Judging by the insurance industry letter, there is a high probability that we are heading toward another "Night To Remember". Bet on it.

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In God We Trust?

by Alfred Adask

Trusts are similar to corporations in that both are artificial entities (legal, fictional persons) devised to limit personal liability. That is, by placing your property or conducting your activities from behind the shield of an artificial entity, you can avoid personal liability for your own negligence or mistakes. However, while both corporations and trusts are defensive devises used to shield their members from personal liability, only trusts promise to provide tangible "benefits" to its beneficiaries.

Unlike corporations, the essential attribute of trusts is *divided title* to trust property. That is, a Grantor who has "perfect title" (owns both *legal* and *equitable* titles) to a particular property creates a trust by 1) appointing one or more *trustees* to hold *legal* title and thereby *control* the trust property; and 2) naming one or more *beneficiaries* to receive *equitable* title (possession and beneficial use) of the trust property. The resultant *relationship* between trustee, beneficiary, and legal and equitable titles to property is called a "trust".

One hard and fast rule for trusts is that beneficiaries may not serve as trustees and control trust property – and conversely – trustees may not possess, use or enjoy trust property. Instead, much like a millionaire's servants must serve the millionaire's kids, trustees must administer trust property in order to *serve* the "best interests" of the trust's beneficiaries. The resulting tension between trustees (who do all the work) and beneficiaries (who receive all the benefits) spawned several TV sit-coms depicting the comical antics of hard-working trustee/ servants dealing with spoiled kid/ beneficiaries – or responsible beneficiaries burdened with incompetent trustee/ servants.

In real life, the tension between trustees and beneficiaries is not so funny and can often lead to jealously, exploitation, and even violence. Trustees inevitably want to use and enjoy the benefits of the trust assets they control. Beneficiaries inevitably want control of the trust assets they possess and enjoy. In truth, trusts create potentially frustrating relationships and are unlikely to work for long unless beneficiaries have great faith in their trustees, and the trustees have real love for the beneficiaries. Human nature being what it is, the requisite faith and love are seldom present. As a result, that trustee/beneficiary tension has been a mainspring for centuries of human conflicts, including those described in the Bible.

Anyone reading the *AntiShyster* knows I believe trusts are a fundamental mechanism used by our government to bypass our constitutional rights. But few readers suspect that much of what I know (or think I know) about trusts (and law, itself) is coming from the *Bible*.

I'm not evangelizing. I'm simply saying that studying the Bible can be surprisingly educational because it provides hundreds of verses that I belileve illustrate fundamental trust principles.

For example, in *Numbers* 1:2, God orders Moses to "Take a census of the whole *Israelite community* . . . ." According the New International Version (NIV) Bible's introduction to *Numbers*, the term "Israelite community" was expressed in Hebrew as "bene yisra'el". Obviously, "yisra'el" means "Israel," so "community" and "bene" should be roughly synonymous.

Is the simsilarity between the Hebrew "bene" and the modern trust "beneficiary" coincidental, or evidence that Moses applied trust principles 3,500 years ago?

Strong's Electronic Concordance (copyright 1989, Tristar publishing) offers some clues. *Strong's* identifies every Greek word used in the original version of the Bible with individual numbers and translates those Greek words into English. Thus, the English term "Israelite community" is derived from three Greek words (#s 5712, 1121 and 3478) as: "the congregation of" (5712)[1] "the children of" (1121) "Israel" (3478). Ignoring the terms "Israel" (3478) and "congregation" (5712), the Hebrew "bene" is roughly translated as "children" in Greek. Insofar as the majority of modern trusts are created by parents to provide benefits for their children, there is an obvious similarity between the ancient Hebrew "bene" and modern "beneficiaries".

This illustrates the value of Biblical study. Reading modern texts on trusts makes trust concepts seem so subtle and convoluted that the entire trust relationship seems hard to understand. But if you read the Bible, trusts can be easily understood as virtually identical to the relationships commonly found in most families. Parents act as trustees who own trust/family property

and work to provide food for their children. The children act as beneficiaries who don't work, but enjoy the "benefits" of food, shelter, education, and their parent's love. The parent/ trustees manage trust assets to achieve indirect control over the beneficiaries ("If you don't mow the lawn, you can't use the car for your Saturday night date.") The children/ beneficiaries are constantly pushing to escape their status as beneficiaries who are subject to trust control ("But it's just not *fair*! All the *other* kids can stay out until after midnight!") and gain personal "freedom" (actually *control* over trust property).

Once you understand that trusts work almost exactly like families, and the obligations, rights and relationships between trustees and beneficiaries are analogous to those between parents and children, what part of trusts don't you understand? Although there are some subtleties that may exceed the family analogy, generally speaking any time you have a question about what a trustee must (or must not) do, or what a beneficiary may (or may not) do, all you have to do is frame your question as if the trustee were a parent and the beneficiary were a child. Generally, trust fundamentals can be learned though the family analogy. And where's that understanding come from? From the Bible and associated reference texts.

Is this family/ trust analogy really valid? *Vine's Expository Dictionary of Biblical Words*[2] states that the Hebrew term "bene" or "ben" (*Strong's* # 1121) is derived from the term "banah" (1129) which mean, "to build, establish, construct, rebuild" . . . ."Metaphorically or figuratively, the verb banah is used to mean 'building one's house'– i.e., having *children*."

Yep. The trust/ family analogy works.

Vine's offers more support: "Basically, 'ben' (1121) represents one's immediate physical male or female offspring. The special emphasis is on the physical tie binding a man to his offspring. Sometimes the word ben, which usually means 'son,' can mean 'children' (both male and female) [and] can signify '*descendants'* in general"[3]

"Ben can also be used in an *adoption* formula: 'Thou art my Son; this day have I begotten thee' (Ps. 2:7). . . .

Point: Not all "ben's" (or "bene's") need be born into a particular family/ trust – some can be *adopted*. If modern trusts are based on ancient Biblical principles, then it might follow that a modern legal procedure very similar to adoption was used to include us into government trusts like Social Security. If so, it should follow that the correct procedure for escaping the rightless status of beneficiary in an unwonted government trust might be similar to whatever modern legal process is used to annul adoptions or emancipate natural children from parental (trustee) control. (This insight illustrates that Bible study can not only illuminate the underlying causes for many of our predicaments, but also teach how to escape them.)

Vine's offers another hint on escaping the unwonted status of beneficiary:

"Ben (1121) may signify 'young men' in general, regardless of any physical relationship to the speaker: 'And [I] beheld among the simple ones, I discerned among the youths, a young man *void of understanding'* (Prov. 7:7). . . ."

That's a clue to a fundamental characteristic of beneficiaries: they have *no understanding* of the trust or the trustees obligated to serve them. They are young, dumb and full of benefits. Like all children, their ignorance makes them vulnerable to abuse by unscrupulous trustees and also their own shortsighted, self-serving decisions motivated by greed to control (rather than appreciate and enjoy) trust assets.

It follows that one of the keys to escaping one's status as an ignorant, rightless beneficiary is study. Those of us who are more devoted to our TVs than our libraries are condemned to live "from cradle to grave" as children, beneficiaries, wards of the state. Is there an example of people whose study has helped to escape their status as beneficiaries? Yes. Lawyers. Insofar as they must all operate in "good faith", I'm almost convinced the bar is a trust, the courts are probably a trust, and lawyers (officers of the court) are acting in the capacity of trustees whenever the provide the "benefit" of representation to members of the public. Although lawyers are still caught in most of the beneficial schemes that afflict other Americans, by virtue of their study (law school) they have at least achieved the status of trustees within the courts.

Can trust principles found in the Bible be applied to more than modern trusts? Maybe. For example, interpreted from a "trust perspective," the story of the Garden of Eden might go thus:

Adam and Eve enjoyed the blessing of Paradise. They both tended the Garden and were allowed to eat freely of its fruit (except fruit of the Tree of Knowledge of Good and Evil). Note that the "blessing" of Paradise consisted in *both* the work (tending the Garden) and benefits (ample food) of the Garden. However, when they broke the rules and tasted the apple, they were ejected into a world where they must struggle for their food without guarantee that their work would produce a benefit (food) or that those who did the

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work would actually enjoy the benefits (food). (Unpredictable weather and unjust neighbors might easily destroy or steal the food/ benefit of Adam’s labor.)

This suggests a distinction between “blessings” (from God) and “benefits” from some artificial entity/ trust. Perhaps a blessing is always entirely yours, like your life, health, unalienable rights, talents or forgiveness – something no one can take from you. Once you receive a blessing, you alone can control and enjoy it. In that sense, a blessing is similar to “perfect” title (legal and equitable titles) to a particular property. You get to control it, you got to use it, as you alone see fit.

But a benefit (which appears deceptively similar to a blessing) is always incomplete since, by definition, the benefit is controlled by others (trustees), and your use is always conditional on their approval. For example, if lawful money were a blessing, Federal Reserve Notes (which look like money) would be a “benefit”. True, unalienable rights would be a blessing, but privileges (which look like rights) and “civil” rights would be only a “benefit”.

Within the Garden of Eden, Adam’s blessing included both work and benefit. Outside of Eden, he was condemned to work hard (much like a trustee) but not necessarily reap all the rewards (benefits) of his efforts. In a sense, God cursed Adam by dividing his “title” to the work and benefit of Paradise. Adam was condemned to a trust-like environment where the former relationship between his work and rewards was severed. From this perspective, divided titles (or trusts) might be construed as a test, even a kind of curse – equally unsatisfying for both trustees and beneficiaries. Thus, a primary Biblical theme might be man’s attempts to “reunite” the duties and benefits of this mortal trust into the blessing of paradise.

If application of “trust principles to the Garden of Eden seems farfetched, note that the history of Israel also seems tied to trust principles. When God freed the Israelite slaves from Egypt, they reached a covenant/ contract wherein the Israelites would enjoy the blessing of perfect title (legal and equitable; control and use) to the “Promised Land” – *provided* they obeyed God’s laws. As usual, the uppity Israelites rebelled, compromised their covenant/ contract and were denied equitable title to use (live in) the Promised Land.

Because the Israelites reneged on the covenant, God seems to have *divided* title to the Promised Land. The original generation of rebellious Israelites were condemned to live in the desert for forty years somewhat like “trustees” who would own – but never possess or enjoy – the Promised Land. Only their children/ descendants would later both own and possess the Promised Land.

Functionally, this apparent “division” of title to the Promised Land is similar to a trust. Again, from this perspective, the trust (*divided* title to property) might be viewed as a punishment, even a curse. (“Sure, you Israelites are my children and own legal title to the Promised Land – but since you’ve been bad boys and girls, I’m sending you to bed without your milk and honey.”)

A subsequent generation of Israelites regained control and possession of the Promised Land, but they also strayed from the covenant and were ejected and dispersed.[4] However, losing the use (equitable title) of the Promised Land did not void the Israelite’s claim on legal title. For nearly 2,000 years, the Israelites faithfully passed their legal title to the Promised Land as an inheritance from one generation of “trustees” to the next for the benefit of some unknown future generation.

Since World War II, that “unknown future generation” seems to have arrived. All of the recent Middle-East turmoil has centered on Israel’s attempt to reassert their *legal* title (which they’ve claimed and passed to their descendants for centuries) and regain *equitable* title (use, possession) to the Promised Land. Thus, the modern nation of Israel might be viewed as the preliminary “re-unification” of legal and equitable titles to the Promised Land” – the restoration of a blessing.

Modern Middle-East conflicts ultimately boil down to a 3,500 year old *title* to the “Holy Land”. These conflicts are so important, that during the Cold War, the Middle-East was regarded as a potential cause for a nuclear world war. All of this flows from conflicting cliams to an ancient title and illustrates that understanding *titles* (the source of all *rights*) and especially *divided* title (the essence of all *trusts*) may be vital to understanding world history, current events, politics, our legal system and even our relationship to God.

However, note that I’m not proposing that the relationship between Yahweh, the Israelites and the Promised Land constitutes a “trust”. Maybe

yes, maybe no. However, I am speculating that modern, man-made trusts are not only based on Biblical principles but insofar as they disperse "benefits" may even seek to emulate God, himself.

An attempt to emulate God is not necessarily benign. Like corporations, modern trusts: 1) offer limited personal liability (which is contrary to the essence of God's justice – unlimited personal accountability); and 2) provide earthly *benefits* as an addition, perhaps even an *alternative* to God's blessings and arguably God, himself.

Just as corporations are artificial persons – a modern secular trust (as a *source* of benefits subtly competing with God's blessings) might be viewed as an *artificial faith*, a *false religion,* or even a *false god/idol*. Based on the First Commandment, God might be displeased with secular trusts since they tend to compromise our trust (faith) in God *alone* to provide Justice (unlimited personal liability for all) and whatever providence and blessings He deems necessary and appropriate for our survival.

Again, without evangelizing, I don't know of a modern text on trusts, law or history that offers more insight into our modern world than the Bible. It's not just "Jewish fairy tales". Instead, that single text presents an amazing distillation of thousands of years of observation of principles and motivations that affect all human lives. Regardless of whether you're a Christian, Jew, Moslem or atheist, if you'd like to escape your ignorance, you ought to take a look.

[1] According to *Vine's Expository Dictionary*, the Greek word for "congregation" is "edah (5712)" and " may have signified a 'company assembled together' for a certain purpose, similar to the Greek words *sunagoge* and *ekklesia*, from which our words 'synagogue' and 'church' are derived." Does this suggest that all *true* faiths are trusts?

[2] *Vine's Expository Dictionary of Biblical Words*. ©1985, Thomas Nelson Publishers

[3] To this day, legal title to property can only pass by exchange of lawful money (typically gold or silver) or by "descent" (from parent to child in wills).

[4] How'd they stray? Maybe by wanting an earthly king like other nations. Like our own kids (beneficiaries) who are always pushing for more "freedom" (actually *control* of trust/ family assets like the car), the early Israelites were constantly pushing to wrestle *control* of the Promised Land (blessing) from their grantor/ trustee – God, himself.

God obliged, stepped aside and gave Israel a "king" (arguably, a mortal trustee). But ever one for giving lessons, God gave Israel two of the finest kings ever known: David and Solomon. One had extraordinary courage, the other unparalleled wisdom – and yet both ultimately failed to properly administer the trust. Lesson One? No mortal (since all have sinned) can truly fulfill the role of trustee. Lesson two? Sensible Israelites should trust God *alone* as grantor of their blessings and sole trustee.

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Dear Abby,
I've always wanted to have my family history traced, but I can't afford to spend a lot of money to do it. Any suggestions?
Sam

Dear Sam,
Yes – Run for public office.

Moses, Jesus and another guy are playing golf. Moses tees off and drives a long one directly toward a water trap. Quickly, Moses raises his club, the water parts, and his ball rolls to the other side safe and sound.

Next, Jesus tees off and his ball heads toward the same water trap. It lands directly in the center of the pond and kind of hovers over the water. Jesus casually walks out on the pond and chips the ball up onto the green.

The third guy gets up and randomly whacks the ball out over the fence and into oncoming traffic on a nearby street where it bounces off a moving truck onto the roof of a shack, rolls into the gutter, down the downspout and right toward the same pond. But on the way to the pond, the ball hits a stone, bounces out onto a lily pad. Suddenly, a bullfrog jumps up on the lily pad and snatches the ball into his mouth. Then an eagle swoops down, grabs the frog and flies away. As they pass over the green, the frog croaks with fright and drops the ball right into the hole for a beautiful hole-in-one.

Moses shakes his head in dismay, turns to Jesus and says, "I just hate playing with your Dad."

A young punk rocker gets on a bus with spiked, multicolored hair that's green, purple, and orange. His clothes are a tattered mix of leather and rags. His legs are bare and he's without shoes. His face and body are pierced with jewelry and his earrings are big, bright feathers. He sits down in the only vacant seat, directly across from an elderly man who just glares at him for the next ten miles.

Finally, the punker gets self-conscious and barks, "What you looking at, old man . . . didn't you ever do anything wild when you were young?" Without missing a beat, the elderly man replies, "Yeah. Back when I was young and in the Navy, I got really drunk one night in Singapore, and had sex with a parrot. I thought maybe you were my son."

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