Freemen

Armageddon's Prophets of Hate And Terror

(Third Edition June 1999)

The Kitsap County Prosecuting Attorney's Office

Presentation On

Freemen

Armageddon's Prophets of Hate And Terror

A Washington Association of Prosecuting Attorneys Lecture
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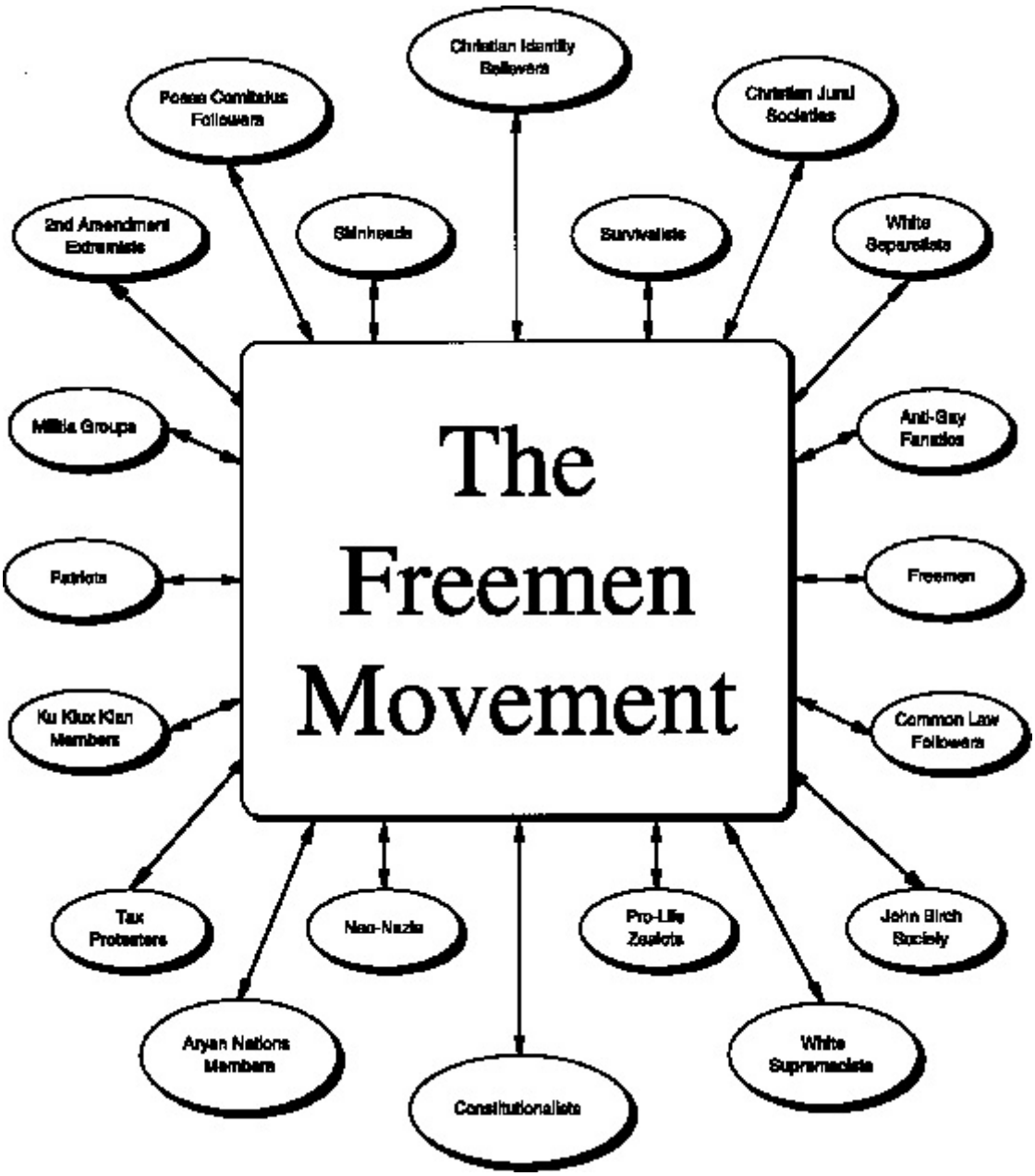
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Posse Comitatus Followers
Christian Jural Societies
2nd Amendment Extremists
Skinheads
Survivalists
White Separatists
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Part I
Introduction

A NEW GOVERNMENT AT ANY COST

> Litigants such as Mr. Greenstreet should not be underestimated. They are often motivated and know how to work the system. Unfortunately, the honest taxpayer is victimized as a result. Tactics such as declaring oneself a sovereign, turning to common law courts, challenging the jurisdiction of state and federal trial courts, and contending that federal reserve notes are not legal tender are favorites among these litigants. Such arguments, however, are time consuming for courts to process and routinely futile.

U.S. v. Greenstreet, 912 F.Supp. 224, 230 (N.D. Tex. 1996) (U.S. sued two former borrowers from Farmers Home Administration for declaratory and injunctive relief in response to UCC-1 financing statements filed by borrowers against federal employees who were named as "debtors" by Common Law court because borrowers were never provided with "lawful money" under the original loans since they were not paid in gold or silver; Held: financing statements fraudulent and void ab initio).

Preface to Third Edition

There is a community scattered among us with its own law, its own courts and its own well-armed militias. This community rejects the power of the courts of the federal and state government over the "Sovereign Citizens" of this separate community. This community, though, claims jurisdiction over us (should we interfere with its citizens in some way proscribed by its law), and over those we recognize as our judges and government officials. They call their law Common, and claim it to be the legitimate descendent of the God-given unalienable rights found in the Bible, the Magna Carta, the Declaration of Independence, the United States Constitution and its Bill of Rights. *See* Appendix at 1 for WSBA's discussion.

A significant number of members in this community are armed. Some have killed to protect their rights as conceived in their law and others have been killed or imprisoned for refusing to be bound by any law but their own. In the name of their law, the community is willing to risk death as well as murder.

We became aware of Freemen[1] ideology and criminal activity through our 1995 and 1996 prosecutions of David Carroll, Stephenson (*State v. Stephenson,* 89 Wn.App. 794, 950 P.2d 38, *review denied,* 136 Wn.2d 1018 (Div. 2 1998) and Veryl Edward, Knowles (*State v. Knowles,* 91 Wn.App. 367, 957 P.2d 797, *review denied*, 136 Wn.2d 1029 (1998)). The *Stephenson* and *Knowles* cases, along with subsequent prosecutions of other Freemen forced us to pay attention to this phenomenon since we were deluged with documents and lien-filing activities that made absolutely no sense to us. Much of our initial research is included in this manual and stemmed from the Stephenson and Knowles actions. For this we owe both men an ironic thank you for helping to make us aware of the high potential for dangerousness in the criminal Freemen movement.

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[1] We use the term "Freemen" throughout these materials to describe members of the Common Law anti-government movement. We reject the terms "Patriots," "Constitutionalists," or other similar misnomers to describe this group. Their actions and beliefs have nothing to do with patriotism or the United States Constitution as we define those terms. The following quote is often cited by members of this group to describe themselves—

> **Freeman.** A person in the possession and enjoyment of all the civil and political rights accorded to the people under a free government.
>
> In the Roman law, it denoted one who was either born free or emancipated, and was the opposite of "slave." In feudal law, it designated an allodial proprietor, as distinguished from a fassal or feudal tenant...In old English law, the word described a freeholder or tenant by free services; one who was not a villein. In modern legal phraseology, it is the appellation of a member of a city or borough having the right to suffrage, or a member of any municipal corporation invested with full civic rights.

BLACK'S LAW DICTIONARY 793 (4th ed. 1968).

Stephenson's, Knowles' and subsequent criminal actions by other Freemen have continued to push our abilities to research and understand their Sovereign Citizen and Common Law theories. As our understanding of the Freemen movement and their beliefs expanded, though, we came to realize that the failure of prosecutors to respond to initial Freemen criminal activity resulted in an ever-increasing and bold response by Freemen against public employees.

We are pleased to note that since our office made the decision in 1996 to take whatever time was necessary to prosecute Freemen who chose to commit criminal acts in Kitsap County, we have not seen new threats or lien filings against public servants (of which we are aware, anyway). The number of Freemen with whom we currently engage is but a handful, and their identities are well known to us.

We certainly did not know at the time that our prosecution of Stephenson and Knowles would result in our preparation of any manual on Freemen, much less lead us to write three editions as well as to speak with many different groups of public employees, including the Washington prosecutor's association, Washington auditor's association, Washington assessor's association, law enforcement, legislators and legislative committees, and court personnel.

We are amazed with the pervasiveness of contacts members of these Washington government agencies have had with Freemen sympathizers. It is obvious that the Freemen movement will not soon be disposed of in Washington State, and will continue to be a criminal threat requiring a response that will take excessive amounts of public servant time and taxpayer's dollars.

The vast majority of Washington's governmental department heads (prosecutor, sheriff, auditor, assessor) are elected to their posts by the citizenry, who expect the department heads to hire competent and dedicated staff. The Freemen movement's decision to target public employees to further their agenda is nothing short of a direct attack on the citizenry's democratically elected government. While Freemen are certainly entitled to their religious and political beliefs, their criminal acts in rejection of our laws cannot be tolerated. We will continue to be ever vigilant against this threat, and will assist you in any way we can in your similar efforts.

Freemen Prosecutions in Kitsap County

Over the past three years, our county has experienced infraction and criminal defendants who subscribe to their law as the only legitimate law. We have prosecuted Freemen defendants for an ever-increasing myriad of crimes, including—

- theft (purchasing a $40,000 vehicle with a document appearing to be a check that was drawn off a non-existent debt allegedly owed to the defendant by the federal government), Defendant convicted; [2]
- intimidating a judge (documents issued from "one supreme Court of Washington, Kitsap County," indicating the judge would be in contempt of their court and a $300 million fine levied and secured by a lien to be filed against judge's property if Defendant not released from custody and theft charges were not dismissed, and threatened the judge with prosecution under 42 USC § 1983), Defendant convicted; [3]
- intimidating a public servant ($7,914,100.00 in liens and UCC-2 fixture filings filed against judges'

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[2] A somewhat humorous description of a Seattle area Freemen couple using a similar fraudulent check scam is made in the book DALE AND CONNIE JAKES WITH CLINT RICHMOND, FALSE PROPHETS—THE FIRSTHAND ACCOUNT OF A HUSBAND-WIFE TEAM WORKING FOR THE FBI AND LIVING IN DEEPEST COVER WITH THE MONTANA FREEMEN (Dove Books 1998), at 175-76. Dubbed the "Odd Couple," the book describes how the couple bragged to Montana Freemen followers about their new Ford crew-cab pickup obtained with fraudulent checks. The Freemen were not impressed with the "pushy and brazen" girlfriend, which is not surprising given their views that they could barely tolerate "vocal" women in general. One of the Montana Freemen believed that the woman might have been a witch since she claimed to be a clairvoyant who could read the Freemen's "auras." As the book notes, this "far-right, far-out Samantha" tormented the Montana Freemen while she was at the Freemen complex.

[3] Division II affirmed the intimidating a judge conviction in *State v. Knowles,* 91 Wn.App. 367, 957 P.2d 797, *review denied,* 136 Wn.2d 1029 (Div. 2 1998). The court held that the retaliation prong of the crime does not violate the First Amendment

and prosecutors' properties due to their failure to dismiss 1993 theft charges), Defendant convicted; [4]

- obstructing a public servant (traffic infraction defendant who repeatedly falsely gave his name as *Brown v. Texas*, 443 U.S. 47, 61 L.Ed.2d 357, 99 S.Ct. 2637 (1979)), Defendant convicted;
- intimidating a public servant (threat to shoot officers if they tried to enter home made during fresh pursuit after traffic law violations); Defendant convicted;
- barratry (traffic infraction defendant who served officer with lengthy documents that compelled a response from the officer under threat of monetary judgment), case dismissed, pending appeal with oral argument held in Division II on June 15, 1999. *See State v. Timothy Charles, Duffey,* COA No. 23602-8-II.;
- barratry (writ of habeas corpus from ecclesiastical court requiring Kitsap County Superior Court to transfer theft prosecution to common law court), Defendant convicted;
- unlawful practice of law (attempting to represent child in juvenile court proceedings both in court and through filed pleadings despite repeated admonitions from court), Defendant acquitted;
- malicious prosecution (defendant filed citizen complaint under CrRLJ 2.1(c) attempting to charge both Jeff and Kitsap County Prosecutor Russell D. Hauge with unlawful practice of law in retaliation for charges brought against defendant), Defendant convicted;
- tax evasion (prosecution under city code for chiropractor's refusal to pay city taxes because the city lacked jurisdiction over him and his business), Defendant convicted;
- unlawful practice of law for filing habeas corpus writ on behalf of "girlfriend" who was being detained pending trial on felony drug charges and represented by a public defender, Defendant acquitted; and
- unlawful possession of a machine gun (AR-15 that was modified with M-16 parts to allow full automatic fire) by gun shop owner who also teaches NRA gun courses, case is pending.

Dealing with Freemen defendants takes an extraordinary amount of a prosecutor's time, which is the Freemen goal. Their modus operandi is to file as much paperwork as possible and take as much court time as permitted in an effort to bring our system to a screeching halt by giving it more than it can handle. This can be an especially effective strategy in a court of limited jurisdiction that is trying its best to deal with high volume caseloads. Freemen refuse representation by attorneys they believe cannot be impartial given mandatory membership in a bar association of a political entity (the State of Washington) they claim has no authority over them.

Judges who have not dealt with such defendants are likely to try to understand their theories by asking questions of the Freeman defendant. This inevitably leads to the Freeman defendant responding with a plethora of questions to the judge. Important court time is often reduced to a question-and-question dialogue between the Freeman defendant and the court that seems to endlessly go nowhere. Frequently, the result of this through-the-looking-glass experience is that the prosecution is ordered to prepare a written bill of particulars since this appears to be what the Freeman defendant is seeking. At the next court hearing, this process begins anew.

[4] Division II affirmed the intimidating a public servant convictions in *State v. Stephenson,* 89 Wn.App. 794, 950 P.2d 38, *review denied,* 136 Wn.2d 1018 (Div. 2 1998). The court held that the intimidating a public servant statute was not unconstitutionally overbroad and did not violate free speech protections of the First Amendment, and that superior court judges were "public servants" within the meaning of the statute.

Why Care About Freemen?

Over 100 Common Law courts have been established around the country. These courts have issued liens, set up common law juries, ordered the United States government and Roman Catholic Church to pay $93 trillion for "150 years of plundering" (a Texas group called the Republic of Texas), and tried, convicted, and issued execution warrants for public officials. Judgments are routinely entered in Common Law courts against government employees with whom Freemen have had contact. These judgments are attempted to be enforced through the filing of liens, use of the militia to seize property or persons, and the "creditor's" filing of an involuntary bankruptcy against the judgment "debtor."

Freemen consist of a loose coalition of many groups. It is unfair to paint a particular member in this coalition with one brush since each group often rejects some of the principles of the other groups. Some persons certainly do not advocate violence nor the politics of hate. Yet, one only needs to read the newspaper to learn of bombings, armed battles with government authorities, and increasing federal indictments of Freemen sympathizers to quickly recognize the increasingly violent nature of this coalition.

While membership is probably small, it is a movement with enough force to become established in a widespread geographical area within a relatively short period of time. The internet has become their "anonymous" method of instantaneous communication.

We do not pretend to be experts in their law. There are many parts of it that we simply do not understand. It is complex, and so divergent from conventional legal doctrine that our formal legal training in law is often an impediment to our understanding.

Our research of their law, which is permeated with racism, anti-Semitism and to a lesser extent anti-Roman Catholicism, reveals a biblical calling to an especially violent response towards our law and officials. Their law is both personally and professionally frightening. While we are convinced that their law is doomed in our system, we believe that prosecutors cannot ignore the potential for violence by members of their law who are seeking martyrdom through often violent means.

As the Freemen movement evolves, it is becoming increasingly complex and well-organized. It is beginning to take the form of a government in which different branches of the movement perform separate tasks. Common Law courts have joined forces with the militias for the obvious purpose of empowering the courts to hand out judgments and sentences and the militias to execute them. And the sentences ordered in their system are not prison terms, but death sentences.

Freemen Actions Nationally—You Better Pay Attention!

While we hope that we are simply over-reacting to a temporary phenomenon, past events suggest a less than peaceful resolution as we approach a new millennium. Examples include—

- Gordon Kahl's death in a shoot-out with FBI and U.S. Marshal agents on June 3, 1983 (Kahl and police officer dead, after two federal marshals and state officer killed in shoot-out with Kahl two and a half years earlier wherein Kahl escaped), depicted in the film DEATH AND TAXES–GORDON KAHL'S STORY and discussed in JAMES CORCORAN, BITTER HARVEST, GORDON KAHL AND THE POSSE COMITATUS: MURDER IN THE HEARTLAND (New York: Viking Penguin, 1990).
- Robert Jay Matthews' December 8, 1984 death in a fire started by FBI flares after a 35-hour standoff on Whidbey Island near Seattle. Matthews was the leader of The Order, a Christian Identity group engaged in a series of bombings, robberies from armored cars ($4 million taken) and attacks on federal officers modeled after THE TURNER DIARIES, *infra*.
- Randy Weaver's siege with the FBI and ATF at Ruby Ridge, Idaho in August 1992 (14 year old son, and wife Vicki Weaver who was shot on August 22,1992, dead).
- Rocky Mountain Rendezvous, October 22, 1992, with 160 attendees (a virtual Who's Who of the radical Right, including the Montana Militia, the Aryan Nations, tax protesters, mainstream Baptist and Mennonite fundamentalists, gun rights followers, and Christian Identity believers) of various groups

who would never normally sit down together met to discuss the Weaver incident, and left with an understanding of a common enemy–the federal government. And a common goal–a new Christian government. This meeting may have been the birthplace of the modern Freemen movement.

- David Koresh and the Branch Davidian siege and conflagration in Waco, Texas involving FBI and ATF, from February through April 19, 1993 (80 dead).
- July 20, 1993 bombing of an NAACP office in Tacoma by three white supremacists as part of an aborted series of commando raids planned by the neo-Nazi group Church of the Creator. The next targets the trio had planned were rap music figures Ice-T and Ice Cube.
- Timothy McVeigh, Terry Nichols and the April 19, 1995 Murrah Federal Building bombing in Oklahoma City, in which some of the ATF and FBI officials involved in the Waco incident had their offices (in response to death sentence ordered by Common Law court for deaths of its followers in Waco?) (168 dead, over 500 injured).
- Justus[5] Township's 81-day standoff from March 25 through June 13, 1996 between the FBI and the Montana Freemen, who had issued Common Law bounties, indictments, liens, fraudulent checks and various execution warrants, including one for Nickolas Murnion, the part-time prosecutor in Garfield County, Montana.

Murnion's first experience with the Freemen was a $500 million lien "owed" and payable in gold or silver. Shortly after the lien, Murnion found his name posted on local bulletin boards along with a $1 million bounty for his arrest. The posters read—

> The sum of one million dollars of money will be tendered over to any Freeman or other person who successfully causes the arrest and subsequent conviction of the following named suspects.

Also named in the poster was the Garfield County Sheriff, who along with Murnion were involved in foreclosure of the Freemen's property. While the poster did not mention the sentence, subsequent inquiry disclosed that upon capture both men were to be hanged.

LeRoy Schweitzer, leader of the Montana Freemen, and his disciples gave birth to the modern Freemen movement. Schweitzer taught his antigovernment students how to establish a sovereign township, set up Common Law courts, and create pseudo-banking systems designed to convert antigovernment justice into cash. It is believed that over 1800 people attended Schweitzer's antigovernment crash course and took their newfound "wisdom" back to their own communities where it is being passed on to still more people today. For an excellent discussion of the inner workings of the Montana Freemen, *see* DALE AND CONNIE JAKES WITH CLINT RICHMOND, FALSE PROPHETS—THE FIRSTHAND ACCOUNT OF A HUSBAND-WIFE TEAM WORKING FOR THE FBI AND LIVING IN DEEPEST COVER WITH THE MONTANA FREEMEN (Dove Books 1998).

Murnion received the prestigious 1998 John F. Kennedy Profile in Courage Award on May 29, 1998 for enforcing the law despite death threats from antigovernment militants. Garfield County has a prosecutor, Murnion, his secretary, the Sheriff and one deputy. Murnion testified before a House judicial subcommittee in 1998 on crime: "I think there's a greater chance that the United States will send 20,000 troops to help the people of Bosnia than that I get any help to protect the people of my county." *See* Appendix, at 3-5 for articles about Murnion.

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5 Although the media perpetuated the myth that the Montana Freemen were a bunch of dimwitted but harmless "Bubbas" by citing to the Freemen's perceived misspelling of Justice, the name Justus had a far more serious meaning.

The name Justus was symbolic to the Freemen cause. Justus was an obscure biblical character in *Colossians* 4:11. He was a follower of Christ. Because his name was also Jesus, he took the name Justus, which means "righteous" in Hebrew. The man was also a converted Jew.

The Freemen misinterpreted the verse, though. They thought that this person was Christ. A careful reading of this passage makes it clear that Justus was another biblical figure entirely. Ironically, the anti-Semitic Freemen actually named their capital after a converted Jew. But they liked the sound of the name Justus and referred to their township as "just-us."

- April 29, 1996, a pipe-bomb goes off outside the Spokane City Hall set by Chevie Kehoe and Daniel Lewis Lee.
- In May 1997, a six-day siege between Texas law enforcement and a Freemen group called the Republic of Texas ended in the arrest of leader Richard McLaren and five of his followers. More than 100 officers surrounded the remote compound at Fort Davis after the group shot at a neighbor's home and kidnapped the man and his wife (to be tried by a Common Law court?) for their protests of years of paper terrorism and threats of violence against citizens in the resort community. One armed insurrectionist was killed and another escaped. Indictments alleging $1.8 billion in bank and mail fraud were returned against the Republic of Texas members.
- July 1997 arrest of nine members of the Washington State Militia on explosives and conspiracy charges.
- July 1997 convictions of Charles Barbee, Robert Berry, and Verne Jay Merrell for twice robbing a U.S. Bank branch (April 1 and July 12, 1996) and for bombing a Planned Parenthood abortion clinic in the Spokane area. The men left literature about the Phineas Priesthood (a description used by some white supremacists based on a skewed reading of various biblical passages justifying violence against Jews and minorities) at each crime scene, signed with the capital letter "P" superimposed on a cross.

  After an April 1997 hung jury (one juror), the three were convicted at their second trial in July 1997. Barbee's defense in the second trial was that he read a book detailing the "lost tribes" of Israel and converted to the Christian Identity doctrine. All three men are members of the Idaho militia and have associations with America's Promise Ministries (APM), a Christian Identity church in Sandpoint, Idaho.
- May 14, 1998 dismissal (pending appeal) by U.S. District Court Judge Edward J. Lodge of involuntary manslaughter charges filed by the Boundary County, Idaho special prosecutor (after the Justice Department concluded no prosecutable offenses were committed) against Lon Horiuchi, the FBI sharp-shooter who shot and killed Vicki Weaver on August 22, 1992 at Ruby Ridge, Idaho. Judge Lodge ruled that the agent was properly performing within the scope of his duties and accordingly was constitutionally protected from prosecution. The effect of this ruling on Freemen followers is unknown, but likely will be considered further proof of the need for Freemen action against an unholy government which has declared war on the "Chosen People."
- On July 1, 1998, Jason McVean and Alan "Monte" Pilon were seen near Montezuma Creek, Utah after months of hiding in the southeast Utah desert after their alleged killing in a blaze of automatic gunfire on May 29, 1998 of Dale Claxton, a Cortez, Colorado police officer, during the officer's stop of a stolen water truck outside town. They and a third man, Robert Mason, reportedly wounded sheriff's deputies as they fled into a maze of canyons along the Colorado-Utah border. Mason killed himself a week later after wounding a Utah deputy near the town of Bluff, Utah, about 20 miles from where McVean and Pilon were seen. The two men are both wilderness survivalists with Freemen views and are believed to be living off provisions stashed in desert caches.
- On July 8, 1998, a federal jury convicted LeRoy Schweitzer and three top comrades (Dale Jacobi, Daniel Petersen, and Russell Landers) of conspiracy and bank fraud for a massive scheme involving issuing billions of dollars in bogus checks. Twelve defendants were charged in a 41 count indictment with a total of 126 charges including conspiracy to commit bank fraud, mail and wire fraud, theft, false claims to the IRS, interstate transportation of stolen property, threatening to murder a federal judge, armed robbery of two television news crews, and firearms violations. The jury deadlocked on 63 other charges. The remaining counts were streamlined and retried in November, 1998, with guilty verdicts on 36 counts delivered against nearly all involved.

  Prosecutors called the conspiracy a "fraud of epic proportions" saying the Freemen created and issued 3,432 bogus checks totaling $15.5 billion on a Norwest Bank Butte–Anaconda savings account that

never contained more than $116. Losses from those checks totaled $724,000. In all, prosecutors said losses from the conspiracy to disrupt the nation's banking system totaled $1.8 million..

On March 16, 1999, U.S. District Court Judge John Coughenour sentenced Schweitzer to 22½ years in prison for 25 convictions. Peterson, Skurdal and Jacobi also received lengthy sentences. Coughenour explained that the sentences reflected the crimes' seriousness and send "a loud and clear message to those who pass this hatred and ugliness around....Be forewarned, your personal liberty is at stake.

- The Kehoe Gang of Colville, Washington. Father Kirby Kehoe, and sons Chevie and Cheyne, have been convicted of multiple federal offenses for their scheme to overthrow the federal government and set up a whites-only nation in the Pacific Northwest. An article on the family from the INTELLIGENCE REPORT is in the Appendix, at 6-14.

  Kirby was sentenced on July 21, 1998 to 51 months in prison by U.S. District Court Judge Robert Whaley after Kehoe pleaded guilty to possessing a short-barrel rifle, two hand grenades and a machine gun. Kehoe has Arkansas charges pending for conspiracy to revolt against the federal government and create a whites-only nation. Defense counsel, seeking a reduced sentence, asserted that Kehoe was "a unique individual" who had adopted an isolated "18th century lifestyle" that included living off the land without electricity. Assistant U.S. Attorney Earl Hicks disagreed, asserting that Kehoe had arranged booby traps around his home to trigger if law enforcement officers arrived. Hicks stated that the weapons cache was "to be used for a movement against the United States government."

  Chevie and Cheyne first came to the nation's attention in February 1997 when a shootout with Ohio police was caught on videotape and broadcast nationwide. There was a second exchange of gunfire with other officers minutes later. Both brothers have been sentenced.

  On May 10, 1999, Chevie was given three life sentences without the possibility of parole for the 1996 murders of an Arkansas family as part of a scheme to overthrow the federal government and set up an Aryan People's Republic in the Pacific Northwest. Gun dealer William Mueller, his wife Nancy, and their 8 year old daughter were suffocated with plastic bags, weighted down with rocks and tossed into a western Arkansas bayou following a robbery. A week earlier, co-defendant Danny Lee was convicted of racketeering, conspiracy and three counts of murder. Jurors rejected the death penalty for both defendants. Both mothers testified against the co-defendants.

  Prosecutors argued that the enterprise to overthrow the government involved a 1995 robbery of Washington couple Jill and Malcolm Friedman; the 1995 murder of Jeremy Scott in Idaho; a 1995 robbery of Mueller; the 1996 robbery and murders of the Muellers; the April 29, 1996 bombing of the Spokane City Hall; the August 1996 murder in Idaho of Jon Cox of Sacramento; and the attempted murders of police officers Robert Martin and Rick Wood in a February 15, 1997 shootout in Ohio.

The Southern Poverty Law Center's website (visited May 17, 1999) <http://www.splcenter.org>, lists hundreds of incidents of hate crimes and hate group activities occurring throughout the United States. Since hate activities are often not reported, the listing understates the true level of bias incidents. [6]

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[6] The 1998 incidents occurring in Washington listed by community are—

Auburn • June 19, 1998
A 16-year-old was arrested for arson and harassment after a car was burned and a note with racial slurs was left at an interracial couple's residence.

Bellingham • May 21, 1998
National Socialist Vanguard and Aryan Nations literature was distributed to high school students.

Everett • February 1998
A threatening, racist flier was posted on a bulletin board at Everett Community College.

Everett • Feb. 12, 1998
Racist, threatening fliers were posted on bulletin boards at Everett Community College.

Everett • July 2, 1998

The Southern Poverty Law Center web site lists several hundred “Patriot” and hate groups known to

Aryan Nations member Michael R. Nelson, 35, surrendered to police on a first-degree murder charge after being sought for allegedly murdering a man in June.

Everett • Sept. 24, 1998
Donald Richards, a 44-year-old white man, was charged with malicious harassment for allegedly scrawling the letters "KKK" on the car of a white woman who was dating a black man. He was convicted in December of malicious harassment and ordered to perform 120 hours of community service.

Issaquah • June 8, 1998
White Aryan Resistance literature was allegedly sent to a white woman who was dating a black man.

Lamont • March 18, 1998
A swastika and the letters "KKK" were written on a minister’s car door.

Langley • Dec. 5, 1998
Two swastikas were burned outside a residence.

Medina • Feb. 19, 1998
World Church of the Creator literature was sent to several residences.

Pullman • Feb. 17, 1998
Swastikas were scrawled on a Black History Month display at Washington State University.

Pullman • Feb. 22, 1998
Anti-Semitic graffiti was written at a residence hall at Washington State University.

Pullman • March 18, 1998
A racial slur was spray-painted on a car owned by a man of Chinese descent. Christopher J. Bean, 15, was charged with malicious harassment.

Rosalia • March 18, 1998
A Native American woman was allegedly threatened and run off the road by three men who wore Klan-like outfits.

Seattle • Sept. 28, 1998
National Socialist Movement and European American Educational Association literature was mailed to a man’s residence.

Spokane • Oct. 24, 1998
A Gonzaga University gay activist allegedly received a threatening letter.

Spokane • Dec. 5, 1998
A lynched doll was left at a black family’s residence.

Vancouver • March 17, 1998
Reported white supremacist Mathew M. Bracken, 25, was arrested on suspicion of auto theft, possessing explosives and being a felon in possession of a loaded firearm after being pulled over at a rest area. Police found bomb-making materials in the car.

Wallace • June 18, 1998
Alleged white supremacist Edward D. Pope, 43, was arrested for allegedly assaulting a police officer, burglary, being a felon in possession of a firearm and destruction of jail property. Pope had Aryan Nations literature in his possession during the arrest.

Yelm • Nov. 7, 1998
A 21-year-old white man was charged with malicious harassment for allegedly placing a cross in an interracial couple’s yard.

In January and February, 1999, magazines targeting blacks and Jews have been found in Issaquah and Bellevue mailboxes.

From March through June, 1999, white supremacist fliers have been found in the Enumclaw area inviting white residents to Enumclaw City Hall for a “White Power” rally on July 4, 1999. The purpose, one flier reads, is to “fight for the survival of our white heritage, the purity of our white families.”

In early May, 1999, Lonnie “Joe” Goolie, at 15 year old, was being detained and charged with burning a cross in the yard of a multiracial family in Spokane. Goolie is one of three juvenile males identified by police as participants in cross burnings February 14 and April 13, 1999 at the same northeast Spokane home. A married black man and white woman with three children live at the home. Goolie, who has a Nazi swastika cared into his arm, told authorities that he was a member of the white-supremacist Aryan Nations.

exist in the United States. Washington State currently has 12 known active "Patriot" groups.[7] *See* the Appendix, at 15-16, for a listing by state of the SPLC's "Active Hate Groups in the United States in 1998."

The Southern Poverty Law Center web site also lists 17 Washington hate groups that were active in 1998.[8] A map of the active hate groups in the United States taken from the Southern Poverty Law Center's INTELLIGENCE REPORT, Winter 1999 (Issue 93), at 38-39, is included in the Appendix to these materials.

Law enforcement and government agencies may subscribe to the SPLC's INTELLIGENCE REPORT at no cost by contacting the SPLC at Southern Poverty Law Center, P.O. Box 548, Montgomery, AL 36104-0548.

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7 "The Intelligence Project identified 523 "Patriot" groups that were active in 1997. Of these groups, 221 were militias, 53 were "common-law courts" and the remainder fit into a variety of categories such as publishers, ministries, citizens' groups and others. Generally, Patriot groups define themselves as opposed to the "New World Order" or advocate or adhere to extreme antigovernment doctrines. Listing here does not imply that the groups advocate or engage in violence or other criminal activity. The list was compiled from field reports, Patriot publications, the Internet, law enforcement sources and news reports. When known, groups are identified by the city, town or county where they are located." The following Washington groups were identified—

Citizens for Liberty, Bellingham
Lake Chelan Citizens Militia, Chelan
Washington State Constitutional Rangers, Chelan
National Citizens Alliance, Mountlake Terrace
Citizens for a Constitutional Washington, Puyallup
Washington State Unorganized Militia, Republic
Populist Party of Washington State, Seattle
Right Way L.A.W., Seattle
Jural Society, Snohomish County
Populist Party of Washington State, Tacoma
Wenatchee Minutemen Militia, Wenatchee
Yakima County Militia, Yakima County

8 The following Washington groups were identified—

World Church of the Creator, Bremerton
Christian Israel Covenant Church, Colville
World Church of the Creator, Everett
World Church of the Creator, Federal Way
National Socialist Vanguard, Goldendale
Remnant of Israel, Opportunity
Nation of Islam, Seattle
Northwest Knights of the Ku Klux Klan, Seattle
World Church of the Creator, Seattle
National Socialist White People's Party, Spokane
World Church of the Creator, Spokane
World Church of the Creator, Sumas
Northwest Knights of the Ku Klux Klan, Tacoma
World Church of the Creator, Tacoma
International Keystone Knights of the Ku Klux Klan
Machine Skinheads

ACKNOWLEDGMENTS

While we have spent hours reading and responding to documents served on us by Freemen, these seminar materials would not be possible without information from the following works—

- **The** website on links to extremist websites, with over 400 links. *The Militia Watchdog* (visited June 5, 1999) <http://www.militia-watchdog.org>
- The Southern Poverty Law Center web site (visited June 5, 1999) <http://splcenter.org>
- Susan P. Koniak, *When Law Risks Madness*, CARDOZO STUDIES IN LAW AND LITERATURE, spring/summer 1996 (vol. 8, no. 1)
- JOEL DYER, HARVEST OF RAGE: WHY OKLAHOMA CITY IS ONLY THE BEGINNING (Westview Press 1997)
- DALE AND CONNIE JAKES WITH CLINT RICHMOND, FALSE PROPHETS—THE FIRSTHAND ACCOUNT OF A HUSBAND-WIFE TEAM WORKING FOR THE FBI AND LIVING IN DEEPEST COVER WITH THE MONTANA FREEMEN (Dove Books 1998)
- Institute for Jewish Policy Research, *Antisemitism in the World Today: the United States of America* (visited June 5, 1999) <http://www.jpr.org.uk/antisem/americas/usa/index.html>
- Kingdom Identity Ministries, *Doctrinal Statement of Beliefs* (visited June 5, 1999) <http://www.kingidentity.com/doctrine.htm>
- The World Church of the Creator Homepage (visited June 5, 1999) <http://www.creator.org>
- "The Order" website on the 14 Word ("We must secure the existence of our people and a future for White children.") Press Homepage (visited June 5, 1999) <http://www.14words.com>
- America's Promise Ministries (located in Sandpoint, ID) Homepage (visited June 5, 1999) <http://amprom.org>
- *The Right Way ... l.a.w. (learn and win!),* "a continuing legal education project" (visited June 5, 1999) <http://www.rightwaylaw.org> (Members receive discounts on seminars and materials on Common Law topics; membership is $150 per year)
- *The Civil Rights Task Force for the people of the united States of America* (visited June 5, 1999) <http://www.crtf.org> (a Pacific Northwest "study" and "activist" group and members of The Right Way ... l.a.w "study club"). The CRTF, in conjunction with "The International Bar Association, North American Chapter," conducts continuing legal education seminars in the Pacific Northwest by instructors and tutors recognized by The International Bar Association. This website has a pretty useful links section.
- *Mission to Israel* (visited June 5, 1999) <http://www.missiontoisrael.org>. The website includes discussion on Israel's Modern Identity, The Jewish Question, The Antichrist, The Two Seedline Issue, Miscegenation, The Phinehas Priesthood, Ruby Ridge, Waco, Oklahoma City Bombing, The Women's Liberation Movement, Communism, and The New World Order.
- *Hebraic Heritage Ministries Int'l* (visited June 5, 1999) <http://www.geocities.com/Heartland/2175/babylon.html>. The website includes discussion on Hebraic/Jewish Roots and the Babylon Mystery (The Illuminati, Trilateral Commission, Federal Reserve, Smart Cards, One World Government, Constitution for the Federation of the Earth, One World Religion, The Pope and One World Religion/Government, Ecumenicalism Between Catholics and Protestants, The Babylonia Worship Day From Sabbath to Sunday, Babylonian Holidays of Christmas and Easter, multiple topics

on the Catholic Church, and the Mark of the Beast).

- Patrick Minges, *Apocalypse Now! The Realized Eschatology of the "Christian Identity" Movement, Paper Presented at the March 1994 Meeting of the Mid-Atlantic Region of the American Academy of Religion (March 1994), reprinted on the internet* (visited May 18, 1999) <http://www.cc.columbia.edu/~w127/aarlong.html>
- J. Gordon Melton, Director of the Institute for the Study of American Religion, *The Identity Movement* (visited June 5, 1999) <http://www.americanreligion.org/cultwtch/identity.html>
- Devin Burghart and Robert Crawford, *Vigilante Justice: Common Law Courts,* CovertAction Quarterly (visited June 5, 1999) <http://caq.com/CAQ/CAQ57 ComnLaw.html>
- Kevin Korsmo, Senior Deputy Prosecuting Attorney, Spokane County, RALJ Brief from *In re the Citizen Complaint of Tim Buchanan, Jr.,* Spokane County Superior Court Cause No. 98-2-02547-1 (June 1998)
- Massachusetts LawyerViews, *Lawyer Views Legal History* (visited June 5, 1999) <http://www.lawyerviews.com/lawsite/history.html>
- *The Billings Gazette Online* (visited June 5, 1999) <http://www.billingsgazette.com>

Since our materials are not intended to be "the" treatise on the Freemen movement (if such a treatise is even possible), we have chosen to not heavily footnote or endnote the authorities for the statements made herein. If you are interested in a more in-depth analysis, we suggest starting with the above-mentioned sources and visiting your favorite bookstore and/or the internet.

Part II
Their Theories

FREEMEN ROOTS—ECONOMIC CRISIS

A Synopsis of Their World

Our examination of and experience with the Freemen movement has shown that Freemen followers see an entirely different world than we do. From our world, their Common Law makes little if any sense. A central tenet of that law is that their members are "Freemen" or "Sovereign Citizens" over whom our courts lack any jurisdiction. A fundamental move in this group's practice is the filing of Common Law liens in our system against those in our system who are charged with violating the rights of Freemen members as conceived by their law. While our courts uniformly hold that these liens are nullities and have enjoined the filing of further liens, the burden on our system is tremendous. In our world, these beliefs and lien filing activities look bizarre, but in their world these actions make logical sense.

The connection is the land. To become a "Sovereign Citizen" one files a "Quiet Title Action" in their court. The person must appear and present a birth certificate showing that the person was born in a state of the union and not Washington, D.C., which is considered under the legitimate control of the federal government.

In our legal system, a quiet title action is an action brought by the owner of land to remove any cloud on the title. It declares property, not people, free from the hold of others. The transformation of this action into a method of setting people free suggests a strong identification between real property and a person's existence. Additionally, the use of liens to penalize those who deny the group's law suggests this same identification.

In our world, these liens are viewed as troubling nuisances and harassment devices, especially for prosecutors who are called upon by our government officials to "do something" about the liens. Our world has labeled these liens "soft" or "paper terrorism," but there is reason to believe that in their world, these liens are much more potent and accordingly we believe prosecutors should avoid describing them as "soft."

An Historical Perspective—The 1980's Farm Crisis

Before we discuss the specific beliefs and tenets of their world, an historical background is in order. While Norman Rockwell's version of rural America is dead, if it ever existed, what is left of the 90 percent of the United States denominated as "rural" is massive poverty and despair. For decades, farmers and their families have pleaded for help with little if any response from our government. As we shall see, this neglect provided a perfect vacuum which was filled by Freemen and their beliefs.

In the 1970's, the Department of Agriculture, bankers and university extension offices told farmers that they must get big or get out. The rate of inflation was running several points above the interest rate, so banks and government lenders were encouraging farmers to borrow as much money as possible to buy additional farmland. As a direct result of this "new" money entering the system, the price of farmland skyrocketed as farmers tried to outbid each other. Lenders would actually call farmers and ask them to take even more money because many lenders were at the time being paid bonuses based on how much money they could loan.

But all this changed in 1979. Federal Reserve Chairman Paul Volcker decided that inflation was out of control, and made the decision to shrink the money supply by raising interest rates to heretofore unseen heights. He succeeded in halting runaway inflation, but there was a side effect—the farm crisis.

Farmland property values collapsed at the same time the interest rates on farmers' loans climbed out of sight. Bankers began to take a more realistic look at the value of a farmer's land and equipment, the value the items would bring at auction. The farmers who had listened to our government and its banking experts

lost everything when the loans were called, often prior to any default by the farmer under the Uniform Commercial Code (more on the UCC later).

At the peak of this crisis in 1986-1987, nearly 1 million people were forced from their land in a single twelve month period. Years before and since have been much the same, with a half million being forced from their land annually. The number of displaced farmers is not as big today, but only because there are simply less farmers. For the roughly 20 percent of the United States population that live in rural America, this continuing loss is a crisis that compares with the Great Depression.

Farmers had but two lawful options—leave voluntarily or proceed through bankruptcy. Either choice shamed any farmer, and ended in the same results—the loss of the family farm often held by the family for generations, and a loss of a way of life.

For a farmer, losing the land is much more than an economic disaster. The land is a farmer's "identity." It is his connection with God—his religion, his nationality, his family's heritage, and the legacy to his children. Not surprisingly, the suicide rate among farmers during this crisis was a staggering three times the rate of the general population. Many of the suicides in rural America are a reflection of its unique culture and belief system. A farmer who killed himself to allow his family to collect insurance money and save the farm is often thought to be honorable in the subculture of rural America.

The loss of the family farm was cultural and spiritual as well as economic. At such moments, people seek out new understandings, and new interpretations of reality to make sense of this experience. Rural farmers would often rather die than give up the farm to evil forces that had taken control of the government. Many will kill before they give it up.

And not only farmers and ranchers have been effected by the globalization of the United States' economy. Industries such as mining, oil, and timber have been hit hard in recent decades. Increasing government regulation and dwindling resources at home have made it more profitable for today's multinational corporations to take their business to Third World countries. One by one the once prosperous small businesses in rural towns have withered away, often being serviced by a single Wal-Mart or other large discount store. This trend of consolidation has thrust rural America into an economic abyss filled with tremendous suffering, anxiety and depression for rural Americans.

The psychological effect of foreclosure and the concurrent chronic long-term stress should not be underestimated. Foreclosure often takes months. During this time, the farmer will naturally do anything possible to save the farm. Working harder and more hours for months on end, it is only a matter of time before the pressure and stress of fighting the inevitable losing battle takes its toll. Alcoholism, domestic violence, and death by heart attack or stroke significantly increased in rural America.

A 1989 Nebraska study of 500 farmers determined that the average farmer was an introverted, sensing, thinking, judging type, whereas the typical farm woman was introverted, sensing, feeling, and judging. Of the known sixteen personality types, farm people scored as the most conservative and hardworking.

What better place for a message of the Freemen movement, which teaches that all of this pain and destruction was avoidable? And worse, the message includes a belief that this destruction was intentionally planned and orchestrated by an evil force that has taken over our government. Why not convict bankers, judges, prosecutors and police with crimes since they caused the financial stress that resulted in the death of the farm by our system's liens, quiet title actions and bankruptcies, and the death of the farmer by suicides, heart attacks and other illnesses? Our government officials who "caused" this death are viewed as murderers. Quite naturally, their courts should sentence these "criminals" with death by hanging.

The Land

The Freemen message was carried into rural America by extremist apostles who called themselves Christians, Patriots, Constitutionalists, and Freemen. As we will see, their message is anti-Semitic, racist, and hateful. It was ludicrous, but some farmers listened. Sure the message was crazy, but was it any crazier than the cataclysmic events destroying the farmer's world?

And the message had one centralizing tenet—the land. It is natural to find that the quiet title action is transformed into a path to freedom. It makes sense that liens, the cause of so much of a farmer's oppression and a tool of the bankers, are seen as a powerful weapon to be turned against one's enemies.

For their community, foreclosures, clouded titles and liens mark the demarcation line between the old world and the new. But what this group can express through a proceeding to quiet title or by issuing their liens cannot be understood without stepping into their world.

In our world, these legal devices are not similarly powerful and are relatively weak. But across the divide in their world, these tools have real meaning backed by divine guidance.

The Posse Comitatus

Today's Common Law court system is an expanded version of the Posse Comitatus (Latin meaning "power of the county") system created in the 1970's and 1980's.[9] The Posse was the first of the antigovernment groups to incorporate Common Law courts into its structure. The Posse based its Common Law philosophy on a combination of old English common law, the Magna Carta, and a belief that people are born with certain God-given rights.

The core of the Posse belief was that the supreme power in the land rested with the county sheriffs, the only legal law enforcement office in the United States. The sheriff's job is to enforce the Common Law, which is based upon a particular county's local custom and precedent. If the county sheriff failed to perform his or her duties under the Common Law, it was the Posse's duty to remove the sheriff and/or enforce the Common Law.

Any government official who attempted to enforce unconstitutional laws (as determined by the Posse) was subject to arrest by the Posse and trial by a Citizens jury. This jury was to be impaneled by the county sheriff from citizens of the local jurisdiction because the present method of impaneling juries by the Courts was unlawful and was to be repudiated.

In the Posse's court system, no crime had been committed unless there was an injured party. A person was free to do anything he or she pleased provided another's person or property was not injured. If another was injured ("trespassed against") [note reference to The Lord's Prayer], the complaining person could go to the Sheriff and sign a formal Complaint against the perpetrator, thereby "waking up" the law. The Sheriff was then to take this sworn Complaint to a judge, who would grant authority to "serve" the Complaint upon the person who committed the trespass.

At this point, the Common Law could compel the trespasser to answer. The party served with the Complaint had two choices—defend or confess. If the party knew he was guilty, he could remain silent or demur and suffer the "civil" penalties, or he could confess and subject himself to "criminal" penalties. At a trial, the perpetrator had to be proven guilty by the evidence alone. He could not be compelled to confess (see the 5th Amendment). The Sheriff could do nothing without a sworn Complaint signed by the injured party.

On the one hand, the Posse system would eliminate our prison overcrowding by decriminalizing offenses involving drugs, alcohol, and driving. But on the other hand, the Posse system had its own brand of violence and abuse.

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9 For a more detailed discussion of the Posse Comitatus movement, *see Roots of Common Law, An Interview With An Expert On The Posse Comitatus,* INTELLIGENCE REPORT, Spring 1998 (Issue 90), at 29-31, a copy of which is in the Appendix, at 17-20.

The Posse's courts met infrequently in only a few states and were never very consequential. These early Common Law courts would send out arrest warrants to public officials who they believed were guilty of a crime (usually related to farm foreclosure), but that was the extent of it.

The sentences given out by the Christian Identity-influenced Posse courts were stiff but rarely, if ever, carried out. The Posse's code of justice, laid out in a manual written by Posse leader Mike Beach known as THE BLUE BOOK, spelled out the basic sentence for nearly all crimes — "He shall be removed by the Posse to the most populated intersection of streets in the township and at high noon hung by the neck, the body remaining until sundown as an example to those who would subvert the law."

Today's Common Law courts are different from the Posse's earlier versions in a number of ways. They are considerably more widespread, in great part due to LeRoy Schweitzer's teachings and the ease of dissemination of information over the internet. Common Law courts have added a new function unknown to the Posse's system—the grant of sovereignty to citizens. Common Law practitioners claim that once their courts grant sovereign status to someone, that person can legally stop paying taxes, ignore federal and state laws, and act in essence as if he or she was a separate sovereign entity.

Our experience shows that the Posse's "justice system" is certainly alive and well in the Freemen world, albeit with some "fine tuning."

Gordon Kahl, a Posse Hero

Gordon Kahl was a farmer. He fought in World War II, earning a Silver Star, a Bronze Star, two air medals, a presidential unit citation, nine battle stars and two Purple Hearts. He became a follower of the Christian Identity movement in the 1950's. He joined the Constitutional Party in North Dakota, a group that advocated Common Law principles. In 1967 he wrote to the Internal Revenue Service to inform it that he could no longer "pay tithes to the Synagogue of Satan…."

In 1973, Kahl joined Posse Comitatus. He thereafter reclaimed his Sovereignty by renouncing his driver's license and his airplane pilot's license. In 1976 Kahl appeared on television to urge others to stop paying taxes. Not surprisingly, the IRS thereafter charged Kahl with willfully failing to pay income taxes for 1973 and 1974. Kahl refused to enter a plea of guilty or not guilty, contending that the court lacked jurisdiction over him. Nonetheless, his lawyer contended that Kahl was being prosecuted for having expressed his views on television about the income tax and not for his failure to file. Kahl was convicted. Addressing the court before it imposed sentence, Kahl spoke the language of martyrdom—

> I felt I had a choice to make. I realized I could be cast into prison here or I could spend an eternity in the Lake of Fire. It seems to me that the choice of the two would have to be whatever punishment I have to receive here. That's all I have to say.

With those words, Kahl pronounced the supremacy of his law over that of the judge and the inability of State "violence" to kill off his law. It is the martyr at prayer that these words suggest, the martyr whose very submission to State violence mocks State law by demonstrating its inability to coerce compliance.

Kahl was sentenced to one year in prison and five years' probation. While his case was on appeal, Kahl transferred ownership of his farm to "Gospel Doctrine Church of Jesus Christ, Alter Ego of Gordon Kahl," an attempt to fend off State law (the income tax) with State law (the exemption from taxation for religious institutions).

This move is somewhat more intelligible in our world than invoking the UCC; State law at least recognizes that the exemption relied upon is relevant to the question of State law at issue, whether Kahl must pay taxes. However, the idea that individuals are religious institutions that qualify for this exemption is different enough from State doctrine to lead to the obvious result that such an exemption does not exist.

Nonetheless, the move was nonviolent, as was Kahl's reaction to the appeals court's upholding of his conviction. He entered Leavenworth prison where he served eight months of his sentence.

Kahl's martyrdom began to change when he learned that a friend, following Kahl's advice from television, had similarly been imprisoned for tax evasion and died of a heart attack in prison. Kahl believed that the government had induced the heart attack to silence the law both he and his friend would speak. Kahl the martyr made the transition to rebel.

After his release from prison, Kahl continued to refuse to pay taxes in direct violation of his parole that he do so. In 1981, the IRS seized his land. The IRS then tried to seize Kahl on a misdemeanor warrant. While law enforcement officers do not usually respond to misdemeanor warrants (this one for violation of parole), Kahl's open defiance of State law generated a typical response from the government. For some time Kahl escaped capture.

A trap was finally set for Kahl on a road outside Medina, North Dakota. Surrounded by armed officers, Kahl and his adult son and two friends chose to fight. A shoot-out ensued, with Kahl's son and a state officer wounded, and two federal marshals killed. Kahl somehow escaped capture.

Kahl managed to elude arrest for two and a half years. This feat not only mocked State law, but suggested that State force can be overcome. Kahl, eventually though, was found. This time the State went all-out in confronting Kahl who was inside a building. Shots were fired, and soon flames engulfed the building. Kahl was shot and died before the fire, but he claimed one more victim—the officer who killed Kahl died from shots received from Kahl during the last seconds of Kahl's life.

Kahl's funeral was attended by over 250 people coming from many different states. The eulogy likened Kahl to various American heroes, including Patrick Henry. Kahl's story has become legend among the Freemen community. Tales about Kahl's alleged actions are as an important part of the Freemen history as George Washington's bravery is to our history. Unlike Washington's tale, though, Kahl's mythology celebrates and affirms the use of violence in the name of the Common Law and confirms the validity of the community's vision that the State is despotic. The tales also teach that strong commitment has a terrible price.

Of course, in our world, the fact that these tales inspire even a small handful of like-minded hero wannabes is frightening. As the Oklahoma City bombing showed, it only takes a few committed people to shatter our world.

The Posse Comitatus in Our World—13 USC § 1385

While Posse adherents do not directly link their theories with the Posse Comitatus Act, 13 USC § 1385, Washington case law has discussed the Act. Since Freemen are certainly adept at citing BLACK'S LAW DICTIONARY for many of their propositions, and our case law has done the same in defining Posse Comitatus under our common law, the following cases may help in responding in our world to Freemen Posse-based arguments.

> Posse comitatus constitutes the power or force of the county, consisting of the entire population of the county above the age of 15, which a sheriff may summon to his assistance in certain cases, for example aiding him in keeping the peace, or pursuing and arresting felons. BLACK'S LAW DICTIONARY 1046 (5th ed. 1979); Furman, *Restrictions Upon Use of the Army Imposed by the Posse Comitatus Act,* 7 Military L.Rev. 85, 87 (1960).

City of Airway Heights v. Dilley, 45 Wn.App. 87, 95, fn. 1, 724 P.2d 407 (Div. 3 1986) (use of Air Force technician to administer breathalyzer test to civilian did not violate Posse Comitatus Act).

Our court system has summarized the purpose of the Posse Comitatus Act and its relationship to state law enforcement as follows—

> Responding to apparent abuses in the use of the military during the reconstruction era, Congress adopted the Posse Comitatus Act in 1878 which, as since amended, reads:
>
> > Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any

> part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both.
>
> 18 USC § 1385. No Washington case has discussed the application of this statute. Within the last 10 years, however, this act has been used in a variety of factual situations in both state and federal courts by defendants seeking to exclude evidence allegedly obtained in violation of the statute. There are no cases found in which the court actually excluded evidence because of a violation of the statute. Nor is there authority that a prosecution was pursued for violation of the act. In applying the statute, we must examine whether a violation occurred and, if so, whether evidence seized is admissible as evidence.
>
> In determining what military involvement is forbidden, we look to the historical underpinnings of the act. Congress passed the Posse Comitatus Act to limit allegedly excessive use of federal troops to preserve order and maintain the governments of Republican carpetbaggers in the southern states. While protecting civilians from being subject to the exercise of regulatory or proscriptive military authority, the act also is aimed to protect the military from overuse by local civil law enforcement authorities.
>
> In *Casper,* [*United States v. Casper,* 541 F.2d 1275 (8th Cir. 1976), *cert. denied,* 430 U.S. 970, 97 S.Ct. 1654, 52 L.Ed.2d 362 (1977)] the court had to determine whether military involvement in law enforcement activities during the 1973 Wounded Knee uprising violated the act. Setting a standard to determine whether a violation of the act had occurred, the court stated at 1278:
>
> > Were Army or Air Force personnel used by the civilian law enforcement officers at Wounded Knee in such a manner that the military personnel subjected the citizens to the exercise of military power which was regulatory, proscriptive, or compulsory in nature, either presently or prospectively?
>
> Accordingly, when these concepts are evaluated in the present legal framework, military involvement does not violate the Posse Comitatus Act unless it "actually regulates, forbids, or compels some conduct on the part of those claiming relief." Merely furnishing military personnel, cameras and planes to fly surveillance and providing advice to those dealing with the disorder does not connote the active participation proscribed by the act.
>
> Based upon the language, history and apparent purposes of the Posse Comitatus Act, which is to have local authorities handle local matters, preclude use of the federal militia, particularly in policing state elections, and to prevent citizen control through military power, we find no violation of the act here. Officer Anderson transported Mr. Dilley to the Fairchild Air Force Base front gate for testing because Fairchild was the closest and most convenient place to administer the examination. Airman Garcia conducted the Breathalyzer test in the same way a civilian technician would have conducted it. She did not force Mr. Dilley to take the test. Thus, it cannot be said that the Posse Comitatus Act was violated, given the practically nonexistent military force used here. While it might be wrong to engage military force to enforce civilian law, engaging military expertise alone does not violate the act. Since Airman Garcia was merely operating the machine and not forcing Mr. Dilley to take the test, her conduct was acceptable. We find this dispositive of the issue, hence we do not address whether evidence seized in violation of the act must be suppressed.

Dilley, 45 Wn.App. at 89-92. (Citations omitted.) *See* also—

- *State v. Short,* 113 Wn.2d 35, 38-40, 775 P.2d 458 (1989) (Naval Investigative Service agent, while acting undercover in Kitsap County, purchased drugs from defendants. Court held that even if the

Posse Comitatus Act was violated, it only applies to Army and Air Force personnel, and not to Navy personnel.)

- *State v. Valdobinos,* 122 Wn.2d 270, 276-77, 858 P.2d 199 (1993) (even if Posse Comitatus Act violated by national guardsmen's search, the preferred remedy under the Act is a fine and not suppression).

Ruby Ridge, the Rocky Mountain Rendezvous, Waco and Oklahoma City

The historical significance of these places and events was discussed in the Introduction. These events, along with the bombing that rocked the Atlanta Olympic Games (seen as proof of a one world government), the arson fires against black churches, and violence at abortion clinics, send a clear message. The Freemen movement and its followers are not afraid to advocate and use violence. And in their world, to do so has biblical support.

THE CONSPIRACY— A ONE WORLD GOVERNMENT

One World Government

The antigovernment movement has been in existence for decades. Christian Identity-influenced groups such as the Ku Klux Klan first appeared in the 1800's, whereas other groups are much younger. The John Birch Society came along in the 1950's, followed by Posse Comitatus in the 1970's. But until the last few years, these groups, predicting that the sky was falling, existed in relative obscurity with few members.

But then the sky did fall for farmers in the 1980's. And Ruby Ridge and Waco occurred in the 1990's. The scenario prophesized by these unsuccessful groups fit perfectly with the farming plight and subsequent events. With the lack of a better explanation, many converted to and became antigovernment followers. While the groups have new names, the conspiracy theories and printed propaganda on which it bases its antigovernment dogma are being created and carefully controlled by the radical leaders of the old guard.

Paramount to today's Freemen movement is the rather complex nature of the one world government theory. The roots of a one world government conspiracy theory can be traced directly to the Bible. Both the Old and New Testaments contain many prophecies that have been historically interpreted as predicting that the end of the world will be the result of secret political maneuvering on the part of Satan and the Antichrist. The Freemasons and Illuminati are such perceived examples. [10]

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[10] Adam Weishaupt, a Catholic priest, joined the Freemasons in Germany in the late 1770's hoping to create a powerful secret organization to support him in the conflict with his adversaries and in the execution of his rationalistic schemes along ecclesiastical and political lines. Upon closer inquiry, though, Weishaupt determined that a new secret society would be needed, and in 1776 organized the "Illuminated Freemasons" in Ingolstadt, Bavaria. The Illuminati, as they were known, propagated a new religion and a universal democratic republic wherein man would be enlightened through secret tutelage to outgrow the religious and political needs of the Church and nation state. These secret schools of wisdom would lead to the fall of princes and nations so that the human race would become one family. This redemption of mankind by the restoration of the original freedom and equality through illumination and universal charity, fraternity, and tolerance could only be accomplished, though, to members who progressed through various degrees of teachings.

In 1783, though, the anarchistic tendencies of the order provoked public demonstrations which led the Bavarian government in 1789 to ban the order and any recruitment by its members, upon penalty of death. Some in the order claimed responsibility for the French Revolution in 1789, but the claims lack proof and often conflict with known facts. Weishaupt renounced all secret societies in 1787 and reconciled with the Catholic Church by his death on November 18, 1830.

Source: *The Catholic Encyclopedia, Illuminati* (visited June 4, 1999) <http://www.knight.org/advent/cathen/07661b.htm>.

Freemen claim, though, that Weishaupt was funded by international bankers and started the Illuminati as a satanic plot in order to establish a one world government. The order, which exists today, is allegedly composed of wealthy Jews whose main goal is to own all the land and wealth in the world, relegating everyone else to slavery in one form or another. Churches would also be transformed into synagogues. The Illuminati is alleged by some in the Freemen movement to have taken over the American government, banks and legal system. The sect is also credited with creating the conspiracy that led to the French Revolution.

Weishaupt's plan of operation required the Illuminati to perform the following tasks to accomplish their purpose—

1. Monetary and sex bribery was to be used to obtain control of men already in high places in the various levels of all governments and other fields of endeavor. Once influential persons had fallen for the lies, deceits, and temptations of the Illuminati, they were to be held in bondage by application of political and other forms of blackmail, threats of financial ruin, public exposure, and physical harm, even death to themselves and loved members of their families.
2. The Illuminati who were on the faculty of colleges and universities were to cultivate students possessing exceptional mental ability and who belonged to well-bred families with international leanings, and recommend them for special training in Internationalism. Such training was to be provided by granting scholarships, like the Rhodes Scholarship, to those selected by the Illuminati. All such scholars were to be first persuaded and then convinced that men of special talent and brains had the right to rule those less gifted on the grounds that the masses do not know what is best for them physically, mentally, and spiritually.
3. All influential people who were trapped to come under the control of the Illuminati, plus the students who had been

This one world "biblical" theory has been enhanced through racist myths, and has now become the means for interpreting the very Bible from which the theory came. In today's Freemen movement, religion and conspiracy are inseparable.

One must not ignore the real forces, though, such as banks, corporations, and government, that are playing a role in this saga of rural restructuring. There are only a few basic themes behind their world, which are almost obscured by the conspiracy beliefs—religion, the Constitution, the monetary system, gun control, international trade agreements, monopolies, and morality.

The Bible

How did the old guard of the antigovernment movement turn rural Americans against a government that rural Americans had heretofore staunchly supported? The Bible. The most sacred document of rural America was brilliantly used by twisting it into a literal call to arms against the federal government. Under the movement, a losing economic war was transformed into a "holy" war that must be won to save one's soul.

Studies have shown that over 80 percent of the rural population claim some affiliation to a church. Rural America is predominately Christian, with strong leanings towards Protestant Christianity. The foundation for this Christian influence has been laid by our history and supported by such customs as recital of the Pledge of Allegiance ("…one nation, under God…") and the Lord's Prayer. Given this background, it only makes sense that when the world is crashing down, a "Christian" explanation is needed.

Various factions, including David Koresh and the Branch Davidians, have consistently believed that the Bible justifies or even demands that they rebel against the current American government. This belief that the Bible demands rebellion compels these rural warriors to see themselves as an army of holy patriots rather than as a treasonous force attempting a coup. They believe that the Bible is to be literally interpreted and that a proper understanding of its prophecies leaves true Christians with little choice but to fight.

People are being taught that our founding fathers intended the country to be a Christian nation and that they wrote the God-inspired Constitution with that in mind. Some groups teach that the Constitution was derived directly from the Bible and is therefore a sacred document. Recruits are told that God added the Second Amendment (the right to keep and bear arms) for an important reason—the weapons of the people were to be used to force the government back towards a godly course if the government ever strayed from its "Christian" underpinnings. Many in their world believe that now is the time for this armed insurrection.

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specially educated and trained, were to be used as agents and placed behind the scenes of all governments as experts and specialists. They would advise the top executives to adopt policies which would, in the long run, serve the secret plans of the Illuminati's one world conspiracy, and bring about the destruction of the governments and religions they were elected or appointed to serve.

4. They were to obtain absolute control of the press so that all news and information could be slanted to convince the masses that a one world government is the only solution to our many and varied problems. They were also to own and control all the national radio and TV channels.

Source: *Thirst for Justice—A Satanic Plot for a One World Government. The World Conspirators: the Illuminati* (visited June 4, 1999) <http://www.prolognet.qc.ca/clyde/illumin.htm>.

THE TRIBULATION—2,000 A.D.?

> [In response to the disciples' questions about signs that will signify Jesus' second coming and the end of the world, Jesus said—]
>
> *For nation will rise against nation, and kingdom against kingdom, and in various places there will be famines and earthquakes.*
>
> *But things are merely the beginning of birth pangs.*
>
> *Then they will deliver you to tribulation, and will kill you, and you will be hated by all nations on account of My name.*
>
> *And at that time many will fall away and will deliver up one another and hate one another.*
>
> *And many false prophets will arise, and will mislead many.*
>
> *And because lawlessness is increased, most people's love will grow cold.*

Matthew 24:7-12

The End of the World

Is the Tribulation at hand? It is certain that a holy war is blazing across America in the form of terrorist bombings in places like Oklahoma City, Atlanta, Los Angeles, Spokane, and Dallas. Whether the holy war is the one described in the Bible or the one started by people who decided the Bible version was taking too long to get here does not really matter. The death and destruction are real.

Bible-influenced Freemen groups believe that Jesus will one day return to earth. They also believe that the closer we get to that day, the more we will experience pestilence, famine, and cultural upheaval. Our summary of one interpretation[11] of the meaning of *Revelation* 20 is as follows—

> This is all part of the Tribulation—a time many Christians believe will be defined by the appearance of new technologies; by the "mark of the Beast" (the symbolic number 666) being put on the bodies of those worshiped Satan and accepted the mark; by the creation of a one world government headed by the Antichrist; and by the persecution and murder of Christians.
>
> It is at the end of this period of tribulation that the Battle of Armageddon—the final battle between Jesus' forces of good and Satan's forces of evil—will be fought and won by Christians. Satan will be imprisoned in a bottomless pit, ushering in a 1,000 year period of peace known as the Millennium. At the beginning of this 1,000 year period, the martyrs (the dead souls who had been beheaded for their beliefs and had not worshipped Satan nor accepted his mark) will come to life and live and reign with Christ during the Millennium. The rest of the dead souls will not come to life until the end of the Millennium.
>
> At the conclusion of the Millennium, Satan will be released and attempt to deceive all nations and people, and gather an army of followers. This army will surround the city of the living saints. A fire will come down from Heaven, though, and consume Satan's followers, and God will cast Satan into a lake of fire and brimstone, to be tormented forever.
>
> Then, all the dead souls remaining will stand before God for final judgment, the Book of Life will be opened and the dead souls will be judged according to their works.

[11] We recognize that there are several different interpretations of the end times as described in *Revelation*. The summary we provide appears to us to be the most common.

> Whoever is not written in the Book of Life will be cast along with death and hell into the lake of fire (the Second Death) for eternity.

At some point during this tribulation process, many Christians believe rapture (the union of Christ with the redeemed) will take place. The rapture is the simultaneous ascension of all Christians who are alive at the time of Christ's second coming. Most fundamentalist Christians believe this will happen in a single moment without any warning—a Christian driving down the road will suddenly disappear, leaving the car to careen out of control.

Christian teachers have been warning their followers for years that the Tribulation is approaching. But their doomsday messages have escalated for a number of reasons. First we are rapidly approaching the end of a century. Historians have noted that apocalyptic scenarios always escalate before a change of a century, and not just among Christians.

Another reason for the increase in end-of-the-world thinking is that the media have made the delivery of apocalyptic information easier, faster, and more profitable. Christian authors have created a pseudo-science, not to mention a pretty good living out of their "final chapter" interpretations of biblical prophecy by citing to current events as "proof" of the coming Tribulation.

It should come as no surprise that when televangalists preach daily over the airwaves to millions of people that the government is evil/satanic, the message heard is a literal call to arms through the Freemen movement. After all, these preachers are trusted by rural America and teach many of the same antigovernment conspiracy theories as the Freemen.

Rural America believes in following the precept of "one nation under God." If the current government is being influenced by the supernatural forces of the Antichrist against Christian rule, how could any truly faithful follower not join this divinely-inspired movement which quotes scripture?

How radical these followers eventually become depends to a large extent on their personal interpretations of biblical prophecy in *Revelation*.

The vast majority of Christians fall into one of three camps—pre-tribulation, mid-tribulation, or post-tribulation. "Pre-trib" Christians believe that if alive at the second coming, they will be called up to heaven by the rapture before the Tribulation begins.[12] Consequently, they are not likely to become convinced that now is the time for a holy war. "Mid-trib" and "post-trib" Christians, though, believe that they will have to live through part or all of the Tribulation before they will be raptured.[13] They are thus left to their own faculties to determine at what point they have entered the terrible time. For these believers, the stress of poverty, the loss of a farm, or any other devastating circumstance can be interpreted as a sign that the Tribulation has started and, of course, that now is the time for an all-out holy war.

While "pre-trib" Freemen believers are just as strongly opposed to the government as their "mid- and post-trib" brethren, they are more likely to exhibit that opposition by participating in some form of peaceful defiance against the unholy government, such as Common Law courts, refusing to pay taxes, etc.

For the "mid- and post-trib" Freemen followers, though, there is no roadblock to declaring war on the government and establishing a Christian theocracy. In fact, once they are convinced that the Tribulation has arrived, they believe that it is a sin not to fight on behalf of God's calling them to do so, in an effort to stay alive until the rapture. Otherwise, once dead and assuming one is listed in the Book of Life, Heaven will have to wait until the conclusion of the 1,000 year Millennium rather than being instantaneous upon the rapture.

In their view, the government is already under the control of the demon Jews who are seeking to establish a one world government, perhaps through the United Nations or the Roman Catholic Church. And

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12 The recently released $5 million film REVELATION...THE BOOK HAS BEEN OPENED (independent Canadian film 1999) starring Jeff Fahey, Nick Mancuso and Carol Alt provides a look at the Tribulation after a "pre-trib" rapture takes place.

13 An example of a "post-trib" rapture is provided in C.S. LEWIS, THE CHRONICLES OF NARNIA—THE LAST BATTLE (1956).

in their view, this is not some intellectual, political or spiritual war designed to intimidate enemies. It is a real war of guns, assassinations, bombs, and death.

The Tribulation and Freemen Recruiting Techniques

Today's Freemen have become especially successful at converting economically-distressed people into their fold. They work the crowds at foreclosure sales, telling people that the sale is part of the Antichrist's plan to control the food supply of Christians. They tell people that the Constitution says one does not have to pay income tax. They promise farmers their land can be recovered even after it is sold at auction. They describe how the government took the United States off the gold standard as part of a plot to rob us of our wealth.

The movement has had great success with this economic targeting, and has begun to expand its membership with strategies using other religious/political debates involving abortion, gay rights, home schooling, and doctor-assisted suicide.

The movement carefully constructs its message to convince people who are already politically charged over these issues that these religious and political issues of the day are all part of a bigger plot by an evil government to desensitize them to perversion and murder, steps necessary to eventually enthrone the Antichrist during the Tribulation.

One of the movement's most successful recruiting grounds has been the pro-life movement. Militant groups that oppose the government are overflowing with people who started in the pro-life movement but became frustrated with what they perceived to be mainstream pro-life's less than radical approach to stopping the murder of children. Pro-life factions enter the Freemen world already possessing the understanding that there is no room for compromise. It is the word of God through the Bible that gives these factions no choice but to pursue their ultimate goal of establishing a Freemen Christian government that will treat abortion as murder and strike down any statutes that contradict their interpretation of biblical law.

Given the success of the conversion of the anti-abortion contingent, the Freemen will likely add any and all "anti" groups, targeting the breakers of holy laws. Transgressors will include gays, blacks, Jews, and other minorities; doctors who perform abortions; people in mixed race marriages; proponents of other religions such as Islam, Buddhism, Hinduism, and New Age believers; manufacturers of products deemed to be offensive (especially involving pornography); and media personnel whose reports are found to be blasphemous.

THE CHRISTIAN IDENTITY MOVEMENT A.K.A. "CHRISTIAN AMERICA," "CHRISTIAN ISRAEL," "KINGDOM OF GOD"

Introduction—America is the Promised Land of Israel

While Freemen pleadings and Common Law court opinions often do not provide or recount the underlying nature of the impact of Christian Identity beliefs on their system, our failure to recognize the impact of these beliefs on Freemen would be a great mistake. [14]

Few court opinions or pleadings in our system recount the tale of our Revolution or the circumstances surrounding the adoption of the Constitution or any other central tenet in our law. Generally, we take these basic and central underpinnings for granted. Indeed, an opinion that recounts these underpinnings normally signals either that an extraordinary challenge to our system has been made or that a novel legal step is about to be sanctioned by our courts, which seek to legitimize the move by tying it back to basics.

Therefore, despite the fact that most of the Common Law papers we have seen do not retell the Christian Identity story in full, we are prepared to call the story central to many, if not all, of those within the Freemen movement.

The fused Common Law Christian Identity story divides Americans into two classes—the chosen and the damned. That division predicts the division of American citizenry into two classes—Common Law/Sovereign Citizenship and 14th Amendment Citizenship.

Sovereign Citizenship, which belongs to their members as a matter of birthright, guarantees freedom from tyranny (the exercise of jurisdiction by federal and state "illegal" governments and courts), and recognizes one's God-given unalienable rights. Fourteenth Amendment citizenship is not only less ennobling but is akin to the mark of Cain, a badge of slavery, made for lesser beings, specifically African-Americans and others considered non-white. The other United States, our world, is the home of the 14th Amendment slave as opposed to their united States, home of the original, privileged citizens—Freemen. The Christian Identity story dictates just such a distinction—a distinction between the Chosen People and the misbegotten others that populate the earth.

The story also locates the group in relation to the government. It suggests that the State has somehow been corrupted and is exercising power unjustly over God's Chosen People. The story provides meaning for the "odd" moves made by Freemen, like divesting oneself of one's driver's license and refusing to pay taxes, moves needed to reclaim one's birthright as a free and Sovereign being.

Most importantly, the story not only unites the people of their community into a group and locates that group in relation to others, it fuses the group's identity with the land. The land is what God promised his Chosen People, according to the Bible. The quiet title action, as understood in the Common Law, similarly fuses identity with land. The Christian Identity story gives added meaning to the filing of liens against

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14 We believe that a thorough understanding of the Christian Identity movement and their beliefs is critical to an appreciation of the potential seriousness and dangerousness of the Freemen movement. We do not pretend to be "experts" in Christian Identity theology or the Bible. Nor do we claim to be trained scholars who can provide a point/counterpoint response from a Judeo-Christian perspective. It is not our intent in any way to offend anyone's spiritual faith or understanding of these topics. If our discussion of these topics has inadvertently offended, we sincerely apologize and ask forgiveness for our ignorance.

enemies of their group. Those who are not God's Chosen People can never have clear title to the land. At most, those people may occupy the land so long as they do not interfere with the destiny of God's Chosen People. Liens give expression to that message, clouding title precisely as the story suggests is just.

It is easy to trivialize the rhetorical excess of the Christian Identity movement and dismiss it as a fringe element. However, it is important to note that Christian Identity numbers have grown from perhaps 2,000 to 5,000 in 1986 to more than 30,000 today. Apart from the regular membership in the churches, it is estimated that today there are nearly a quarter of a million people who may be Christian Identity followers.

The Christian Identity movement ties young to old, and is the bond that coalesces the various forces of the white supremacist movement into a coherent ideological force. Propelled by an apocalyptic vision of a racial holy war, guided by a destiny in which God's purpose is fulfilled through their actions, and understanding themselves as part of an historical tradition, Christian Identity recruitment has been surprisingly effective.

While one can be lulled into a false sense of security in thinking that the Christian Identity's perceived war is over, in reality it has yet to begin. Christian Identity advocates wait patiently and struggle silently. While still secretly holding on to their "identity," many suppress the traditional racist diatribe in order to become a part of our system, and betray it from within. Many more quietly wait for the moment when they are called upon to become a warrior and strike a blow for their "liberation," the moment when God taps them on the shoulder and tells them it is their time.

Christian Fundamentalists v. Christian Identity Believers

Most of the people in the Freemen world fall into two categories—those claiming to be traditional Christian fundamentalists (composed of mainstream mostly Protestant denominations) and those who adhere to some or all of the teachings of Christian Identity. Both camps believe in a new Christian government, with the Christian Identity believers seeking to establish a white male-run theocracy in accordance with their unique biblical interpretations.

The religious terminology used by both fundamentalists and Identity believers at first blush appears similar. Nothing could be further from the truth.

Fundamentalists view Identity beliefs as heresy, whereas Identity practitioners see fundamentalists as misled Jew-loving traitors. The Identity movement relies heavily on its interpretation of the Old Testament to justify its beliefs that white people are the true nation of Israel, that Jews are the offspring of Satan, and that other minorities are soulless animals.

Fundamentalists believe that Jews are the true nation of Israel—an idea that infuriates Identity believers—and that all people regardless of race and gender are equal in God's eyes. Fundamentalists make no argument to justify racism while Identity-influenced groups such as the Aryan Nations and the Ku Klux Klan attempt to do so biblically, thereby justifying their supremacist and/or separatist ideas.

A further comparison of these two groups reveals that Identity believers are more prone to violence. Their white supremacist and/or separatist theology practically demands violence. Identity believers know that they are God's enforcement arm, thereby obligated to punish those of us who stray from their reading of the Old Testament's laws, which frequently require death upon violation. For example, the Old Testament compels death for a multitude of sexual behavior, including incest (Leviticus 20:11-12,14,17), adultery (Leviticus 20:10), homosexuality (Leviticus 20:13), and bestiality (Leviticus 20:15-16). Identity followers feel compelled to execute this death sentence, especially for the "abominations" of homosexuality and for those having "bestial" sexual relations with minorities (whom Identity believers consider to be soulless animals).

The theology of the Non-Identity Freemen groups is usually less violent than that of the Identity followers, but there are exceptions. How dangerous a group becomes depends almost entirely upon how its leaders interpret biblical prophecies. Within both factions exists a subset of people who are operating under the belief that the violence-filled period described by the Bible and known as the Tribulation is rapidly

approaching or has already arrived. Since the end of the world is fast approaching, they believe that they have nothing to lose. Many Common Law courts are meeting to hand out death sentences. The militia arm of their "government" is then expected to carry out the sentence as commanded by its court and required by the Bible.

While some fundamentalists and Identity believers disagree with many tenets of the other's beliefs, these groups have been increasingly able to set aside their disagreements to fulfill their one common goal—a new Christian government. The theological differences will be sorted out once they have toppled the existing democratic regime.

The racism that had long been the chief barrier to Identity recruiting efforts in rural America has been de-emphasized by the Freemen, at least until a new member's allegiance is confirmed. The Identity movement's long-held concept of a white America has now been given a new, more acceptable moniker, such as "Christian America" or "Christian Israel."

Christian Identity Expansion

How did Freemen ever provide the unifying ideology to "explain" Gordon Kahl, Ruby Ridge, and other current events for the diverse coalitions that comprise its ever-increasing membership? Through Christian Identity teachings.

It has become commonplace for Identity members to start attending a small fundamentalist Protestant congregation, and slowly over time begin to insert their Identity doctrines into meetings. By the time the pastors of the infected congregations figure out what is going on, it is too late. Either the pastor is also converted, the pastor is removed, or a sizable portion of the congregation leaves to follow Identity believers.

Pastors have also been recruited directly by being invited to meetings billed as rural chaplain seminars. While some pastors leave when the Identity message is taught, many others stay and take their new teachings to their congregations.

The Identity movement's techniques for spreading its message are working surprisingly well. A great deal of its recent success can be attributed to its new "toned-down" less racist style of recruitment. Under the guise of the antigovernment evil enemy theme, Identity followers can now interact with non-Identity people for long periods of time. Given the Identity's explanation of who is destroying rural America, their success is understandable considering the perception that rural America's way of life is being destroyed by such modern agendas as affirmative action, the environmental movement, global economics, gay rights, abortion, gun control, school prayer, flag burning and pretty much any other cause taken up by the ACLU.

As Identity spreads, so does the promotion of violence by the Freemen movement. For that reason, it is critical to carefully examine the beliefs of Identity adherents.

A History of Christian Identity Theology

From the very beginning of colonialism, American Christians have considered themselves to be a chosen nation. They see themselves set above the rest of humanity with a special responsibility for the fulfillment of biblical prophecy. Our history is replete with expectations shaped by Christian America that the United States is the culmination of God's unfolding plan for the Manifest Destiny of all nations. The English Reformation, the settlement of North America, the wars against the French and the Indians, the American Revolution, and even the Civil War established that God was powerfully at work in our midst.

This nativist thought arising out of the economic and social crises of the nineteenth century increasingly defined evil as those who were non-white, non-Protestant, and non-native born. In this view of America, evil did not exist as an abstract force but in a very real world personification.

Anti-Roman Catholicism. In the early nineteenth century, the nativist movement focused upon the massive influx of Roman Catholic immigrants, especially the Irish, as a threat to America's internal security. Anti-Catholic sentiments viewed the Catholic Church as the "Whore of Babylon," the *Revelation*

17 description of the great harlot living on the blood of the holy ones who seduces kings and leads Christians astray into idolatry for the Antichrist. A monastery in Massachusetts was burned in 1834, anti-Catholic riots erupted in New York and Philadelphia (where a seminary and two churches were burned), and an anti-Catholic party, the American Party, swept large numbers into political office on the eve of the Civil War. Following the Civil War, the American Protective Association was founded in 1887 to curb the dangers of "Romanism," limit immigration, and protect the public school system from the challenge of the parochial system.

Anti-African Americanism—The Ku Klux Klan. Following the Civil War, especially in the south, the nativist movement began to re-frame evil from religious into distinctly racial terms. Charles Carroll's THE NEGRO A BEAST exemplified this movement. Carroll argued that African-Americans were sub-human, beastly, and without a soul. Arising out of such sentiments and to "protect" southern culture from the danger of race-mixing, the Ku Klux Klan was founded in Pulaski, Tennessee on Christmas Eve, 1865.

The official application for charter membership to the KKK establishes that one must be "A believer in the tenets of Christian religion, the maintenance of white supremacy, the practice of honorable clannishness, and the principles of 'pure Americanism.'"

Why Good Freemen Drive Fords—The Jewish Conspiracy. In the beginning of the twentieth century, nativist thought combined religious and racial supremacy into a single component and focused upon the Jew as the locus of evil in American society. Automotive tycoon Henry Ford's Michigan newspaper THE DEARBORN INDEPENDENT, edited by William J. Cameron, gained notoriety in the 1920's with a seven year campaign against what Ford termed the "international Jew." The newspaper espoused anti-Semitic conspiracy theories about Jews controlling the world economy, Jewish Bolshevism (and Jewish fueled communism) exploiting the October 1929 stock market crash and economic crisis, and Jews as an evil religious force out to destroy Anglo-Saxon America. Within Ford's work are the alleged details of the High Jewish Council's (the Sanhedrin) and the Masonic Order's quest for total global domination based on the conspiracy book THE PROTOCOLS OF THE MEETINGS OF THE LEARNED ELDERS OF ZION. [5]1

PROTOCOLS promoted a one world government conspiracy theory of a secret council of Jewish elders who sought to seize world power by manipulating and ultimately taking over the world's economy and food supply through a cabal of bankers, puppet politicians, and the press. PROTOCOLS is a significant treatise in Christian Identity literature.

British Israelism. The most profound influence upon the formation of Identity ideology, though, is the theological movement from the nineteenth century known as Anglo-Israelism or British Israelism. Anglo-Israelism places the nations of Europe as descendants of the Ten Lost Tribes of Israel. In 1871, Identity's founder, Edward Hine, published and sold in England 250,000 copies of a treatise entitled

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15 One website asserts that it provides an "exact reprint" of the original PROTOCOLS OF ZION referred to in the late 1700's and published in the early 1800's. The website includes Protocols No. 1 through No. 24, and includes the following subheadings—

Gold	Jewish Super-State	Gentiles Are Stupid
Right Is Might	Christian Youth Destroyed	Gentiles Are Cattle
We Are Despots	Our Goal—World Power	We Demand Submission
We Shall End Liberty	Poison of Liberalism	We Shall Be Cruel
Destructive Education	We Name Presidents	We Shall Change History
Poverty Our Weapon	We Shall Destroy	We Shall Destroy The Clergy
We Support Communism	We Are Wolves	Government By Fear
Jews Will Be Safe	We Control The Press	We Shall Destroy Capital
We Shall Destroy God	Free Press Destroyed	We Cause Depressions
Masses Led By Lies	Only Lies Printed	Gentile States Bankrupt
Monopoly Capital	We Deceive Workers	Tyranny Of Usury
We Shall Enslave Gentiles	We Shall Forbid Christ	King Of The Jews
Universal War	Secret Societies	

Protocols of the Learned Elders of Zion (visited June 5, 1999) <http://www.ptialaska.net/%7Eswampy/illuminati/zion.html>.

IDENTIFICATION OF THE BRITISH NATION WITH LOST ISRAEL. This bestseller was brought to the United States during the latter years of the nineteenth century by Rev. W. H. Poole of Detroit.

Ford's conspiracy theories and the popular image of Jews as Shylock spread the image of the "hidden hand" of Jewish conspirators influencing history. Following World War II and the Holocaust, the widespread audience that had previously accepted this "hidden hand" message began to wane. But the movement continued.

After World War II. Dr. Wesley Swift, an ordained Alabama Methodist minister, incorporated Identity theology, especially Anglo-Israelism, into Christian Defense League rhetoric. In 1946, Swift founded the Church of Jesus Christ–Christian, which is still in operation in Hayden Lake, Idaho. It was Dr. Swift, a former Ku Klux Klan Kleagle, who was to spread the teachings of the Identity movement into the KKK and neo-Nazis in the early 1960's under the auspices of his Church of Jesus Christ–Christian.

Swift expanded on his Identity beliefs by asserting the need for paramilitary organizations to defend the movement and to help establish its goals at any cost. Swift formed the racist paramilitary California Rangers in the early 1960's; a group that formed the core of late 1960's revolutionaries, the Minutemen. The Minutemen were arrested in 1968 after blowing up a police station and attempting to rob several banks. One of its members, and a member of Swift's church, was arrested for stealing 1,400 pounds of dynamite in a plot to blow up Martin Luther King at the Hollywood Palladium. Other Swift followers preached his message throughout the United States.

When Swift died in 1970, a Swift-recruit and long-time white supremacist, Rev. Richard Bulter (a Presbyterian who received his "ordination" through the mail) and a handful of his congregation moved to Idaho near Hayden Lake to establish a "Promised Land"—a whites-only martially run self-enclosed enclave and continued Identity teachings. As a follower of Butler puts it, "You have Detroit for your niggers, and we'll have the Northwest for our Aryans." From this central church and compound at Hayden Lake, the gospel of Christian Identity would be used to consolidate the splinter groups of the hate movement into an army of God against the evil United States government a.k.a. ZOG—Zionist Occupation Government.

Ruby Ridge's Randy Weaver is an associate of Richard Bulter and Kevin Harris (a friend of Gordon Kahl since high school.

Freemen commonly use the word "Usurers" to describe Jewish bankers whom they claim are running our country through ZOG.

Christian Identity Beliefs 101

Christian Identity, which is also known as Christian America, Christian Israel, British Israelism, Israel Identity, Anglo-Israelism, or Kingdom of God, does not consider itself to be a new sect or denomination, but rather believes itself to be a group of orthodox Christians who accept the Bible as the inspired and hence literally true Word of God. While affirming their belief in God, Jesus, and the Holy Spirit, they generally stop short of belief in the Trinity. Their belief in the literal truth of the Bible is manifested by a firm belief in the biblical account of creation as described in *Genesis*, the virgin birth of Jesus, the personal return of Jesus to earth, and the final battle to be fought between the Israel of God and the enemies of Jesus. Following the tradition of free church Protestantism, two ordinances, baptism (by immersion) and communion are practiced. *See* the Appendix, at 21-23, for a Christian Identity church's statement of beliefs.

Some Christian Identity groups have also adopted both sabbatharianism and sacred name emphases from Adventism. Joe Jeffers, head of the Kingdom of Yahweh, was possibly the first person to combine a belief in the Identity hypothesis with the keeping of the Sabbath on Saturday and the use of transliterations of the Hebrew names of the Creator and His Son (Yahweh and Yahshua) in place of God and Jesus.

Christian Identity is most at variance with the larger body of Christian theology with its belief that the Anglo-Saxon, Celtic, Scandinavian, Germanic, and related peoples (often called the "Christian nations") are the direct racial descendants of the tribes of Israel and that for two thousand years the world has mistaken

the true identity of the Jews. As such direct descendants, Christian Identity followers deem themselves to be God's Chosen People, the heirs of all God's biblical promises to Abraham and his progeny.

The ten lost tribes of Israel, the former northern kingdom, are sharply distinguished from Judah, the ancient southern kingdom centered around Jerusalem, which consisted of the tribes of Judah, Benjamin, and some Levites. Christian Identity sees Israel first of all as a nation (a land) and then as a church. Great Britain and the United States possess what God decreed Israel was to possess, and are doing what Israel was to do. Christian Identity makes a sharp distinction between present day Anglo-Saxons (the true "Israelites") and present day Jews (Judah).

The New Covenant first mentioned by the prophet Jeremiah was made with Israel, and Jesus Christ came to confirm that covenant and hence to redeem Israel. Jesus' death re-established the relationship between Israel and God that was broken at the time just prior to Israel's being cast out of the Holy Land. II *Kings* 17.

Christian Identity's roots come from its reading of *Genesis*. Identity teaches that God's first creation produced "the beasts of the field" or "mud people" along with the other soulless animals and subhumans. These "beasts" lived outside the Garden of Eden. They were a sort of subhuman species that had more in common with beasts than men.

God then created white Adam "in his own image." Adam was not the first man, but the first white man. Eve was thereafter created from one of Adam's ribs. Since the female was created from a male and not "from scratch" like Adam, females must be subordinate to males. The true Jews, the descendants of the patriarchs and those God called his "Chosen People," are the people of Western Europe. The people known today as Jews are actually an Asian race, the "Khazars" (Ashkenazim), that descended from the seed of Satan (the serpent) which was planted in Eve's womb when she was seduced by Satan (who was disguised as a white man) and the Forbidden Fruit in the Garden of Eden. (Jewish Talmud, *Yebamoth* 103a-103b, the serpent "copulated" with Eve…)

Eve first gave birth to Cain, "the spawn of Satan," and then Adam's white son Abel. Cain, in Satan's first effort to eliminate whites, slew Abel after God rejected Cain's satanic offering. God cursed Cain, and set a mark upon Cain so that no one would kill him.

Cain then ran away to live and inter-breed with the subhuman non-whites. Some blacks and other non-whites are descendants of the seed of Satan through Cain. Eve then gave birth to Adam's second child, Seth, thereby ensuring survival of God's white race.

The heirs of Satan and Cain created Baal, which Freemen use as an interchangeable description for the current government. Thus, all who serve as government employees are deemed to be fornicating blood-mixing prophets of Baal. *See Numbers* 25:1-18, and *Baal Worship and the Phineas Priesthood*, *infra*. [16]

The direct descendants of Cain, the people called Jews today, crucified Jesus. Throughout the history of humanity, the descendants of Satan/Cain have attempted to eradicate the progeny of Adam. The Bible is a history of this struggle. The Revelation to John, or the Apocalypse, is the prophecy regarding the end of this struggle between whites (good) and evil (Jews, Blacks, minorities, Roman Catholics).

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16 Montana Freemen LeRoy Schweitzer's Common Law course materials give clear direction on what to do about the prophets of Baal. "Seize the prophets of Baal; let not one of them escape…and kill them there!…Prophets of Baal represent our so-called congress and/or state legislators…Satans of today, creating and passing manmade laws, regulations, codes, rules and polices, under color of law…"

Once the modern-day Satans are removed, Schweitzer taught that a de jure government must be established pursuant to the Holy Scriptures. This de jure government was ordered by God, and was therefore superior to state or federal governments, which are termed "foreign governments."

These de jure governments would constitute a "Trinity of government" as follows—the national branch (God) would be headed by the supreme judiciary branch; the state government (Son) would be headed by the executive branch; and the county government (Holy Spirit) would be headed by the legislative branch.

According to Christian Identity, the white race is biblical Israel. Isaac's white sons (Saxons) crossed the Caucasus Mountains hundreds of years before the birth of Jesus to settle in the British Isles, thus forming "British Israel," where the "Chosen People" eventually received God's Magna Carta. This migration to the British Isles occurred around 975 B.C., when the ten northern tribes of Israel were captured and taken into captivity by the Assyrians. Two of the ten tribes, Ephraim and Manasseh, migrated virtually intact through the Caucasus Mountains into northwestern Europe. Ephraim was to become "a company of nations" — the British Commonwealth.

The second son of Joseph, Manasseh, was to become a "great nation" — the United States. Identity teaches that the Manasseh tribe crossed the Atlantic aboard the Mayflower to America. In America, God gave them such sacred documents as the Declaration of Independence, the Constitution, and the Bill of Rights. Thus, the united States of America is the holy country of the House of David and white people who settled it are entitled to the country through divine convenant. Accordingly, the documents of our founding fathers are considered sacred and stand in continuity with the covenant of Abraham. Identity believers only respond to this higher law and morality as defined in the Bible and God's divine will as expressed in the writings of our founding fathers.

Inherent in Identity thought is a dualism. A mythology that posits the white race as the Children of Israel, the highest expression of good, must also construct an evil. For Identity followers, this evil takes the form of the "false" children of Israel—what we call Judaism. As the Assyrians were transporting the Northern tribes of Israel in the eighth century B.C., the Southern tribes of Judah were conquered by the Babylonians and transported into exile. It is during this period that the Identity movement sees Judaism as separating itself from its Old Testament background and falling into heresy. In Babylonia, the people of Judah fell under the influence of pagan beliefs and were introduced to the "black" magic of Satan. The product of this period is the "Babylonian" Talmud, one of the central documents of the Jewish religion and the foundation of Rabbinical Judaism.

In addition, the people of Judea fell into even greater desertion of their faith. Under the reign of the benevolent King Cyrus and the Persians, the people of Judea were allowed to return to the Holy Land to rebuild the Holy Temple of Solomon. During this period, the people of the Southern Kingdom intermarried with the Edomites (Africans) and began to take on the "dark" features of the native Africans.

All people not of Northern European extraction are lumped by Identity into a category of soulless subhumans called "mud people." When the people of the Southern Kingdom intermarried with the "mud people," they committed a crime against God by having intercourse with beasts. *Leviticus* 20:15-16.

In order for the second coming of Christ to occur, God's law on Earth must first be established through a great battle between good and evil, Armageddon. In this battle, the forces of good—the white "Israelites"—will be pitted against the armies of Satan, represented by the Jewish-controlled one world government. Identity followers will wage an all-out war against ZOG, "race traitors," and anyone else who stands in the way of their effort to establish a Christian Identity government suitable for Christ. Since this battle is close at hand, Identity adherents advocate keeping a well-stocked arsenal and readily accessible survival gear.

Just as with the earlier nativist movement, a shift occurred from a religious conception of evil to a racial one. It is the construction of evil in starkly racial terms that is Christian Identity. When a white person recognizes his or her "identity" as a member of the Nation of Israel, the person will be compelled to act in a manner consistent with this ideology. In the apocalyptic struggle between good and evil that is biblically destined to come, the Identity movement offers salvation. A salvation by race alone.

Identity (which rejects rapture) also condemns the "Rapture Hoax" as being sponsored by state supported (those churches receiving tax-free status from the government) "Baal churches" to lull "marshmallow Christianity" into a false sense of security. This "hoax" prevents "Baal church" members from having active concern about the immediacy and even the necessity of the impending apocalypse. It is this sense of necessity that pushes the Identity movement into violent confrontations with the unholy

government to precipitate a race war. Since there is no rapture, Identity followers see prophecy being fulfilled in their midst because evidence of the Tribulation is so clear.

These are the end-times and the signs are everywhere apparent to those who have the power to see. While the threat from Jews, minorities, gays, etc. is very real to Identity believers, the greatest threat is from "city-living white Christians and 'do-gooders' who have fought for the rights of these groups." Those who have succumbed to "Judeo-Christianity" are being led by Jewish-trained theologians and duped into blindness of the threat that is posed by a Satanic conspiracy to end the white race.

The Jesus of the Identity faith is a member of the House of David and of the true Nation of Israel, the united States of America. One must remember that Jesus is distinctly white, and as God, was a militant, an extremist, a paramilitarist, a racist, and a Jew-hater whose only mission was to find the lost sheep—the true Nation of Israel. *Matthew* 15:24.

The responsibility for the salvation of the white race lies with those who recognize their "identity" and struggle to endure and overcome the Tribulation. Identity gospel teaches that those who overcome evil and survive Rahowa (the racial holy war) will be the "Elect" of the new Kingdom of God. The "Elect" are the "soldier saviors" who have prepared for the Tribulation by paramilitary training, building fortifications, stockpiling weapons and supplies, and educating themselves regarding their "identity" and its ensuing responsibility. As Identity Pastor Richard Butler preached from his pulpit in Hayden Lake—

> The white youth of this nation shall utilize every method and option available to them to neutralize and, quite possibly, engage in the wholesale extermination of subhuman non-Aryan peoples from the face of the North American continent. Men, women, and children, without appeal, who are of non-Aryan blood shall be terminated or expelled.

Richard Butler, quoted in Simon Winchester and Steven Lerner, *Idaho's Half-Baked Messiah,* Present Tense 14: no. 4, May/June, 1987, at 10.

Life's complexities are rendered negligible within this ideology. All historical and current events are controlled and manipulated by this hidden and powerful conspiratorial force called evil. This interpretation of the Bible and the coming Battle of Armageddon between good and evil as described in *Revelation* virtually demands a prompt and holy response. Anyone, regardless of intellect, can grasp this simple explanation. That is the appeal of the Identity movement.

Baal Worship and the Phinehas Priesthood

The Priests of Phinehas (also spelled "Phineas") are a product of the Christian Identity movement; a very radical fringe of the movement. The priesthood group is highly fanatical, espousing deadly beliefs even beyond the wildest tenets of Identity. The Priests especially hate black and women's groups, and are may well be involved in bombings of abortion clinics and black churches.

The most vile of all evils to a Phinehas Priest is to be "biologically lawless"—that is, Anglo-Saxons (who alone are the true Israelites) mixing bloodlines with a non-Anglo-Saxons through inter-racial copulation. Priests of Phinehas believe that this "blood-mixing" is the sin God praised Phinehas for stopping.

The name for the brotherhood comes from the Old Testament in *Numbers* 25:1-18. Moabites and Midianites[17] worshipped their pagan god Baal.[18] Women from these tribes offered their "pleasures" to the

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17 Lot, Abraham's nephew, impregnated his eldest daughter who gave birth to Moab ("from my father") and his descendants the Moabites. *Genesis* 19:37.

Midian was one son by Abraham and Keturah. *Genesis* 25:1-2. Midian's descendants, the Midianites (Madianites), were a nomadic tribe who moved their flocks from Southern Arabia to Egypt and the Dead Sea. (Moses sought refuge with the Midianites when he was fleeing from Egypt, and ultimately took a Midian wife, Zipporah. *Exodus* 2:15-22).

Shortly before Israel's final advance for Palestine, the Moabites had been deprived of some of their territory. Moab's king, Balak feared and hated the Israelites because of their numbers and Israel's recent victory over the Amorites. So, Balak contacted the elders of Midian to form a temporary alliance against the Israelites. Balak hired Balaam to curse the Hebrew tribes. Balaam failed in his

men of Israel. Along with the "pleasures," the women strongly influenced, if not required the men to participate in their "evil" worship of Baal of Peor.[19] They committed open acts of physical fornication as "proof" of their allegiance to Baal as required by that god. For their obscene open acts and worship of Baal, both "carnal and spiritual whoredom," God severely punished Israel for being easily seduced into leaving their spiritual allegiance to Yahweh to adopt the sensual pagan religion of Baal.

An Israelite priest named Phinehas, the son of Eleazar, the son of Aaron the priest, saved the children of God from further plague by driving a spear with one mighty thrust through the heart of a wayward member of the tribe and at the same time through the belly of a Midianite woman while they were copulating in their tent after purposely fornicating at the door of the tabernacle in full view of Moses and the whole Israelite community. Phinehas' act resulted in God stopping the slaughter of the wicked Israelites, but only after 24,000 had died through battles with other clans.

God was pleased with Phinehas' zeal and told Moses of this good act. God promised an everlasting priesthood for Phinehas and his descendents.

Phinehas Priests believe that the Midianite woman killed by Phinehas was black because the name Midianite to them is a code-word for midnight (and dark skin). And they believe that they bear the responsibility for cleansing the races by killing those who mix races. The modern Priests of Phinehas organization is the heir to that covenant.

The Priests defense for their taking violent action against the social wickedness that our civil government refuses to stop is that being the proper descendents of Phinehas and his covenant, they have the God-given right to violently act as did Phinehas against obvious social evils. This includes any social evil worthy of "judgment."

When the civil authority fails to execute righteous judgment—that is, uphold biblical law—God has given these Priests the authority to execute that judgment, i.e. the permission to do that which is otherwise unlawful. Though not advocating outright taking of the lives of the ungodly, their writings strongly imply that such action by select private individuals is authorized directly by God.

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attempts, and the expected curses were divinely changed into blessings. *Numbers* 22-24.

After Balaam's failed attempts, Balak developed a successful plan to use the daughters of Moab and Midian to entice the Israelite men to participate in the obscene worship of Baal. *Numbers* 25.

18 Baal (Hebrew Ba'al), or the plural Baalim, is a word which belongs to the ancient Semitic peoples, and primarily means "lord" or "owner." So in Hebrew a man is styled baal of a house, of a field, of cattle, of wealth, or even of a wife.

"Baal" was also used to describe innumerable ancient local deities controlling fertility of the soil and the forces of nature, and often was discussed in relationship to geographic locations such as Baal of Tyre, Baal of Harran, Baal of Tarsus, or Ball of Lebanon. Since the various baals were not everywhere conceived as identical, they may not be regarded as local variations of the same deity. A general belief existed, though, that every tract of ground owed its productivity to a supernatural being, or baal, that dwelt there.

Worship practices included burning of incense and perfumes, consumption of libations, sacrifices of oxen and other animals, and perhaps not infrequently children of both sexes were burned in sacrifice to Baal. In several shrines, long trains of priests clad in special attire performed the sacred function of shouting to Baal, dancing around the alter, and in their frenzied excitement cut themselves with knives until they were all covered with blood. In the meantime, lay worshippers prayed, kneeled, and paid their homage by kissing images or symbols of Baal.

At several shrines, in honor to Baal (as the male of reproduction) and his mate, the Canaanite goddess Asherah, worship demanded public copulation and prostitution at the alter with much sensuality to ensure fertility of the land for crops, fruit and cattle. Sacred wooden poles (asherot) were erected in Asherah's honor, along with the erection of stone pillars (massebot) in honor of Baal. Both were placed near the alter in a Canaanite shrine. *See Exodus* 34:13; *Judges* 6:25,28.

Sources: *Baal: The Pagan God of Fertility* (visited June 5, 1999) <http://giraffe.rmplc.co.uk/eduweb/sites/sbs777/snotes/note1112.html>; *The Catholic Encyclopedia Baal, Ballim* (visited June 5, 1999) <http://www.knight.org/advent/cathen/ 02175a.htm>; JOHN R. HINNELLS, A NEW DICTIONARY OF RELIGIONS (Penguin Books Ltd. 1995), at 37-38, 381-82.

19 Baal-peor (or Beelphegor or variations thereof) was the baal of Mt. Phogor, or Peor, a mountain of Moab. Baal-peor was the god of the fertility of the soil and the increase of the flocks. *The Catholic Encyclopedia Beelphegor* (visited June 5, 1999) <http://www.Knight.org/advent/cathen/023886b.htm>.

The Priesthood is divided into two schools of thought—those who believe "Phinehas" acts can entitle one to become a member; and those who believe that only men of Phinehas' lineage from Aaron may become such a priest. Lineage followers concede that there is no way for one to "prove" descent from Aaron, but such a "minor" problem does not seem to matter. Under either theory, the Priesthood is for life upon sanction of death if one attempts to leave the brotherhood.

The Phinehas Priest movement is apparently of the "Phinehas' act" school. In order to attain priesthood, the highest order in the Phinehas brotherhood, a member has to commit the act of Phinehas—kill a woman or man who indulged in race mixing, homosexuality or other offense from their list of mortal sins.

Whether the story of Phinehas proves as Phinehas Priests claim that God has empowered certain men to act unlawfully by the sword is certainly subject to debate. Mainstream faiths believe that Phinehas was not acting unlawfully, but rather was acting lawfully as a member of a group specifically commanded by Moses to kill the transgressors.

While many in the Christian Identity movement reject the Phinehas Priesthood,[20] most believe that Baal worship is rampant in our "sex crazed" world. Identity followers argue that our government's failure to make any effort to curb various biblical sins of morality[21] (or for government leaders to actually be involved in such activities) for which Israel was punished due to their Baal-Peor worship will again result in a severe divine punishment. And conspiracy followers see this as further proof of an evil satanic government that must be rejected.

Such a debate will be left for another forum. Be assured, though, that Priests of Phinehas believe that to save Christian Israel, they are entitled to murder transgressing Anglo-Saxons along with the Mud People who commit blood-mixing with Anglo-Saxons.

The Washington Monument?

Identity followers offer the Washington Monument as proof that our government is actually being run by Rome (i.e. Roman Catholics), who are the Antichrist's agents. Here is their theory—

> Roman law overlays the land and is the law of the land, thereby displacing the documents of God's law and of the founding fathers. The takeover of the law was punctuated by the erection of the obelisk in Washington's name, a phallic obelisk that copies the one in St. Peter's Square, Rome. The Washington Monument was sponsored by Rome, and represents the shadow of the Egyptian sun god Ra. The obelisk punctuates the circle, St. Peter's Square, which is not a circle, to signify intercourse and other abominable actions by demonic gods with the earth. The resulting secret religious system is the Beastly government, which is a shadow, and receives its power by the slaughter and shedding of blood of the Christians.

Identity followers also argue that the monument is a Baal-Peor phallic worship symbol similar to the one's erected beside the alter of Baal. *See* the discussion of Baal-Peor in the previous section.

For more information on Rome's place in this one world government takeover by the Antichrist, *see What is a Christian Appellation?, infra*.

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20 For an interesting Christian Identity strong response against the Phinehas Priesthood, *see* Evangelist Ted R. Weiland, *The Phinehas Hoods—A Biblical Examination of Unscriptural Vigilantism* (visited June 5, 1999) <http://www.missiontoisrael.org/ Phinehas-Hoods.html>. The article argues that if the sin God punished in *Numbers* 25 was race-mixing, then Moses promoted race-mixing since he spared the Midianite virgins for the Israelite men as permitted by *Deuteronomy* 21:10-14. *Numbers* 31:17-18.

21 Baal-Peor sexual debauchery include adultery (sexual acts with a person other than your spouse, *Exodus* 20:14, *Leviticus* 20:10, *Proverbs* 6:32, *Jeremiah* 23:14), fornication/whoredom (sexual acts between unmarried persons for pleasure or profit, *Leviticus* 19:29, 1 *Corinthians* 6:18), sexual acts between relatives (*Deuteronomy* 27:22-23, *Leviticus* 20:12), homosexuality (*Leviticus* 20:13, *Deuteronomy* 23:17, *Genesis* 13:13, *Genesis* 18:20-21, *Romans* 1:18-32), and bestiality (*Exodus* 22:19, *Leviticus* 18:23, *Leviticus* 20:16, *Deuteronomy* 27:21).

We the People are not Racists!

After observing the Identity interpretation of biblical creationism, it is easy to see why the movement's adherents have a hard time believing that they are racists. After all, can you be racist over goats or chickens? Can you be called a racist for despising Satan and his Jewish offspring? How can you be a racist if the group you are accused of subjugating is not even human? Of course, taking these beliefs to their logical end opens the door to far more heinous transgression and violence than mere racism, including murder and genocide through ethic cleansing.

THE TURNER DIARIES

In 1978, the MEIN KAMPF of a new generation was published under the auspices of the Nation Alliance, a fusion of KKK and Nazi organizations that evolved out of George Wallace's presidential campaign of 1972. THE TURNER DIARIES (Arlington: National Vanguard Books, 1978), written by Andrew MacDonald a.k.a. William Pierce (director of the National Alliance) is an apocalyptic manifesto that not only details the coming race war but also lays out the strategy and mechanisms for accomplishing it through Identity teachings. Pierce described his book as a "blueprint," a "Handbook for White Victory."

THE TURNER DIARIES describes the struggle of Earl Turner against the "jewish-liberal-democratic plague" that has turned America into "a swarming horde of indifferent, mulatto, zombies." The American public has been disarmed as a result of gun control legislation. They are controlled by bands of armed and often Black police known as Human Rights Councils. Rape laws have been ruled discriminatory and sexual debauchery has "reached a level that would have been unimaginable only two or three years ago. The queers, the fetishists, the mixed-race couples, and the exhibitionists are parading their perversions in public." In this violent and racist novel, Turner and his cohorts in the "Organization" (and the even more elite secret society, the "Order") wage war against the government of the United States.

The book meticulously details a series of terrorist bombings, counterfeiting rings, political assassinations, armed car and bank robberies, and wholesale military assaults upon "the System" set in the waning years of the twentieth century. In the final cataclysmic struggle, chemical and nuclear weapons assaults are launched upon a number of metropolitan areas so as to secure control of the United States for the "Organization," thereby establishing a political order based on the ethnic cleansing of the population.

In the end, the "Great Revolution" is accomplished in "…the year 1999, according to the chronology of the Old Era—just 110 years after the birth of the Great One [Adolph Hitler]—that the dream of a White world finally became a certainty."

Although fiction, THE TURNER DIARIES became the blueprint for a series of paramilitary strikes originating out of Identity encampments throughout the United States in the middle of the 1980's. The Order, an organization directly inspired by THE TURNER DIARIES, engaged in a series of bombings, robberies (obtaining $4 million from armored cars) and attacks on federal officers in the early 1980's. The Order was led by Robert Jay Matthews, who died in a 1984 fire started by FBI flares after a 35-hour standoff on Whidbey Island near Seattle. Officials have suggested, but never proved, that Pierce received some of the money.

Gordan Kahl, whose story was discussed previously, was also influenced by this book. And Timothy McVeigh was in possession of excerpts from the book at the time of his arrest for the Oklahoma City bombing (which was patterned on a similar bombing depicted in THE TURNER DIARIES).

> The first thing I saw in the moonlight was the placard with its legend in large, block letters: "I defiled my race." Above the placard leered the horribly bloated, purplish face of a young woman, her eyes wide open and bulging, her mouth agape. Finally I could make out the thin, vertical line of rope disappearing into the branches above. Apparently the rope had slipped a bit or the branch to which it was tied had sagged, until the woman's feet were resting on the pavement, given the uncanny appearance of a corpse standing upright of its own volition.

> I shuddered and quickly went on my way. There are many thousands of hanging female corpses like that in this city tonight, all wearing identical placards around their necks. They are the white women who were married to or living with Blacks, with Jews, or with other non-white males.

WILLIAM PIERCE, THE TURNER DIARIES (Arlington: National Vanguard Books 1978). Quoted in JAMES RIDGEWAY, BLOOD IN THE FACE (New York: Thunder's Mouth Press, 1995), at 12.

The most recent book by the author of THE TURNER DIARIES, entitled HUNTER (Arlington: National Vanguard Books 1989), depicts the assassinations of interracial couples, Jews and politicians, and shows what one man can do before the final solution of THE TURNER DIARIES. The book is dedicated to Joseph Paul Franklin, convicted of the sniper murders of at least two black men.

> Oscar Yeager, a former combat pilot in Vietnam, now a comfortable yuppie working as a defense department consultant in the Virginia suburbs of the nation's capital, faces this question. He surveys the race mixing, the open homosexuality, the growing influence of drugs, the darkening complexion of the population as the tide of non-white immigration swells. He finds that for him, there is no choice at all: he is compelled to fight the evil which afflicts America in the 1990's: his conscience will not let him ignore it and joining it is inconceivable.

Recognizing the inevitability of loss in a military confrontation with the United States government, this new theory of war in HUNTER has been advanced in recognition of the tremendous potential of decentralized terrorism and the relative inability of the government to respond to such a threat.

On the 100th anniversary of Adolf Hitler's birth on April 20, 1989, Pierce editorialized that the Nazi leader was "the greatest man of our era."

It is clear that radical Identity followers' thirst for righteousness gained through other people's blood is limitless. They are well organized and heavily armed, and are fully committed to a holy war that has already been declared. They will continue to be a deadly force in America for many years to come.

Christian Identity Martyrdom

While many of the violent Identity leaders were arrested in the 1980's, the ideological apparatus has not decreased Identity's appeal to numbers of dispossessed and disenchanted young people seeking an outlet for their frustrated ambitions.

Identity thrives on martyrs, and the death or imprisonment of a leader only serves to proliferate a biblical message among an audience who already feels besieged and can easily explain political repression within the contexts of conspiracy theory.

Not surprisingly, Identity flourishes in prison where race is often the lowest common denominator and where Identity ideology serves as a link between the prisoners and those who run the prisons. As a black prisoner from Lucasville Prison in Ohio described the situation following a 1993 prison riot, "Everything there is straight-up politics on the white side, the Aryans control everything, drugs, prostitution, and getting the best jobs." What was seen as a punishment for sedition is producing a whole new generation of biblical insurrectionaries.

As discussed in the Introduction, the Identity movement has no shortage of martyrs, beginning with Gordon Kahl, Randy Weaver's family, and the Waco "Holocaust." The Identity media continues to assert that the entire Waco "Holocaust" was precipitated by the Anti-Defamation League of the B'nai B'rith against the Anglo-Israelite Davidians because of their Identity beliefs and the League's satanic desire to further the agenda of a one world government and the elimination of Christianity. Their press places great significance on the fact that the CS gas used against the white Davidians was developed by the Israeli military and has been used by the Israelis against Palestinian "refugees."

Photographs of the seventeen children who died at the hands of the "Clinton Government" at Waco are routinely printed as proof of this uniquely American tragedy. Could there be any better "proof" of the Tribulation than the "murder" of Identity children at the hands of the satanic government? The articles often conclude by asserting that Identity followers are not some volunteer force in God's Christian Army, but were chosen (or drafted) by God to follow His will and teachings.

Virtually any action taken by our government is seen as proof of the accuracy of Identity teachings., and martyrs certainly inspire others in their world, especially among the young, angry skinhead groups which are more than willing to use violence. While many Identity followers are now quietly waiting for the moment when they will be called upon to become a warrior and strike a blow against Satan's government, our world should not underestimate the powerful impact of Identity teachings on these believers.

THE COMMON LAW AND ITS COURTS

> Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.

Olmstead v. United States, 277 U.S. 438, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting).

> At the onset we note our belief that the common denominator for all of the issues before us is Terpstra's failure to grasp the legal principles germane to this lawsuit. Terpstra's brief and reply brief reflect the careful typing effort put into them, but lacking are sound legal arguments supported by persuasive authority. A layman who merely extracts a sentence or two from a case containing language believed to be relevant risks the very grave danger of misstating the law or reaching inappropriate legal conclusions. A sincere subjective belief by a party as to the correctness of his argument is not enough to ensure success when, as here, the arguments are broad, abstract and contrary to current law. Terpstra's lack of trained legal counsel surely contributed to the substantive and procedural flaws evident in his briefs.

Terpstra v. Farmers and Merchants Bank, 483 N.E.2d 749 (Ind.App.3 Dist. 1985) (Terpstra filed numerous Common Law liens against real property owners and bank. Owners and bank brought "equitable" action to remove cloud from title. Terpstra claimed action was at law, entitling him to a jury trial on the law and facts. Summary judgment was granted, and Terpstra appealed. Opinion also discusses "choice of counsel" assistance of non-bar association persons.)

America On Trial

The Freemen movement's Common Law courts are putting America on trial. After decades of watching people with money get preferential treatment, while those with little or no means have been carted off to our overflowing prisons and/or have lost their property to foreclosure, rural America is fighting back. The Common Law courts that now exist in almost every state in the country and are spreading like wildfire for one simple reason—Common Law proponents claim that their system puts the poor on an equal footing with the monied and the powerful.

While our government authorities play catch-up trying to cope with the threat of the Freemen movement's militias, Common Law courts have surged past the militias as the most influential and rapidly growing element of the Freemen phenomenon.

Sovereign Citizens v. 14th Amendment Citizens

The touchstone of the Freemen movement is the belief in the sovereignty of the individual—that citizens can take certain steps to legally remove themselves from the authority of our government. The idea is that if the government will not help, then Sovereign Citizens will simply govern themselves.

These self-designated Sovereigns claim that their actions are political, but as with many of the movement's beliefs, they are more rooted in economics. If not, then it is a huge coincidence that the majority of sovereigns owe back taxes, cannot afford to have taxes taken out of their paychecks, have had run-ins with the IRS, and/or are in bankruptcy court.

Rural Americans are having trouble making ends meet. If these people did not have to pay city, state, and federal taxes—a distinct benefit of becoming a sovereign—their limited financial resources would go further. Sovereignty is a complicated, contrived argument designed to free people from a government system that they can no longer financially afford to support.

In most instances, the movement's sovereignty concept is derived from a hyper-literal interpretation of the Constitution. Sovereigns claim that there are two types of citizens described in the founding document—Fourteenth Amendment citizens and "natural" citizens.

Fourteenth Amendment citizens are those who received their citizenship from the federal government shortly after the Civil War through the Reconstruction Amendments. Those in the movement view this type of citizenship as second class because people "granted" citizenship by the federal or state government must therefore abide by its rules and regulations, including taxes.

"Natural" citizens are born in this country, and are Sovereign at birth since their sovereignty is God-given and unalienable. Sovereigns do not need to be "granted" any rights since God, not government, bestows rights to His people. Sovereigns claim that the federal government's true jurisdiction covers only a ten-square mile area around Washington, D.C., plus U.S. territories like Guam and Puerto Rico, and that its authority only pertains to Fourteenth Amendment citizens.

Sovereignty disciples say that most "natural" citizens have been duped into Fourteenth Amendment status by establishing a contractual relationship with the government, a status which has converted a Sovereign's Natural Rights into government issued "Privileges." The 14th Amendment "adhesion" contracts to which Freemen refer include—

- social security numbers and cards
- passports
- having filed a federal tax return
- driver's licenses
- vehicle registrations and tags
- voter registrations
- professional licenses (attorney, doctor, architect, engineer, etc.)
- birth certificates
- being a director of a corporation
- government marriage licenses
- having children in a government school

How to Become a Sovereign

But "natural" citizens can be "unduped." Freemen teach that people can reclaim their "natural" sovereignty status by rescinding all their "illegal" (often termed "adhesion") 14th Amendment contracts with the government. Freemen recognize that those accepting 14th Amendment citizenship and benefits are bound by our government's restrictions on that citizenship. So, those wishing to revert to their sovereign status must renounce their United States citizenship (federal citizenship) by divesting themselves of all 14th Amendment "adhesion" contracts, including rescinding one's social security number, driver's license, and the other 14th Amendment adhesion contracts discussed previously.

A Declaration of Independence or "Affidavit of Truth" should thereafter be prepared, published, filed with the county recorder (auditor), and sent to all governmental authorities to give notice of the Sovereign status. Once all 14th Amendment adhesion contracts are rescinded and notice of the sovereign status is prepared and served on the proper parties, and so long as you do not reside in the District of Columbia (the only place seen by Freemen as exclusive federal citizenship), a Common Law court will issue a judgment recognizing your sovereign citizenship.

If you are male, and white!

What is the Common Law?

One's attempt to define the Common Law of their system is far from easy. Different groups within the movement have developed their own "local" versions of the Common Law. Some see it as only the Bible. Others see a somewhat expanded view. We will attempt to describe it based on our Freemen experiences.

Freemen call their law "Common Law" and their courts "Common Law Courts" or "Our one supreme Court." Common Law is to be distinguished from statutory law, just as it is for those in our world who use the term "common law," although usually not capitalized. Past this point, though, our world and their world radically diverges.

Common Law not only trumps statutory law (at least for Sovereign Citizens), but is legitimate God-given law in contrast with statutory manmade law which is not. As Freemen put it, in their united States of America (a group of sovereign States banded together) the Law (Common Law) prevails. In contrast, the other United States (one entity with 50 political subdivisions called states), which lacks authority over Sovereign Citizens, is a Legislative Democracy with Legislative Courts that apply Statutory Law, Rules and Regulations.

The Common Law is law pursuant to the Word of God, and Freemen's legal documents are often filled with biblical references and quotations. While Freemen consult the Bible as often as they do BLACK'S LAW DICTIONARY, the Bible is not, however, the only source of their law. This is not surprising since Freemen claim to be the legitimate followers of the law, a law bastardized by our system. To legitimize their law, they claim adherence to documents we also recognize.

Unfortunately, the Common Law and its courts reveal weaknesses in our system's ability to respond. While every system has weaknesses, they are rarely so vividly apparent. So, any Common Law court that purports to judge our State is powerful because it mocks the notion that any law (ours) can control power (their courts).

Overlapping Law—Theirs and Ours

The precepts their group considers law overlap in part with ours. This is especially useful in Freemen recruiting efforts since our basic legal documents discussed in any high school civics class also form the underlying basis for their law. The Bill of Rights, for example, is law in the Common Law Courts and in our courts. On the other hand, their group rejects many, if not most, of the rules that are considered law by most Americans and by our judges.

Under their law, the income tax is unconstitutional, social security numbers are a mark of second-class citizenship, state laws requiring licenses to drive (except for those traveling "in commerce" under the Commerce Clause) are a violation of their constitutional Right to Travel, and most importantly, federal and state court jurisdiction over Sovereign Citizens is invalid.

The Magna Carta

The Magna Carta was the culmination of a protest against the arbitrary rule of King John, who was using governmental powers for selfish and tyrannical purposes. On June 15, 1215, King John assented to the charter because of the threat of armed might by barons. The document announced the rule of law over kings, and provided the foundation upon which the entire structure of Anglo-American constitutional liberties was built. Freemen see the document as God-inspired, and cite to the last sentence of the first article—

> We have granted moreover to all *free men* of our *kingdom* for us and our heirs forever all the liberties written below, to be had and holden by themselves and their heirs from us and our heirs.

(Italics added.)

The document is replete with discussion about the rights of free men and their kingdom, along with a statement that any infringement of liberties granted therein shall be "invalid and void." Our common law that developed over the centuries due to the Magna Carta is believed by Freemen to be legitimate law inspired by God.

The Declaration of Independence

This July 4, 1776 revolutionary document is significant in both our worlds. Freemen look to its references to God as proof of their right to ignore any government that has clearly lost its godly way.

> We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; *that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government*…But when a long train of abuses and usurpations, pursing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.…

(Italics added.) *See* the Appendix, at 24, for a copy of the Declaration of Independence for the thirteen "united States of America." For Freemen, this spelling is vindication of their belief system.

The United States Constitution—"We the People …"

Second to the Bible, there is no greater influence on the Freemen movement than the United States Constitution. As Freemen correctly point out, originally the Constitution, our supreme law emanating from the people (and God), had no title but simply began "We the People."

In their united States of America, the "Basic Constitution" is law, including the original Constitution and the first ten amendments but little else. Freemen go to great lengths to point out that the Declaration of Independence and the Constitution were created (through Divine guidance) by free white "Preamble People," i.e. men, for Preamble People. Freemen conclude from this that "Black People" are "second class" or lessor beings [note Christian Identity beliefs about minorities], just as the Bible says. As will be discussed, this second class (federal) citizenship theory is precisely what Freemen claim was "granted" by the government to minorities with the Civil War Amendments.

The Preamble People's Citizenship was not "created" nor "granted" by any Constitution since this Citizenship was won by war with England. This Citizenship existed from the time our government was created; a citizenship which cannot be relinquished or forfeited without the Sovereign Citizen's consent.

It is this "Basic Constitution" that is central to Freemen, as is the division of government into three branches. Article III describes the judicial branch and the one supreme Court. Other courts formed by congressional action constitute Article I Legislative Courts, which can have no power over the one supreme Court. Indeed, Freemen derive the names for their "legitimate" courts from the Constitution.

> The Constitution of the united States of America, Article III, Section I, states
>
> "The judicial Power of the United States, shall be vested in *one supreme Court,* and in such inferior Courts as the Congress may from time to time ordain and establish …" (emphasis added [by the community])
>
> Notice that it states "one supreme Court" and separates it from any other courts that are established by legislative acts of Congress and that those legislatively created Courts are inferior to the "one supreme Court." The one supreme Court being a Constitutional Court of "We the People."

For Freemen, their courts are the one supreme Court provided for by the Constitution, and as such trump all other courts claiming jurisdiction over Sovereign Freemen. They submit that the United States Supreme Court is not the "one supreme Court" referred to in Article III. Under Article I, Congress has the power to create courts inferior to the "one supreme Court," and the lower case spelling of "supreme" in that clause and in Article III denotes for Freemen that the United States Supreme Court of the Judiciary Art of 1789, 1 Stat. 73, is not the one supreme Court of Article III.[22]

Freemen correctly point out that Article VI makes clear that: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." So, all actions taken by a State or on behalf of a state cannot be valid against a Sovereign Citizen, especially after a Common Law court (the one supreme Court) has granted sovereign citizenship.

Since the one supreme Court was already created by the Constitution, Freemen assert that Congress lacked power to "create" a court with authority over this constitutional court. After all, legislation was not needed to create Congress or the President. Freemen conclude, therefore, that the legislative court called the U.S. Supreme Court, and all other legislatively created courts, must be "inferior" to the one supreme

[22] Freemen assert that the U.S. Supreme Court, ordained and established on September 24th, 1789, by an act of Congress when it passed a Judicial Act that created the U.S. Supreme Court, ignored the Constitutional Court provided for in the Constitution.

Court, a Freemen court, as discussed by Article III. Freemen accordingly refer to their courts as constitutional courts, and frequently consider themselves to be constitutionalists.[23]

The "Organic" Constitution

Within the more radical elements of the Freemen movement, the goal is to return to the "organic" [4]2 Constitution—the original version in which blacks, immigrants, and women were relegated to slavery or second-class citizenship with no right to vote. As discussed in the Christian Identity section, these people are believed to be soulless subhumans and/or subservient to white males, a status Freemen argue was intended by our founding fathers and required by the Bible.

Amendments to the Constitution

Freemen see the Bill of Rights as part of their Common Law, and the remaining Amendments as "Equity Law," a derisive term. The first 10 Amendments are labeled as "ratified," while the next 16 Amendments are listed with a date preceded by either the word "adopted" (11th and 12th Amendments) or the words "took effect" (the 13th through the 26th Amendments). As explained by the CITIZENS RULE BOOK—

> Took effect is used as there is a great deal of suspicion as to the nature of these Amendments (common law vs. equity), also whether these last sixteen Amendments are legal, how many were ratified correctly, do they create a federal constitution in opposition to the original, etc. For further studies a good place to begin is with the article by the Utah Supreme Court on the 14th Amendment, 439 P.2d 266-276.

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23 **Constitutional Basis for the Supremacy of the "common law jury."** Prior to the war of revolution with England a central government existed which was controlled by the King. The state governments joined together to recreate this form of government to resolve problems arising under the Article of Confederation. The Constitution simply replaced a king with a "federal" authority. The King was overthrown because he refused to allow the people to be self governing by giving full faith and credit to their common law courts. The Constitution was designed to not only create a central authority but to force this entity to recognize the highest law making body to be a common law jury.

According to the Common Law Court of the United States of America, the following Articles, Sections, lines and Amendments of the Constitution of the government purportedly perform this objective:

1. Article I., Section 9, Clause 2 preserved the right of Habeas Corpus Ad Subjiciendum.
2. Article III., Section 2 made actions at common law when diversity existed in original (but not exclusive) federal subject matter jurisdiction.
3. Article IV, Section 1 stipulated that full faith and credit would be given all common law actions and created the need for rules to enforce these jury decisions.
4. Article IV, Section 4 stipulated that the final rule of law would be a court action.
5. Amendment 1 stipulated that the government may be sued by any individual to redress a grievance.
6. Amendment 2 protected the right of common law (free) states to maintain a militia.
7. Amendment VII, stipulated that common law jury trials are inviolate except for orders of retrial at common law.
8. Amendment IX, protected the rights to the people to change, reorganize and otherwise control their common law.
9. Amendment XI, reaffirmed that the judicial power of the central authority only supplemented common law jury trial by enforcing it's judgements.
10. Amendment XVI, limited the taxing power of the central authority to government controlled states (the several states) and not the free states.

The total effect was to create a central authority that was prosecutable and controlled with actions at common law when a citizen of a free state prosecuted this type of relief. The people (not the individual or the government) when acting as a law making body became the sovereigns in any issue of law or fact.

Source: American Patriot Network, *The Common Law Court of the United States of America* (visited May 13, 1999) <http://www.civil-liberties.com/commonlaw/common.html>.

24 **Organic Act.** An act of Congress conferring powers of government upon a territory. BLACK'S LAW DICTIONARY 1250 (4th ed. 1968).

Organic Law. The fundamental law, or constitution, of a state or nation, written or unwritten; that law or system of laws or principles which defines and establishes the organization of its government. BLACK'S LAW DICTIONARY 1251 (4th ed. 1968).

The Utah case referred to, *Dyett v. Turner,* 439 P.2d 266 (Utah 1968) is a remarkable unanimous opinion in which Justice Ellett of the Utah Supreme Court sets out his view that the 14th Amendment to the Constitution was not validly adopted and thus is not part of the Constitution. The Justice also uses significant space in the opinion to discuss why the U.S. Supreme Court has so badly erred in its holdings. Justice Ellett reaffirmed his views in a concurring opinion in *State v. Phillips,* 540 P.2d 936, 941-43 (Utah 1975), *majority opinion disavowed, State v. Taylor,* 664 P.2d 439 (Utah 1983). A copy of *Dyett v. Turner* is in the Appendix, at 25-30.

For Freemen, who frequently cite *Marbury v. Madison,* 5 U.S. (Cranch) 137, 177, 2 L.Ed. 60 (1803) ("Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void."), all Amendments after the Bill of Rights can and must be ignored since they were improperly enacted.

The Civil War Amendments—Creation of an Inferior Citizenship

Freemen make several different arguments concerning the validity of the 13th, 14th, and 15th Amendments.

Freemen assert that the Amendments were not properly ratified by the States. Since these Amendments "took effect" (not "ratified" like the Bill of Rights) during wartime through military rule, and were never "ratified" by the appropriate number of States during peacetime, they are unlawful and invalid. Freemen argue that President Andrew Johnson encouraged the all-white governments of the Southern states to reject the 14th Amendment (privileges and immunities, due process, and equal protection clauses), which they did. The Reconstruction Congress of 1866 then replaced those Southern governments with military rule, and allowed the "military" States to "rejoin" the Union only upon their acceptance of the 14th Amendment. Since these procedures were not authorized by the Constitution, Freemen assert that the 14th Amendment is void, citing *Marbury v. Madison*.

Freemen claim that the privileges and immunities clause of the 14th Amendment created a new and inferior form of citizenship to guarantee its power, federal citizenship, to be contrasted with sovereign, state citizenship, as recognized by the original (and valid) Constitution. Federal citizens alone are subject to the jurisdiction of the federal government and the federal courts. The privileges and immunities clause says: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

Our law explains that this clause was a repudiation of the *Dred Scott* decision which held that no Negro, free (granted citizenship by a State) or slave, could institute a lawsuit in federal court since he or she was not a citizen of the United States when the Constitution was adopted. *Scott v. Sandford,* 60 U.S. (How.) 393, 15 L.Ed. 691 (1857) (suit by Scott for his and his family's freedom against his "owner"). In our world, the Amendment did not create a federal citizenship because such citizenship was created when the Constitution was enacted. Rather, the Amendment only redefined it to cancel the restrictive definition given in the *Dred Scott* case.

> It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became also citizens of this new political body [the United States]; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guarantied to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in

> every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.

Dred Scott, 60 U.S. at 406-7.

As for the due process clause of the 14th Amendment, our world says that the clause extends the protection of the Bill of Rights to prevent encroachments of those rights by the states. For Freemen, the due process clause means that federal citizens are not guaranteed the protection of the Bill of Rights guaranteed to Sovereign Citizens because the Bill of Rights was not incorporated within this new 14th Amendment federal citizenship. Instead, the Amendment "grants" privileges to federal citizens by limiting federal citizens to protections against interference with "due process" and denials of "equal protection of the laws;" a much more limited form of freedom. It of course goes without saying that the federal government can regulate the privileges it has "granted." The result, Freemen argue, is incredible federal governmental control over a federal citizen through our laws, rules and regulations.

Further "proof" of this dual citizenship can be found in the spelling of the word "citizen" in the Constitution. When our nation was founded, each of the individual sovereign states had their own Citizens, which is always spelled with a capital "C" in the Constitution. After the adoption of the 14th Amendment in 1868, citizen is no longer capitalized. Freemen claim that this new federal citizenship was unknown until 1868. After all, look at the definitions of the Fourteenth Amendment and United States in BLACK'S LAW DICTIONARY—

> **The Fourteenth Amendment.** The Fourteenth Amendment of the constitution of the United States.
>
> It became a part of the organic law July 28, 1868, and its importance entitles it to special mention. It creates or at least recognizes for the first time a citizenship of the United States, as distinct from that of the states; forbids the making or enforcement by any state of any law abridging the privileges and immunities of citizens of the United States; and secures all "persons" against any state action which is either deprivation of life, liberty, or property without due process of law or denial of the equal protection of the laws.
>
> **United States.** This term has several meanings. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family or nations; it may designate territory over which sovereignty of United States extends, or it may be collective name of the states which are united by and under the Constitution.

BLACK'S LAW DICTIONARY 785, 1703 (4th ed. 1968).

Since the 14th Amendment created a new federal citizenship, Freemen claim that the Amendment can have no effect on the class of Sovereign Citizens that existed when the Constitution was enacted. Accordingly, Freemen must remove all vestiges of this federal citizenship (passport, social security number, etc.), and "re-obtain" their Sovereign citizenship through a Common Law court, the one supreme Court.

This Freemen argument resonates with their Christian Identity themes. The concept that the 14th Amendment created a lesser form of citizenship reinforces the racist theme which describes African-Americans not as true "men," but as "beasts." It also identifies their community with those for whom the Constitution was written, state/Sovereign Citizens. Such a reading meshes with the identification of their community with the Chosen People theme. The 14th Amendment and Christian Identity beliefs assign Freemen a privileged position in relation to others who occupy the same geographical space.

Perhaps most interesting, their reading of the 14th Amendment shows how profoundly Freemen will transform the meaning of our documents. In our world, the Reconstruction Amendments mark the end of two nations on one soil. In the Common Law world, one of those amendments creates just that—two classes of citizenship, two United States of America.

The 16th Amendment—Income Taxes

Freemen single out income taxation as one of the most abhorrent of the government's laws over its federal citizens, a message certainly palatable to any Freemen prospect. Once a person has properly become a Sovereign Citizen, he or she is not obliged to pay either state or federal income taxes.

First, as previously discussed, Freemen claim that all post-Bill of Rights Amendments have not been properly "ratified" by the appropriate number of states, and are thus unlawful and void. *Marbury v. Madison*.

We will not dwell on the extensive "rationale" underlying the Freemen's position about income tax since a lengthy examination of the IRS Code through Freemen eyes is just not worth our effort herein (Freemen definitions for words in the IRS Code such as "person," "income," "taxpayer," "shall means may," "having income," and "must means may" through a BLACK'S LAW DICTIONARY perspective). And, most of the precepts concerning the "sovereignty" of Sovereign Citizens have already been discussed.

It is of interest to note, though, that State income taxes also cannot be collected by the Freemen's specific Republic since all states with an income tax use one's federal income tax qualification as a prerequisite to state income tax (including social security number, etc.). Freemen argue that if you are not a 14th Amendment citizen who is required to pay federal income tax, a State cannot "touch" you once you rescind all state "adhesion" contracts and inform the state taxing authority of the Sovereign status.

Lastly, the following "disclaimer" was noted at the conclusion of a Freemen internet article on this topic after a discussion of the "Income Tax Package" that could be obtained for $150—

> This work is educational in nature, it comes with no guarantee expressed or intended, is for the good of "We the People" undertaken with the full protection of the Bill of Rights, and is not to be confused with the "practice of Law" as purveyed by the various Bar organizations.

Sovereign Rights Over Corporations and States, And the Right to Contract

Freemen trace our law through its roots from Medieval English common law back to Roman law. Freemen claim that this law recognized, at least until the "illegal" actions of President Lincoln during our Civil War, two classes of men—free and unfree. Freeman and slave. *See* the BLACK'S LAW DICTIONARY definition of "freeman" at the beginning of our materials, at Footnote 1.

Freemen claim that our case law has also made just such a distinction between the individual (Freeman) and the corporation/state (slave) in *Hale v. Henkel,* 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652 (1906), at least until the death of the Common Law by the Supreme Court in *Erie v. Tompkins, infra*. *Hale* involved a secretary/treasurer (Hale) of a corporation who refused to answer questions or bring documents for a grand jury investigating Sherman antitrust violations by the corporation. Hale claimed the Fifth Amendment privilege against self incrimination both individually, and on behalf of the corporation. In rejecting a corporate Fifth Amendment privilege, the court said—

> ...Conceding that the witness was an officer of the corporation under investigation, and that he was entitled to assert the rights of corporation with respect to the production of its books and papers, we are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the state. The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. *His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the*

> *Constitution*. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. *He owes nothing to the public so long as he does not trespass upon their rights.*
>
> Upon the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that a state, having chartered a corporation to make use of certain franchises, could not, in the exercise of its sovereignty, inquire how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose. The defense amounts to this: That an officer of a corporation which is charged with a criminal violation of the statute, may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation, vested with special privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges.

Hale, 26 S.Ct. at 378-79. (Emphasis added.)

Freemen read the above as a vindication of their Common Law/natural law philosophy of the superiority of the Sovereign citizen over the state and its corporations. This quote also supports their posse comitatus view that a Freemen owes nothing to the public, and the state cannot invade a Freeman's privacy (commit violence against me) unless a Freemen trespasses on another's rights.

We read *Hale* quite differently. The Supreme Court was establishing that corporations lack individual constitutional rights. It chose to highlight this through *dicta* by describing the rights of individuals. The case had nothing to do with an citizen's rights over corporations or states.

Hale is also important in the Freemen world due to its statement that an individual's "power to contract is unlimited." *Hale, supra.* This belief forms the basis of Freemen ideology that all contacts with government are contracts which Sovereign Freemen are free to rescind. While a Sovereign is certainly free to contract with our government and accept the benefits and restrictions thereof (through 14th Amendment citizenship), a Sovereign is also free to rescind these contracts pursuant to *Hale*.

Thus, with all contacts with our government being rescindable "contracts," and our commercial law, the Uniform Commercial Code, must be strictly followed by Freemen to avoid unwittingly "contracting" with our government. More on the UCC later.

The Common Law's Demise (*Erie v. Tompkins* (1938)), the UCC, the Federal Rules of Civil Procedure, Admiralty Courts, and Flag Fringe

Freemen claim to have resurrected the Common Law, which implies that their law at some point had died. The story, as already discussed, begins with the tale of how the Judiciary Act of 1789 substituted the United States Supreme Court for the one supreme Court of the Constitution.

The end of the Common Law came in 1938 with our Supreme Court ruling in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). *Erie* appears in virtually every leading textbook on civil procedure and is an important case in our world. It has also been the focus of far too many law review articles to list herein.

For the Freemen community, though, *Erie* is **the** smoking gun since the case clearly holds that there is no federal common law.

> Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision *is not a matter of federal concern. There is no federal general common law.* Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.

Erie, 58 S.Ct. at 822. (Italics added.)

In a world in which the Common Law is not only one's birthright, but tantamount to the word of God, there could be no more horrific statement. Of course, most mainstream "experts" deny that *Erie* renounced all common law. They explain *Erie* as the triumph of the right of state courts to articulate their own common law, free of federal second-guessing. Common law that varies from state to state is, however, not Freemen Common Law.

Common Law believers are not legal positivists. Their Common Law is the common law of Blackstone, a type of natural law ordained by God. In the Freemen world, it would—

> …hardly be contended that the decisions of Courts constitute [the Common Law]. They are, at most only evidence of what the [Common Law is], and are not of themselves law.

Swift v. Tyson, 41 U.S. 1, 16 Pet. 1, 10 L.Ed. 865 (1842), overruled by *Erie, supra*.

Erie did abandon *Swift's* understanding of common law as Blackstone's natural law, the Common Law sacred to Freemen. After *Erie*, the Freemen community asserts that our law became a masquerade for the Law that should reign and once did. In essence, the Supreme Court suspended the Constitution in 1938, a Constitution that remains suspended even today.

Erie is also an important piece of the tale that explains the Freemen condemnation of "our" United States (the federal and state governments) as a "legislative democracy" with "legislative courts."

Not only did *Erie* abandon the Common Law, it put in its place "the law of the State." Moreover, the Supreme Court announced its indifference on the source of that law: "[W]hether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern."

In the Common Law world, this language is read as encouraging states to abandon their Common Law systems in favor of illegitimate legislative democracies. For Freemen, the republican form of government guaranteed by the Constitution is the Common Law system. The Supreme Court's indifference to whether the states abandoned Common Law in favor of legislation is anathema, another sign that the Constitution has been abandoned.

The Common Law community's discussion of *Erie* emphasizes that the state law, which triumphed in that case, limited the railroad's duty of care to those with whom the railroad was in privity of contract.

When injured, Tompkins had been walking beside the tracks, a pedestrian not a passenger, and thus someone not in **privity of contract** with the railroad. As a result, Freemen frequently claim to not be in privity of contract with our government.

In the Common Law world the result in *Erie* (state privity of contract law governs) demonstrates that *Erie* **substituted contract law for the Common Law**, which at the time imposed a duty of care toward foreseeable others, like the issue presented by pedestrian Tompkins.

Freemen believe that commercial law (contract law) reigns in the federal and state courts, a conclusion that has enormous implications for how they should respond to our law. The point is that *Erie* supports an understanding that is foreign to our world—that invalid commercial law courts, applying contract law over Common Law, have replaced constitutionally mandated Common Law courts. Alas, the **Uniform**

Commercial Code's preeminence for Freemen when dealing with our world since we should follow our own contract law (the only law that exists after *Erie*), the Uniform Commercial Code.

Also, just as our world has been long intrigued with the connection between *Erie* and the adoption that same year of the Federal Rules of Procedure, so too the Freemen community finds meaning in the confluence of these two events. Freemen claim that before 1938, the federal courts in diversity cases applied federal substantive law through state procedure (except in an equity case); but after 1938 federal courts applied state substantive law through federal procedure.

While "equity" is not generally seen as central to understanding the connection between *Erie* and the Federal Rules, Freemen see the connection as an important piece of the puzzle. The Common Law position places enormous significance on the fact that the Federal Rules of 1938 abolished the distinction between actions at law and suits in equity. Unlike in our world, though, Freemen equate "actions at law" with the Common Law.

Of course, the Federal Rules could not have meant that Common Law actions were to be merged with equity suits because *Erie* had abolished the Common Law. The Federal Rules must then mean, Freemen argue, that equity suits were to be treated not as if they were Common Law actions, but as if they were **admiralty** suits, admiralty jurisdiction (international law) being the third and only remaining jurisdiction recognized by the Constitution (the other two being the now abolished Common Law and the now submerged equity.)

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.…

United States Constitution, Article III, § 2.

So, by putting *Erie* and the Federal Rules together, we have a story that explains the Common Law insistence that the federal courts possess only admiralty jurisdiction. *Erie* and the Federal Rules explain the Common Law view that the federal courts[25] are trying to foist admiralty law upon the people. According to Freemen, the momentous shift of 1938 took place without the consent or knowledge of the people, buried as it was in the intricacies of *Erie* and the Federal Rules.

And in 1966 when the Federal Rules of Civil Procedure were amended to "abolish the distinction between civil actions and suits in admiralty," well, the true nature of the federal courts was confirmed as courts of admiralty. One only need to look at the **gold-fringed flag**[26] that is displayed in federal (and state) courts.

While in our world the "fringe on the flag" story is idiotic, and Christian Identity beliefs are perverted and filled with hate, many of the other Common Law beliefs discussed herein dovetail quite closely with the legal stories in our world.

In our world people write of the federal government's expansive use of emergency powers; of the Constitution dying with the triumph of the New Deal's administrative state; of the questionable procedures

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[25] Presumably, the admiralty label extends to the state courts because state procedure codes mirror the Federal Rules of Civil Procedure and because in *Erie*, "State law" was "acknowledged" to be other than the Common Law.

Note that in our civil rules, CR 1 and 2 make clear that there is only one form of action (whether a case at law or in equity) known as "civil action." Such a statement satisfies a Freemen view that our state courts are acting as admiralty courts.

[26] More on the importance of the flag *infra*.

by which the Reconstruction Amendments became part of our Constitution; and of *Erie* signaling a revolutionary shift away from natural law.

It will undoubtedly surprise many that the Freemen community, a group of people so far removed from our community of legal scholars, judges and lawyers, shares so many of the underpinnings that are alive, although perhaps not dominant, in our world.

Public Law vs. Private Law

Freemen believe that Anglo-Saxon law has two separate and distinct branches. The branches are "Public Law" and "Private Law." Public law should properly be called civil law (or civil code) which pertains to government made law. Private law is currently known as "common law" or "natural law" and pertains to the people acting in a law making capacity expressing divine will.

Public law (law of the United States or the civil code) is generated in the following manner—

1. An elected body generates a code or written law.
2. The publication of this law signifies that it is in effect and controlling.
3. Litigation resulting from the implementation of this law results in modification, changes or even abrogation.
4. Subsequent code adopted by vote or litigation may replace this public law if the new law is contrary to the old law.

Private law (common law, natural law or law of the united States of America) is generated in the following manner—

1. A self governing people may generate a "common law" trial by filing in the people's jurisdiction to create a court order which becomes law subject to litigation.
2. The court order can be modified by further litigation until a point of law is disputed by two or more parties.
3. A jury trial may then settle the dispute.
4. Subsequent trials may then amend, abrogate, modify or suspend this order.

Far superior to either "private law" or "public law" is Common Law. Common Law can be briefly defined in this manner—

1. It is God's law as imprinted on the hearts and mind of His people.
2. The final formal expression of this law in a legal society is when 12 men sit on a jury and express this knowledge by creating a judgment based on Anglo-Saxon Christian principles of right and wrong.

Source: American Patriot Network, *The Common Law Court of the United States of America* (visited May 13, 1999) <http://www.civil-liberties.com/commonlaw/common.html>.

Public Law vs. Private Law—Diversity of Jurisdiction

Freemen who have quieted title with respect to their citizenship in the "Republic of Washington" or in another common law jurisdiction operate under "private law." Freemen believe that their diversity of citizenship and adherence to private law instead of public law creates a conflict of law sufficient to trigger federal court jurisdiction. *See* United States Constitution Article III, 2.[27] Freemen, however, appear to believe that the federal court's role in a "private law/public law" conflict is strictly limited to announcing which law will apply.

Freemen must "properly" raise the diversity issue in state court or the matter is waived. According to The Common Law Court of the United States of America, a Freeman must take the following steps in order to obtain a federal court declaration that private law must be applied to the resolution of the case at bar—

> 1. The litigant who claims the wrong law is being used may file a proceeding in Federal Court to resolve the issue.
>
> 2. The litigant may use documents generated by the courts of the litigants domicile.
>
> 3. The Federal courts are then properly noticed of the applicable law to be used in the resulting litigation.

Source: American Patriot Network, *The Common Law Court of the United States of America* (visited May 13, 1999) <http://www.civil-liberties.com/commonlaw/common.html>.

To convince a federal court that the law applicable to the controversy is common law or private law, the Freeman must establish that the following two conditions exist—

> 1. The litigant who claims the dispute exists can prove that a diversity of citizenship exist. This diversity must be that an individual is not a United States citizen.
>
> 2. The other court will assume jurisdiction of the litigation by issuing a certified court order (private law judgment).

Id.

Proof sufficient to satisfy both elements can be found in the following facts—

> 1. The litigant making this claim has chosen the applicable law for himself by changing citizenship (abrogating US Citizenship) to a private law jurisdiction.
>
> 2. A court order exist that establishes this change of domicile.
>
> 3. A court with litigation rules exist that establishes this change of domicile.
>
> 4. A court with litigation rules exist in which the litigant can obtain private law relief.
>
> 5. This private law court system recognizes the original and non exclusive jurisdiction of the Federal Courts.
>
> 6. This private law court system recognizes the supplemental subject matter jurisdiction of the US District Courts mandated by operation of the Constitution.

Id.

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[27] United States Constitution Article III, 2 provides that—

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

The exact scope of this provision was altered by the Eleventh Amendment to the United States Constitution. This amendment precludes suits against the states. Const. Amendment XI ("The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.").

Once the correct law is determined to be common law or private law, it is unclear whether the action is to continue in a Washington Superior, District or Municipal Court or whether the action is transferred to the closest Common Law Court for trial.

Non-Violent Freemen Actions

The Common Law distinguishes between moves members should take now and moves that would be celebrated if taken, but are not expected of all. Not surprisingly, the moves it "requires" of Sovereign Citizens are nonviolent. Freemen are not oblivious to the State's ability to win most contests of violence. By not "demanding" violent moves, it helps ensure that the State will not kill all their members which makes room for followers who are not prepared to die for principle. It is this nonviolent principle that has allowed the Freemen movement to dramatically expand.

Instead of violence, Common Law requires giving up one's social security card and one's driver's license; relying on certain sections of the Uniform Commercial Code in dealing with our government; and invoking Common Law court process to declare oneself a Sovereign Citizen.

- **Social Security Numbers, Passports, and Driver's Licenses.** After the Constitution was suspended in 1933 by President Roosevelt, the Common Law limped along until 1938 when it was summarily replaced by statutory law/admiralty law/commercial law, a new form of social contract. It is this new and illegitimate social contract that must be disavowed.

  No more perfect symbol for this new social contract could be imagined than a federally-issued social security card, concrete evidence of a new government that took over after the New Deal. So to accomplish full secession from our United States, Freemen "contracts" with the federal government, like welfare payments, must also be renounced.

  State governments are as illegitimate as the federal government. So, Freemen "contracts" with a State must also be renounced. As social security numbers evidence federal control, so to do driver's licenses exhibit State power. And a driver's license requirement is seen as an interference with one's basic constitutional right to free travel, the right to roam freely in one's own Promised Land. Again, these actions tie one's identity as a Sovereign to the land.

- **The Uniform Commercial Code.** Unlike the Bible and the Constitution, it does strike one that the UCC is an unlikely source for a community of radicals. But once one understands that the community has received the State's jurisdiction based on contract law (not the original social contract of the Constitution but some illegitimate contract substituted for the Constitution after 1938), the Freemen's obsession with the UCC begins to make sense. If the task is to extricate oneself from a reign conceived of as based on illegitimate contract law, the UCC is a natural place to look. Freemen do not hold the UCC sacred, but they do insist that because our community, however wrongly, does "worship" our UCC, we are bound to follow it.

  Thus, in the Common Law the UCC becomes a central text of resistance. The UCC is portrayed as the law that our United States must follow since our law has renounced constitutional law, Common Law, and Equity, leaving only contract law.

  UCC 1-207 explains in the comment that the section is intended for situations "where one party is claiming as of right something which the other believes is unwarranted." This is precisely the situation that exists between the State and the Common Law community according to their law. The State is claiming a right to impose its extra-constitutional, statutory, contract-based, admiralty law on the Common Law community, and the community considers that assumption of sovereignty over its members to be unwarranted. So UCC 1-207 takes on enormous significance in their world. Freemen consider this UCC section to provide an "out" from our law (under our law) for Sovereign Citizens. As the Comment to the section says—

> This section provides a machinery for continuation of performance along the lines contemplated by the contract despite a pending dispute, by adopting the mercantile device of going ahead with delivery, acceptance, or payment "without prejudice," "under protest," "under reserve," "with reservation of all our rights" and the like …

Freemen are advised by their law to invoke the phrases listed by UCC authors when dealing with the State, including "U.D." (under duress), "all rights reserved," and "without prejudice." So, members frequently rely on these phrases when filing documents with any part of our government or appearing in our courts.

UCC 1-103. The "out" provided by UCC 1-207 places the Freemen back within the jurisdiction of the Common Law because UCC 1-103 provides that contracts are subject to general legal principles of common law where that law is not specifically displaced by the UCC. So, when a Freeman opts "out" under UCC 1-207, section 1-103 leaves the relation with the State to be decided under the Common Law through Common Law courts. Freemen assert that UCC 1-103 compels the State to apply the Common Law as determined by Common Law courts once Freemen have reserved their rights under UCC 1-207.

UCC 3-501. This section allows a party to refuse payment of a negotiable instrument if it lacks a necessary endorsement or otherwise fails to comply with the terms of "an agreement of the parties, or other applicable law or rule." Freemen use this section in responding to State court process of any kind, particularly traffic tickets. Since Freemen have reserved their rights under UCC 1-207 not to be bound by the State's authority, the presentment process (traffic ticket, criminal complaint, information) is not in compliance with the agreement of the parties. The result is the return of our pleadings with the words "refused for cause without dishonor" or "refused without recourse" written over them, usually with a cite to UCC 3-501.

- **Liens.** Freemen insist on "following" our law by locating their right to maintain their own law in our State law. However, Freemen argue that our law can only be read as the Common Law dictates (contract law/UCC). This guarantees conflict with our law, since to us it makes no sense to appeal to the UCC as a means of freeing oneself from the reach of federal and state law or courts, just as giving up one's social security card or driver's license appears random and ridiculous.

  These nonviolent moves, though, encourage Freemen to flout State law, which invites the State to use violence (filing charges, jail) in response. So, the Common Law must next provide a repertoire of moves to deal with our violent reaction to Freemen "legitimate" actions.

  A nonviolent Freemen response authorizes Sovereign Citizens to interfere with the property rights of State agents who attempt to "unlawfully" enforce State law against Common Law members. Sovereign Citizens file liens (notice the tie to the land) against government agents who attempt any action against such a Citizen. These liens are filed in county offices in our system, and sit there like "ticking time bombs" on the property rights of the target (and on his or her credit) who may not become aware of their existence until he or she moves to sell the property or is denied credit.

  To remove such a lien, our law requires the target to invoke our legal process. There can be no doubt that these liens impose real costs on others for having violated the Common Law. These liens provide Freemen with force, however transitory the impact of that force is. While not a "win," the lien is "felt" in our world, perhaps for years to come.

- **Involuntary Bankruptcies.** Under federal rules, a creditor holding a judgment worth more than $10,000 can file an involuntary bankruptcy to force the debtor to liquidate his or her assets to satisfy the debt. A petition for involuntary bankruptcy is decided at trial. If the judgment comes from a Common Law court, it will hopefully not be recognized and the petition will be dismissed.

  No matter the outcome, though, the fact that a bankruptcy was filed remains on a "debtor's" credit report for at least a decade. Even a judge's order to remove the bankruptcy notation from a credit record is not included in the reports most merchants request when deciding to extend credit.

- **Charging Government Officials With Crimes—The Citizen Complaint.** While a more extensive discussion on this topic is given *infra,* suffice it to say that Freemen are more than willing to retaliate against prosecutors and other government officials by attempting to charge the official with various crimes in our system pursuant to CrRLJ 2.1(c).

  And there can be no doubt that Freemen are charging government officials with crimes in their Common Law courts.

- **Becoming a Sovereign Citizen—Their "Quiet Title" Action.** The next move is for a Freeman to declare one's Sovereignty through a quiet title process. The Common Law court gives public notice of the quiet title proceeding. After receiving appropriate evidence to establish that the applicant is eligible for status as a Sovereign Citizen, the Common Law court declares the applicant's "title" clear, thus proclaiming him Sovereign.

  This is important because courts are powerful symbols. Their judges write law, not novels. Their proceedings are in law and not theatrical. Their courts provide "cover" and "justification" for Freemen actions.

- **Common Law "Pleadings."** Inundating our court system with Common Law documents involves real costs on our court system and on the individuals (usually prosecutors) who must respond to what our system perceives as bogus documents. This is an especially effective non-violent Freemen response, since their goal is to obstruct our system whenever possible in the hope of causing our system to collapse.

Violent Freemen Actions—Secret Common Law "Military" Courts

While Common Law courts may convene in public with many "judges" in attendance, a much smaller mini-system has been created by the Freemen movement to deal with our government officials who Freemen assert have broken their oaths of office to follow the Constitution. This type of transgression is considered so flagrant that only a "military" response is possible, a response which is reserved for issuing indictments for treason (for ignoring Common Law documents issued from a one Supreme Court) and "trying" judges, ATF and FBI officers, sheriffs, prosecutors, and the like.

The existence of these military courts might explain the Freemen violence America is now experiencing. Unlike the more straight-forward Common Law courts that are attended by as many as four hundred people at a time, military courts can be convened by one small cell (five or six people) of Freemen radicals in any basement or back room. By holding a military court, hard-core radicals can keep their violent plans a secret, while still using the idea of a court to legitimize their forthcoming criminal actions.

Based on the movement's almost sacred need for a "legal" (biblical) justification for its actions, one can assume that prior to many pipe-bomb incidents, assassinations, church burnings, and acts of paper terrorism, there was a cell of at least five people involved and that there was a Common Law or Military court trial that took place.

This also means that for every arrest, Freemen coconspirators are left behind and likely to be even more agitated by an "unlawful" arrest of a comrade. The motivation to strike again arises and the cycle continues. And with a willing militia available to enforce a Common Law court's order of arrest, the future looks bleak indeed for government employees who "dare" use our "inferior" law to confront Sovereign Citizens. [8][2]

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[28] The dangerousness of these Freemen cannot be overemphasized. During the Justus Township standoff in Montana, militia leaders from all over the country made a great public effort to let the media know they were not in sympathy with the fraudulent financial schemes and other criminal activities of the Montana Freemen. But they failed to tell the media that regardless of their lack of support for the conduct of the Freemen, the militia movement "would absolutely not stand for any government attack on citizens."

Accordingly, a nationwide network alert was sent over the internet, by phone, and by fax to units in every state where militias could be identified. Plans had previously been drawn by scores of militia units to target metropolitan areas and small cities in nearly every state. If an incident similar to Ruby Ridge and Waco occurred at Justus Township, these militias would execute their plan against governors, federal judges, and local officials throughout the United States. Buildings housing IRS, FBI, ATF, federal courts,

Ecclesiastical Courts

Ecclesiastical courts, or Courts Christian, originated among the Christian brethren under the Romans prior to the adoption of Christianity as the state religion by Constantine I, Emperor of Rome, in the 4th century A.D. The Christians, as a persecuted sect, had no access to the Roman courts. These Roman courts were pagan, and proscribed by Christian leaders on religious and moral grounds. The Christians, therefore, needed their own courts, which were simple tribunals whose chief function was the arbitration of disputes among the brethren, with bishops acting as the arbitrators.

After Christianity became the state religion of Rome, the ecclesiastical courts were incorporated into the Roman judicial system. The Christian Church developed on a pontifical and hierarchical basis and as its power grew, the simple courts of primitive Christianity underwent a corresponding development. In time, they comprised a complex system exercising jurisdiction delegated by the pope in his capacity as the supreme judicial power in the Christian Church. Then, as the secular power of Rome declined and its institutions decayed, the ecclesiastical courts began to assume jurisdiction in secular affairs.

In the Middle Ages, the Church reached the zenith of its power. It became a world state, the popes became temporal potentates, and cannon law and the jurisdiction of the ecclesiastical courts were extended to embrace virtually the entire range of human relationships.

Extension of the jurisdiction of the ecclesiastical courts was facilitated by the dual character of the princes of the Church, as functioning ecclesiastics—bishops, archbishops, cardinals, and popes—and as powerful landowners and temporal rulers.

When courts established by secular authority resisted the incursions of the ecclesiastical courts into secular matters, the ecclesiastical courts fought persistently for supremacy. The protracted struggle that ensued shaped much of the legal history of the latter Middle Ages. Beginning in the 13th century, the great judicial power of the Church was manifested especially through the tribunal commonly called the Holy Office, which was created to ferret out and punish heresy, which ultimately resulted in the Inquisition.

The Reformation was a basic cause of the decline of the ecclesiastical courts. Other causes included the rise of representative government, the separation of judicial from executive and legislative powers of government, and the separation of church and state. All these factors combined to reduce gradually the power and jurisdiction of ecclesiastical courts to their present limited extent concerning church policy, administration, and discipline within various churches, including the Roman Catholic Church, various Protestant churches, the Church of England, and other Anglican churches. In the Protestant sections of Germany, and in the Netherlands, Switzerland, and other countries where Protestantism is non-episcopal, though, ecclesiastical courts have virtually ceased to exist.

However, a new brand of ecclesiastical court has surfaced within the Freemen movement. Freemen . Ecclesiastical Courts are established within the Common Law community to hear and decide moral matters involving biblical interpretation. These courts within the movement have great power since biblical

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National Guard, and reserve armories had all been scouted and filmed. Assault plans and schemes to either seize or destroy the installations had been rehearsed.

As one militia leader said: "There won't be another Ruby Ridge or Waco without an answer from us this time. The beauty is, we'll hit everywhere. There's no way the feds can muster a response if we hit in fifty or sixty places at once. We'll take out our targets and then melt back into the community…And strike again if they don't get the message the first time." FALSE PROPHETS, at 267-8.

interpretation and punishment (typically death in the Old Testament), as determined by an ecclesiastical court, must be followed as God's law.

Compurgation—Medieval Acquittal

The Freemen movement, having borrowed ecclesiastical courts from history, is beginning to assert compurgation as a defense to criminal charges filed in our system against Freemen.

In medieval law in front of ecclesiastical courts, compurgation was a method of defense in which a person accused of a crime or charged as a defendant in a civil action was acquitted on the sworn endorsement of a specified number of friends or neighbors. This process of taking ritual oaths was called compurgation because one party would "purge" himself of the charges by taking the oath.

The oaths were taken seriously because to swear a false oath was perjury, a false promise to God. The oaths had to be made without any mistakes, "without slip or trip." The oaths were poetic and alliterative and gave the process a formality and ritual that impressed the parties with its importance.[29]

The procedure was singular in that the witnesses, who were called compurgators, swore not to their knowledge of the facts at issue, but to their belief that the defendant was telling the truth. The party swearing the oath needed the help of these supporting witnesses or oath helpers who swore that his oath was unperjured. Parties would swear oaths at each other until someone made a mistake. The number of compurgators was often eleven, but it varied according to the rank of the accused and the seriousness of the crime or action.

Compurgation was used as part of the regular procedure of the ecclesiastical courts throughout Europe in the Middle Ages. It existed among the Anglo-Saxons and was in use in the courts of the common law in England through the 1600's until it was gradually superseded by the jury system.

The practice that originated when the eleven people were local and had first hand knowledge and knew the oath taker eventually became a farce when a professional class of oath helpers lingered around courts to provide assistance for a fee. A professional oath taker would wear a piece of straw in his shoe signifying his status, giving rise to the term "straw man."

Compurgation never existed in the legal procedure of the British colonies in America or of the United States, until now. Freemen assert that compurgation is a part of the Common Law (God's law) and that a Freeman defendant is entitled to acquittal in our system if he or she can obtain sufficient statements under oath (presumably from other Freemen) that the Freemen defendant's version of the crime is believed.

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29 "So I hold it as he held it, who held it saleable, and I will own it—and never resign it—neither plot nor plough land—nor turf nor toft—nor furrow nor foot length—nor land nor leasow—nor fresh nor marsh—nor rough ground nor room—nor wold nor fold—land nor strand—wod nor water."

The Third Continental Congress 1996-1997

The arena of constitutional debate has drawn mainstream support. From conservative columnists like Thomas Sowell and George Will to politicians on the state and national level like Newt Gingrich, a cry is going out to return to the Constitution. While not advocating overthrowing the current system, legal scholars in our world have also questioned the New Deal and similar federal government activism.

- Gary Lawson, *The Rise and Rise of the Administrative State,* 107 Harvard Law Review (1994) (the Constitution is a choice that may or may not be "correct," and New Deal "reforms" are accepted by, not imposed on, the people);
- ROBERT BORK, THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW (New York: Free Press, 1990) (explaining that the modern administrative state born in the New Deal is unconstitutional, but refusing to sanction judicial activity to restore the Constitution); and
- Richard A. Epstein, *The Proper Scope of the Commerce Power,* 73 Virginia Law Review (1987) (arguing that New Deal legislation is unconstitutional, but accepting that it is the result of "political forces" of the people).

Others have asserted that the New Deal was an act of constitutional restoration after a period of unconstitutional usurpation by an activist conservative Supreme Court.

- Lawrence Lessig, *Understanding Changed Readings: Fidelity and Theory,* 47 Stanford Law Review 395 (1995); and
- LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW (New York: Foundation Press, 1988, 2nd ed.), at 308-315.

To some degree, the Republican "revolution" using such terminology as "state's rights" or "the end of big government" can be attributed to this constitutional interpretation argument.

Freemen argue that the Republicans are wrong to attempt to "correct" an inherently flawed and corrupted evil system. In 1996 and early 1997, various elements of the antigovernment movement held several national meetings near Kansas City dubbed the "Third Continental Congress." These meetings were an attempt to set up a provisional government whose role is to begin operating now in accordance with the Constitution as interpreted through the movement's "framer's original intent" doctrine. The provisional government is to remain in place until the illegal impostor government is toppled or collapses on its own, at which time elections can be held. While the east-coast media portray members of this movement as a cartoonish "Bubba" character, the truth is to the contrary.

Doctors, lawyers, insurance agents, and college professors were all in attendance at the meeting of the Third Continental Congress. They are revolutionaries, perhaps, but they are not ignorant rednecks. They were all there because they believe that the Constitution has been abandoned illegally and that, most likely, only armed confrontation can restore it to its rightful role in the political system. The real makeup of the antigovernment movement of the 1990's demonstrates just how widespread, and how serious this internal threat has become.

And several delegates in Kansas City were representatives of jural societies.

CHRISTIAN JURAL SOCIETIES—
AN INTERIM GOVERNMENT

The Only "True" Government

"The loss of the American union of states based upon the Constitution for the United States took place on April 15, 1861. Since that date, there has been no legal government in the United States." That is the claim of the Christian Jural[30] Society, one of the least-known yet most significant organizations in the Freemen movement.

The Christian Jural Society is a logical end product of Freemen thinking. It is an attempt to "reconstruct" a Christian government throughout the United States by creating small pockets of self-governing Christians who are tied to a national Christian government through their chosen representatives.

Jural societies believe that they are the only legitimate form of government now operating in America. As these societies proliferate throughout the country, they are doing more to pull in 10 to 15 million "soft core" nonviolent believers deeper into the movement than any previous manifestation of the movement. If these societies continue to grow—and all indications are that they will—they could become the most powerful force within the Freemen movement.

Jural Societies Must Remain Anonymous

Jural societies to a large degree have remained unmonitored. One reason is that, unlike militias, jural societies shun publicity. Jural societies have a hard-and-fast rule—Do not speak with the media.

A Self-Sufficient Government With All Power at the Local Level

The Christian Jural Society is the brainchild of a religious right think tank based in California known as the "King's Men."[31] The society's leaders are John Quade, Randy Lee, and John Joseph. John Quade, an actor whose film credits include Clint Eastwood's EVERY WHICH WAY BUT LOOSE and EVERY WHICH WAY YOU CAN, as well as THE STING and the miniseries ROOTS, serves as the society's spokesperson. He travels the country, holding well-attended seminars on how to establish a jural society.

Regional jural societies are made up of approximately 100 families—the number recommended in the Christian Jural Society's manual, THE BOOK OF THE HUNDREDS. Each society becomes self-governing, based somewhat on an updated version of the Posse Comitatus model. Their seminar information states—

> Since the existing governments are *de facto* and without true law, once the jural society is formed it becomes the ultimate civil authority in the country.... It is a Christian body, based on God's Law, the *lex non scripta* [Common Law].

The jural societies are completely self-sufficient. Their court system includes an **ecclesiastical court** to handle interpretation of scripture, a **court of assise** to handle civil matters under Common Law, and a **grand jury** to investigate charges brought before it. Each jural society has its own enforcement arm, referred to as the lawful Posse Comitatus. The posse serves the courts as needed by bringing in witnesses or by enforcing sentences.

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30 **Jural.** 1. Pertaining to natural or positive right, or to the doctrines or rights and obligations; as "jural relations." 2. Of or pertaining to jurisprudence; juristic; juridical. BLACK'S LAW DICTIONARY 989 (4th ed. 1968).

31 *See Jeffry.com—Dedicated to Restoring the Republic Through God, Information & Technology!* (visited May 26, 1999) <http://www.jeffry.com> and its link to *The King's Men of the Christian Jural Society Press, a Christian Common Law Think Tank* (visited May 26, 1999) <http://jeffry.com/law/law/htm>.

Jural societies elect officers who serve as their representatives at the state and national level of the jural society. A local or county jural society is considered to be the most powerful level of government, with the national being the least powerful.

As the name implies, the Christian Jural Society is designed to be exclusively for Christians—non-Christians are not allowed to join under any circumstances. To be a voting member of a jural society, a person must file papers terminating all other voter registration. Once a person joins a jural society, as thousands have, it becomes the only form of government in his or her life. [23]

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[32] The "unofficial" King's Men website provides the following description of The California Christian Jural Society (visited May 26, 1999) <http://www.jeffry.com/law/law.htm>—

AN INTRODUCTION TO THE CALIFORNIA JURAL SOCIETY

A Jural society is an organized political community and a synonym of nation, state, and county. It is Founded in Law, organized upon the basis of a fundamental Law, and existing for the recognition and protection of Rights. The purpose of The California Jural Society is to reestablish the de jure government of the California Republic through county based houses of delegates duly elected by those Electors who desire a return to a lawful government. Due to the loss of the American Union prior to the war of northern aggression, when the southern states walked out of Congress, resulting in a sine die situation, a de facto government was created after hostilities ceased. The states of the earlier union became franchisees of that de facto national government known as the United States. Today, the result is a government of lawlessness, enforcing code through arbitrary and capricious means, by way of military procedure at the direction of the commander-in-chief. That code, created by executive orders and a militarily conscripted Congress (voted in by the franchised people of the franchised state), is then delegated for enforcement by the various branches of government (departments prior to the Civil War). These administrative agencies are thus operating outside of true positive law and are simply code enforcement services. For these and many other reasons, it is essential for the people of California to return to a proper elector status, become involved with The California Jural Society at their county level, in order to return to the Law that made America a great and prosperous nation.

ORGANIZATION AND OPERATION

I. The Jural Society is the ultimate civil authority of the county and wields the same power as the county board of supervisors, and much more. The Jural Society is a Christian organization, based on Biblical principals, common law and the Constitutions, State and National. The Jural Society is comprised of three parts, first, it is the county Grand Jury in a de jure venue and jurisdiction, separate of the current de facto government, second, the Jural Society maintains an Assise Court for those who wish to avoid being judged by the ungodly and unbelievers, third, the Jural Society is the civil authority and handles all necessary, day-to-day business within the county as is needed to provide services to the county public at large. Its elected officers are sent as delegates to the State Jural Society to represent their county. At the county level, it has the descetion [sic] to maintain any action to protect the county for the people, as the people dictate in their local Jural Society to acquire the above mentioned services and the needs of the people as they may desire.

II. The Militia shall be subordinate to the civil authority as per Article 1, Section 12 of the Constitution of California, 1849. The Jural Society extends the civil protection to the Militia, and the Militia extends physical protection to the Jural Society. The Militia is also to be utilized for civil process until such time the proper officers are elected to relieve the Militia of that particular duty. For the time being, the Militia can and will be utilized for the process of the Grand Jury and the Assise Court.

III. The Ecclesiastical Society provides scriptural guidance and influence to the Jural Society and Militia. They maintain social, mental, physical, religious, spiritual, and biblical welfare in the county. They are an independent body that by God's Law must speak out and step in when the Jural Society or the Militia is in the wrong. They provide the proper checks and balances between the Jural Society and the Militia to maintain a proper Republican Form of Government under Gods [sic] Law. They are utilized to render opinions on biblical matters when it is requested by the Assise Court.

IV. The Assise Court can hear issues brought to it by various methods. The petitioners request the Jural Society to be heard on their matter, and enter it upon the record. When this is done, the petitioners are requested to sign a binding arbitration agreement to abide by the decision of the Assise Court, as per Article 1, Section 10, of The Constitution of the united states of America. After this is done, the petitioners file briefs with the Assise Court. The Assise Court proceeds to adduce the evidence and render a judgment based upon their findings. This process should take less than two (2) weeks.

V. The Grand Jury is a free and independent body that adduces its own evidence and delivers their findings to the Jural Society. If the Grand Jury findings need process of service, the Jural Society directs the Militia to do the Process to bring the man, woman, or evidence before the Court.

VI. The Jural Society, Militia, and Ecclesiastic Society need to redress the de facto government in all of its branches. All three of these de jure government elements must maintain a strong Christian attitude in redressing for grievances. The executive, legislative and judicial branches at the city, county, state and national level must all first be redressed for grievances. We must continue to organize the de jure government and maintain a passive attitude unless and until offered no other avenue.

VII. The Jural Society officers must be elected by the Electors of the county that are not members of the Jural Society. All ballots cast by Electors will not be done in secret as Satan would have it, but by open and public elections. This must be done to have a Republican Form of Government and to establish the Jural Society as a legitimate body politic, de jure. This can be accomplished by canceling ones voter registration as per the current California Code section 700, 701, in order to cast a ballot as an Elector. As it is required to only request the cancellation of the registration by the registered voter. This

2,000 A.D.—A New Christian Government Now!

The ultimate goal of the jural society is to create a national government for all Christians, with Jesus as the head of that government. Jural societies believe that this must be accomplished before Jesus returns to earth. As with the rest of the apocalyptic Freemen movement, people in jural societies feel a sense of urgency to accomplish their goal before the year 2000.

Although it is still unclear just how violent the jural societies will become in their effort to be self-governed, there is evidence that the most radical forces in the Freemen movement are already influencing them. Several of the jural society members are Christian Identity believers, whose concept of justice is a rope and a tree.

If jural societies are being controlled by the Freemen's most radical leaders, leaders who have called for the execution of judges, prosecutors, and other officials, these societies may well pose the greatest Freemen threat to date.

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makes one an Elector, and for those who have never voted or registered, it takes only a signed affidavit statement of the same.

CONCLUSION

When these three entities are occupied and maintained by Christian men and women, under God's Law, and are operating within this country again, then, and only then, will we have a proper de jure government.

Patrons may write to: Randy Lee.,
general delivery.
Canoga Park Post Office.
Canoga Park, California.
or call: 818-347-7080 (voice), 818-313-8814 (fax)

WHAT IS WRONG WITH OUR PUBLIC DEFENDERS AND PROSECUTORS?

The Freemen "Counselor"

It has been our experience that Freemen will not accept any representation by members of the Washington State Bar Association. Our world prohibits representation by anyone not admitted to the bar, so a Freeman's "counselor" cannot be permitted to act in our courts on a Freeman's behalf. To allow this activity in our system is to condone a crime—the unlawful practice of law. The result is a pro se Freeman defendant.

Since Freemen often refuse to answer questions from the court, it can be extremely difficult to establish (1) whether the Freeman defendant is indigent, and (2) whether the Freeman defendant is waiving his or her right to counsel. This creates a clear potential appellate issue since every criminal defendant has a 6th and 14th Amendment right to the assistance of counsel before he or she can be validly convicted and punished by imprisonment, *see* e.g. *Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), and every such defendant also has the right to voluntarily and intelligently waive the assistance of counsel, *Faretta v. California,* 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). Care must be taken to establish a proper record of the Freeman defendant's waiver of this right.

A Public Defender's "Conflict of Interest"?

But what is wrong with our lawyers? Freemen assert that a State has no authority over a Sovereign Citizen who has properly attained that status from a Common Law court. Since a bar association is a "legislative" (i.e. derisive) creature of a de facto State established by executive order and military rule, Freemen posit that it is obvious such a "lawyer" has an inherent conflict of interest in arguing before judges who belong and submit to the same State entity.

Bar Association Approval to Practice Law—A "Title of Nobility"?

A person may not "appear as an attorney or counsel in any of the courts of the State of Washington, or practice law in this state" until becoming an active member of the Washington State Bar Association. Admission to Practice Rule 1(b).

Freemen assert that the privilege to practice law granted by a bar association (and the legislatively-created State supreme court) is actually a title of nobility mandated by our State Supreme Court, a title that is prohibited by Article I of the U.S. Constitution—

> § 9.…No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Freemen argue that to them, de facto Washington State, for example, is a foreign state. Since any government act done in contradiction to the Constitution is void, *Marbury v. Madison,* Freemen conclude that no bar association lawyer holding such a title of nobility can or should be accepted. To do so risks condoning an unconstitutional act, and accepting jurisdiction of the State court over Freemen, something no self-respecting Freeman could ever allow.

The "Missing" 13th Amendment—Lawyers Prohibited From Serving in Government

The Title of Nobility argument discussed previously is bolstered by an article claiming to have found the "missing" 13th Amendment to the United States Constitution.[33] This "missing" amendment is claimed to automatically strip citizenship from anyone who accepts a title of nobility, and to thereafter prohibit one from serving in government employment. The title given to a lawyer (and judge) is asserted to be a title of nobility. Thus, it is argued that all lawyers and judges in this country are illegally holding public office, are committing treason by doing so, and may be ignored by a Sovereign Citizen under the jurisdiction of a one supreme Common Law Court. The article's discussion is summarized as follows—

> **The Thirteenth Amendment.** In 1789, the House of Representatives compiled a list of possible Constitutional Amendments, some of which would ultimately become our Bill of Rights. The House proposed seventeen and the Senate reduced the list to twelve. During this process, Senator Tristrain Dalton (Mass.) proposed an amendment seeking to prohibit and provide a penalty for any American accepting a "title of Nobility." Although it was not passed, this was the first time a "title of nobility" amendment was proposed.
>
> Twenty years later, in January 1810, Senator Philip Reed introduced an amendment that, after twice being considered by a committee, was approved on April 26, 1810 by the Senate by a vote of 19 to 5. On May 1, 1810, the House approved the amendment by a vote of 87 to 3. This proposed Thirteenth Amendment read as follows—
>
> > If any citizen of the United States shall accept, claim, receive or retain any title of nobility or honour, or shall, without the consent of Congress accept and retain any present, pension, office or emolument of any kind whatever, from any emperor, king, prince or foreign power, such person shall cease to be a citizen of the United States and shall be incapable of holding any office of trust or profit under them, or either of them.
>
> **Historical Context.** To understand the meaning of this "missing" Thirteenth Amendment, one must understand its historical context. At the time of the American Revolution, King George III and other monarchs of Europe say democracy as an unnatural, ungodly ideological threat every bit as radical as communism was once regarded by modern western nations.
>
> Even though the Treaty of Paris ended the Revolutionary War in 1783, the United States' existence threatened other monarchies. The United States stood as a heroic role model for others who struggled against oppressive monarchies. The French Revolution (1978-1799) and the Polish national uprising (1794) were in part encouraged by the American Revolution.
>
> Their survival at stake, the monarchies sought to destroy or subvert the American system of government. Knowing they could not destroy us militarily, they resorted to more covert methods of political subversion, employing spies and secret agents skilled in bribery and legal deception. Since governments run on money, much of the monarchies' counterrevolutionary efforts emanated from English banks.
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> **Banks and Money.** In seeking to destroy the United States, bankers committed many crimes, including fraud, conversion, and theft. To escape prosecution, the bankers hired and formed alliances with the best lawyers and judges money could buy. These alliances,

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[33] David M. Dodge, *The Missing 13th Amendment (August 1, 1991)* (visited June 6, 1999) <http://odur.let.rug.nl/~usa/E/thirteen/thirteen1.htm>.

For a stinging rebuke of Dodge's article, *see* Jol Silversmith, *The Real Titles of Nobility Amendment FAQ—Exposing extremist lies about the "Missing Thirteenth Amendment" (June 19, 1997)* (visited June 6, 1999) <http://www.nyx.net/~jsilvers/nobility.html>.

originally forged in Europe, spread to the colonies and later into the newly formed United States.

Despite their criminal foundation, these alliances generated great wealth and ultimately respectability. The English bankers and lawyers wanted to be admired as "legitimate businessmen" so as their fortunes grew the British monarchy legitimized these thieves by granting them "titles of nobility."

Titles of Nobility. Historically, the British peerage system referred to knights as "Squires" and to those who bore the knights' shields as "Esquires." As lances, shields and physical violence gave way to the more civilized means of theft, the pen grew mightier (and more profitable) than the sword, and the clever wielders of those pens (bankers and lawyers) came to hold titles of nobility. The most common title was "Esquire" (used even today by some lawyers.)

International Bar Association. In colonial America, attorneys trained attorneys but most held no title of nobility or "honor." There was no requirement that one be a lawyer to hold the position of district attorney, attorney general, or judge. A citizen's "counsel of choice" was not restricted to a lawyer and there were no state or national bar associations.

The only organization that certified lawyers was the International Bar Association (IBA), chartered by the King of England, headquartered in London, and closely associated with the international banking system. Lawyers admitted to the IBA received the rank "Esquire," a "title of nobility." "Esquire" was the principle title of nobility which the 13th Amendment sought to prohibit. Why? Because the loyalty of "Esquire" lawyers was suspect. Bankers and lawyers with an "Esquire" behind their names were agents of the monarchy; members of any organization whose principle purposes were political, not economic.

Article 1, Section 9 of the Constitution[34] sought to prohibit the International Bar Association (or any agency that granted titles of nobility) from operating in America. But the Constitution neglected to specify a penalty, so the prohibition was ignored, and agents of the monarchy continued to infiltrate and influence the government (as in the Jay Treaty and the US Bank charter incidents). Therefore, a "title of nobility" amendment that specified a penalty (loss of citizenship) was proposed in 1789, and again in 1810. The meaning of the amendment was to prohibit persons having titles of nobility and loyalties to foreign governments and bankers from voting, holding public office, or using their skills to subvert the government. [53]

Honor. The missing Amendment is referred to as the "title of nobility" Amendment, but the second prohibition against "honour" (honor) may be more significant. The archaic definition of "honor" as used in 1810 meant anyone obtaining or having an advantage or privilege over another. A contemporary example of an "honor" granted to only a few Americans is the privilege of being a judge. Lawyers can be judges and exercise the attendant privileges and powers; non-lawyers cannot.

By prohibiting "honors," the missing Amendment prohibits any advantage or privilege that would grant some citizens an unequal opportunity to achieve or exercise political

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34 "...No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any king whatever, from any King, Prince, or foreign State..."

35 Silversmith's article, *supra,* asserts that no debates about the proposed amendment survive. "One theory is that the amendment was a reaction to the involvement of Napoleon's nephew, Jerome Bonaparte, in American public life a few years earlier. Nathaniel Macon (a Republican from North Carolina) noted that 'he considered the vote on this question as deciding whether or not we were to have members of the Legion of Honor in this country.' The Federalists thus may have introduced the proposal in an attempt to avoid embarrassment about their own associations with the British aristocracy....Another theory is that the amendment reflected the general animosity to foreigners evident before the War of 1812...There is not a shred of evidence to support the extremist theory that the amendment was part of an international banking/legal conspiracy, as claimed by extremists."

power. While "titles of nobility" may no longer apply in today's political system, the concept of "honor" remains relevant. For example, anyone who had a specific "immunity" from lawsuits which were not afforded to all citizens would be enjoying a separate privilege, an "honor," and would therefore forfeit his right to vote or hold public office. Think of the "immunities" from lawsuits that US judges, lawyers, politicians, and bureaucrats currently enjoy.

[**Ratification of the Amendment.** Twelve states ratified the amendment, three rejected it, and two took no action. Thirteen states were needed for adoption. Both of the articles, *supra,* discuss at great length whether a thirteenth state, Virginia, ratified the amendment before or after the addition of more states into the union (if it ever ratified it), and the impact of more states on the requirement of ratification by three-quarters of the states. For further discussion on ratification, please see the articles.]

Significance of Removal. To create the present oligarchy (rule by lawyers) which the US now endures, the lawyers first had to remove the 13th "title of nobility" Amendment that might otherwise have kept them in check. In fact, it was not until the Civil War and after the disappearance of this 13th Amendment that American bar associations began to appear and exercise political power.

Since the unlawful deletion of the 13th Amendment, the newly developing bar associations began working diligently to create a system wherein lawyers took on a title of privilege and nobility as "Esquires" and received the "honor" of offices and positions (like district attorney or judge) that only lawyers hold. By virtue of these titles, honors, and special privileges, lawyers have assumed political and economic advantages over the majority of U.S. citizens.

The significant of this missing 13th Amendment and its deletion from the Constitution is this: Since the amendment was never lawful nullified, it is still in full force and effect and is the Law of the land. If public support could be awakened, this missing Amendment might provide a legal basis to challenge many existing laws and court decisions previously made by lawyers who were unconstitutionally elected or appointed to their positions of power; it might even mean removal of lawyers from the current US government system.

At the very least, this missing 13th Amendment demonstrates that two centuries ago, lawyers were recognized as enemies of the people and nation. Some things never change.

The Prosecutor's Svengali—Janet Reno?

The Freemen documents received in Kitsap County assert a belief that all prosecuting attorneys, if not all lawyers, owe allegiance to or are the agent of the United States Attorney General, Janet Reno. The exact source of this belief has not been located, but the fact that the Attorney General is an attorney, that she took an oath to support and uphold the Constitution of the United States of America, and that she is ultimately responsible for the prosecution of federal crimes may support the idea.

In Freemen doctrine, our allegiance or agency to Janet Reno is problematic because she is a liaison with or member of Interpol, the International Police. It is not surprising that Freemen target Janet Reno given her involvement in Ruby Ridge and WACO, and their one world government conspiracy theory.

Interpol, which is part of the one world conspiracy, is an international law enforcement agency. The United States accepted membership in Interpol in 1938. The office of the Attorney General is the designated office of responsibility for Interpol in the United States, with the Attorney General authorized to

accept and maintain membership in Interpol and to designate any departments and agencies which may participate in the United States representation at Interpol. [6]3

The problem, as Freemen see it, with membership in Interpol is that the Interpol Constitution requires participants to place the interests of Interpol over loyalty to a member's home nation.[37] The Attorney General's acceptance of the terms of the Interpol Constitution purportedly results in the Attorney General's expatriation and a relinquishment of her United States citizenship pursuant to 8 U.S.C. § 1481. [8]3 Accordingly, any discretionary decisions made by the Attorney General or any other government attorney or member of a law enforcement agency that is adverse to the privacy or property of a Freemen is seen as a "declaration of war" by a foreign agent.

The International Bar Association

Freemen also claim that International Jewish Bankers have set up the International Monetary Fund so that all nations who "borrow" from the IMF will be beholden to this international body, a step in the Jewish effort to institute a one world monetary system to the goal of a one world satanic government.

These bankers deemed it necessary to set up an International Bar Association because the bankers knew that what they were doing under the law was a very traitorous and treasonous act against all nations which could lead to a lawful charge of treason subject to a penalty of death. So they formed these bar associations to ensure all lawyers and judges would "legally" take an oath and an allegiance to this international bar association.

This bar association set up a bar association in every nation. Our "American Bar Association" was thereafter instrumental in setting up bar associations in each of the states. These associations issue licenses demanding compliance with "their" standards. Failure to do so prohibited acceptance into their "Bar," which fixed the practice of law so that only International Bar Association "followers" could practice law and become judges.

Since we are being run by lawyers beholden to an international body, with the Common Law having been successfully eliminated, only Admiralty Jurisdiction (international law) exists in our courts, a law that recognizes no civil rights, no Bill of Rights. And who better to enforce this law than our country's "traitorous" lawyers under Janet Reno?

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36 Freemen assert that the Secretary of Treasury, ATF, FBI, DEA, Customs, IRS, Secret Service, Department of Justice, Department of State, and Postal Service have all been designated to work with and participate in Interpol.

37 Article 21 of the Interpol Constitution states: "In the exercise of their duties, all members of the Executive Committee shall conduct themselves as representatives of the organization and not as representatives of their respective countries."

Article 30 of the Interpol Constitution states: "In the exercise of their duties, the Secretary General and the staff shall neither solicit nor accept instructions from any government or authority outside the Organization. They shall abstain from any action which might be prejudicial to their inter-national task."

38 This section, 8 U.S.C. § 1481(a) provides in pertinent part—

> Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions
> (a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality—
> (1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of eighteen years; or
> (2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof....

"TRESPASSING ON MY VENUE"—THE FLAG

Ship in a Harbor

Citing to Admiralty (maritime or international) Law, Freemen believe that the flag determines the law under which an action is being conducted. In other words, the "law of the flag" is the repository of all the rights guaranteed a "citizen in party." The origin of this belief probably stems from maritime law, which provides that a vessel sailing into port under a flag is considered to be a part of the territory of the nation whose flag she flies.

By flying the flag, the ship owner gave notice to all those who enter into contracts with the ship's master that he intends the law of that flag to regulate those contracts. Flying the flag on a vessel thus had an effect similar to the present day choice of law provisions found in many contracts. The "law of the flag," however, is only one of several factors to be considered in determining law applicable in maritime cases.

"The American Flag of Peace"

The United States Code provides that "[t]he flag of the United States shall be thirteen horizontal stripes, alternate red and white; and the union of the flag shall be forty-eight stars, white in a blue field," 4 U.S.C. § 1, with one star added for each additional state, 4 U.S.C. § 2. A flag that strictly complies with this definition is generally identified by Freemen as the "American flag of peace."

Flag Fringe—Velcro Anyone?

The flag that is present in most courtrooms and other governmental buildings varies from the strict language of the Code due to the addition of yellow-fringe. This practice first arose in our military branches, which is why Freemen generally call such a flag a "flag of war." [39]

When a court flies a yellow-fringed flag,[40] Freemen assert the court has created a new "foreign state/power" within the "sanctuary" or "territory of the bar" within the courtroom. Accordingly, when the court acts, it acts outside the confines of the Constitution and laws of the United States, and the judge is somehow transformed into the "Supreme Ruler" of a foreign state/power without a constitution. In addition, this action—displaying the yellow-fringed flag—apparently strips all citizens of their constitutional rights and voids all contracts between the court and a citizen in party. By crossing and entering the bar of a court displaying the offending flag, a Freemen gives up his Common Law rights.

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[39] As explained in one of the recent federal cases addressing a Freemen's claim that a state court that convicted him was deprived of jurisdiction over him by the presence of a fringed flag—

> In the 1920s, Army Regulation 260-10 required troops in the field to fly flags with a yellow silk fringe. *See* 34 Op. Atty. Gen. 483, 484-85 (1925). The Adjutant General of the Army believed that [t]he War Department ... knows of no law which either requires or prohibits the placing of a fringe on the flag of the United States. No Act of Congress or Executive order has been found bearing on the question. In flag manufacture a fringe is not considered to be a part of the flag, and it is without heraldic significance. In the common use of the word it is a fringe and not a border. Ancient custom sanctions the use of fringe on the regimental colors and standards, but there seems to be no good reason or precedent for its use on other flags. *Id*. at 485 (quoting an untitled circular of the Adjutant General dated Mar. 28, 1924). The United States Attorney General concurred, noting that the presence of a fringe on the flag "can not be said to constitute an unauthorized addition to the design prescribed by statute." *Id.* The President may, however, determine whether the Army or Navy display or remove fringes from their flags or standards. *Id.* at 485-86. The latest effective executive order, signed by President Eisenhower, himself a military man, did not address this issue. *See* Executive Order No. 10834, 24 Fed. Reg. 6865 (1959), reprinted in 4 U.S.C.A. § 1 notes (1985). Therefore, [the plaintiff's] claims against the above-listed Defendants must be dismissed because his factual predicate is incorrect as a matter of law. Even if the Army or Navy do display United States flags surrounded by yellow fringe, the presence of yellow fringe does not necessarily turn every such flag into a flag of war. Far from it: in the words of the Adjutant General of the Army, "[i]n flag manufacture a fringe is not considered to be a part of the flag, and it is without heraldic significance." 34 Op.Att'y Gen. at 485.
>
> If fringe attached to the flag is of no heraldic significance, the same is true a fortiori of an eagle gracing the flagpole. Nor are the fringe or the eagle of any legal significance. Even were [the plaintiff] to prove that yellow fringe or a flagpole eagle converted the state court's United States flag to a maritime flag of war, the Court cannot fathom how the display of a maritime war flag could limit the state court's jurisdiction...

McCann v. Greenway, 952 F.Supp. 647, 650-51 (W.D.Mo.1997) (citations and footnotes omitted).

[40] It has also been suggested that displaying an American flag with a yellow fringe is a violation of 36 U.S.C. § 176(g), which provides that "[t]he flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature." Apparently, the fringe is considered by some Freemen to be a "design" that is attached to the flag. This part of Title 36, commonly known as the "flag code," is not, however, intended to proscribe conduct. *See Holmes v. Wallace,* 407 F. Supp. 493, 496 (M.D.Ala.), *aff'd,* 540 F.2d 1083 (5th Cir.1976) (Mem.). In addition, § 176 does not proscribe any remedy for its violation. Therefore, even if a fringe on the flag could be viewed as a violation, a private plaintiff cannot premise a civil rights violation on a claimed violation of Title 36. *See id.* at 497.

Moreover, if the flag code did in fact provide for penal sanctions, it would be of dubious constitutionality. *See, e.g., United States v. Eichman,* 496 U.S. 310, 313-19, 110 S.Ct. 2404, 2406-10, 110 L.Ed.2d 287 (1990) (finding the Flag Protection Act of 1989 unconstitutional and noting that the Government's interest in protecting the symbolic value of the flag runs afoul of the First Amendment); *Spence v. Washington,* 418 U.S. 405, 412-15, 94 S.Ct. 2727, 2731-33, 41 L.Ed.2d 842 (1974) (holding unconstitutional a state statute that made it a criminal act to place "any word figure, mark, picture, design, drawing or advertisement of any nature upon any flag...of the United States," and reversing the conviction of college student who attached a peace symbol to an American flag).

Crimes Committed Against Freemen

Anyone, including judges, prosecutors, defense attorneys, courtroom personnel and law enforcement officers, who participates in a criminal prosecution in a courtroom in which a yellow-fringed flag flies is guilty in the Freemen ideology of numerous serious offenses, including civil and criminal conspiracy to deprive the defendant of his civil rights, extortion (presumably because the judges, prosecutors, *et. al.* were paid for their work or because bail is imposed as a condition of release), mail fraud (for capitalizing the defendant's name in court documents), misprision of a felony, perjury of oath for not correcting the flag "mutilation," kidnapping, assault with a deadly weapon, obstruction of justice, and deprivation of defendant's rights to equal protection.

Most of these offenses are defined by various federal criminal statutes. The power to enforce these criminal statutes, however, has been delegated solely to the Attorney General of the United States. *See, e.g., Cok v. Cosentino,* 876 F.2d 1, 2 (1st Cir.1989) (holding that only the United States can bring an action for criminal conspiracy to deprive another of their civil rights). No private right of action exists. *See Newcomb v. Ingle,* 827 F.2d 675, 676 n. 1 (10th Cir.1987) (violation of criminal conspiracy under 18 U.S.C. § 241 does not provide for a private cause of action).

Treason—The Ultimate Crime and Punishment

Perhaps more seriously, Freemen believe that the act of displaying a yellow-fringed flag in a court involves all court personnel and anyone who has sworn an oath to uphold the Constitution of the United States in "constructive treason" by "betraying the state into the hands of a foreign power." This doctrine, however, has never been adopted in the United States.

Conceptually, constructive treason "is an attempt to establish treason by circumstantiality, and not by the simple genuine letter of the law, and therefore is highly dangerous to public freedom." 87 C.J.S. *Treason* § 1 (1954). This doctrine developed under English law where it was made a crime to "compass or imagine the Death of ... the King." *Steffan v. Perry,* 41 F.3d 677, 713 (D.C.Cir.1994) (Wald, J. dissenting) (quoting Statute of Treasons, 25 Edw. III). "This became the crime of 'constructive treason,' which was enforced against supposed 'compassers' and 'imaginers' even when no overt act other than mere words or agreement corroborated an intent to carry out the regicide." *Id.* (citations omitted). This doctrine, however, is expressly repudiated by the Constitution, which states that —

> treason against the United States consists only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.... [and that] [n]o person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

U.S. Constitution. Article III, § 3. By its express language, the Constitution limits conviction for the crime of treason to particular overt acts. No other form of treason has been recognized.

The Protective Shroud of the American Flag of Peace

To secure their choice of law, many Freemen will affix the unoffending American flag of peace to the first page of all the papers submitted to the court, and in the event the Freeman appears before the court, the Freeman will also be personally adorned with the unoffending flag. The more demure Freemen settle for wearing a small flag pin on their collar or lapel. Other, more gregarious Freemen will place a desktop flag display on counsel table or pin a large American flag of peace to their chest.

Apparently, Freemen believe that even though the courtroom may be displaying a flag other than the flag of peace, the Freemen's shrouding in the unoffending American flag of peace acts as a talisman of sorts to protect the Freemen against jurisdictional conversion and somehow secures the Freemen's Common Law rights, just as a vessel sailing into port under a foreign flag was considered under Admiralty Law to be part of the territory of the nation whose flag she flew. This belief serves as the basis for the frequently asked question, "By what authority do you trespass on my venue?"

MONEY

Corruption of the Constitution—1933

The Common Law's discussion that is based on our underlying principles starts out looking remarkably orthodox—

> The United States Constitution was basically the shackles placed on the federal government by a sovereign people. The people possessed God-given rights. Those rights were only secured by the Constitution. All rights not specifically granted to the government were reserved for the people.
>
> This country started as a constitutional republic, that is, a union of sovereign nation states. The federal government was to be an agent of the states.
>
> As a safeguard, the Constitution provides that during times of rebellion or invasion, the president may assume all powers. These emergency powers should end after the crisis. President Lincoln assumed all powers during the Civil War. Since he was dealing with a rebellion, we may say that he established a constitutional dictatorship.
>
> Since then, however, the definition of "emergencies" requiring total control has been stretched to include economic problems, social imbalances, and perceived threats to the U.S. by a foreign country's actions on another continent. When authoritarian control is exerted during times other than rebellion or invasion, it is an unconstitutional dictatorship. The federal government has overstepped the bounds placed on it by the Constitution.
>
> Through the insidious, yet steady encroachment of "emergency powers," the government has now achieved the ability to rule the people by statute or decree, without the vote or consent of the ruled. Through a maze of political maneuvers, the emergency powers granted to Franklin D. Roosevelt in 1933 to deal with economic depression have become part of the U.S. Code as permanent everyday powers. America has continued under the "unconstitutional dictatorship" of war and emergency powers to this day, more than 60 years later.

EUGENE SCHRODER AND MICKI NELLIS, CONSTITUTION: FACT OR FICTION (Cleburne: Buffalo Creek, 1995), at 1-2. (Schroder is the movement's most important legal scholar. For example, in June 1995, 1,000 Common Law supporters from 32 states gathered in Wichita, Kansas to hear Schroder lecture on the Common Law.)

Schroder makes quite a claim—unbeknownst to the American people, the Constitution has been abandoned by the government through political trickery. In the movement's thinking, every red-blooded American has a duty to do whatever it takes to restore the land to constitutional rule. That is why we fought the Revolutionary War and that is why Freemen must fight this one.

Both our systems started out at the same place. When did our system abandon its commitment to our original and righteous destiny and fall from grace? While several explanations are offered (some blaming Abraham Lincoln, some Bill Clinton), the most important of these tales looks to the year 1933.

In 1933, Franklin D. Roosevelt took office and proclaimed that a state of emergency existed in the nation, the Great Depression. Roosevelt felt that the economic calamity facing the country was as serious a threat to our survival as any invasion. So, he decided to invoke the war and emergency powers that the Constitution stated were only to be used in times of rebellion or enemy invasion.

History bears out Schroder's version of the story. Roosevelt did indeed seize all gold and silver, took the country off the gold standard, and established a new banking system with paper money. He tinkered

with many constitutional divisions of power, redefining the president's role, including taking the power to coin money from Congress and giving it to himself, despite specific instructions of the Constitution.

Because the Great Depression was threatening not only the nation's economic status but also the very future of the nation, Roosevelt determined that it was better to sacrifice certain aspects of strict constitutional adherence rather than have the country crumble into chaos.

In all likelihood, Roosevelt never intended to give up his new power. This is not because he was a puppet of a great Jewish conspiracy, but rather because he felt it was in the best interest of the people for the president to keep them. Roosevelt did not believe that the founding fathers had ever intended for future generations to be bound by a literal interpretation of the Constitution. He believed that the founders understood that the Constitution was a starting point for the federal government and that, as such, its rules would be allowed to evolve over the centuries to fit the nation's needs.

By 1935, many New Deal policies were attacked by corporate lawsuits, and thrown before the Supreme Court. First, the National Industrial Recovery Act was struck down as unconstitutional. Then, the Railroad Retirement Act, followed by the Agricultural Adjustment Act. Emergency or not, New Deal policies were going down in flames. Freemen see this as proof that they are correct.

Roosevelt saw the Supreme Court's actions as obstructing the people's will, a people that had elected Roosevelt by a landslide. So, Roosevelt attempted to pack the Supreme Court with his nominees by a scheme to increase the number of Supreme Court justices to twelve. The move to stack the court turned out to be Roosevelt's biggest mistake. Even his staunchest supporters began to realize that the president wanted to implement his programs so badly that he was willing to break all the rules, including those in the Constitution. Congress refused to go along.

But in the end, it did not matter. The 1937–1938 Supreme Court (with new Roosevelt judicial appointees due to attrition) reversed its decisions on New Deal reforms and forever changed the face of the federal government by throwing out the "original intent" constitutional analysis doctrine and replacing it with a new interpretation that the Constitution was an "evolutionary document." The legislation proposed by Roosevelt and passed by Congress was found constitutional by the Supreme Court. All three governmental branches concurred, and the New Deal became law under the Constitution. Roosevelt won, but the argument concerning original intent of the framer's versus a living, breathing Constitution is far from over.

The Bank Conservation Act of 1933—The Federal Reserve and Removal From the Gold Standard

Freemen tell of a government captured by hostile forces; a government now turned against the people instead of emanating from them. The Bank Conservation Act, which ratified Roosevelt's emergency proclamation temporarily closing the banks and, as it turned out, permanently taking the country off the gold standard, takes on enormous significance to Freemen because it was passed as an amendment to the Trading with the Enemy Act. Freemen assert that the government is illegitimate since the federal government, by removing state's rights, have influenced all law by forbidding the people to have a voice in government since parts of the Constitution were suspended by this Act.

Roosevelt believed that the gold standard had created a system that would never provide enough currency to fill the needs of our growing population. He believed that America could only escape the Great Depression by spending and investing its way out of the mess. He needed more money in the pockets of the people, but knew that if he simply ordered more money to be printed, the result would be hyperinflation due to our limited gold reserves. Hyperinflation would create something similar to the disastrous situation in Germany in the postwar 1920's when people literally had to carry trunks full of their worthless cash just to buy a loaf of bread.

To resolve the problem, Roosevelt planned to change the resource that backed our money from gold and silver to all the assets controlled by the banking system. So, the new Federal Reserve notes would be

backed by the mortgages and loans controlled by the nation's banking system. In order to accomplish this task with some appearance of legality, the president had to do some pretty inventive tinkering with the existing laws—something he could only accomplish through his new emergency powers.

In the end, Roosevelt's plan allowed for the printing of billions of dollars in new paper money. Many argue that Roosevelt's paper money ended the Great Depression.

Freemen assert that the Bank Conservation Act was passed at the behest of banks, to benefit them and to act against the people, who would be prevented from removing their property from the grasp of the bankers and would have their property (gold-backed money) replaced with illegal "wartime scrip," i.e. Federal Reserve notes (issued after March 9, 1933 by a central bank) backed only by the paper it was written on. This attack on the people was passed as part of the Trading with the Enemy Act, and the lesson is clear—with this Act the American people were defined as the enemy by their government, which was now in the hands of the bankers.

The "confiscation" of the people's property and removal of the gold standard is seen by Freemen as an attempt to reduce them to "serfdom." And by highlighting the Bank Conservation Act, Freemen reinforce religious tenets of a Jewish banking conspiracy intent on capturing the government and turning it against the people.

But who got the gold? In the overall scheme of things, it really does not matter. It becomes important only because of the significance placed upon it by today's Freemen movement.

The government got the gold, which is fine with people who believe that the transfer was the result of democracy in action. However, for those who believe that Roosevelt suspended the Constitution as part of the one world conspiracy, the government's theft of all the gold was part of a future plan to give it to the secret force of Jews who were taking over the world's governments.

Although the Freemen movement's claim that the government has been illegal for sixty years is wrong, its belief that we have been operating under emergency powers during this time is accurate. But, in 1976 Congress passed the National Emergency Termination Act. Roosevelt's emergency powers would no longer be considered as such. Instead, they had been written into permanency in the U.S. Code, forever changing the status of the Constitution. Like it or not, this action was done with the blessing of all three branches of government, and is the law.

If not so deadly serious, these Freemen arguments would be funny. In reality, Roosevelt trampled on our constitutional liberties over 60 years ago because he thought it was the right thing to do to save the country. Today, Freemen are willing to commit murder because they disagree with his decision.

Why Do Green Pieces of Paper Called "Dollars" Have Value?

The elimination of the gold standard as proof of the great conspiracy is a powerful message. After all, how many people can explain why our current money has value or why we abandoned the gold standard some 60 years ago? Does anyone ever bother to ask, "Why is this green paper worth anything at all." The movement tells Freemen that the banking system is part of the great one world government conspiracy. The evil-infiltrated government stole all our gold and now wants the rest of our wealth, and has a scheme to get it.

When a farmer needs money to keep his operation going, he goes to the local banker and mortgages his land and equipment. In return, the farmer gets paper money—or even less. In exchange for his life's work, the bank gives him a piece of paper showing a long account number on one side and another number next to it that represents how many dollars are credited to that account, say $30,000.

Then, the local bank notifies the Federal Reserve that it needs $30,000. In response, the Federal Reserve calls the World Bank—composed of twelve international banks that are run by people like the Rockefellers and their European counterpart, the Rothschilds, the people at the center of the great conspiracy. At this point, the international bankers turn on a printing press and out comes a fresh batch of $30,000 in paper money. The money is created out of thin air, and is backed by nothing more than the

paper and ink on it. Freemen estimate that the real cost to the World Bank is about $20 for paper, ink, and handling. But if the farmer should find himself unable to repay the loan, the bankers take his farm. Not bad for a $20 investment.

Perhaps sadly, this wild idea of how the monetary system works is not all that far from being correct. Money has been turned first into gold, then paper. And even paper is going out of style; being transformed into bits and bytes that fly through computer terminals and satellites at the speed of light. Now the conspirators can save their $20 with the stroke of a key—and steal farms for free.

The idea of money has always been controversial, shrouded in mystery and somewhat tied to the spiritual realm. Few acts require as much faith as a person accepting paper dollar bills in exchange for his or her property which has actual value. Yet we exercise this faith millions of times a day.

Over the centuries, we have used cows, seashells, stones, food, grain, and of course gold, as a method of exchange—as money. It is not easy to carry around these bulky items, so we created coin and paper money, which is far more convenient.

Over time, we figured out that whatever we use for money has to be something with a limited supply—something scarce like gold. But if you were wealthy and forced to keep the "money" at your house, you were vulnerable to theft. So we created banks, places with secure vaults to store our gold.

We gave our banks gold, and banks gave us paper certificates that we could redeem for our gold when the time came to buy something. We quickly figured out that it did not make sense to go to the bank for each purchase, especially when the merchant would just return the gold to his or her bank for more paper certificates. So we started giving the merchants our gold certificates, which allowed them to redeem our gold. This was the birth of paper money, born out of convenience.

Freemen draw the line at this juncture, asserting that only paper money backed by gold or silver is "real" money. The idea behind the movement's teachings is that gold and silver were created by God in limited supply and are therefore ordained to be the only true form of money.

While it is difficult to understand why God-made gold is more acceptable as money than God-made cows, it is easy to understand why Freemen have a hard time accepting the concept of today's paper and computer generated money. After all, its value is based on paper, or so it seems, and if that is the case, whoever controls the presses must therefore control the money, and the world. Once again, there is a certain amount of truth behind the paranoia.

A National Bankruptcy—June 5, 1933

The Freemen argument that federal reserve notes do not constitute legal tender was summarized in a 1996 federal district court case.

> Perhaps the most bizarre basis for Greenstreet's position rests on the theory that the American system of currency is illegal and unconstitutional. Liberally construing the language of his pleadings before the Court, Greenstreet apparently believes that he has never been provided with funding (i.e. "lawful money") from the FmHA, under their contract, because it failed to give him money in silver or gold. Presumably, he therefore reasons that filing a UCC-1 is an appropriate remedy for him to pursue. Greenstreet contends that federal reserve notes are not legal tender, because they violate Article 1, Section 10, of the United States Constitution. Defendant Greenstreet's argument centers around his view that "the Congress of the United States of America declared a partial NATIONAL BANKRUPTCY on June 5, 1933, under H.J.R. 192 which abrogated the gold clause and deprived the American Citizens of their Constitutional Article 1, Section 10, lawful money" and that the "COINAGE ACT OF 1965 deprived the American Citizens of their required and mandated...silver coinage." Thus, Greenstreet extrapolates, until he is given funds in silver or gold, he will not consider any past payment to have been acceptable or satisfactory. Attacking the legitimacy of federal reserve notes is not a novel argument. Others have asserted such claims; however, they have been summarily rejected. This Court will also reject Mr. Greenstreet's coinage arguments. The Court believes that Defendant's position is simply irrational.

U.S. v. Greenstreet, 912 F.Supp. 224, 229 (N.D. Tex. 1996) (U.S. sued two former borrowers from Farmers Home Administration for declaratory and injunctive relief in response to UCC-1 financing statements filed by borrowers against federal employees who were named as "debtors" by Common Law court because borrowers were never provided with "lawful money" under the original loans since they were not paid in gold or silver; Held: financing statements fraudulent and void ab initio) (Citations omitted.).

The Mark of the Beast—The Future of Money

At the center of the money controversy is a question that the "anti" groups cannot explain, "Why is gold worth more than quartz or seashells or lead, if all of them are made by God?" In our reality, it is not. This is a societal illusion, a matter of cultural perspective and choice. Money changes as cultures change. It always has, and it always will.

Today we operate in a global economy that is pushing us to a global culture, and once again, money is changing its shape. Electronic cash in the form of "smart" cards is coming into use all over the world. Bar codes know no nationality or language, and are replacing paper money as the push for global commerce intensifies.

But to Freemen, electronic money is the last step in the Bible's prophecy of the mark of the Beast (666), a move to place all commerce in the hands of the Antichrist. Freemen believe that in the near future, even smart cards will be deemed inconvenient. Banks will turn to a system that will require us to have these codes placed directly on our hands. They believe this evolution in money will be masked under the guise that smart cards can be stolen, but permanent (invisible to the naked eye) marks on our hands cannot be.

It would seem that the money controversy is only going to escalate over the next few years. The bombings of ATMs in California in early 1997 are likely just the beginning of the Freemen's war on the Antichrist's electronic money. Barter societies have already become a mainstay of the Freemen movement. Gold and silver are once again becoming official exchange for tens of thousands of Americans who are flying under the radar of the Satan-controlled Internal Revenue Service.

Regardless of whether you see electronic money as progress or prophecy, one truth is undeniable—whoever controls the computers that send out bits and bytes controls the money.

A NEW BANKING SYSTEM

"We the People" was a patriot-for-profit group started by Roy Schwasinger, who promised his victims that for a mere $500 they could receive millions from the government. LeRoy Schweitzer and his followers, looking for answers to their economic woes in the early 1990's, attended a We the People meeting.

Organizers of We the People claimed they had won a class-action lawsuit against the federal government that had resulted in a multibillion dollar judgment. The lawsuit supposedly proved that the government had illegally abandoned the gold standard. Of course, no such judgment existed, and Schwasinger and his cohorts eventually made off with $2.5 million that has never been recovered.

The We the People antigovernment message was just what Schweitzer and the Montana Freemen wanted to hear. They took the We the People teachings and expanded upon them.

Schweitzer's Montana Freemen believe that the Federal Reserve's worthless paper money is backed by nothing more than the debts of the American people. They decided to emulate the Federal Reserve by forming their own banking system. They declared themselves to be a sovereign township, which separated them from the federal government. In their minds, being a "Sovereign" separate entity meant they could legally create a separate banking system. All they needed was something to back the money they wanted to print.

The Freemen decided to mix justice with banking. They convened Common Law courts, and found public officials guilty of treason. As part of their sentences, in addition to the death penalty, the common law courts decided to impose huge liens against the property of the "convicted." Those liens (debts) would then back the Freemen money orders and checks in their new banking system just like the debts of the American people are backed by the Federal Reserve notes.

In other words, if the Freemen filed $10 million worth of bogus liens against people they had convicted in their one supreme Court, the Freemen were entitled to write $10 million worth of checks and money orders that were now backed by the property of the corrupt officials.

These Freemen claimed that their banking system was just as legal as that of the Federal Reserve. If the United States had its own banking system, the Montana Freemen's nation, Justus Township, could do so as well.

Since the systems were the same, the Freemen would logically adhere to all of the laws set out in the Uniform Commercial Code that are designed to regulate banking practices. In fact, Freemen are fanatics when it comes to following the letter of the law and the UCC.

You might ask that if the Freemen believed the Federal Reserve was a fraud, why create their own similar banking system? Expanding on their We the People predecessors, the Freemen were motivated not by money but by their political and religious ideologies.

The purpose of the Freemen system of liens and money orders was twofold—first to take Federal Reserve Notes out of the United States system so that they could then be reconverted to gold and silver (the only form of money the Freemen actually recognize as legitimate); and second to provide those people who were losing their property with a means to pay their debt and avoid foreclosure in our system.

Initially, the Freemen's banking system actually worked. Credit card companies accepted Freemen documents as payment. The IRS accepted Freemen money orders written for two and three times the amount of the tax debt, and promptly sent the group a check for the overpayment.

But the Freemen's ultimate motive was politics, not greed. They ran their school as an effort to establish similar Common Law courts and banking systems across the country in the hope that their system

would eventually cause the collapse of what they believe is an unconstitutional totalitarian government. If the collapse occurred, the Freemen goal of a white Christian America could finally be realized.

The Montana Freemen did more to further paper terrorism than any other group, but they did not stop at paper. One of the reasons the government moved in on the Montana Freemen when it did was that the group was preparing to carry out the death sentences its Common Law court had issued on several local officials.

Prior to the standoff at Justus Township, Schweitzer told his fellow Freemen "…We got a warrant on the sheriff. We got one on the deputy, on the judge and on the county attorney, and on the county commissioners…We're going to have a standing order. Anyone obstructing justice, the order is 'shoot to kill.'"

Is such an order currently outstanding against you or other county/city officials?

WHAT IS A CHRISTIAN APPELLATION?

Arraignments—Let the Games Begin

Unless Freemen paperwork is previously received, usually by a law enforcement officer, a prosecutor's first knowledge that he or she is dealing with a Freemen defendant is likely to occur at arraignment. A clerk or the judge will typically begin by calling the court calendar and asking those present to respond affirmatively. When a name is called and a response is given that the person called is not present, you probably have the beginnings of a long arraignment calendar with a Freeman defendant. While our request for a $50,000 cash only bond to secure the presence of the defendant in court has so far convinced our Freemen defendants to come forward, the arraignment of these defendants is far from over.

Freemen are very particular in the spelling of their "Christian appellation"[41] and refuse to acknowledge any other spelling as referring to them. In their mind, alternative spellings are simply referring to different people and not to the Freeman defendant actually in court. While at first blush it is tempting to consider this word-game battle to be another example of a Freeman defendant trying to obstruct our justice system, in their world the spelling of their identity has significant religious connotation.

Despite a Freeman defendant's perceived notion that the government has chosen to spell his or her name in a certain way as a secret sign of the coming one world government, the reality is far less stark. For a matter of convenience, Washington's computerized court docketing system as developed by the Office of the Administrator for the Courts under the direction of the Judicial Information System Committee shows a defendant's name in all-capital letters on any calendar, docket, or other reports printed through the use of the Superior Court Management Information System (SCOMIS), Juvenile Court Information System (JUVIS), or District and Municipal Court Information System (DISCIS).

If it were possible to "fix" the court's system to allow upper and lower case letters as required by a Freeman defendant, we would be first on the bandwagon to do so. The extra court time wasted on this issue is simply not worth the fight. We have even suggested adding an AKA with the correct "Christian appellation" only to be doomed by the computer system (once a clerk hits "enter" all typing will be automatically turned into capital letters) and face vehement opposition by the Freeman defendant. After all, he or she is simply not the person described in the all-caps name and should not be linked to that person. Freemen see the court's claimed inability to spell the appellation correctly in its computer system as proof positive of Satan at work.

We offer no solution to this dilemma, and wish prosecutors patience since this issue is hardly the last that will arise in the prosecution of Freemen defendants. Perhaps with an understanding of why the spelling matters, we can take a good breath of air at our next arraignment and let the inevitable course occur with little consternation on our part. And please remember, Identity believers read the Bible literally, with no room for interpretation.

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41 **ap-pel-la-tion.** 1. a name, title, or designation. 2. act of naming. WEBSTER'S ENCYCLOPEDIC UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 72 (1989).

Capitalization Counts—The Mark of the Beast

Freemen Christian Identity believers act only in a character and capacity as a Christian Citizen, and not under the jurisdiction of the Revised Code of Washington or a city code. These laws, "from the pit of hell," can have no binding effect on a Sovereign Citizen since these laws are not of the Common Law or other recognized God-inspired document. The following portions of a document we received from a Freeman defendant "explain" why spelling matters—

> Freemen believe the premise that the Word of God as given in the Bible is the highest law. In contrast, *Marbury v. Madison's* [5 U.S. (Cranch) 137, 2 L.Ed. 60 (1803)] proclamation that the United States Constitution is the "highest law of the land" can have no operative effect since the land is an inanimate object. Accordingly, one must look to the Bible for guidance about one's valid name. Any spelling different than the biblical spelling must therefore be a fraud, lie, perjury, or blasphemy.
>
> The first white man's name given to Him by God in *Genesis* 5:2 is the name Adam. The word adam appears elsewhere in the Bible, but it is an adjective or a noun, not a proper noun or name. Everywhere that the word Adam occurs it is the name of the first white man or of a place. It also was given as the name of His posterity. "Male and female created he them; and blessed them, and called their name Adam, in the day when they were created." *Genesis* 5:2 It is a proper noun, and is spelled in upper and lower case letters. Additionally, the name Eve, the name of the first Woman is written in upper and lower case letters to indicate a name or a proper noun.
>
> An examination of the original Hebrew also gives the names of Adam and Eve in the proper upper and lower case style. Adam's name is Adam, and Eve's name is Chavvah, both written from right to left in the original Hebrew language.
>
> A perusal through the Bible shows that when People's names occur they are always written with the first letter capitalized and all other letters written in lower case. Exceptions to this do occur in the King James Version of the Bible in English. JESUS has been spelled with all capital letters, as has THE KING OF THE JEWS, KING OF KINGS AND LORD OF LORDS. See the four gospels and Revelation (BABYLON THE GREAT, THE MOTHER OF HARLOTS AND ABOMINATIONS OF THE EARTH). It is believed that this was done by the translators for emphasis.
>
> Other non-English versions of the Bible do not use all capital letters for a person's name as shown above. One can only conclude that the English versions have been mis-translated. Since the same all capitals nomenclature is used by war departments and martial law, the all capitals names and words must have preceded Us. This mis-translation is very dangerous and sets the stage for the Antichrist and his beastly government based upon emergency war time, martial law and siege.
>
> The all capitals name is a war name, or "nom deguerre." It is given to those who wage war, and their enemies. Those who give the name claim ownership over those who receive it. It is truly a name of blasphemy when it is given and claimed by the Beast.
>
> There are many biblical references to those whose names are written in the Book of Life throughout Revelation. Since the Antichrist's church is spelled in all capital letters, and Adam's name and lineage is not, it is obvious that when God wrote the names in the Book of Life at the beginning of time, He used the spelling technique of capitalizing the first letter and using lower case letters thereafter.
>
> In fact, an exhaustive research of the subject reveals that the altered, blasphemous name is the key to the Roman Catholic's and Rome's goal of unity, and one world government by the year 2,000. This goal was publicly proclaimed during the installation of Archbishop Brunnel in Seattle. The Bishop of Rome, the Pope, sent his representative to install the archbishop and to proclaim that the year 2,000 is the jubilee year, the second Pentecost, and the year of unity. This can only mean the publicly stated goal of the

Catholic church's unifying of all Christian and non-Christian religions and governments under Rome and the Vatican by the year 2,000.

All prophesy is fulfilled, and We are in the season, the previous jubilee ushered in by the establishment of the nation of Israel in 1948. The Beast's system is in place, and Rome holds all of the decrees, papal bulls and treaties necessary for its dominance and control of that Beast. The stage is set for the end.

When God's Chosen People accept the name of the beast through his mark on our name (all capital letters), the recipient becomes fodder for Satan and his helpers. "Do not they blaspheme that worthy name by the which ye are called?" *James* 3:5-7. Look at the name that lenders give. It is always altered, bastardized, blasphemed. Examine your license. Examine your court papers. The name is a lie.

God made no mistakes or errors when He wrote Our names in the Book of Life. Our names are written exactly, without error, as written upon Our birth certificates or upon Our Baptismal records. Any alteration blasphemes God, and may deny Our salvation.

Are We to accept the all capitals, or altered name which is a different name, and is a lie, and is blasphemy? Emphatically No! I pray that the Holy Spirit will teach, and will move you to an understanding of what God's Word has to say concerning Our name.

The vile nom deguerre that the courts and the Beast government system uses to dehumanize and satanize the populace is blasphemous. We cannot accept that false name. To do so is to invite the wrath of God. Jails also cannot hold Us using a false name which is not Our name. As an aside, you are encouraged to look up the word persecute, which means "to pursue," which is the charge filed by the prosecutor.

Capitalization Counts—A Secular Challenge and Our Response

Freemen often complain about their names being in all capital letters and demand that court captions be amended so that their name is written in upper and lower case letters. Frequently, the authority cited for their request is Fed.R.Civ.P. 10(a). A federal judge has rejected this authority for altering the standard document caption, stating—

> In both of his motions, Jaeger contends that defendants violated Fed.R.Civ.P. 10(a) by capitalizing all of the letters of his name in the caption of their answers to his complaint. Jaeger asserts that the alteration was not one of the modifications to the caption specifically permitted in Fed.R.Civ.P. 10(a). Jaeger asserts that "All capital letters changes the status of an individual significantly, as it creates a corporate 'person' (which plaintiff is not) and changes the status of an individual (which plaintiff has not authorized). *See* BLACK'S LAW DICTIONARY, 5th Ed. at 191." The court does not believe that the cited authority supports Jaeger's proposition, because the definitions found on the cited page of BLACK'S LAW DICTIONARY have to do with the financial basis of a corporation, not the way in which names are written.
>
> The court finds Jaeger's arguments concerning capitalization otherwise specious. The court routinely capitalizes the names of all parties before this court in all matters, civil and criminal, without any regard to their corporate or individual status, and has never considered that Fed.R.Civ.P. 10(a) prevented different fonts, type faces, types of ink, types of printers, methods of printing or handwriting, or styles of capitalization for names of parties. The rule by its very terms identifies only changes in the content of captions, not the way in which they are printed. Jaeger's motions to strike are denied as to improper captioning.

Jaeger v. Dubuque, 888 F.Supp. 640, 643-44 (N.D. Iowa 1995) (Footnotes omitted).

The reasoning in *Jaeger* is applicable to Washington statutes and court rules. Neither RCW 10.40.050, RCW 10.40.060, CrR 4.1(d), nor CrRLJ 4.1(c) which require the defendant's "true name" to be entered into the court minutes and added to the charging document indicate that different fonts, type faces, types of ink,

types of printers, methods of printing or handwriting, or styles of capitalization for names of parties have any impact upon an individual's "true name." Neither CrR 2.1 nor CrRLJ 2.1 which specify the contents of a charging document mandate the use of certain fonts, type faces, types of ink, types of printers, methods of printing or handwriting, or styles of capitalization for names of parties.

A Freeman's Name—Why First Middle, Last?

Freemen will frequently separate their first and middle names from what we consider to be a last name, i.e. John Quincy, Public or John Quincy: of Public. The reason for this practice is that an individual "owns" his or her first and middle name. The last name, though, is owned by the family. In keeping with this belief, some Freemen will give their middle name (in our world) when asked for their last name, or they will introduce themselves as "John Quincy of the family Public."

Freemen assert that the Book of Life (God's pre-determined list of those who will enter the Kingdom of God) lists their appellation as First and Middle followed by a comma, and then the family name. See the previous discussion on the importance and true meaning of our system's designation of a Freemen appellation.

Since court calendars do not correctly spell (capitalization) nor use commas or colons as required, Freemen assert that the "person" charged with a crime is not the Freeman defendant before the court.

Capitals Indicate a Corporation?

We have been told that one of the style manuals say that all capital letters is a sign that the entity named is a corporation. Since Freemen are human beings and not corporations, their appellation should not be in all capital letters. The source of the style manual is unknown.

Sui Juris

Freemen often sign their name followed by the phrase "sui juris."[42] While such a designation has no impact in our system, Freemen apparently use this moniker to give our system notice that it is dealing with a Sovereign Citizen. A similar tactic is employed by Freemen use of the flag on their person or on documents presented to our system. *See "Trespassing on My Venue"—The Flag, supra*.

The Common Law Seal—Your Thumbprint

Many Freemen documents have a thumbprint next to the signature. The thumbprint is apparently considered a "common law seal." *See The American's Bulletin,* Vol. 17, Issue 12 at 11 (December 1998) ("Original Affidavits were duly witnessed and lawfully signed by Affiants and originals contain 'thumbprints' or same, constituting common law seal(s).")

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[42] **Sui Juris.** Lat. Of his own right; possessing full social and civil rights; not under any legal disability; or the power of another, or guardianship. Having capacity to manage one's own affairs; not under legal disability to act for one's self. Black's Law Dictionary 1602 (4th ed. 1968).

Alieni Juris. Lat. Under the control, or subject to the authority, of another person; *e.g.,* an infant who is under the authority of his father or guardian; a wife under the power of her husband. The term is contrasted with Sui Juris. *Id.*, at 96.

FREEMEN-SPEAK—A REFERENCE CHART

Freemen terminology is often difficult to understand. We hope that the following reference chart, written from a Freemen perspective of their and our government, will assist you. [3][4]

u.S.A.	U.S.
DESCRIPTION	DESCRIPTION
In The united States of America	In the United States
A "Republic"	A "Corporation" of England in 1871 [To incorporate means to become a part of something bigger]
Having a de jure form of government (lawful)	A de facto government (unlawful)
Created by Sovereign Citizens	Created by merchants and bankers through President Lincoln and his cohorts [by acts of treason] They also forced the South and other States to secede. This Martial Law government is a fiction managing civil affairs.
Started with the Declaration of Independence in 1776, the Articles of Confederation in 1778, and the Constitution in 1787	Started with the Gettysburg Address in 1864, and the Incorporation of the District of Columbia by Act of February 21, 1871, under the Emergency War Powers Act and the Reconstruction Acts
The Articles of Confederation are still in operation. The Constitution was added to restrict and limit the federal venue.	Ruled from the "District of Columbia" under "Masonic Rule." US Titles and Codes call "DC" the "United States"
The Constitution for The united States of America	The Constitution of the United States
"I pledge allegiance to The united States of America, and to the Republic for which it stands, One nation under God..."	Emphasizes "Democracy" which is the next thing to "Socialism" which is another form of "Communism."
"Republic" means "Government of the people"	"Democracy" means "Rule by Queen of England"
The rights of the people are its main concern and maintains all states as Republics	Gives away our rights, land, parks, and streams, over to a foreign government such as the United Nations by Executive Orders or by decree
Government restricted by the Constitution to the 10 miles square called Washington DC, US possessions, such as Puerto Rico, Guam, and its enclaves for forts and arsenals.	Expands and conquers by deceit and fraud. Uses "words of art" to deceive the people."
Represents the "American Sovereign Citizens" and the "Republics" among nations.	Represents its own supposed sovereignty among nations.
Sovereign Citizens are created by God and are answerable to their Maker who is Omnipotent. The Bible is the Basis of all Law and moral standards. In 1820, the uSA government purchased 20,000 Bibles for distribution.	This government is god. It sets the morals, and values of those in its jurisdiction. These values are ever changing at their whim.
No state of Emergency and is not at war	US continues to be in a permanent state of national emergency. (Senate report 93-549 (1973))

43 *See* Jack Slevkoff, *The Truth as I see it* (visited June 6, 1999) <http://www.gemworld.com/USAvsUS.htm>.

u.S.A.	U.S.
Adjournment of Congress sine die occurred in 1861	Still existing as long as: 1. "State of war" or "emergency" exists 2. the President does not terminate "martial" or "emergency" powers by Executive Order or decree, or 3. the people do not resist submission and terminate by restoring lawful civil courts, processes and procedures under authority of the "inherent political powers" of the people
GOVERNING BODY	GOVERNING BODY
Three separate Departments 1. Executive 2. Legislature—can enact positive law 3. Judicial	The President (a Caesar) rules by Executive Order (unconstitutional) Congress and the Courts are under the President as branches of the Executive Department Congress sits by resolution not by positive law The Judges are actually referees
CITIZENS	CITIZENS
Natural-born Citizens of a state of the union are "Sovereign," "Freemen," and "Freeborn." Unless that right is given up knowingly, intentionally, and voluntarily.	US citizens (Chattel Property) are belligerents in the field and are "subject to its jurisdiction" (Washington DC)
Born as Sovereigns	They are 14th Amendment citizens implemented by the Civil Rights Act of 1866 for the newly freed slaves
Judicial Name (Appellation) Flesh and blood name of a living soul John James, Christianson (note upper and lower case; proper by Rules of English Grammar) Christian Name: John James Family Name: Christianson	"Prisoner of war" name Fictitious "nom de guerre" name for a non-living entity JOHN DOE (note all caps) John C. Doe (note middle initial, which is no name at all—a fiction) First Name: JOHN Middle Initial: C. Last Name: DOE A fictional persona being surety for the debt as a fiction in commerce (look at the name on driver's licenses, social security cards, credit cards, deeds, bank accounts, etc.)
Vote counts like one on the Board of Directors	Vote is a recommendation only U.S. citizens were declared enemies of the U.S. by F.D.R. by Executive Order No. 2040 and ratified by Congress on March 9, 1933 F.D.R. changed the meaning of The Trading with the Enemy Act of December 6, 1917 by changing the word "without" to citizens "within" the United States

u.S.A.	U.S.
	People became surety for the debt by a number of different ways. One way is by a Birth Certificate when the baby's footprint is placed thereon before it touches the land. The certificate is recorded at a County Recorder, then sent to a Secretary of State which sends it to the Bureau of Census of the Commerce Department. This process converts a man's life, labor, and property to an asset of the US government when this person receives a benefit from the government such as a driver's license, food stamps, free mail delivery, etc. This person becomes a fictional persona in commerce. The Birth Certificate is an unrevealed "Trust Instrument" originally designed for the children of the newly freed black slaves after the 14th Amendment. The US has the ability to tax and regulate commerce.
STATES	STATES
"state" when used by itself refers to the "Republics" of The united States of America	In U.S. Titles and Codes "State" refers to U.S. possessions such as Puerto Rico, Guam, etc.
All of the states are "Republics" "The Republic of Washington" "Washington republic" "Washington state" or just "Washington"	Politicians of each state formed a new government and incorporated it into the federal US government corporation and are therefore under its jurisdiction. "State of Washington" "corporate Washington" "Washington State"
Sovereign Citizens created the states (Republics) and are Sovereign over the states The Republics and the people created the uSA government and are sovereign over the uSA government	The corporate states are controlled by the US government by its purse strings such as grants, funding, matching funds, revenue sharing, disaster relief, etc.
JUSTICE SYSTEM	JUSTICE SYSTEM
Judicial Department	Judicial Branch under the President
Separate from all other Departments	It is not separate
Judicial venue	Federal (feudal) venue
Common Law Court(s)	Equity Courts, Municipal Courts, Merchant Law, Military Law, Marshal Law, Summary Court Martial proceedings, and administrative ad hock tribunals (similar to Admiralty/Maritime) now governed by "The Manual of Courts Martial (under Acts of War) and the War Powers Act of 1933
The 7th Amendment guarantees a trial by jury according to the rules of the common law when the value in controversy exceeds $20	All legal actions are pursued under the "color of law" Color of law means "appears to be" law, but is not
Common Law has two requirements 1. Do not Offend Anyone 2. Honor all contracts	Covers a vast number of volumes of text that even attorneys cannot absorb or comprehend such as 1. Regulations 2. Codes 3. Rules 4. Statutes
Constitution is the Supreme Law of the land	No stare decisis. No precedent binds any court because they have no law standard of absolute right and wrong by which to measure a ruling—what is law today may not be law tomorrow

Lawful or Unlawful	Legal or Illegal
Council (Lawyer) In-Laws (like Son-in-law)	Attorney Attorney-at-law (licensed agents of the court)
Must have damaged party	Compels performance. No damaged property is necessary

u.S.A.	U.S.
Maintains rights, freedoms, and liberties	No rights except Civil Rights. Restricts freedoms and liberties
Bill of Rights, Constitutional Rights, unalienable rights, and fundamental rights are all protected	US citizens are at the mercy of government and courts
Due Process is required Writ of habeas corpus	Due Process is optional—Sometimes Gestapo-like tactics without reservation
Innocent until proven guilty	Guilty until proven innocent
Jurors judge the law as well as the facts	The juror judges only the facts. The judge gives the statute, regulation, code, rule, etc.
DEBT	**DEBT**
None!	Trillions of Dollars First bankruptcy was in 1863 In 1865, the total debt was $2,682,593,026.53 A portion was funded by 1040 Bonds to run not less than 10 nor more than 40 years at an interest rate of 6% Members of Congress are the official Trustees in the bankruptcy of the US and the re-organization
Would it not be nice to be completely out of debt, personally, and have a stash of gold and silver besides?	"All individual Income Tax revenues are gone before one nickel is spent on services taxpayers expect from government." (Ronald Reagan, 1984, Grace Commission Report
TAXATION	**TAXATION**
Limits on taxation	No limit on taxation
Direct taxes such as "Income taxes" are unlawful	Income taxes are legal and ever increasing
Indirect taxes such as excise tax and import duties are lawful	Other taxation such as inheritance taxes are legal
	IRS's 1040 forms originated from the 1040 Bonds used for funding Lincoln's War 1863 was the first year an income tax was ever used in US history The IRS is a collection arm of the Federal Reserve. It is not listed as a government agency like other government agencies
FLAG	**FLAG**
American Flag Prior to the 1950's, state republic flags were mostly flown, but when a uSA flag was flown it was one of the following: 1. Military flag—Horizontal stripes, white stars on blue background 2. Peace flag—Vertical stripes, blue stars on white background—last flown before the Civil War	Not an American flag Some say it is a flag of Admiralty/Maritime type jurisdiction and is not supposed to be used on land. Others say it is not a flag at all but fiction Appears to be an "American flag" but has one or more of the following: 2. Gold fringe along its borders (called a "badge") 3. Gold braided cord (tassel) hanging from pole 4. Ball on tope of pole (last cannon ball fired) 5. Eagle on top of pole 5. Spear on top of pole

44

u.S.A.	U.S.
Although the codes do not apply here, the uSA Military flag is described in Title 4 U.S.C.	The flag is not described in Title 4 U.S.C. and therefore is illegal on land except for (1) the President since he is in charge of Naval Forces on high seas, and (2) naval offices and yards. President Eisenhower settled the debate on the width of the fringe. The US government is still under an official state of emergency since March 9, 1933, and possibly as far back as the Civil War
BENEFITS	**BENEFITS**
Unalienable rights (God given rights) Enjoy: 1. Life 2. Liberty 3. Pursuit of Happiness 4. Full property ownership No US benefits—Every living soul is responsible for themselves and has the option of helping others. Each living soul gives accordingly to help others in need and receives the credit or gives the credit to his Maker and Provider. No tax burdens or government debt obligations	Government given rights (which can be taken away at any time) So-called benefits include: 1. Social Security (you paid all your working life and there are no guarantees that there will be money for you) 2. Medicare 3. Medicaid 4. Grants 5. Disaster relief 6. Food Stamps 7. Licenses and Registrations (permission) 8. Privileges only, no rights 9. Experimentation on citizens without their consent Corporate government takes your money and gets credit for helping others. Politicians in return create more such programs to get more votes. Eventually there is no more to collect and give. Everyone becomes takers and there are no givers. The government then collapses from within. That is why democracy never survives.
RECORDS	**RECORDS**
Ex-officio clerks County Clerk is also Clerk of the superior court (a court of common law) and courts of record Records are also kept by Citizens such as in a family Bible	County Clerk Recorders Office created by statute to keep track of this government's holdings which are applied as collateral to the increasing debt. Property recorded at the recorder's office makes the corporate de facto government "holders in due course" Your TV is not recorded there, therefore you are "holder in due course" for the TV
Record the date family members are born, married, and the date they pass on in the Family Bible	"Birth Certificate" is required. It puts one into commerce as a fictional persona
Common Law Marriage Married by a minister or living together for more than 7 years constitutes a marriage Pastor may issue a Certificate of Matrimony	Must file a "Marriage License." The Corporate State becomes the third party to your union, and whatever you conceive is theirs and becomes their property in commerce.
PROPERTY	**PROPERTY**

44 As of 9:50 PM on June 6, 1999, the national debt was just under $6 trillion ($5,827,792,331,337.00). *The U.S. National Debt Clock* (visited June 6, 1999) <http://www.toptips.com/debtclock.html>.

Full and complete ownership 1. Allodial Title—Land Patents—Allodial Freeholder 2. Cannot be taxed (only voluntary) 3. You are king of your castle 4. No government intrusion, involvement or controls	Privilege to use 1. Fee title—Feudal Title 2. Grant Deed and Trust Deed (GRANTOR and GRANTEE in all caps are fictional persona) 3. Property tax (must pay) 4. Other taxes (such as water, sewer, school) 5. Subject to control by government 6. Vehicle registration (the incorporated State owns vehicles on behalf of US) 7. Property and vehicles are collateral for the government debt

u.S.A.	U.S.
MEDIUM OF EXCHANGE	**MEDIUM OF EXCHANGE**
Lawful money gold or silver coinage (minted before 1964)	Legal tender (dollar bills) which are actually units of debt
Has substance	Has no substance—built on credit
Controlled by Treasury of The united States of America	Controlled by US Treasury
Real Money Most of us were taught to write an S with two lines through it	Phony Money All computer programs are designed with the "$" having only one line through it
1. Silver coins* (silver dollar—standard unit of value) 2. Gold coins* 3. Paper currency* redeemable in gold or silver 4. Spanish milled dollar *issued by the Treasury Department of The uSA (a republic)	1. Federal Reserve Notes (issued by the Federal Reserve Bank, a private corporation owned by foreign bankers) 2. Bonds 3. Other Notes—evidences of debt 4. Cashless society—electronic banking
Coinage started in 1783. The first paper currency was issued in 1862. "Silver Certificates" last printed in 1957. Coinage of Silver coins for circulation ended with the 1964 coins. Redemption of "Silver Certificates" ended on June 24, 1968	The government must borrow before Federal Reserve notes are printed. The Federal Reserve Bank pays 2½ cents per Federal Reserve note printed whether $1 or $1,000. The US in turn pays the Federal Reserve Bank interest indefinitely for each outstanding notes or representation of a note. With electronic banking Federal Reserve notes are created out of nothing and nothing being printed. What a deal!!
America's wealth would be like a "Pot of Gold"	The Greenback Act was revoked and replaced with the National Banking Act in 1863. An Act passed on April 12, 1866 authorizing the sale of bonds to retire currency called greenbacks. Federal Reserve notes were issued in 1914.
ROADWAYS	**ROADWAYS**
Sovereigns have a right to use the public ways	Driver's licenses are required because driving is a privilege
"Liberty of the common way"	May lose privilege or have it suspended at the whim of government
A driver's license can only be required for those individuals or businesses operating a business within the rights-of-ways such as chauffeurs, taxi drivers, and truckers	Must comply with the Motor Vehicle Code and Department of Licensing regulations, which are forever changing Must comply with the Washington State Patrol
MAIL	**MAIL**
Non-domestic Mail that moves outside of Washington DC, its possessions and territories	Domestic Mail that moves between Washington DC, possessions and territories of the US

Zip Code not required and should not be used	Zip Codes are required when using "jurisdictional regions or zones" such as "WA," "ID," "OR"
3 cents Sovereign to Sovereign 33 cents otherwise	Cost is 33 cents for first class
Write out the state completely such as "Washington" or abbreviated "Wash." Never use "WA" for an address to a Sovereign or in your return address	Must use "jurisdictional regions or zones" such as "WA," "ID," "OR" Purposely used ad nauseum which means "no name at all"

u.S.A.	U.S.
John James, Christianson general delivery Port Orchard [Main] Post Office Port Orchard, Washington state [Zip Exempt] NON-DOMESTIC John James, Christianson c/o 1234 Main Street Port Orchard, Washington Republic [98366] Non-Domestic John James, Christianson c/o 1234 Main Street Port Orchard, Washington state [Postal zone 98366] NON-DOMESTIC Anything in brackets or boxes is considered to be excluded from the rest of the document	JOHN C. DOE 1234 Main Street Port Orchard, WA 98366 JOHN DOE 1234 Main Street Port Orchard, WA 98366 John C. Doe 1234 Main Street Port Orchard, WA 98366 All caps and/or middle initial makes the name a fiction (a non-living entity)
Patrons receive mail by "general delivery" at main post office or post offices in existence prior to the creation of corporate government	Since July 1, 1863, Customers receive "free delivery" to any location having a mailing address or PO Box (a corporate government benefit)
GUNS	GUNS
Sovereign Citizens have a right to own and use guns "Right to bear arms" against "enemies, foreign and domestic" The founding fathers knew the importance of citizens protecting themselves from governments who get out of hand.	This government wants to disarm the Citizens so as to have compete control and power. Every tyrannical government in the past has taken away the guns to prevent any serious opposition or rebellion. History continues to repeat itself because the new generations who come along do not know or tend to forget about the past and will say it will not happen here.
2nd Amendment protects the Right of the people to keep and bear arms	Disregards the 2nd Amendment or justifies what weapons should not be legal. Ever changing and ever restrictive Requires registration of guns (and their owners) Any of you who saw the motion picture "Red Dawn" realize that the enemy finds these lists and then goes door to door collecting all of the guns.
RELIGION	RELIGION

Churches exist alone No permission of government is required 1st Amendment protects against government making a law that would respect an establishment of religion or prohibit the free exercise of religion	This government wants to control the churches by having them come under their jurisdiction as corporations under Section 501(c)(3) This is to prevent the clergy, pastors, ministers, etc. from having any political influence on its members or the public in general. This government regulates what is to be said and not to be said. These churches also display the gold fringed flag. Their faith is in the government and not in God. They exist by permission of this government not by God alone. They signed away their Birthright for a so-called benefit: "Tax-exempt corporation"

SO WHO IS THE ENEMY?

Today's Freemen teachings are the result of three factors—fundamentalist interpretations of the Bible; fundamentalist interpretations of the Constitution, and the belief in a one world conspiracy. When all three are mixed together, they paint a terrifying picture of what's going on in the world. The Bible describes the horrific events of the end of the world in somewhat vague and symbolic terms, whereas conspiracy theories conveniently flesh out all the details omitted by the scriptures. The manmade details that drape the biblical framework are designed to explain American culture's most unacceptable events—loss of property; wealth; and individual freedoms—the very losses that most rural people believe they are experiencing as a result of the global restructuring.

Most of the Freemen movement's conspiracy theories are used to explain specific parts of its larger one world government AKA the new world order theory. The major players are as follows—the banks, the Federal Reserve, the International Monetary Fund, the World Bank, the federal government, communism, the United Nations, the Trilateral Commission, the IRS, the multinational corporations, the media, and the world's Jewish population, which acts through various secret organizations such as the Illuminati and Freemasons.

Within the movement, there are many subtle variations on the one world conspiracy. For Christian Identity believers, it is a Jewish conspiracy. For others, such as the more traditional fundamentalists, it is a conspiracy composed of the evil forces of the Antichrist, not necessarily Jews. But for the most part, the conspiracy story is easy to tell and goes like this—

> A one world government is being formed under the auspices of the United Nations, the Trilateral Commission or some other mysterious quasi-governmental agency that is really controlled by the Illuminati or Freemasons, or both. Conspiracists see the United Nations as usurping the historic independence of the United States and other countries. They believe that it is solidifying its position of power by using the World Bank and the IMF to make huge loans of worthless paper money which are too big to ever be repaid to countries throughout the world.
>
> Once a country falls under the power of this unrepayable debt, it is forced to dance to the tune of the international bankers (who according to the rhetoric are composed of the world's richest Jewish families) or face foreclosure or bankruptcy. The idea is that once all the governments of the world are under the control of the United Nations, the Antichrist will step in and assume power.
>
> Freemen proponents believe that the United States is now one of these "controlled" countries. They believe that when the United States went off the gold standard as the basis of its monetary system and adopted the current Federal Reserve system, political leaders were really just fulfilling biblical prophecies by giving the forces of the Antichrist the reins of government and instituting a means to take away the property and freedom of the people, actions that will ultimately result in the control of all Christians.
>
> And to make sure that this grand plan goes unopposed, the Satan-infiltrated government is now attempting to take away Freemen's guns, the very firepower that could be used to thwart this enemy within. Those in the movement are quick to point out that this sinister scenario could not have transpired had America adhered to the original intent of the Constitution, or better phrased their interpretation of the Constitution.

POSTSCRIPT ON THEIR THEORIES

The Freemen movement began as a response by ardent government supporters, farmers, to the nightmare of farm foreclosure. This economic crisis, fueled by religion and a deep identification with the land, resulted in an incredibly complex and sometimes violent Freemen system.

As our law becomes more complex and punitive economically, the Freemen movement will continue to expand. Recent laws in our world continue to extract severe economic penalties against offenders, often with no possible method available for the offender to "start with a clean slate."

Failing to pay a traffic infraction results in economic penalty, which can be especially severe if the driver lacks insurance. If the fine is not paid, the amount often is referred to a collection agency, which adds an additional penalty. The Department of Licensing is also notified of the non-payment. DOL then suspends the person's privilege to drive, and adds a fee for reinstatement of the driving privilege.

Driving while license suspended laws are enforced, so the person now appears in a criminal court, with possible criminal sanctions. Of course, if the person pleads guilty or forfeits bail, a fine is ordered to be paid.

With enough suspended driving convictions, the person's privilege to drive will be suspended in the interests of safety (with a possible gross misdemeanor second degree driving while license suspended charge for future violations within the base suspension period). Ultimately, if the person keeps driving, he or she will be declared to be an habitual traffic offender, with significant jail being imposed upon conviction (a mandatory minimum 10 days in jail for a first conviction of first degree driving while license revoked, 90 days in jail for second conviction, and 180 days in jail for third or subsequent conviction).

The obvious answer for the offender is to not drive until all the financial penalties are paid and a current driver's license obtained. While such a solution might work in a metropolitan area with available mass transit, rural counties like Kitsap offer no such option. Since the offender must work (an admirable societal goal) to provide food and shelter to the family, he or she continues to drive. And the cycle perpetuates.

This economic spiral only continues, with no end in sight for the offender. As the pressure of potential jail for each violation builds, stress creates exactly the same opportunity as the farm crisis created for Freemen recruitment. A system that asserts that the State lacks authority over Sovereign Citizens, and thus cannot require driver's licenses.

And as with farmers, the choice is to continue to violate the law or declare (in this case) a chapter 13 bankruptcy thereby establishing a plan to repay the debt. The shame that such an action engenders should not be ignored.

And now, our legislature has passed a law allowing impound (and increased monetary penalties and possible ultimate loss) of the family vehicle by those driving while suspended licenses. While the social policy of getting unlicensed and uninsured drivers off the road cannot be criticized, the effect of this never-ending economic spiral on the offender will be devastating.

Similar economic penalties, including loss of license, occur with DUI. And the requirement of a loss of one's ability to possess firearms (upon a future penalty of a felony conviction) with domestic violence crimes fuels Second Amendment Freemen arguments.

Most Freemen cases are seen in courts of limited jurisdiction. The defendants are often in economic distress, and cannot understand why the government is being so oppressive. The seeds for the Freemen antigovernment movement are sown with these offenders. Hopefully our system will show more compassion to the "average" person caught up in an unintended economic nightmare than was shown to our farmers in the 1980's.

Our failure to learn this lesson may well risk paper terrorism escalating to Common Law courts handing out death sentences and warrants of arrest against government officials, and ordering the pipe bombing of government buildings.

The challenge, though, is our correct identification of those seeking martyrdom through nonviolent paper terrorism versus those terrorists willing to use violence as a means to the end of establishing Christian Israel.

Our materials have unintentionally grown beyond all intended length. It is apparent as we continue to research their law that the Common Law is expanding in scope—some precepts of which we understand, and other ideas that are just plain bizarre. Since our effort here is already much too long, we will not discuss the following Freemen topics. But they are at least worth mentioning should you have a burning desire to know more—

- How to "dupe" an Auditor into accepting a filing (lien)
- How to open a bank account without a social security number
- How to obtain foreign vehicle identification plates and international motorist qualification (driver's license) from the Grand Turks & Caicos Islands (east of Cuba and north of Haiti)
- Jury nullification (a subject being debated in our community as well)
- How to order Common Law paperwork on disk (for a fee)
- The Right to Bear "Arms" (constitutionally protected) versus "firearms" (properly regulated for 14th Amendment citizens)
- The Right to Travel
- Understanding the adhesion contract called "Zip Code" and properly addressing your mail (do not submit to Congress' trick into federal citizenship, *see* the Federal Reserve, IRS, etc.)

Part III
Our Responses

WHAT SHOULD LAW ENFORCEMENT DO?

First Contact

The first notice that our system is dealing with a Freeman is usually given to an officer. The officer either is subjected to a plethora of questions on the street concerning the officer's authority, or the officer receives some type of Freemen document purporting to compel the officer to respond or face an economic penalty. Either way, law enforcement should be advised as to how to proceed.

The Traffic Stop

We have had cases where a Freeman has given a U.S. Supreme Court case as his identification, has attempted to engage in a lengthy "constitutional" discussion, has refused to sign an infraction, and has signed the infraction "refused for fraud" or "under duress." No doubt, many other "tactics" will be employed by Freemen when having first contact with our system through our law enforcement.

Obstructing an Officer—The "Stop and Identify" Statute

Brown v. Texas, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979). Defendant Brown was seen walking away from another person in a high drug crime area. Since the situation "looked suspicious," an officer approached and detained Brown. The officer asked Brown to identify himself, which Brown refused to do. At the time, Texas had a "stop and identify" statute making it a crime to refuse to identify oneself upon an officer's request.

The Supreme Court held that Brown was "seized" under the 4th Amendment when the officer detained Brown (because Brown was not free to leave). In reversing Brown's conviction under the stop and identify statute, the Supreme Court held that absent any basis for suspecting that a defendant was involved in misconduct, Brown's "right to personal security and privacy tilts in favor of freedom from police interference." *Brown,* 99 S.Ct. at 2641.

Since *Brown*, most states have modified their stop and identify statutes to incorporate some type of misconduct on the part of a citizen wherein he or she willfully interferes with the lawful discharge of an officer's duties, an act that results in hindering law enforcement.

Washington's stop and identify statute, RCW 9A.76.020 (obstructing a public servant, sections 1 and 2) was declared unconstitutional by Washington's Supreme Court in *State v. White,* 97 Wn.2d 92, 640 P.2d 1061 (1982) in response to *Brown v. Texas*.

Since then, our legislature has amended the "obstructing" statute, and created two separate crimes, one for a person's acts and the other for a person's words—

- **RCW 9A.76.020. Obstructing a Law Enforcement Officer** (willfully hinder, delay or obstruct officer in discharge of official powers or duties). Gross misdemeanor. Statute is limited to **"acts"** of a defendant that hinder, delay or obstruct. *State v. Williamson,* 84 Wn.App. 37, 924 P.2d 960 (Div. 2 1996) (defendant lied about his identity, a statement; conviction reversed since obstructing charge only concerns acts; case should have been charged under RCW 9A.76.175)
- **RCW 9A.76.175. Making a False or Misleading Statement to a Public Servant** (knowingly make false or misleading "material" **statement** to public servant; "material" means a written or oral statement reasonably likely to be relied upon by public servant in discharge of official powers or duties). Gross misdemeanor.

So You Want to Issue an Infraction?

A notice of infraction may be issued upon certification by the issuer that he or she has probable cause to believe that a person has committed an infraction contrary to law. Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 2.2(b). A law enforcement officer may issue a notice of infraction, and the infraction need not have been committed in the officer's presence, except as provided by statute. IRLJ 2.2(b)(1).

A notice of infraction shall include the name, address, and date of birth of the person committing the infraction. IRLJ 2.1(b); *State v. Cole,* 73 Wn.App. 844, 848, 871 P.2d 656, *review denied,* 125 Wn.2d 1003 (Div. 3 1994).

An officer may detain a person stopped for a traffic infraction for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person's license, insurance card, vehicle registration, and complete and issue a notice of traffic infraction. RCW 46.61.021(2); *Cole, supra.*

Vehicle passengers are not required to carry driver's licenses or other identification. *State v. Barwick,* 66 Wn.App. 706, 709, 833 P.2d 241 (1992). A passenger has a duty in response to an officer's issuance of a traffic infraction against the passenger, though, to "identify himself, give his current address, and sign an acknowledgement of receipt of the notice of infraction." RCW 46.61.021(3); *Cole, supra.*

A person may be **arrested and taken to jail** if he or she refuses to sign the promise to respond on the traffic citation. *Port Orchard v. Tilton,* 77 Wn.App. 178, 180, 889 P.2d 953 (Div. 2 1995) (defendant charged under municipal code equivalent of RCW 46.61.022 for refusal to acknowledge receipt of the notice of infraction under RCW 46.61.021(3); court reversed conviction since notice of infraction contained a correct statement above the person's signature wherein the person "promise[d] to respond as directed on this notice" but said nothing about a refusal to acknowledge receipt of the infraction, an element of the crime under RCW 46.61.021(3); unlike a criminal citation, a person has no legal duty to promise to appear in court for an infraction).

Any act relating to offenses involving traffic, parking, seat belt, pedestrians, etc. is a "traffic infraction." A person need not drive a vehicle to commit a "traffic infraction." RCW 46.63.020.

Any person who aids or abets another person's commission of a traffic crime or traffic infraction is similarly guilty of the offense. RCW 46.64.048.

OK, I'll Sign But Only "Under Duress"

As discussed in other parts of these materials, some Freemen actions are worth contesting, and others simply are not. So long as a traffic infraction defendant is willing to sign his or her name on the appropriate location on the citation, the Freemen act of putting "under duress" or similar language is of no consequence. So ignore it, give the Freeman his or her copy of the citation, and file the original with the court.

Custodial Arrest on Probable Cause Permitted for Certain Traffic Crimes

An officer's arrest powers are codified in RCW 10.31.100. What was once a paragraph now extends over three pages. It is incumbent on all law enforcement to carefully review RCW 10.31.100 since the "legality" of a custodial arrest will stem directly from this statute.

RCW 10.31.100(3) specifically allows arrest on probable cause for hit and run, reckless driving, DUI, and driving while license suspended (any degree). *State v. Reding,* 119 Wn.2d 685, 835 P.2d 1019 (1992) (reckless driving); *State v. Thomas,* 89 Wn.App. 774, 950 P.2d 498 (Div. 3 1998) (arrest proper even though jail had policy to cite and release reckless driving offenders).

Criminal Citation and Notice to Appear in Court

Although not required (some prosecutor's offices require all police reports to go through their office for "screening;" citations are not issued by the police), law enforcement officers have discretion to issue criminal citations. RCW 46.64.015 sets out the process for an officer to issue a criminal citation if he or she chooses to do so.

The statute makes clear that a person is to be detained for no period longer than reasonably necessary to issue and serve the citation. But some exceptions are given, specifically—if the person refuses to sign a written promise to appear in court as required by the citation, or where custodial arrest is permitted by RCW 10.31.100(3), or when the person is a nonresident and is being detained for a hearing under RCW 46.64.035 (nonresident requirement to post security for infraction or criminal traffic citation). Under these exceptions to the cite and release presumption, a person may be arrested. *Thomas, supra.*

Officer Safety is Number 1

As with any other law enforcement action, an officer's safety is of primary importance. Freemen are frequently heavily armed, and reject our law's authority over them, especially concerning firearms. It makes no sense to engage a Freeman on the street in a discussion about the Common Law, the one world conspiracy or the Tribulation. Officers should act in a professional manner, and should not treat Freemen differently from any other citizen.

Officer's are trained to take control of a scene, and a Freeman contact is no different. If a Freeman wants to write over an infraction or criminal citation, let him or her. The verbiage will not have any effect on the court processing the matter (assuming it is legible, including officer's handwriting).

When You are Served with a Freemen Document

Freemen are especially adept at serving their Common Law documents on anyone with whom they have come in contact. Officers should accept service of the documents, and immediately notify a supervisor and contact the prosecuting attorney. Prosecutors need to review the documents for possible criminal charges.

A Lien is Recorded, Involuntary Bankruptcy Filed, or Citizen's Complaint Received

Officers should immediately notify a supervisor and contact the prosecuting attorney in these situations. These documents can and should be responded to, but it will likely take an attorney to do so. Prosecutors are your attorneys, so use them.

Develop Intelligence and Know Your Freemen

The vast majority of Freemen are paper terrorists seeking martyrdom in their community, with no intention of becoming violent. But given the religious beliefs and fanaticism of some members of their community, officers and prosecutors must take great care to "know" what is going on in their community.

Radical Freemen know how to make pipe bombs (learned off the internet), have used bombs to attempt to blow up courthouses (or as a diversion to allow "liberation" of their money from banks) and believe that the satanic one world conspiracy to eliminate the white race (the Tribulation) for the Antichrist is here now. Such beliefs have a dramatic effect on whether a Freemen will be "compelled" to use violence against the evil government officials implementing Satan's will.

Government officials must be ever vigilant in watching such groups, especially as the year 2000 nears. There can be no doubt that Freemen certainly know who you are and the location of government facilities.

WHAT SHOULD JAIL PERSONNEL DO?

Freemen can pose numerous problems in a correctional facility. Issues can arise at the original booking when some Freemen refuse to provide their name and may resist efforts to obtain mandatory identification information. Problems continue with respect to Freemen communication and visitation with non-lawyer "Sixth Amendment counsel." Freemen will frequently refuse to leave their cell for court and some Freemen will resort to hunger strikes in order to protest their continued confinement by a "foreign" jurisdiction.

Some of these issues are discussed below. This discussion is no substitute for the adoption of specific procedures by each institution. The procedures that follow are merely starting points for the development of such procedures.

Identification

Refusal to Provide Name. In our experience, some Freemen who have been stopped for traffic infractions will identify themselves to the investigating officer as *"Brown v. Texas."*[45] Continued belligerency when pressed for their correct name will generally result in the Freeman's arrest and his or her booking into jail. Once in jail, the primary concern is to determine the Freeman's true identity and to determine whether there are any warrants outstanding for his or her arrest. Fingerprints obtained from an individual who refuses to properly identify themselves during booking should be promptly forwarded to the F.B.I. and to the Washington State Patrol Identification Section so that the individual's true name can be determined.

Fingerprints and Photographs. It is the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all adults and juveniles lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor. RCW 43.43.735(1).

It is the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state, to photograph and record the fingerprints of all adults lawfully arrested. RCW 43.43.735(2). This information must be furnished to the Washington Sate Patrol Identification Section within seventy-two hours from the time of arrest. RCW 43.43.740(1).

It is also the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to record the fingerprints of all persons held in or remanded to their custody when convicted of any crime as provided for in RCW 43.43.735 for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon arrest pursuant to RCW 43.43.735 and 43.43.740. RCW 43.43.745(1).

Physical force may be used to obtain photographs and fingerprints from individuals who are required to provide such identification at booking or charging. RCW 43.43.750 provides—

> In exercising their duties and authority under RCW 43.43.735 and 43.43.740, the sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may, consistent with constitutional and legal requirements, use such reasonable force as is necessary to compel an unwilling person to submit to being photographed, or fingerprinted, or to submit to any other identification procedure, except interrogation,

[45] *Brown v. Texas,* 443 U.S. 47, 61 L. Ed. 2d 357, 99 S. Ct. 2637 (1979), was the United States Supreme Court case that struck down "stop-and-identify" statutes.

> which will result in obtaining physical evidence serving to identify such person. No one having the custody of any person subject to the identification procedures provided for in this act, and no one acting in his aid or under his direction, and no one concerned in such publication as is provided for in RCW 43.43.740, shall incur any liability, civil or criminal, for anything lawfully done in the exercise of the provisions of this act.

The use of force is to be considered as a last resort. Sometimes Freemen will cooperate if you indicate that they may sign a statement that the photographs and fingerprints were obtained under duress. Such a statement allows them, under their understanding of the their law, to continue to argue that they have not submitted to the jurisdiction of state court.

A recalcitrant Freeman may also submit to fingerprinting and photographing without the use of force after being ordered to do so by a judge during the Freeman's first appearance in court. The judicial order, like the statement that the Freeman is agreeing under duress, will prevent a finding under their interpretation of their Common Law that the Freeman has entered into any contractual relationship with the state or that the Freeman has voluntarily submitted to the jurisdiction of state court.

Refusal to Leave Cell

Some Freemen defendant's have "refused" to leave their cell to come to court. The court has various options available to it when this happens. In deciding between the options, the court will need an assessment from the jail of how violent the defendant presently is, how many correctional officers may be needed for proper transport, and other security related issues.

Non-Lawyer "Sixth Amendment Counsel"

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right…to have the Assistance of Counsel for his defence." U.S. Cont. amend. VI. The Sixth Amendment, however, does not permit a criminal defendant to be represented by an advocate who is not a member of the bar. *United States v. Wheat,* 486 U.S. 153, 159, 100 L.Ed.2d 140, 108 S.Ct. 1692, 1697 (1988); *see also State v. DeWeese,* 117 Wn.2d 369, 376, 816 P.2d 1 (1991) (a criminal defendant does not have the absolute right to be represented by the individual of his or her choice). Nonetheless, many Freemen will identify a non-attorney as their counsel. As discussed below, a non-attorney counsel is entitled to no greater access to an inmate than is a member of the public.

Legal Mail

As a general rule, inmates have a lessened expectation of privacy and jail officials may examine all of their incoming and outgoing letters and packages. *See, e.g., Lavado v. Keohane,* 992 F.2d 601, 607-08 (6th Cir. 1993) (prison officials may open and read prisoner's incoming general mail pursuant to a uniform and evenly applied policy with an eye to maintaining prison security); *Frye v. Henderson,* 474 F.2d 1263 (5th Cir. 1973) (opening incoming mail violates no inmate right); *Robinson v. Peterson,* 87 Wn.2d 665, 669, 555 P.2d 1348 (1976) ("We have upheld the right of jail officials to examine the letters and packages, incoming and outgoing, of all inmates."); *State v. Hawkins,* 70 Wn.2d 697, 425 P.2d 390 (1967), *cert. denied,* 390 U.S. 912 (1968**)** ("We said there that there can be no claim of an invasion of privacy under such circumstances.").

Some items of incoming and outgoing mail,[46] such as correspondence between an inmate and his or her attorney, is subjected to a less stringent examination by prison or jail officials. Instead of reading such correspondence, letters or packages from an inmate's attorney are generally opened in the inmates presence and any inspection of the package or letter is limited to the detection of contraband.

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[46] Federal regulations dealing with mail in federal prisons have identified correspondence received from the following as deserving special treatment: (1) President and Vice President of the United States; (2) Attorneys; (3) Members of the U.S. Congress; (4) Embassies and Consulates; (5) the U.S. Department of Justice (excluding the Bureau of Prisons but including U.S. Attorneys); (6) other Federal law enforcement officers; (7) State Attorneys General; (8) Prosecuting Attorneys; (9) Governors; (10) U.S. Courts (including U.S. Probation Officers); and (11) State Courts. 28 C.F.R. §§ 540.2-540.25 (1992).

This lesser level of inspection is designed to protect an inmate's attorney/client privilege. The attorney/client privilege,[47] like all other privileges in Washington, is strictly construed. This means that the privilege does not apply to non-lawyer counsel. *Cf. Hagan v. Kassler Escrow, Inc.,* 96 Wn.2d 443, 635 P.2d 730 (1981). Thus correspondence or packages sent by an inmate to a non-lawyer counsel or to an inmate by a non-lawyer counsel may be subjected to the same level of scrutiny as ordinary mail.

Visitation

Many jails and prisons provide for contact visits between attorneys and inmate clients. These visitations are frequently held in special visitation rooms that, if in a department of corrections facility, are not subject to interception and recording under RCW 9.73.095. *See* RCW 9.73.095(4). A Freemen's non-attorney counsel is not entitled to the benefits of these rules, but should instead be given the same access as any other civilian visitor.

Hunger Strikes

A Freemen inmate may resort to a hunger strike as a method of protesting what is perceived to be incarceration by a foreign government. The safest way to deal with a hunger strike is as a medical condition. Careful monitoring of food intake and the inmate's physical condition should be promptly undertaken once an inmate announces his or her intent to stage a hunger strike. Department of Corrections, Division of Prisons, Directive DOP 620.100, a copy of which is provided in the Appendix, at 31-33, is an excellent starting point for any facility that does not already have a procedure in place for dealing with hunger strikes.

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47 The attorney/client privilege is codified at RCW 5.60.060(2)(a). This provision states that "[a]n attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment." *Id*.

WHAT SHOULD AUDITORS/ASSESSORS DO?

Allodial Freeholds and Land Patents

The legal concept of holding land by "allodial freehold" or "in allodium"[48] traces to the feudal roots of the English system of land tenure. As it operated at the height of the Middle Ages, feudalism involved a descending pyramid of lords and vassals. The monarch granted tenure to tenants in chief, who in turn often granted portions of their estates to others. Those lower on the pyramid owed certain obligations, in the form of military service, cash, crops, or other services, to the higher lord. This system generated the revenues and services with which the monarch financed the expenses of government and maintained a military.

Allodial and allodium are defined as follows—

> **Allodial.** Free; not holden of any lord or superior; owned without obligation of vassalage or fealty; the opposite of feudal.
>
> **Allodium.** Land held absolutely in one's own right, and not of any lord or superior; land not subject to feudal duties or burdens.
>
> An estate held by absolute ownership without recognizing any superior to whom any duty is due on account thereof.

BLACK'S LAW DICTIONARY 100 (4th ed. 1968).

This distinction between property held subject to tenure and in allodium has long since been derogated to mere academic interest. The obligations owed by vassals to their lords, such as providing the services of a particular number of knights, were gradually superseded as society modernized. While concepts of land tenure were initially imported to the American colonies (as evidenced by original royal land grants), such concepts have been abolished with all land, long since held free of feudal obligation.

A land patent is a creature of statute whereby the United States government conveys title to public land to a private individual. *Federal Land Bank of Spokane v. Redwine,* 51 Wn.App. 766, 769, 755 P.2d 822 (Div. 3 1988).[49]

Presumably, a title search to most private property in Washington would reveal initial title stemming from such a patent, usually issued in the nineteenth century. *See Barbizon of Utah, Inc. v. General Oil Co.,* 471 P.2d 148 (Utah 1970).

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[48] Most of the information in this section is taken from two 1996 Washington State Attorney General opinions.

AGO 1996 No 6 (declaration of "allodial freehold" ownership does not create an exception from payment of property taxes; a homestead exemption does not bar a foreclosure for unpaid real property taxes); and
AGO 1996 No. 12 (auditor may not refuse to record land patent or non-statutory abatement documents if the documents' purpose is to convey or affect title to real estate).

The entire text of the Attorney General opinions is available at the Attorney General's website (visited February 25, 1999) <http://www.wa.gov/ago/opinions/opinion_1996_6.html> and <http://www.wa.gov/ago/opinions/opinion_1996_12.html>.

[49] Two months prior to default on his mortgage, the defendant executed and recorded a "Declaration of Land Patent," wherein the property was automatically converted to an allodial freehold unless challenged by someone in court within 60 days of recording. Attached to the document was a hard to read document dated January 6, 1896, and stamped as an official record on file with the Oregon state office of the Bureau of Land Management. Defendant claimed that this latter document is the original federal patent for the land in question, and that the Declaration of Land Patent prohibited the bank from foreclosing.

Division III held that the recording of the Declaration of Land Patent had no effect on title since it was issued by the defendant and not by the United States, and affirmed the trial court's summary judgment in favor of the mortgage holder.

Freemen have recently presented land patents for recording, often accompanied by another document they have generated named "Declaration of Patent" or "Update of Assignment of Patent." While the recording of such documents does not prohibit foreclosure or shield the land owner from property taxes, an auditor does not have discretion to refuse to record the document.

The general rule is that an auditor must record "any instrument authorized or permitted to be so recorded." RCW 65.08.150. It is clear that auditors must record original patents issued by the United States or the state of Washington, at least at the time the property is originally conveyed. RCW 65.04.030(2); RCW 65.08.090. Given the Freemen practice of also including other "declarations" or "updates" in a filing request, the Attorney General refers to the more general authorization for recording.

> A conveyance of real property, when acknowledged by the person executing the same (the acknowledgement being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated.

RCW 65.08.070. The term "conveyance" is broadly defined to include "every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected[.]" RCW 65.08.060(3). Under this more general language, an auditor must record a document if it is properly acknowledged and if it affects an interest in real property.

The Attorney General examined the formal opinions of the attorneys general of five other states. Two states (Kansas and North Dakota) concluded that patent documents must be recorded because a recording officer may not interpret the document in order to decide whether title is affected. Three other states (Nebraska, South Dakota, Ohio) reached the opposite conclusion reasoning that the recording officer must examine a document submitted for recording in order to determine whether it is of the type provided for by statute.

Our Attorney General agreed with Kansas and North Dakota that an auditor must record land patents and related documents since an auditor may not interpret a document that might affect title.

> We conclude that the former analysis better comports with the laws of Washington than does the latter. The statutory definition of "conveyance" includes those instruments by which an interest in property is "created, transferred, mortgaged or assigned," but also includes those "by which title to any property may be affected[.]" RCW 65.08.060(3). If an instrument facially purports to affect title, even if it does so without transferring an interest to a second party or encumbering the property, a legal conclusion would be required in order to determine whether or not it really does affect title. It does not appear that the auditor is statutorily authorized to interpret the instrument or to render that opinion. *Philadelphia II v. Gregoire,* 128 Wn.2d 707-714-15, 911 P.2d 389 (1996).
>
> We therefore conclude that if documents facially purporting to affect the title to real estate are submitted for recording, the Auditor lacks the statutory authority to determine whether the documents truly have that effect. For this reason, auditors must record "land patent" documents if they facially purport to affect title, and if they are properly executed, acknowledged, and accompanied by the proper fee. [Footnote 7]
>
> [Footnote 7] This analysis presumes that the record owner of the property is the person executing the instrument. We do not hereby express any conclusions regarding the possibility of such documents being filed with regard to the property of another, perhaps with intent to harass the true owner. *See, e.g*. Op.Att'y Gen. 84-48 (Kan. 1984).

AGO 1996 No. 12 at 7.

Non-Statutory Abatement

Freemen often present documents entitled "Non-Statutory Abatement" in response to some action by a public official. Although a bit difficult to understand, the document purports to "abate" the action taken by the public official. This attempt at a non-statutory abatement procedure apparently arose from the English practice of plea in abatement.

> Plea in abatement. In practice. A plea which, without disputing justice of plaintiff's claim, objects to place, mode, or time of asserting it; it allows plaintiff to renew suit in another place of form, or at another time, and does not assume to answer action on its merits, or deny existence of particular cause of action on which plaintiff relies.

BLACK'S LAW DICTIONARY 1310 (4th ed. 1968).

> **Abatement and Revival. Actions at Law.** As used in reference to actions at law, word abate means that action is utterly dead and cannot be revived except by commencing a new action.
>
> The overthrow of an action caused by the defendant's pleading some matter of fact tending to impeach the correctness of the writ or declaration, which defeats the action for the present, but does not debar the plaintiff from recommending it in a better way.
>
> **Abatement and Revival. Chancery Practice.** It differs from an abatement at law in this: that in the latter the action is entirely dead and cannot be revived; but in the former the right to proceed is merely suspended, and may be revived.
>
> In England, declinatory pleas to the jurisdiction and dilatory to the persons were (prior to the judicature act) sometimes, by analogy to common law, termed "pleas in abatement."

BLACK'S LAW DICTIONARY 16 (4th ed. 1968) (Citations omitted.)

Freemen apparently believe that their service of a Non-Statutory Abatement on a public official terminates the action taken by the public official since our courts lack jurisdiction over a Sovereign Citizen. Presumably, the public official is not prohibited from asserting the same position in a Common Law court since the Common Law court has jurisdiction over a Sovereign Citizen.

The Attorney General noted that the Non-Statutory Abatement document provided to the Attorney General appeared to be a response to an administrative order issued by a county department. The document is directed "against" a named county official, and states that the administrative order is being returned to that official because the sender refuses to accept it. AGO 1996 No. 12, at 7-8.

Since the Non-Statutory Abatement document provided to the Attorney General made no facial claim regarding title to land or to any ownership or debt interest in real property, it did not need to be recorded. *Id*. We suggest, though, that auditors take great care when refusing to record Freemen documents since any document might have buried in it some claim on title to real property.

Documents Presented by Individual in Name of Non-Legal Entity

The Attorney General's opinion is clear that an auditor may not refuse to record an instrument based upon a belief that the entity submitting it is not legally constituted. As a general rule, a recording officer lacks both the statutory authority and duty to determine the substantive validity of an instrument offered for recording. AGO 1996 No. 12, at 8.

Referring Questions to Prosecutor's Office

A recording cannot be delayed to allow sufficient time for review of the documents by the Attorney General or Department of Revenue because the statute commanding the auditor to record "without delay" implies that the process must be completed with deliberate speedy. RCW 65.04.080. AGO 1996 No. 12, at 15-16.

However, a caveat to the above concerns possible consultations with the prosecutor.

> As the County Prosecutor, you are the legal advisor to both the Auditor and the Treasurer as to matters relating to their official business. RCW 36.27.020(2). It is, therefore, reasonable and within the contemplation of the statute assigning you this role, that those officers consult with you as to the legal requirements of their officers. Throughout this Opinion we have repeatedly noted the general nature of our conclusions and the possibility that future specific transactions on the subjects we have addressed could vary as to legally significant facts.
>
> For the reasons stated above, we do not believe that such consultation with counsel would justify a lengthy delay. As a general matter, officials charged with ministerial duties to file or process documents must do so, "as they [are] received and at the time received for filing." *Pacific National Bank v. Kramer,* 77 Wn.2d 899, 904, 468 P.2d 436 (1970). If this results in an erroneous recording by the Auditor, "a recording or filing officer may correct his [or her] errors and mistakes, if such corrections and changes go no farther than to make the records and files speak the truth." *Id.* At 905 (citations omitted). We do not believe that this limited capacity for later correction, however, extends to decisions that lie beyond the authority of the Office, such as discussed with regard to your first group of questions. [allodial freehold estate and homestead exemption]

AGO 1996 No. 12, at 16.

If you are in doubt about the proper action to take when dealing with Freemen documents, contact your prosecutor. But as the Attorney General opinions make clear, the presumption is to record documents that are properly acknowledged and submitted with the proper fees.

Oaths of Office and Bonds

Freemen frequently challenge the authority of a public official due to the official's failure to properly file an oath and bond as required by statute. RCW 36.16.040, .050, .060, and .070 are very clear concerning the obligations of elected county officials to take an oath and furnish a bond. Oaths of deputies are also required to be filed in the same office as required of the elected official.

> **36.16.040. Oath of office.** Every person elected to county office shall before he enters upon the duties of his office take and subscribe an oath or affirmation that he will faithfully and impartially discharge the duties of his office to the best of his ability. This oath, or affirmation, shall be administered and certified by an officer authorized to administer oaths, without charge therefor.
>
> **36.16.050. Official bonds.** Every county official before he or she enters upon the duties of his or her office shall furnish a bond conditioned that he or she will faithfully perform the duties of his or her office and account for and turn over all money which may come into his or her hands by virtue of his or her office, and that he or she, or his or her

executors or administrators, will deliver to his or her successor safe and undefaced all books, records, papers, seals, equipment, and furniture belonging to his or her office. Bonds of elective county officers shall be as follows:

> (1) Assessor: Amount to be fixed and sureties to be approved by proper county legislative authority;
>
> (2) Auditor: [not less than $10,000];
>
> (3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his or her hands and sureties to be approved by the judge or a majority of the judges presiding over the court of which he or she is clerk: PROVIDED, That the maximum bond fixed for the clerk shall not exceed in amount that required for the treasurer in a county of that class;
>
> (4) Coroner: [not less than $5,000];
>
> (5) Members of the proper county legislative authority: [Amount depends on county population]
>
> (6) Prosecuting attorney: [$5,000]
>
> (7) Sheriff: [not less than $5,000 nor more than $50,000, as approved by county legislative authority]
>
> (8) Treasurer: Sureties to be approved by the property county legislative authority and the amounts to be fixed by the proper county legislative authority at double the amount liable to come into the treasurer's hands during his or her term, the maximum amount of the bond, however, not to exceed [an amount based upon county population]...

36.16.060. Place of filing oaths and bonds. Every county officer, before entering upon the duties of his office, shall file his oath in the office of the county auditor and his official bond in the office of the county clerk: PROVIDED, That the official bond of the county clerk, after first being recorded by the county auditor, shall be filed in the office of the county treasurer.

Oaths and bonds of deputies shall be filed in the offices in which the oaths and bonds of their principals are required to be filed.

36.16.070 Deputies and employees. In all cases where the duties of any county office are greater than can be performed by the person elected to fill it, the officer may employ deputies and other necessary employees with the consent of the board of county commissioners. The board shall fix their compensation and shall require what deputies shall give bond and the amount of the bond required from each. The sureties on deputies' bonds must be approved by the board and the premium therefor is a county expense.

A deputy may perform any act which his principal is authorized to perform. The officer appointing a deputy or other employee shall be responsible for the acts of his appointees upon his official bond and may revoke each appointment at pleasure.

Auditors (oaths) and County Clerks (bonds) should take great care to make sure that this statutory mandate is complied with by all elected county officials. While some case law exists to support a position that an elected official's failure to strictly comply with these statutes is not grounds for removal from office if the irregularities are subsequently cured, *see, generally In re Recall of Sandhaus,* 134 Wn.2d 662, 953 P.2d 82 (1998) (delayed filing of bond not grounds for recalling prosecutor), Freemen are correct to point out the failure of elected public official to follow the law.

So, please make sure that the oaths and bonds are executed and filed in the proper location. If you come into frequent contact with Freemen, you may want to keep a separate file handy for quick access since you will surely be asked to provide a copy of the oath of office and bond.

General Suggestions

Auditors and assessors should always remember to treat Freemen as respectful as any other citizen with whom contact is made. However, one should always remember the potential lethality exhibited by a small faction within the Freemen movement. When in doubt it is wise to not engage a Freemen. Take the document (and of course charge the appropriate fee) and worry about what to do with it later. Do not go on a suspected Freemen's property without law enforcement escort.

While we recognize that it is impossible at the time of filing to examine every document, we ask that auditors and assessors try to have their staff catch liens and other documents filed against public officials (usually judges, prosecutors, or sheriffs for millions of dollars). If the liens or other documents are missed, so be it. But a document involving millions of dollars that has Freemen verbiage should not be too difficult to catch, at least at the filming stage if staff is trained in Freemen document recognition. Freemen documents almost always include religious references, commas in the signator's name, or the name followed by "sui juris." Copies of these documents should be immediately referred to the prosecutor and sheriff.

Lastly, one must take great care to read Freemen documents. The documents often contain what is in effect a public disclosure request to which a timely response is required.

CHARGING OPTIONS—HOW TO FIT A SQUARE PEG INTO A ROUND HOLE

Charging Considerations and Proper Penalties

The bringing of charges against a Freeman should never be based upon a disagreement with the individual's beliefs, for as noted by Judge Easterbrook—

> Some people believe with great fervor preposterous things that just happen to coincide with their self interest…The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

Coleman v. Commissioner of Internal Revenue, 791 F.2d 68 (7th Cir. 1986).

The filing of criminal charges is only appropriate when the individual's actions disrupt the proper delivery of governmental services, otherwise imperil the safety of others, or constitute a violation of a law for which prosecution is normally brought.

Charges should not be withheld, though, merely because prosecution of these individuals will be time consuming or because the charged person may retaliate by filing liens, etc. against the prosecutors involved in the case.

Some Freemen you encounter do not fully understand the arguments or the implications of their actions. Hopefully, these individuals will alter their behavior following a first contact with our criminal justice system. Preference should generally be given to an initial non-felony charge in order to deter conduct without unreasonably punishing.

Some individuals who are initially charged with minor offenses, even if offered prosecution deferral agreements, will up the ante by retaliating against every judge who presides over any hearing and every prosecutor who is involved in the case. Additional charges that arise from such retaliation may either be joined to the original charge or filed under a separate cause number after the first prosecution is obtained. The benefit of waiting is that the prosecutor has the opportunity to see whether the individual's behavior will alter as a result of prosecution and incarceration.

Individuals who file nuisance suits in a Washington State Court or a proper United States Court without the accompanying liens are more properly dealt with under CR 11[50] or Fed.R.Civ.P. 11 and a motion to limit future in forma pauperis filings.

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50 A pro se plaintiff may be subject to CR 11 sanctions if three conditions are met: (1) the action is not well grounded in fact; (2) it is not warranted by existing law; and (3) the party signing the pleading has failed to conduct a reasonable inquiry into the factual or legal basis of the action. *See* CR 11; *Harrington v. Pailthorp,* 67 Wn.App. 901, 910, 841 P.2d 1258 (1992), *review denied,* 121 Wn.2d 1018 (1993); *Lockhart v. Greive,* 66 Wn.App. 735, 743-44, 834 P.2d 64 (1992).

Available Charges

Charges that may be brought in response to "typical" Freemen activity range from the common—driving while license suspended, felony elude, harassment, assault, resisting arrest—to the seldom used. Many appropriate crimes, such as malicious prosecution, barratry and unlawful practice of law, will be found outside Chapter 9A RCW. Resort to less common charges means that pattern jury instructions in the WPICs will not be available and case law discussing the offense is sparse. Less common charges that have been utilized in Kitsap County with success are discussed below.

Barratry

The crime of barratry is codified at RCW 9.12.010. This statute provides as follows—

> Every person who brings on his or her own behalf, or instigates, incites, or encourages another to bring, any false suit at law or in equity in any court of this state, with intent thereby to distress or harass a defendant in the suit, or who serves or sends any paper or document purporting to be or resembling a judicial process, that is not in fact a judicial process, is guilty of a misdemeanor; and in case the person offending is an attorney, he or she may, in addition thereto be disbarred from practicing law within this state.

RCW 9.12.010. A violation of the barratry statute is a misdemeanor.

The barratry statute[51] contains two alternative means of committing the offense: (1) common law barratry; and (2) pseudo-judicial process. Common law barratry consists of the filing of or engaging in vexatious litigation such as that which would engender sanctions under CR 11. Most jurisdictions have judicially or legislatively adopted a rule that a prosecution under the common law prong of barratry requires the commission of several acts, *see generally* 14 C.J.S. *Champerty and Maintenance* §§ 27-28, at 167-69 (1991); 14 Am.Jur.2d, *Champerty and Maintenance* §§ 19-20, at 854-55 (1964). Washington does not have any decisions that discuss the elements of the common law barratry prong.

The pseudo-judicial process prong of the barratry statute is the alternative means utilized in Kitsap County. This pseudo-judicial process prong is violated when an individual sends any paper purporting to be or resembling judicial process, that is not in fact judicial process. Individuals have been charged in Kitsap County under this prong for serving writs of habeas corpus that have been issued by Freemen courts, such as the "Supreme Court, Washington State Republic, Common Law Venue" and the "KINGDOM OF THE LORD ECCLESIASTICAL COMMON LAW COURT." Individuals have also been charged under the pseudo-

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51 RCW 9.12.010 was amended in 1995. The Division III case of *Danzig v. Danzig*, 79 Wn.App. 612, 904 P.2d 312 (Div. 3 1995), *review denied*, 129 Wn.2d 1011 (1996), indicates in dicta that the barratry statute does not apply to non-attorneys. *See Danzig*, 79 Wn.App. at 617-18.

The *Danzig* decision is inapplicable to Freeman prosecutions on a number of grounds. First, the *Danzig* decision was dealing with the common law champerty alternative means portion of Washington's former barratry statute instead of the pseudo-judicial process prong that is at issue in the instant case.

Second, the statute quoted by Division III in *Danzig* differs significantly from the statute than exists today. The current barratry statute does not contain the "every person, being an attorney or counselor at law" clause relied upon by Division III. In fact, the current barratry statute, RCW 9.12.010, only mentions attorneys to single them out for greater punishment than the non-attorneys who are convicted of violating the same statute.

The current barratry statute clearly applies to non-attorneys to the same extent as to attorneys. The current barratry statute appears in Title 9 RCW. This title is devoted to general crimes. Statutes that are generally limited to attorneys are contained in Chapter 2.44 RCW (attorneys at law), and Chapter 2.48 RCW (State Bar Act).

The current barratry statute contains two alternative means of committing the crime: (1) common law barratry or a "harassment prong" which consists of the filing of engaging in vexatious litigation such as that which would engender sanctions under CR 11; and (2) serving or sending pseudo-judicial process. See RCW 9.12.010. Our courts have long recognized that non-attorneys are subject to the sanctions contained in CR 11. *See, e.g., Harrington v. Pailthorp*, 67 Wn.App. 901, 910, 841 P.2d 1258 (1992), *review denied*, 121 Wn.2d 1018 (1993). Accordingly, there is no reason to judicially exempt non-attorneys from the harassment prong of the current barratry statute. In fact, this Division, in a post-*Danzig* case, has affirmed a barratry conviction obtained against a non-lawyer. *See State v. Knowles*, 91 Wn.App. 367, 957 P.2d 797, *review denied*, 136 Wn.2d 1029 (Div. 2 1998).

judicial process prong for serving law enforcement officers with "bills of particulars"[52] that instruct the officers to "TAKE NOTICE" that the "Demandant" "DEMANDS under Rule 7(f) or 12(e) which ever [sic] is applicable that the officers of the court furnish the undersigned a Bill of Particulars or a more definite statement regarding the process issued by you in the Above Case…" and which contains the following warning: "THIS IS LEGAL PROCESS, YOU ARE COMPELLED TO RESPOND." This warning is critical to a barratry charge.

The terms "purporting to be" or "resembling" are not defined in the barratry statute, so they are given their usual meaning. The word "purport" is defined in a standard dictionary as follows: "1: to have the often specious appearance of being, intending, or claiming (something implied or inferred): PROFESS <a book that ~s to be an objective analysis> 2: INTEND, PURPOSE". WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 957 (1985). The word "resemble" is defined in a standard dictionary as follows: "1: to be like or similar to 2 *archaic*: to represent as like." *Id.,* at 1002. The question of whether a particular document sent by a Freeman to a police officer, other public servant, or a general citizen "purports" to be process is a fact question for the jury.

Neither the term "judicial process" nor the word "process" is defined in the barratry statute or in any other Washington statute. BLACK'S LAW DICTIONARY 630, 1085 (5th ed. 1983), defines "judicial process" as including:

> all the acts of a court from the beginning to the end of its proceedings in a given cause; but more specifically it means the writ, summons, mandate, or other process which is used to inform the defendant of the institution of proceedings against him and to compel his appearance, in either civil or criminal cases.

A synonym for the phrase "judicial process" is "legal process" which includes "summons, writ, warrant, mandate, or other process issuing from a court." *Id,* at 1085.

Many of the documents prepared by Freemen that are served upon public officials will resemble a "summons." In Washington, a summons may be signed by a party or the party's attorney. CR 4(a)(1); CRLJ (4)(a)(1). The signature of a judicial officer or clerk is not required. The summons must contain: (1) the title of the cause, specifying the name of the court in which the action is brought and the names of the parties to the action; (2) a direction to the person receiving the summons that he or she must respond within the time stated in the summons; and (3) a notice that if the person receiving the summons does not respond within the time stated, judgment will be rendered against him or her by default; and (4) an address for the person who signed the summons. CR 4(b)(1); CRLJ 4(b)(1). The summons must then be served by a non-party. CR 4(c);[53] CRLJ 4(c). Proof of service must be endorsed or attached to the summons. CR 4(g); CRLJ 4(i).

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52 Under Washington law, only a judge can order the State to provide a bill of particulars. *See* CrR 2.1(c); CrRLJ 2.4(e). A criminal defendant who seeks a bill of particulars must serve a motion for such upon the prosecuting attorney, not the arresting officers. *See generally* CrR 4.7(d) (defendant can only obtain information from persons other than the prosecuting attorney through a subpoena issued by the court); CrRLJ 4.7(d) (same); CrRLJ 4.8(b).

The granting of a motion for a bill of particulars rests in the sound discretion of the court and is dependent upon whether the available discovery discloses the factual basis for the charges. *State v. Grant,* 89 Wn.2d 678, 575 P.2d 210 (1978); *State v. Devine,* 84 Wn.2d 467, 527 P.2d 72 (1974); *State v. Brown,* 45 Wn.App. 571, 726 P.2d 60 (1986); *State v. Merrill,* 23 Wn.App. 577, 597 P.2d 446, *review denied,* 92 Wn.2d 1036 (1979).

Although the documents the Freemen serve upon the arresting officers will generally be entitled a "verification of demand for particulars," the document will more closely resemble interrogatories or demands for admissions. Neither of these discovery tools are available in a criminal case absent extra-ordinary circumstances. *See State v. Norby*, 122 Wn.2d 258, 265-67, 858 P.2d 210 (1993).

53 CR 4(c) clearly indicates that the term "process" is not limited to summons:

> Service of **summons and process**, except when service is by publication, shall be by the sheriff of the county wherein the service is made, or by his deputy, or by any person over 18 years of age who is competent to be a witness in the action, other than a party. Subpoenas may be served as provided in rule 45.

(Bold added.)

The BLACK'S LAW DICTIONARY definition of "judicial process" is narrower than that used by other jurisdictions in connection with their "pseudo-judicial process" statutes. These jurisdictions have held that the word "process" is not limited to those items listed in BLACK'S LAW DICTIONARY. In *State v. Joos,* 735 S.W.2d 776 (Mo.Ct.App. 1987), the court held that—

> The term "process" is not limited to "summons"; as we construe § 575.130[54] , the word "process" is used as a general term and denotes the means whereby a court compels a compliance with its demands.

Joos, 735 S.W.2d at 779. The *Joos* court went on to find a document styled "Arrest of Judgment—Stay of Execution" that was phrased as a command of the United States District Court and which ordered those to whose attention it was brought to refrain from enforcing a judgment in any manner was "well within the meaning and import of the words 'legal process' as used in §575.130." 735 S.W.2d at 779.

Cases from other jurisdictions and legal treatises are consistent with the *Joos'* court's analysis. These authorities indicate that, used in its more restrictive sense, the term "process" refers to the means by which a court compels compliance with its demands. The most encompassing definition of this usage of judicial "process" refers to all writs, warrants, summons and orders of courts or judicial officers. *Lister v. Superior Court of Sacramento County,* 98 Cal.App.3rd 64, 71-72, 159 Cal.Rptr. 280 (1979). In a narrow sense, "process" is the means of compelling a defendant to appear in court after the suing out of the original writ in civil cases and any means of acquiring jurisdiction is properly denominated "process." *Blaire v. Maxbass Secur. Bank,* 44 N.D. 12, 176 N.W. 98 (1919). Washington cases and statutes support the broader definition.

Various Washington cases sweep a wide variety of documents within the scope of "judicial process." *See, e.g., State ex rel. Onishi v. Superior Court,* 30 Wn.2d 348, 191 P.2d 703 (1948) (subpoena for deposition in civil case); *Mark v. Williams,* 45 Wn.App. 182, 191-92, 724 P.2d 428, *review denied,* 107 Wn.2d 1015 (1986) (administrative inspection warrant); *Batten v. Abrams,* 28 Wn.App. 737, 626 P.2d 984, *review denied,* 95 Wn.2d 1033 (1981) (discussing a wide variety of documents that will support an tort action for abuse of judicial process); *Shutt v. Moore,* 26 Wn.App. 450, 456-57, 613 P.2d 1188 (1980) (common law liens); *Fite v. Lee,* 11 Wn.App. 21, 521 P.2d 964, *review denied,* 84 Wn.2d 1005 (1984) (writs of garnishment).

Various Washington statutes also include a wide variety of documents within the scope of "judicial process". *See, e.g.,* RCW 10.27.140 (a public attorney "may issue legal process and subpoena to compel [a witness's] attendance and production of documents"); RCW 9A.72.110 (a person is guilty of intimidating a witness if, by way of a threat against a current or prospective witness, attempts to "[i]nduce that person to elude legal process summoning him or her to testify"); RCW 62A.2A-303 ("a provision in a lease agreement which...prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods...").

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54 The New Missouri Criminal Code § 575.130 defines the crime of simulating legal process as follows:

> A person commits the crime of simulating legal process if, with purpose to mislead the recipient and cause him to take action in reliance thereon, he delivers or causes to be delivered:
>
> * * *
>
> (2) Any purported summons, subpoena or other legal process knowing that the process was not issued or authorized by any court.

Many of the documents in the proceeding list, including subpoenas, demands for discovery, and other similar documents may be signed by an attorney for the party, or, in some cases, by the party itself. *See, e.g.,* CR 33(a) (interrogatories); CR 45(a) (subpoenas); CR 4(a) (summons); CRLJ 4(a) (summons); CRLJ 26 (discovery); CRLJ 45 (subpoena); CrRLJ 4.8 (subpoenas). Thus, the absence of a judge's signature will not preclude a rationale trier of fact from finding that a document "resembles" judicial process.

Intimidating a Public Servant

The offense of intimidating a public servant is defined at RCW 9A.76.180. This statute provides—

> (1) A person is guilty of intimidating a public servant if, by use of a threat, he attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant.
>
> (2) For purposes of this section "public servant" shall not include jurors.
>
> (3) "Threat" as used in this section means
>
> (a) to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
>
> (b) threats as defined in RCW 9A.04.110(25).
>
> (4) Intimidating a public servant is a class B felony.

This offense is ranked and has been assigned a seriousness level of III. A non-statutory element of the crime is that the defendant must "know" that the person being intimidated is a "public servant." Intimidating a public servant is an offense which, if committed in connection with a criminal investigation or prosecution, will fall within the definition of "criminal profiteering." *See* RCW 9A.82.010(14)(t).

The intimidating a public servant statute protects a large number of individuals, including—

> any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror,[55] and any person participating as an advisor, consultant, or otherwise in performing a governmental function.

RCW 9A.04.110(22). Federal, state, county, and municipal workers fall within the scope of "officer" and "public officer." RCW 9A.04.110(13). The definitions of "government" and "governmental function," however, may make prosecution of offenses committed against a federal employee difficult. RCW 9A.04.110(8) and (9). [6][5]

A public servant is protected by this statute even if there is some irregularity with the filing of the public servant's oath of office or bond.[57] *See generally In re Recall of Sandhaus,* 134 Wn.2d 662, 953 P.2d

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55 Although "juror" appears in the definition of "public servant," jurors are excluded from the intimidating a public servant statute. The same theory that is discussed in the intimidating a judge portion of these materials will apply to prosecutions under the intimidating a witness and intimidating a juror statutes.

56 RCW 9A.04.110(8) and (9) provide as follows—

> (8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;
>
> (9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government…

57 With the rise in the number of Freemen defendants, it is only prudent for all public servants to strictly comply with constitutional and statutory provisions requiring the taking and filing of oaths of offices. Every superior court, appellate court, and supreme court judge must file his or her oath with the Secretary of State. Wash. Const. art. IV, §28; RCW 2.08.080; RCW 2.06.085; RCW 2.04.080. Every county officer must immediately file his or her oath with the county auditor. RCW 36.16.060. The oaths of deputies are filed wherever the oath of the principle was filed. *Id.*

82 (1998) (delayed filing of bond not grounds for recalling prosecutor); *State v. Stephenson,* 89 Wn.App. 794, 807-09, 950 P.2d 38, *review denied,* 136 Wn.2d 1018 (Div. 2 1998) (a judge is still a public servant even if his or her oath has not been filed with the secretary of state); *State v. Cook,* 84 Wn.2d 342, 525 P.2d 761 (1974) (authority of a de facto prosecutor, one in actual possession of the office of prosecutor and exercising its duties and powers under color of title, is not subject to collateral attack).

The "threats" described by RCW 9A.76.180(3)(a) are "true" threats which are outside the scope of protected speech. *State v. Kepiro,* 61 Wn.App. 116, 125, 810 P.2d 19 (1991). The "threats" defined in RCW 9A.04.110(25) include a large amount of protected free speech. *See City of Seattle v. Ivan,* 71 Wn.App. 145, 856 P.2d 1116 (1993).

RCW 9A.04.110(25) provides as follows—

> (25) "Threat" means to communicate, directly or indirectly the intent:
>
> (a) To cause bodily injury in the future to the person threatened or to any other person; or
>
> (b) To cause physical damage to the property of a person other than the actor; or
>
> (c) To subject the person threatened or any other person to physical confinement or restraint; or
>
> (d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or
>
> (e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or
>
> (f) To reveal any information sought to be concealed by the person threatened; or
>
> (g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
>
> (h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or
>
> (i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or
>
> (j) To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships…

Generally, only one or two of the types of "threat" contained in RCW 9A.04.110(25) is implicated in Freemen cases. Kitsap County has proceeded under subsection (j) in a lien filing case and in a case involving a Common Law contempt order for "one hundred million dollars to be secured by consensual common law lien." Subsection (d) has been used in a case where the defendant told the pre-sentence author, the judge, and others that they were engaged in a conspiracy against him and their failure to immediately release him would result in his having them prosecuted for "felonious barratry" and violations

of various federal laws.[58] Subsection (d) is also appropriate when you receive one of the check-box citizen informations for charging public servants with various federal felonies.

While the various subsections contained in RCW 9A.04.110(25) probably do not create alternative means of committing the crime of "intimidating a public servant" or of the other "intimidating" offenses, [59] the Kitsap County Prosecuting Attorney's Office limits all jury instructions to the subsections we intend to prove **and** we utilize special interrogatories in order to ensure juror unanimity. This practice is followed because of the free speech and overbreadth arguments that will be brought in any prosecution which involves acts that do not fit within the definition of a true threat. Sample jury instructions can be found *infra* in the intimidating a judge section of these materials.

Prosecution for acts that do not fit the definition of a "true threat" will engender an overbreadth challenge. Such challenges may be brought by an individual even though his or her conduct falls squarely within the statute's legitimate scope, and may challenge the statute on the basis of overbreadth "if it is so drawn as to sweep within its ambit protected speech or expression of other persons not before the Court." *Doran v. Salem Inn, Inc.,* 422 U.S. 922, 45 L.Ed.2d 648, 95 S.Ct. 2561, 2568 (1975); *accord Ivan,* 71 Wn.App. at 150. Application of the overbreadth doctrine is strong medicine and will be employed by courts sparingly. *State v. Halstien,* 122 Wn.2d 109, 122-23, 857 P.2d 270 (1993).

Finally, even if the statute reaches a substantial amount of protected speech, it will not be overturned if: (1) the court can place a sufficient limiting construction on the statute; or (2) the statute's regulation of protected speech is permissible under the First Amendment. *United States v. Hicks,* 980 F.2d 963, 971, (9th Cir. 1992), *cert. denied,* 508 U.S. 941 (1993); *City of Tacoma v. Luvene,* 118 Wn.2d 826, 839-40, 827 P2d 1374 (1992); *State v. Edwards,* 84 Wn.App. 5, 17, 924 P.2d 397 (1996).

Division II of the Court of Appeals recently ruled upon the constitutionality of bringing a prosecution for intimidating a public servant utilizing subsection (j), threats of harm to a person's business, financial condition, or personal relationship. The Court held that—

> The plain language of RCW 9A.76.180 suggests several purposes. First, it protects public servants from threats of substantial harm based upon the discharge of their official duties. *See State v. Hansen,* 122 Wn.2d 712, 716-718, 862 P.2d 117 (1993) (legislative intent behind similar intimidating a judge statute, RCW 9A.72.160(1), is to "protect judges from retaliatory acts" because of past official actions). Second, it protects the public's interest in a fair and independent decision-making process consistent with the public interest and the law. And third, by deterring the intimidation and threats that lead to corrupt decision making, it helps maintain public confidence in democratic institutions. [Footnotes omitted.]

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58 The individuals who we have dealt with go to great efforts to educate state court judges and prosecutors. A frequent "handout" is a card with the following information on it—

> The citizen Presenting This Courtesy Warning to Public Officials is NOT VOLUNTEERING for anything!
>
> **WARNING**
>
> U.S. CRIMINAL CODE
> TITLE 18, CHAPTER 13
> SECTIONS 241 & 242
>
> Make it a FELONY to use or conspire to use COLOR OF LAW to enforce a Code or Regulation which results in the violation of a person's Rights. Violaters [sic] will be prosecuted. (Exact law reproduced inside this card).
>
> U.S. CRIMINAL CODE

59 In *State v. Garvin,* 28 Wn.App. 82, 621 P.2d 215 (1980), *review denied,* 95 Wn.2d 1017 (1981), Division I of the Court of Appeals held that—

> [s]econd degree extortion pursuant to RCW 9A.56.130 is extortion committed by means of a 'threat' which is defined by RCW 9A.04.110(25)(d) through (j)... By defining '[t]hreat' the legislature was not creating alternative elements to, but merely defining an element of, the crime.

Garvin, at 85.

> The purposes promoted by the statute are compelling in a democracy. *See, e.g., City of Hoquiam v. Public Employment Relations Comm'n,* 97 Wn.2d 481, 488, 646 P.2d 129 (1982) (participation in decision-making process by person potentially interested or biased is the evil the appearance of fairness doctrine seeks to prevent); *In re Matter of Stockwell,* 28 Wn.App. 295, 299, 622 P.2d 910 (1981) (public officials must be objective and free as possible of entangling influences). By targeting only threats of "substantial harm" that are designed to "influence a public servant's vote, opinion, decision, or other official action as a public servant," the challenged portion of the statute is narrowly tailored to address the overall problem it seeks to correct. RCW 9A.76.180; RCW 9A.04.110(25)(j). It prohibits only those threats related to future decision making and to substantial interests. It does not encompass threats of harm based upon past decisions. Nor does it prohibit threats to do minor injury to the official's financial situation or other protected interests.

State v. Stephenson, 89 Wn.App. 794, 803-04, 950 P.2d 38, *review denied,* 136 Wn.2d 1018 (Div. 2 1998).

Division II's analysis is consistent with cases in other jurisdictions that have considered the constitutional overbreadth of statutes with similar purposes and restrictions. *See, e.g., People v. Janousek,* 871 P.2d 1189, 1192-93 (Colo. 1994) (statute prohibiting attempts to influence public servants by means of deceit or by threat of violence or economic reprisal not facially overbroad because it was narrowly tailored to enable the state to proscribe the type of conduct that rises to a level of criminal culpability and placed a minimal burden on a person's speech interests); *CISPES v. Federal Bureau of Investigation,* 770 F.2d 468, 471, n.2, 474-75 (5th Cir. 1985) (federal statute that criminalizes the act of willfully intimidating or threatening a foreign official in the performance of his official duties is not facially overbroad because it is an "appropriate and necessary means of addressing the undeniably important governmental interest of protecting foreign officials").

Intimidating a Judge

The crime of intimidating a judge is codified at RCW 9A.72.160. This statute provides—

> (1) A person is guilty of intimidating a judge if a person directs a threat to a judge because of a ruling or decision of the judge in any official proceeding, or if by use of a threat directed to a judge, a person attempts to influence a ruling or decision of the judge in any official proceeding.
>
> (2) "Threat" as used in this section means:
>
> (a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
>
> (b) Threats as defined in RCW 9A.04.110(25).
>
> (3) Intimidating a judge is a class B felony.

Intimidating a judge is a ranked offense with a seriousness level of VI. Intimidating a judge includes a non-statutory element that the defendant must know the person threatened is a judge. Most of the words used in RCW 9A.72.160 are defined in RCW 9A.04.110.

The intimidating a judge offense is unique with respect to the number of arguments that courts have already determined do not constitute defenses. The State need not prove that the defendant's threat actually reached the victim judge in order to convict. *State v. Hansen,* 122 Wn.2d 712, 862 P.2d 117 (1993). All that is necessary to convict is that the defendant must have made a threat to the judge, either directly or indirectly, because of an official ruling or decision by that particular judge. An intention or knowledge that the threat would in fact be communicated to the judge is not an element of the crime. *Hansen,* 122 Wn.2d 716-718.

The State also does not need to prove that the victim judge actually felt intimidated or threatened in order to obtain a conviction. RCW 9A.72.160 does not include an element that the person threatened feel actual fear. *See State v. Kepiro,* 61 Wn.App. 116, 120-21, 810 P.2d 19 (1991) (RCW 9A.72.160 does not

contain an implied element of intent to harm or reasonably cause alarm). As recognized by the Second Circuit with regard to a federal extortion statute—

> The judge charged the jury that the Government must prove from the evidence that 'an ordinary person would have been put in fear of immediate bodily harm or future bodily harm from anything that the defendant said or did to Weiss or Amato…' It is true that this charge did not require the jury to find that the persons threatened had actually been placed in fear, but it is the threat of harm which is prohibited by 18 U.S.C. § 894, and actual fear is not an element of the offense…To be convicted, the defendant must have intended to make a 'threat of use, of violence or other criminal means, to cause harm to the person, reputation, or property of (another) person.' 18 U.S.C. §§ 891(7). Convictions have been sustained under this statute even where the person threatened has denied at trial that he was put in fear by the threat…The approach chosen by the trial judge, to define the word 'threat' in the statute by reference to the reasonable apprehensions of an 'ordinary person,' gives the statute a proper construction since it focuses the jury's attention on the evil being attacked—the defendant's conduct. Acts or statements constitute a threat under 18 U.S.C. § 891(7) 'if they instill fear in the person to whom they are directed or are reasonably calculated to do so in light of the surrounding circumstances…' *United States v. Curcio,* 310 F.Supp. 351, 357 (D. Conn. 1970) (Timbers, J.) (emphasis added). It is this 'calculated' use of threatening gestures or words to collect credit extensions which Congress has made criminal. Actual fear need not be generated, so long as the defendants intended to take actions which reasonably would induce fear in an ordinary person. In other words, it is the conduct of the defendant, not the victim's individual state of mind, to which the thrust of the statute is directed. We have no doubt that Congress meant to protect not only the weak and timid from extortionate threats, but the strong and intrepid as well… Accordingly, we reject the claim that actual fear is a necessary element of this offense.

United States v. Natale, 526 F.2d 1160, 1168 (2d Cir. 1975), *cert. denied,* 425 U.S. 950 (1976) (Citations and footnotes omitted). RCW 9A.72.160, like the federal statute at issue in *Natale,* focuses on the defendant's conduct in making the threat and not the victim's individual state of mind. Thus, a successful prosecution does not require the State to convince the victim judge to testify that he or she felt afraid.

Finally, the State does not need to prove that the defendant's threats caused actual harm. To date, no Washington appellate case has interpreted the crimes of intimidating a public servant, RCW 9A.76.180, and of intimidating a judge, RCW 9A.72.160, as including a requirement of proof of actual harm. In fact, the case law appears to be to the contrary. *See Kepiro,* 61 Wn.App. at 125-126 ("As is made abundantly clear by federal case law and by our previous analysis, Kepiro's actual intent to carry out his threat is irrelevant…All that is required is that the defendant intentionally communicate the words which a reasonable person would construe as a threat, and this requirement was clearly met here. The evil lies in the communication of the threat, regardless of whether the one making the threat intends to carry it out.").

The plain language of these similar statutes, moreover, does not support the existence of an actual "harm" element. The term "threat," as is used in both statutes includes a communication to cause future harm to the person threatened or to another person. The inclusion of promises of future harm only makes sense as an element of the crime if the physical damage, physical confinement or restraint, bodily injury, etc., need not actually have occurred. The purpose of these statutes is to prevent the disruption of public services and judicial activity that flows from the making of the threat, and such disruption clearly can result whether or not the threat is actually carried out or other tangible harm is actually inflicted. *See State v. Kepiro,* 61 Wn.App. 116, 123, 810 P.2d 19 (1991).

Many other jurisdictions have intimidating public servant statutes and/or intimidating judge statutes. While the specific wording of these statutes vary from RCW 9A.76.180(1) and RCW 9A.72.160, these jurisdictions all recognize that their intimidation statutes, like Washington's statute, "is to prevent public servants from undue influence or intimidation by means of deceit or by threat of violence or economic

reprisal." *People v. Janousek,* 871 P.2d 1189, 1194 (Colo. 1994).[60] These jurisdictions have found that their "intimidating a public servant" statutes, as with any other statute involving or resembling extortion, do not require proof of actual intent to do harm nor the ability to carry out the threats. *See, e.g., Smith v. State,* 13 Fla. L. Weekly 2300, 532 So.2d 50, 52 (1988); *United States v. Orozco-Santillan,* 903 F.2d 1262, 1265, n. 3 (9th Cir. 1990) (discussing a variety of statutes governing the intimidation of various public servants and stating that in all of these cases "[t]he only intent requirement is that the defendant intentionally or knowingly communicates his threat, not that he intended or was able to carry out his threat"). *Accord State v. Kepiro, supra.*

As a last note, virtually everything contained in the intimidating a public servant section of these materials applies to a charge of intimidating a judge. The major difference is that the intimidating a judge statute, in addition to an influence alternative, has a retaliation alternative. This retaliation alternative means is also present in the intimidating a juror[61] and intimidating a witness[62] statutes. An overbreadth challenge to the retaliation alternative of intimidating a judge when the threat was defined by RCW

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60 Colorado's statute, Section 18-8-306, 8B C.R.S. (1986), provides that—

> Any person who attempts to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or the agency or body of which he is a member, commits a class 4 felony.

Janousek, 871 P.2d at 1192, n.6.

61 The crime of intimidating a juror is codified at RCW 9A.72.130. This statute provides—

> (1) A person is guilty of intimidating a juror if a person directs a threat to a former juror because of the juror's vote, opinion, decision, or other official action as a juror, or if, by use of a threat, he attempts to influence a juror's vote, opinion, decision, or other official action as a juror.
> (2) "Threat" as used in this section means
> (a) to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
> (b) threats as defined in RCW 9A.04.110(25).
> (3) Intimidating a juror is a class B felony.

62 The crime of intimidating a witness is codified at RCW 9A.72.110. The statute provides—

> (1) A person is guilty of intimidating a witness if a person, by use of a threat against a current or prospective witness, attempts to:
> (a) Influence the testimony of that person;
> (b) Induce that person to elude legal process summoning him or her to testify;
> (c) Induce that person to absent himself or herself from such proceedings; or
> (d) Induce that person not to report the information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have the crime or the abuse or neglect of a minor child prosecuted, or not to give truthful or complete information relevant to a criminal investigation or the abuse or neglect of a minor child.
> (2) A person also is guilty of intimidating a witness if the person directs a threat to a former witness because of the witness's role in an official proceeding.
> (3) As used in this section:
> (a) "Threat" means:
> (i) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
> (ii) Threat as defined in RCW 9A.04.110(25).
> (b) "Current or prospective witness" means:
> (i) A person endorsed as a witness in an official proceeding;
> (ii) A person whom the actor believes may be called as a witness in any official proceeding; or
> (iii) A person whom the actor has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child.
> (c) "Former witness" means:
> (i) A person who testified in an official proceeding;
> (ii) A person who was endorsed as a witness in an official proceeding;
> (iii) A person whom the actor knew or believed may have been called as a witness if a hearing or trial had been held; or
> (iv) A person whom the actor knew or believed may have provided information related to a criminal investigation or an investigation into the abuse or neglect of a minor child.
> (4) Intimidating a witness is a class B felony.

9A.04.110(25)(d) or (j) was rejected by Division II in *State v. Knowles,* 91 Wn.App. 367, 957 P.2d 797, *review denied*, 136 Wn.2d 1029 (1998).

Until all challenges to the various threat definitions and to the retaliation prong of the intimidation statutes are resolved, it is strongly urged that special interrogatories be used with juries. The crime-specific, non-WPIC jury instructions that the Kitsap County Prosecuting Attorney's Office used in the *Knowles* case are set forth below—

NO.

A person commits the crime of Intimidating a Judge when, he directs a threat to a judge because of a ruling or decision of the judge in any official proceeding, or if by use of a threat directed to a judge, a person attempts to influence a ruling or decision of the judge in any official proceeding.

WPIC 4.24
RCW 9A.72.160(1)

NO.

To convict the defendant of the crime of Intimidating a Judge, as charged in count one of the information, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the period beginning on the 19th day of January, 1996, and ending on the 1st day of March, 1996, the defendant or an accomplice did direct a threat to M. Karlynn Haberly;

(2) That M. Karlynn Haberly is a judge:

(3) That the defendant knew M. Karlynn Haberly was a judge;

(4) That such threat communicated directly or indirectly, an intent to

(a) accuse M. Karlynn Haberly of a crime or cause criminal charges to be instituted against M. Karlynn Haberly, or

(b) do any act which is intended to harm substantially M. Karlynn Haberly or another person with respect to that person's health, safety, business, financial condition or personal relationships;

(5) That the defendant or an accomplice made such threat

(a) in response to a ruling or decision made by M. Karlynn Haberly in any official proceeding, or

(b) in an attempt to influence a ruling or decision of M. Karlynn Haberly in any official proceeding; and

(6) That the acts occurred in the State of Washington.

If you find from the evidence that Elements (1), (2), (3), (6) and either (4)(a) or (4)(b) and either (5)(a) or (5)(b) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. Elements (4)(a) and (4)(b) are alternatives and only one need be proved. Elements (5)(a) and (5)(b) are alternatives and only one need be proved. You need not agree as to which of the alternatives is proved.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

WPIC 4.21
RCW 9A.72.160

NO.

Threat means to communicate, directly or indirectly the intent:

To accuse any person of a crime or cause criminal charges to be instituted against any person; or

To do any act which is intended to harm substantially the person threatened or another with respect to that person's health, safety, business, financial condition or personal relationships.

WPIC 2.24
RCW 9A.04.110(25)
RCW 9A.72.160(2)(b)

NO.

Judge means every judicial officer authorized alone or with others, to hold or preside over a court.

RCW 9A.04.110(11)

NO.

Official proceeding means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or depositions.

RCW 9A.72.010(4)

NO.

If there is evidence which indicates several distinct criminal acts of Intimidating a Judge relating to any particular victim, you must unanimously agree that the same criminal act has been proved beyond a reasonable doubt in order for you to return a verdict of guilty as to a charge relating to that particular victim. You need not unanimously agree that all the acts have been proved beyond a reasonable doubt in order to return a verdict of guilty as to a charge relating to that particular victim.

State v. Petrich, 101 Wn.2d 566
WPIC 4.25 (modified)

NO.

It is not a defense to the charge of intimidating a judge that:

(1) the defendant did not cause actual harm; or

(2) the defendant did not intend to carry out the threat; or

(3) the defendant could not have carried out the threat.

State v. Kepiro, 61 Wn.App. 116, 125-26, 810 P.2d 19 (1991)
Smith v. State, 13 Fla. L. Weekly 2300, 532 So.2d 50, 52 (1988)
United States v. Orozco-Santillan, 903 F.2d 1262, 1265, n. 3 (9th Cir. 1990)

NO.

It is not a defense to the charge of intimidating a judge that:

(1) the judge to whom the threat was directed did not feel afraid; or

(2) that the judge to whom the threat was directed never received the threat.

State v. Hansen, 122 Wn.2d 712, 862 P.2d 117 (1993).
State v. Kepiro, 61 Wn.App. 116, 120-21, 810 P.2d 19 (1991)
United States v. Natale, 526 F.2d 1160, 1168 (2d Cir. 1975), *cert. denied,* 425 U.S. 950 (1976)

CAPTION FOR VERDICT FORM

We, the jury, find the defendant, VERYL EDWARD KNOWLES, _____ (not guilty or guilty) of the crime of Intimidating a Judge as charged in count one of the information.

DATED this _____ day of _____, 19___.

_____
PRESIDING JUROR

If this verdict is "guilty" please complete special verdict form A.

CAPTION FOR SPECIAL VERDICT

We, the jury, having found the defendant guilty of Intimidating a Judge as charged in count one of the information, make the following answers to the questions submitted by the court:

With respect to alternative elements (4)(a) and (4)(b) of Instruction No. _____:

1.Was the threat the defendant communicated directly or indirectly an intent to accuse M. Karlynn Haberly of a crime or cause criminal charges to be instituted against M. Karlynn Haberly?

[ ] Yes

[ ] No

[ ] No Unanimous Agreement

2.Was the threat the defendant communicated directly or indirectly an intent to do any act which is intended to harm substantially M. Karlynn Haberly or another person with respect to that person's health, safety, business, financial condition or personal relationships?

[ ] Yes

[ ] No

[ ] No Unanimous Agreement

With respect to alternative elements (5)(a) and (5)(b) of Instruction No.___

1.Did the defendant make the threat in response to a ruling or decision made by M. Karlynn Haberly in any official proceeding?

[ ] Yes

[ ] No

[ ] No Unanimous Agreement

2.Did the defendant make the threat in an attempt to influence a ruling or decision of M. Karlynn Haberly in any official proceeding?

[ ] Yes

[ ] No

[ ] No Unanimous Agreement

DATED this _____ day of _____, 19___.

_____
PRESIDING JUROR

WPIC 90.03 (modified)
WPIC 31.09 (by analogy)

Malicious Prosecution

The crime of malicious prosecution is defined at RCW 9.62.010. This statute provides—

> Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he or she is innocent:
>
> (1) If such crime be a felony, shall be punished by imprisonment in a state correctional facility for not more than five years; and
>
> (2) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor.

The felony is unranked.

The Kitsap County Prosecuting Attorney's Office has used this statute when dealing with an individual who sought a citizen complaint charging the elected prosecuting attorney and a chief deputy prosecuting attorney with the crime of unlawful practice of law after charges of unlawful practice of law had been filed against her. There is virtually no case law regarding this crime, but the following jury instructions should be a correct statement of the law.

NO.

A person commits the crime of Malicious Prosecution when she maliciously and without probable cause therefor, causes or attempts to cause another to be arrested or proceeded against for any crime of which he or she is innocent.

RCW 9.62.010

NO.

Malice and maliciously mean an evil intent, wish, or design to vex, annoy, or injure another person.

WPIC 2.13

NO.

A person has probable cause to proceed against another for a crime where the facts and circumstances within the person's knowledge, and of which the person has reasonably trustworthy information, are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed.

Slate v. Gluck, 83 Wn.2d 424, 426-27, 518 P.2d 703 (1974)
State v. Sinclair, 11 Wn.App. 523, 531, 523 P.2d 1209 (1974)

NO.

To convict the defendant of the crime of Malicious Prosecution as charged in count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1)That on or about the period beginning on the 6th day of March, 1998, and ending on the 19th day of March, 1998, the defendant caused or attempted to cause Jeffrey J. Jahns to be proceeded against for the crime of Unlawful Practice of Law;

(2) That during this period probable cause did not exist for charging Jeffrey J. Jahns with the crime of Unlawful Practice of Law;

(3) That Jeffrey J. Jahns is innocent of the crime of Unlawful Practice of Law;

(4) That the defendant acted with malice; and

(5) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

WPIC 4.21
RCW 9.62.010

False Representation Concerning Title

The crime of false representation concerning title is defined at RCW 9.38.020. This statute provides—

> Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.

Stevens County has prosecuted lien filers under this statute in the past. Kitsap County has not prosecuted anyone under this statute because the liens that we have received do not specifically identify any piece of property.

Unlawful Practice of Law

The crime of unlawful practice of law ("UPL") is defined by RCW 2.48.180. The current version of RCW 2.48.180, which applies to offenses committed after September 1995, provides in pertinent part—

> (1) As used in this section:
>
> (a) "Legal provider" means an active member in good standing of the state bar, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law;
>
> (b) "Nonlawyer" means a person to whom the Washington supreme court has granted a limited authorization to practice law but who practices law outside that authorization, and a person who is not an active member in good standing of the state bar, including persons who are disbarred or suspended from membership;
>
> (c) "Ownership interest" means the right to control the affairs of a business, or the right to share in the profits of a business, and includes a loan to the business when the interest on the loan is based upon the income of the business or the loan carries more than a commercially reasonable rate of interest.
>
> (2) The following constitutes unlawful practice of law:
>
> (a) A nonlawyer practices law, or holds himself or herself out as entitled to practice law;
>
> (b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;
>
> (c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;
>
> (d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business; or
>
> (e) A nonlawyer shares legal fees with a legal provider.
>
> (3) Unlawful practice of law is a crime. A single violation of this section is a gross misdemeanor. Each subsequent violation, whether alleged in the same or in sub-sequent prosecutions, is a class C felony.…

A felony conviction of UPL is a ranked offense with a seriousness level of II. Felony offenses of UPL, if committed for financial gain, will fall within the definition of "criminal profiteering." *See* RCW 9A.82.010(14)(ee).

The most extensive discussion of UPL is contained in *State v. Hunt,* 75 Wn.App. 795, 880 P.2d 96, *review denied,* 125 Wn.2d 1009 (1994). This case contains approved jury instructions (discussed in footnotes 13 and 14). Additional jury instructions are set forth below.

NO.

A person may practice law on his or her own behalf. This is called the "pro se" rule. Only licensed lawyers, however, may practice law on behalf of others. A person cannot transfer his or her "pro se" right to practice law to any other person, including a spouse or parent.

State v. Hunt, 75 Wn.App. 795, 804, 880 P.2d 96, *review denied,* 125 Wn.2d 1009 (1994)
Hagan v. Kassler, 96 Wn.2d 443, 635 P.2d 730 (1981)
State v. Stange, 53 Wn.App. 638, 648, 769 P.2d 873 (1989) (father may not file pro se supplemental brief on behalf of juvenile offender)
City of Seattle v. Shaver, 23 Wn.App. 601, 597 P.2d 935 (1979) (layman husband could not represent wife in a prosecution for failure to yield right-of-way)

NO.

An individual who is charged with a criminal offense has a constitutional right to the assistance of counsel. A criminal defendant's right to the assistance of counsel does not include the right to be represented by an advocate who is not a member of the State Bar.

United States v. Wheat, 486 U.S. 153, 159, 100 L.Ed.2d 140, 108 S.Ct. 1692, 1697 (1988)

NO.

A power of attorney is an instrument in writing by which one person appoints another as his or her agent and confers upon that person the authority to act in his or her place for the purpose or purposes set forth in the instrument. A power of attorney does not authorize the practice of law.

State v. Hunt, 75 Wn.App. 795, 805, 880 P.2d 96, *review denied,* 125 Wn.2d 1009 (1994)

NO.

Ignorance of the law does not excuse the unauthorized practice of law.

Idaho State Bar v. Meservy, 335 P.2d 62 (Idaho 1959)

NO.

It is not a defense to a charge of Unlawful Practice of Law that the defendant received no payment or fee for the preparation of documents or other activities.

Perkins v. CTX Mortgage Company, 137 Wn.2d 93, 97-98, 969 P.2d 93 (1999)

PROCEDURAL ASPECTS OF PROSECUTING FREEMEN

Once typical or atypical charges have been filed, our judicial system and the Freeman defendant are destined for a cultural clash. Dealing with these individuals calls for prior planning on the part of judges, court staff, and prosecutors. An excellent outline prepared by the Honorable Gregory P. Mohr, Justice of the Peace and City Judge of Sidney, Montana, explaining the judicial approach that worked best in the Jordan, Montana Freemen cases is in the Appendix, at 34-36. Please feel free to share this outline with your local courts.

The issues that arise during a Freeman prosecution are obscure and responsive law can be hard to locate. Common arguments are identified below with a short legal response.

"I am not the Person on the Docket"—Correct Name

Assuming the defendant responds to the summons and appears in court, the first challenge will be that the person before the court is not the person named in the information, citation, or complaint. RCW 10.40.050 allows the prosecution to go forward in both the name listed on the charging document and the name alleged by the defendant to be his or her correct name. Merely add the defendant's preferred spelling to the information, complaint, or citation as an AKA.

"Call Me 'Sovereign,' 'Sir' or 'Sire'"—Preferred Honorific

When the defendant provides his or her "correct" name, he or she will frequently ask to be addressed as "Sovereign _____", "Sir _____" or with some other similar title. Do not object if the judge allows this request outside of the presence of the jury. If the case proceeds to a jury trial, an objection/motion in limine should be brought pursuant to Const. art. 4, § 16 as the use of the title tends to be a comment on the defendant's sovereign immunity or diplomatic immunity claim.

"I am not a Person but a Human Being"

The defendant will challenge the court's jurisdiction on the grounds that the criminal code applies to "persons" and the various statutory definitions of "person" do not include the phrase "human being." *See, e.g.,* RCW 46.04.405; RCW 9A.04.110(17). These statutory definitions, however, all include the phrase "natural person." BLACK'S LAW DICTIONARY 1028 (5th ed. 1979) defines person, in pertinent part, as follows: "In general usage, a human being (*i.e.* natural person), though by statute term may include a firm…". Case law also establishes that a "natural person" is a "human being." *See, e.g., Hogan v. Greenfield,* 122 P.2d 850, 853 (Wyo. 1942).

See also *"Infractions," infra,* for a more thorough discussion of why Freemen believe traffic laws do not apply to them.

"I am not a Citizen of Your Jurisdiction"—Jurisdiction Over a Non-Citizen

A superior court has jurisdiction over any individual regardless of the person's citizenship or residency status if the person commits a crime or traffic infraction, in whole or in part, in the county of the state where the superior court is located. *See generally* RCW 9A.04.030; RCW 9A.04.070; RCW 46.08.190; Const. art. 4, § 6; Const. art. 1, § 22; *State ex rel. Best v. Superior Court,* 107 Wash. 238, 181 P. 688 (1919) ("it requires something more than ingenious and pleasing argument to convince us that the state is powerless to maintain her dignity and enforce her laws as against any individual within her boundaries, no matter what his status may be as to citizenship or lack of it"). The superior court's subject matter jurisdiction is invoked by the filing of an information or indictment. Const. art. 1, § 25; CrR 2.1; RCW 10.37.010. A grand jury indictment is not necessary. *See, e.g., State v. Jeffries,* 105 Wn.2d 398, 423-24, 717 P.2d 722, *cert. denied,* 479 U.S. 922 (1986); *Jeffries v. Blodgett,* 5 F.3d 1180, 1188 (9th Cir. 1993), *cert. denied,* 114 S.Ct. 1294 (1994).

A district court has jurisdiction over any individual regardless of the person's citizenship or residency status if the person commits a gross misdemeanor or misdemeanor crime or violates a traffic ordinance, in whole or in part, in the county of the state where the court of limited jurisdiction is located. *See generally,* RCW 9A.04.030; RCW 9A.04.070; RCW 3.66.060; RCW 7.80.010(1); Const. art. 1, § 22; Const. art. 4, § 10; *State ex rel. Best v. Superior Court,* 107 Wash. 238, 181 P. 688 (1919) ("it requires something more than ingenious and pleasing argument to convince us that the state is powerless to maintain her dignity and enforce her laws as against any individual within her boundaries, no matter what his status may be as to citizenship or lack of it"). The district court's subject matter jurisdiction is invoked by the filing of a complaint or citation. Const. art. 1, § 25; CrRLJ 2.1(a); RCW 10.37.010; RCW 10.37.015.

A municipal court has jurisdiction over any individual regardless of the person's citizenship or residency status if the person commits a traffic infraction within the city limits or violates a city ordinance within the city limits. RCW 7.80.010(2); RCW 35.20.030; RCW 3.50.020; *cf. State ex rel. Best v. Superior Court,* 107 Wash. 238, 181 P. 688 (1919) ("it requires something more than ingenious and pleasing argument to convince us that the state is powerless to maintain her dignity and enforce her laws as against any individual within her boundaries, no matter what his status may be as to citizenship or lack of it"). The municipal court's subject matter jurisdiction is invoked by the filing of a complaint or citation. CrRLJ 2.1(a); RCW 10.37.010; RCW 10.37.015.

Cases from other jurisdictions which have expressly rejected claims that a state court lacks jurisdiction because the defendant is freeborn, a citizen of the republic, or similar claim include—

- *United States v. Hilgeford,* 7 F.3d 1340, 1342 (7th Cir. 1993) (criminal tax case in which defendant claimed that he was a citizen of the "Indiana State Republic" and, therefore, an alien beyond jurisdictional reach of federal courts);
- *United States v. Sloan,* 939 F.2d 499, 501 (7th Cir. 1991) (criminal tax case in which defendant claimed that he was not subject to jurisdictional laws of the United States because "he is a freeborn, natural individual, a citizen of the State of Indiana, and a 'master'—not a 'servant' of his government"); and
- *United States v. Greenstreet,* 912 F.Supp. 224, 228 (N.D. Tex. 1996) (court rejected defendant's claim that he was not subject to the jurisdiction of the court because "he is of 'Freeman Character' and 'of the White Preamble Citizenship and not one of the 14th Amendment legislated enfranchised De Facto colored races" and because he is a "White Preamble natural sovereign Common Law De Jure Citizen of the Republic/State of Texas").

"I am Here Under Duress"—Involuntary Presence in the Court

The presence of the accused before the court gives the court jurisdiction over the accused's person regardless of the validity of the accused's arrest. *State v. Blanchey,* 75 Wn.2d 926, 454 P.2d 481 (1969). *See also United States v. Alvarez-Machain,* 504 U.S. 655, 119 L.Ed.2d 441, 112 S.Ct. 2188 (1992) (respondent's forcible abduction in Mexico does not prohibit his trial in a United States court for violations of this country's criminal laws); *Davis v. Rhay,* 68 Wn.2d 496, 413 P.2d 654 (1966) (power of court to try person is not impaired by fact that he has been brought within court's jurisdiction by reason of forcible abduction).

"I have Immunity"—Diplomatic or Sovereign Immunity

Diplomatic immunity and sovereign immunity are premised upon recognition by the receiving state; no one is able to unilaterally assert diplomatic immunity. *United States v. Lumumba,* 741 F.2d 12 (2nd Cir. 1984); Diplomatic Relations Act, §§ 2-6, 22 U.S.C.A. §§ 254a-254e; The Vienna Convention on Diplomatic Relations, April 18, 1961, Art. IV, 23 U.S.T. 3227.[63] Diplomatic status only exists when there is recognition of another state's sovereignty by the Department of State.[64] In other words, recognition by the executive branch—not to be second-guessed by the judiciary—is essential to establishing diplomatic status. *Lumumba,* 741 F.2d at 15, citing *Restatement (Third) of Foreign Relations Law of the United States* § 461 Commentary at 30 (Tent. Draft No. 4, 1983).

Courts have routinely rejected claims of diplomatic and/or sovereign immunity where the defendant has not established that the United States Department of State has recognized the country that the defendant claims to head or to represent as an ambassador. *See, e.g.*—

- *United States v. Lumumba, supra* (defendant's claim of immunity from prosecution due to his proclaimed status as "Vice President and Minister of Justice of the Provisional Government of the Republic of New Afrika," which is the "Nation of Afrikans born in North America as a consequence of...slavery" and which encompasses five southern states—Alabama, Georgia, Louisiana, Mississippi and South Carolina, was rejected because there was no showing that the Department of State had recognized this country);
- *State v. Crisman,* 123 Idaho 277, 846 P.2d 928, 931 (1993) (defendant's unilateral proclamation that he was an ambassador of the "Kingdom of YHWH (Yaweh)" did not entitle him to diplomatic immunity from prosecution because there is no evidence that the United States Department of State had recognized that "Kingdom" as sovereign or had granted the defendant immunity);
- *State v. Davis,* 745 S.W.2d 249, 253 (Mo.Ct.App. 1988) (defendant, who claimed he was citizen and ambassador of Kingdom of God, was not entitled to diplomatic immunity in criminal prosecution because there was nothing in record to indicate the organization of which defendant was a member had been recognized as foreign state by executive branch of federal government, or that Department of State had granted immunity status to defendant).

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63 The protective provisions of the Treaty appear in Articles 29 and 31. Article 29 provides: "The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. Article 31 establishes that: "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state."

64 The United States Department of State produces the Diplomatic List, of missions in the U.S. This list, which is prepared quarterly by the Office of Protocol, contains the names of members of the diplomatic staffs of all missions and their spouses. Members of the diplomatic staff are the members of the staff of the mission having diplomatic rank.

These persons, with the exception of those identified by asterisks, enjoy full immunity under provisions of the Vienna Convention on Diplomatic Relations. The list may be accessed on the State Department's web page at <http://www.state.gov/www/about_state/contacts/diplist/index.html>.

Hard copies of the Diplomatic List, Department of State Publication 10424, are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Tel: (202) 512-1800, FAX: (202) 512-2250.

Washington case law does not clearly establish whether the judge or the jury decides the issue of sovereign or diplomatic immunity or who bears the burden of establishing sovereign or diplomatic immunity. In one Kitsap County case the issue was submitted to the jury, but the jury instructions were structured to ensure that a finding of immunity would not be an acquittal for purposes of double jeopardy. The instructions used are set forth below—

NO.

Jurisdiction is the power of a court to hear and determine a case. The State of Washington may exercise jurisdiction over an individual who has been charged with a crime regardless of whether the individual is a citizen or resident of the state so long as the offense occurred within the state.

RCW 9A.04.030
State v. Lane, 112 Wn.2d 464, 771 P.2d 1150 (1989)
State ex rel. Best v. Superior Court, 107 Wash. 238, 181 P. 688 (1919)

NO.

A grant of diplomatic immunity or sovereign immunity will deprive a state court of jurisdiction to try an individual for any crime. Diplomatic immunity or sovereign immunity cannot be unilaterally asserted by an individual. Diplomatic immunity or sovereign immunity can only be conferred on an individual by the United States Department of State.

The burden is on the defendant to prove the existence of diplomatic immunity or sovereign immunity by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established that he is entitled to diplomatic or sovereign immunity, it will be your duty to return a verdict of no jurisdiction.

State v. Moses, 79 Wn.2d 104, 110, 483 P.2d 832 (1971) (treaty exemption defense to violation of fishing laws must be proved by the defendant by a preponderance of the evidence), *cert. denied,* 406 U.S. 910 (1972);
State v. Williams, 13 Wash. 335, 43 P. 15 (1895) (defendant bears the burden of establishing that he is an Indian by a preponderance of the evidence);
State v. Courville, 36 Wn.App. 615, 622, 676 P.2d 1011 (1983) (assertion of treaty rights as an affirmative defense must be proved by the defendant by a preponderance of the evidence);
Diplomatic immunity and sovereign immunity are premised upon recognition by the receiving state; no one is able to unilaterally assert diplomatic immunity. *United States v. Lumumba,* 741 F.2d 12 (2nd Cir. 1984);
Diplomatic Relations Act, §§ 2-6, 22 U.S.C.A. §§ 254a-254e; The Vienna Convention on Diplomatic Relations, April 18, 1961, Art. IV, 23 U.S.T. 3227

NO.

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence, these instructions, and five verdict forms and five special verdict forms.

When completing the verdict forms, you will first consider the issue of jurisdiction. If you unanimously agree on a verdict, you must fill in the blank provided on the Special Verdict Regarding Jurisdiction with the word "does" or the words "does not," according to the decision you reach. If you find that the Court has jurisdiction, you will need to complete the remaining verdict forms.

When completing Verdict Forms A, B, C, D, and E, you must fill in blank provided in each verdict form with the words "not guilty" or the word "guilty," according to the decision you reach. Since this is a criminal case, each of you must agree for you to return a verdict.

You will also be furnished Special Verdict Forms A, B, C, and D. If you find the defendant not guilty of any particular count of Intimidating a Judge, do not use the Special Verdict Form for that count. If you find the defendant guilty of any count of Intimidating a Judge, you must answer the questions on the Special Verdict Form relating to that count. In order to answer a question on a Special Verdict Form "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you have a reasonable doubt as to the question, you must answer "no." If you do not unanimously agree then answer "no unanimous agreement." When you have arrived at the answers, fill in the Special Verdict Form to express your decision on that count.

The presiding juror will sign the Special Verdict Regarding Jurisdiction, Verdict Forms A, B, C, D, and E, and Special Verdict Forms A, B, C, and D, if a verdict has been rendered on these forms and will notify the bailiff, who will conduct you into court to declare your verdicts.

WPIC 151.00 (modified)
WPIC 160.00 (modified)
WPIC 31.08 (by analogy)

CAPTION FOR SPECIAL VERDICT REGARDING JURISDICTION

We, the jury, find that the Court _____ (Write in "Does" or "Does Not") have jurisdiction to try the defendant, VERYL EDWARD KNOWLES, for the crimes charged in the information.

DATED this _____ day of _____, 19___.

_____
PRESIDING JUROR

If this verdict is "does have jurisdiction" please complete the remaining verdict forms.

"Is this an Admiralty Court?"—Fringe on the Flag

Washington statutes require that the American flag and the Washington flag be on display in the courtroom. RCW 1.20.015. Case law establishes that —

> the mere lack of compliance per se with such an administrative provision would not inure to the benefit of a defendant.[] In itself, and in the absence of relevance to some other situation of separate significance involving a defendant's rights, non-compliance with section 753(b) gives no better basis for a new trial than would a similar provision directing judges to wear robes, deputy marshals to wear a particular sort of uniform while on duty, or court criers to use a particular formula, or to station the American flag at a particular place in the courtroom.

United States v. Sams, 219 F.Supp. 164, 166 (W.D. Pa. 1963), *aff'd in part, vacated in part on other grounds,* 340 F.2d 1014 (3rd Cir.), *cert. denied,* 380 U.S. 974 (1965).

Two recent cases contain extended discussions regarding flags with fringes. These cases, *Schneider v. Schlaefer,* 975 F.Supp. 1160 (E. D. Wisconsin 1997), and *Sadlier v. Payne,* 974 F.Supp. 1411 (D. Utah 1997), provide that—

(1) Yellow fringe on a United States flag in a courtroom does not convert a state court into a "foreign state power" denying due process to a defendant in state criminal proceedings.

(2) Yellow fringe on a flag does not convert a court into an admiralty jurisdiction court.

(3) A fringed flag adoring the courtroom does not limit a court's jurisdiction since "decor is not a determinant for jurisdiction." *U.S. v. Greenstreet,* 912 F.Supp. 224, 229 (N.D. Tex. 1996).

(4) Yellow fringe on a flag does not appear to violate 36 U.S.C. § 176(g) which provides that "[t]he flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature." Title 36 of the United States Code, commonly referred to as the "flag code," moreover, does not proscribe conduct and does not contain any penal sanctions.

Refusal to Enter Plea

Freemen will generally refuse to enter a plea because they do not recognize the court's jurisdiction. A request should be made that the court enter a not guilty plea on the defendant's behalf pursuant to RCW 10.40.190.

"Refusal for Cause"—Return of Pleadings

Frequently, citations, informations, complaints and other pleadings that are given to Freemen will be returned with the phrase "Refusal for Cause" written upon it. As explained by the Federal District Court for Idaho—

> the defendants' "refusal for cause" is meaningless. The defendants claim they can refuse "presentment" of the plaintiff's complaint pursuant to U.C.C. 3-501. Apparently, the defendants are arguing that § 3-501(2)(c)(ii) is a defense which provides for the defendants' "refusal of payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule." The defendants reliance on Chapter 3 of the U.C.C. is misplaced; Chapter 3 of the U.C.C. by its own definitions is only applicable to "negotiable instruments." The complaint filed by the plaintiff is not a negotiable instrument and the Uniform Commercial Code is inapplicable. The defendants do not have the choice of whether or not to be defendants. If properly served, as this court has determined the defendants were, the [defendants] became parties to this lawsuit whether they wanted to be or not.

United States v. Andra, 923 F.Supp. 157, 159 (D. Idaho 1996).

Speedy Trial

The 90/60 day time for trial contained in CrR 3.3 and CrRLJ 3.3 will begin to run when the court enters the not guilty plea on behalf of the defendant if this action occurs within 14 days (CrR 3.3) or 15 days (CrRLJ 3.3) of the defendant's first appearance in court. If the arraignment has been continued for more than 14 or 15 days as has happened in some of our cases when the judge runs out of time and/or patience for dealing with the Freemen at hearing after hearing, make sure that the trial is set within 104/74 days (superior court) or 105/75 days (court of limited jurisdiction) of the first appearance in court.

Also take care in cases filed by criminal citation in courts of limited jurisdiction to comply with *Seattle v. Bonifacio,* 127 Wn.2d 482, 900 P.2d 1105 (1995) (issuance of a citation, regardless of whether it is subsequently filed, starts the speedy trial clock running; Held: prosecution of defendant barred as proceedings did not commence within 110 days [CrRLJ 2.1(b)(3)(iv)'s requirement of filing citation within 20 days of issuance plus 90 day speedy trial rule under CrRLJ 3.3] of issuance of citation even though less than 110 days had elapsed since the filing of a complaint by a city attorney).

Refusal to Sign Promise to Reappear

Release on personal recognizance can be difficult in these cases because the defendant will frequently refuse to sign the promise to appear for the next hearing. When confronted with a judge who appears willing to impose the $50,000 cash only bail requested by the prosecutor to ensure the defendant's appearance at the next hearing, the defendant will sign the promise to appear. If this happens, a copy of the signed promise to appear with the words "Refused for fraud, UCC § ____," "Refused for Fraud F.R.C.P. 9(b)," "Refusal for cause without dishonor U.C.C. 3-501," or the words "Refused for cause without dishonor and without recourse to me" will be received by the court and/or prosecutor within a matter of days. The defendant, nonetheless, will generally appear at the next hearing.

Request for a "Bill of Particulars"

A defendant has a constitutional right to be informed of the nature and cause of the accusation against him or her to enable the defendant to prepare a defense and to avoid a subsequent prosecution for the same crime. [5][6]

> Our prior cases indicate that an indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense. It is generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as "those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished. Undoubtedly the language of the statute may be used in the general description of an offence, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offence, coming under the general description, with which he is charged."

Hamling v. United States, 418 U.S. 87, 41 L.Ed.2d 590, 94 S.Ct. 2887, 2907-08 (1974) (citations omitted.)

This constitutional right of a criminal defendant to be appraised with reasonable certainty as to the charges against him is ordinarily satisfied by a charging document which includes all of the statutory and nonstatutory elements of the offense. *State v. Kjorsvik,* 117 Wn.2d 93, 97, 812 P.2d 86 (1991); *State v. Grant,* 89 Wn.2d 678, 686, 575 P.2d 210 (1978); *State v. Merrill,* 23 Wn.App. 577, 580, 597 P.2d 446, *review denied,* 92 Wn.2d 1036 (1979). The constitution does not require that the prosecuting authority must allege its supporting evidence, theory of the case or whether or not it can prove its case in the charging document. *United States v. Buckley,* 689 F.2d 893 (1982), *cert. denied,* 460 U.S. 1086 (1983); *State v. Bates,* 52 Wn.2d 207, 324 P.2d 810 (1958). In fact, the charging document may even list inapplicable alternative means of committing the offense. *See State v. Williamson,* 84 Wn.App. 37, 42, 924 P.2d 960 (1996). [6][6]

In our system, a defendant may obtain additional clarification of the charging document by bringing a motion for a bill of particulars. *See* CrR2.1(c); CrRLJ 2.4(e); *State v. Holt,* 104 Wn.2d 315, 320, 704 P.2d 1189 (1985). In determining whether to order a bill of particulars in a specific case, a court should consider whether the defendant has been advised adequately of the charges through the charging document and all other disclosures made by the government. *United States v. Long,* 706 F.2d 1044 (9th Cir. 1983); *United*

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[65] The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation."

Article 1, §22 of the Washington State Constitution, which contains language almost identical to the federal constitution, provides: "[i]n all criminal prosecutions the accused shall have the right to demand the nature and cause of the accusation against him."

[66] While not implicated at this stage of the proceeding, it is improper to instruct a jury regarding alternate means that are not supported by the evidence. A conviction entered under such circumstances will only be sustained on appeal if the verdict forms clearly indicate that the jury was unanimous as to the factually supported alternative means. *See, e.g., State v. Chester,* 133 Wn.2d 15, 19, n.2, 940 P.2d 1374 (1997); *State v. Ortega-Martinez,* 124 Wn.2d 702, 707-08, 881 P.2d 231 (1994).

States v. Giese, 597 F.2d 1170 (9th Cir.), *cert. denied,* 444 U.S. 979 (1979). The furnishing of a bill of particulars is discretionary with the trial court, whose ruling will not be disturbed on appeal absent a showing of an abuse of discretion. *State v. Noltie,* 116 Wn.2d 831, 844, 809 P.2d 190 (1991); *State v. Devine,* 84 Wn.2d 467, 527 P.2d 72 (1974).

A bill of particulars is not necessary when the means of obtaining the facts are readily accessible to the defendant or the facts are already known to him or her. *See United States v. Kaplan,* 470 F.2d 100 (7th Cir. 1972), *cert. denied,* 410 U.S. 966 (1973). In *State v. Paschall,* 197 Wash. 582, 85 P.2d 1046 (1939), the court held that it was not prejudicial error to deny a motion for a bill of particulars when the state's attorney had disclosed to the defendant's attorney practically all of the facts concerning which evidence the government intended to use at trial.

> Nor was it error to deny the motions for a bill of particulars and to make the information more definite and certain. It was not made to appear that the state had knowledge of any ultimate facts of which appellants themselves were not cognizant. As a matter of fact, it would appear from the record that, prior even to the filing of the information, the state's attorneys disclosed to appellants or their counsel practically all of the facts concerning which evidence was adduced at the trial. Certainly appellants suffered no prejudice by the denial of the motions.

Paschall, 197 Wash. at 588. *See also State v. Dictado,* 102 Wn.2d 277, 286, 687 P.2d 172 (1984) (court denied motion for bill of particulars stating "nothing in the record indicates what information, beyond that already provided, the State could have furnished to give additional notice of the charges"); *Grant,* 89 Wn.2d at 686-687 (court denied motion for bill of particulars stating "the officer's report is about as much as the court could compel the prosecutor to furnish (the defendant)"); *State v. Clark,* 21 Wn.2d 774, 778, 153 P.2d 297 (1944), *cert. denied,* 325 U.S. 878 (1945) (court denied motion for bill of particulars stating case was based on defendant's confession and a bill of particulars could not provide the defendant with any more information that was not already locked up in defendant's own "breast"); *Merrill,* 23 Wn.App. at 580 (court denied motion for bill of particulars where the defendant was made aware through discovery of all the information available to the prosecutor for proving the offense).

In the Freemen culture, a bill of particulars is a lengthy questionnaire similar in nature to interrogatories. The purpose of their request for a "bill of particulars" is to determine the facts necessary in their legal system for the exercise of its jurisdiction over you.[67] If such a defendant asks the court to order you to provide a bill of particulars you must be very clear to the court that you will provide a bill of particulars as contemplated by CrR 2.1(c) or CrRLJ 2.4(e). The form of any order granting a defendant's request for a bill of particulars should include the limiting language "as contemplated by CrR 2.1(c) or CrRLJ 2.4(e)."

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[67] Examples of questions that have appeared in many of the 16+ page bill of particulars that have been received by us include—

> "16. What is the true and correct Christian Appellation of the *Defendant* in the Above mentioned Case? "true and correct" require that you state the complete praenomen, nomen, and cognomen."…
> "20. Does the Plaintiff claim that the Demandant is an artificial, juristic, or statutory person?"…
> "41. Is the American Bar Association and the Washington Bar Association organized under the power and authority of the Crown of England? Do attorney's owe allegiance to the crown of England's titles of Nobility? Do attorney's have titles of nobility—i.e. Esquire?"
> "48. State all facts relied upon which would put the Demandant in any jurisdiction other than that of the common law of the Organic Washington Republic."…

"The Court has no Jurisdiction Absent a Grand Jury Indictment"

The State of Washington abandoned its mandatory grand jury practice some 80 years ago.[68] While grand juries are still convened on rare occasions in Washington, the vast majority of Washington prosecutions are instituted on information filed by the prosecutor. The use of an information is specifically authorized by the Washington Constitution.[69] Numerous cases, both state and federal, establish that a state prosecution does not require a grand jury indictment. *See, e.g., State v. Jeffries,* 105 Wn.2d 398, 423-24, 717 P.2d 722, *cert. denied,* 479 U.S. 922 (1986); *Jeffries v. Blodgett,* 5 F.3d 1180, 1188 (9th Cir. 1993), *cert. denied,* 114 S.Ct. 1294 (1994).

The Right to an Attorney

The only thing worse than prosecuting a Freeman defendant is having to retry a case because the defendant's right to an attorney was not protected. Absent an adequate *Faretta, infra,* waiver of trial counsel and/or waiver of appellate counsel, an attorney should be appointed by the court.

Reliance upon the defendant's failure to establish indigency is unlikely to shield the conviction from a subsequent challenge. *See generally State v. Nordstrom,* 89 Wn.App. 737, 950 P.2d 946 (1997). The appointment of stand-by counsel will not obviate the need for an adequate *Faretta* waiver. *State v. Barker,* 35 Wn.App. 388, 393, 667 P.2d 108 (1983); *State v. Dougherty,* 33 Wn.App. 466, 655 P.2d 1187 (1982).

A criminal defendant's right to self-representation is guaranteed by the Sixth amendment to the United States Constitution and article 1, section 22, amendment 10 of the Washington State Constitution. *Faretta v. California,* 422 U.S. 806, 45 L.Ed.2d 562, 95 S.Ct. 2525 (1975); *State v. Hoff,* 31 Wn.App. 809, 811, 644 P.2d 763, *review denied,* 97 Wn.2d 1031, *cert. denied,* 459 U.S. 1093 (1982); *State v. Jessup,* 31 Wn.App. 304, 309, 641 P.2d 1185 (1982).

> But unlike the right to assistance of counsel, the right to dispense with such assistance and to represent oneself is guaranteed not because it is essential to a fair trial but because the defendant has the personal right to be a fool. *See State v. Fritz,* 21 Wn.App. 354, 359, 585 P.2d 173, 98 A.L.R.3d 1 (1978), quoting *People v. Salazar,* 74 Cal.App.3d 875, 888, 141 Cal.Rptr. 753 (1977).

Hoff, 31 Wn.App. at 811.

To secure the constitutional right of self-representation, a defendant must make a timely request. *State v. Stenson,* 132 Wn.2d 668, 737-40, 940 P.2d 1239 (1997), *cert. denied,* 118 S.Ct. 1193 (1998). A request is generally considered timely if made prior to jury selection. *Id.*

Granting a request to proceed pro se that is made on or near the date scheduled for trial does not require the court to grant the defendant a continuance. *See State v. Honton,* 85 Wn.App. 415, 932 P.2d 1276, *review denied,* 133 Wn.2d 1011 (1997) (aggravated first degree murder case).

The wrongful denial of a timely, pre-trial request to proceed pro se requires reversal of any conviction without any showing of prejudice. *State v. Breedlove,* 79 Wn.App. 101, 900 P.2d 586 (1995); *State v. Estabrook,* 68 Wn.App. 309, 317, 842 P.2d 1001, *review denied,* 121 Wn.2d 1024 (1993).

The exercise of the right to proceed pro se must be requested by the defendant, and the court is not required to advise the defendant of the existence of the right. *State v. Garcia,* 92 Wn.2d 647, 655, 600 P.2d 1010 (1979). The request or demand to defend pro se must be (1) knowing and intelligent and (2) unequivocal. *See, e.g., Hendricks v. Zenon,* 933 F.2d 664, 669 (9th Cir. 1993); *Gomez v. Collins,* 993 F.2d 96, 98 (5th Cir. 1993); *State v. DeWeese,* 117 Wn.2d 369, 376, 816 P.2d 1 (1991); *Breedlove,* 79 Wn.App.

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68 Washington Laws 1909, c. 87.

69 Const. art. 1, § 25 provides that—

> Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law.

at 106; *State v. Barker,* 75 Wn.App. 236, 238, 881 P.2d 1051 (1994); *State v. Sinclair,* 46 Wn.App. 433, 437, 730 P.2d 742 (1986).

To ensure that a waiver of counsel meets these two requirements, the court should conduct a thorough and comprehensive formal inquiry of the defendant on the record to demonstrate that the defendant is aware of the nature of charges, range of allowable punishments and possible defenses, that technical rules exist which will bind the defendant in the presentation of his case, and the other risks of proceeding pro se. *Hendricks,* 993 F.2d at 669-70; *United States v. Merchant,* 992 F.2d 1091, 1095 (10th Cir. 1993); *DeWeese,* 117 Wn.2d at 378; *Bellevue v. Acrey,* 103 Wn.2d 203, 211, 691 P.2d 957 (1984); *Barker,* 75 Wn.App. at 239; *Vermillion,* 66 Wn.App. at 340, 832 P.2d 95 (1992).

A defendant's refusal to participate in a colloquy requires the court to reject his request to proceed pro se.

Most of the Freemen we have dealt with when asked whether they wish to waive counsel will indicate that they will not be waiving their right to "assistance of counsel." This response, however, relates to their desire to be assisted by someone who is not a member of the Washington State Bar Association. If your question is rephrased as whether they wish to proceed with an attorney who is a member of the Washington State Bar, the answer will be an emphatic "no."

At this point, the prosecution's concern is obtaining an adequate waiver of attorney. Copies of the waiver forms used in Kitsap County for trial counsel and appellate counsel are reproduced below. While it is preferable to have the Freeman actually fill out the forms, the ensuing battle is generally not worth the fight. A compromise that will still protect the record is to have the judge review the form orally with the defendant.

If a Freeman defendant refuses to participate in an oral or written waiver of attorney, an attorney should be appointed to represent the Freeman **regardless** of his or her economic circumstances. As trial nears, Freemen often become so frustrated with court-appointed counsel's refusal to argue the Freemen view of the law that a colloquy to establish a valid waiver of attorney will become possible.

CAPTION FOR WAIVER OF TRIAL ATTORNEY

An accused has a constitutional right to represent himself or herself if he or she chooses to do so, but there are potential dangers and disadvantages of representing yourself. The following questions must be filled in so that the Court can determine that your decision to represent yourself is knowingly made.

1. What was the last grade of school you completed? _____.

2. What languages do you read and speak fluently? _____.

3. Have you ever studied law? _____.

4. Have you ever represented yourself or any other defendant in a criminal action? _____. If yes, please indicate what the charges were and whether the matter proceeded to trial and/or appeal. _____

5. Do you realize that you are currently charged with one count of Unlawful Practice of Law in violation of RCW 2.48.180 and two counts of Malicious Prosecution violation of RCW 9.62.010? _____?

6. Do you realize that the maximum penalty for Unlawful Practice of Law is confinement in the county jail for a term of up to 365 days and/or by a fine of up to $5,000.00? _____. Do you realize that if convicted, the court could also require you to pay restitution to your victim, to pay court costs, and to place certain post-release restrictions on your conduct? _____.

7. Do you realize that the maximum penalty for each count of Malicious Prosecution is confinement in the county jail for a term of up to 90 days and/or by a fine of up to $1,000.00? _____. Do you realize that if convicted, the court could also require you to pay restitution to your victim, to pay court costs, and to place certain post-release restrictions on your conduct? _____.

8. Do you realize that the sentences imposed on each count can be ordered to be served consecutively, that is one after the other? _____.

9. Do you realize that if you represent yourself, you are on your own? ____. The Court cannot tell you how you should try your case or even advise you as to how to present your case.

10. Are you familiar with the Rules of Evidence (ER)? _____. These rules control what questions can be asked of witnesses, how questions must be phrased, and what documents or other items can be admitted at trial. In representing yourself, you must abide by these rules.

11. Are you familiar with the Criminal Rules for Courts of Limited Jurisdiction (CrRLJ)? _____. These rules govern the way in which a criminal matter is presented in the municipal court. These rules will apply to you the same as they apply to an attorney. *State v. Smith,* 104 Wn.2d 497, 508, 707 P.2d 1306 (1985).

12. Do you realize that if you decide to take the witness stand, you must present your testimony by asking questions of yourself? _____. You cannot just take the stand and tell your story. You must proceed question by question through your testimony.

13. Do you realize that a lawyer would be familiar with the rules governing the presentation of evidence, skilled in following these rules, and could advise you of possible defenses to the pending claims? _____.

14. Do you realize that if you proceed pro se that if you do not properly present a defense, subpoena witnesses, or otherwise represent yourself in a competent manner that you will not be able to obtain a reversal of a conviction on the grounds that you received inept representation? _____.

15. Why do you not want an attorney? _____ If it is because you do not believe that you can afford an attorney, do you realize that an attorney can be appointed at public expense if you are indigent, or if you are partially able to contribute to the cost of counsel. Your eligibility for court appointed counsel is determined by a review of your financial resources. Do you wish to be screened for court appointed counsel? _____.

16. Do you realize that once you waive your right to an attorney that it is discretionary with the court whether you may withdraw the waiver? _____.

17. Do you realize that while the court may provide you with an attorney as a legal advisor or standby counsel, that you do not have an absolute right to receive this assistance and that you, and not standby counsel must prepare for trial? _____.

18. Have any threats or promises been made to induce you to waive your right to an attorney? _____.

19. Now, in light of the penalty that you might suffer if you are representing yourself, is it still your desire to represent yourself and to give up your right to be represented by a lawyer? _____.

20. Is your decision entirely voluntary on your part? _____.I have read and completed this form. I have no questions for the court about the risks of proceeding pro se or about my right to have a lawyer appointed to assist me. I request that the court allow me to represent myself.

DATED this _____ day of _____, 19___.

_____
DEFENDANT

I find that the defendant has knowingly and voluntarily waived his or her right to a lawyer who is admitted to the practice of law. I will therefore approve the defendant's election to represent herself.

DATED this _____ day of _____, 19___.

_____
JUDGE

CAPTION FOR WAIVER OF APPELLATE ATTORNEY

An accused has a constitutional right to represent himself or herself if he or she chooses to do so, but there are potential dangers and disadvantages of representing yourself. The following questions must be filled in so that the Court can determine that your decision to represent yourself is knowingly made.

1. What was the last grade of school you completed? _____.

2. Have you ever studied law? _____.

3. Have you ever represented yourself or any other defendant in a criminal action? _____. If yes, please indicate what the charges were and whether the matter proceeded to trial and/or appeal.

_____.

4. Do you realize that you have been convicted of _____ and that you have been sentenced to ____ days in custody, a _____ fine, plus costs, and restitution? _____. Do you realize that if you lose your appeal, this sentence, if stayed, will have to be served? _____.

—OR—

Do you realize that you have been charged with _____ and that if convicted of this offense you can be sentenced to up to ____ days in custody, a $_____ fine, plus costs, and restitution? _____. Do you realize that if the State prevails on its appeal, that the charge of _____ will be reinstated? _____.

5. Do you realize that if you represent yourself, you are on your own? _____. The Court cannot tell you how you should write your briefs or even advise you as to how to present your arguments.

6. Are you familiar with the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ)? _____. These rules govern the way in which an appeal is presented in the superior court. These rules will apply to you the same as they apply to an attorney. *State v. Smith,* 104 Wn.2d 497, 508, 707 P.2d 1306 (1985).

7. Do you realize that a lawyer would be familiar with the rules governing appeals and the presentation of claims, skilled in following these rules, and could advise you of possible procedural bars and defenses to the pending claims? _____.

8. Do you realize that if you proceed pro se that if you do not properly present a claim in the appellate courts that you could be barred from presenting that claim in a subsequent appeal, personal restraint petition or habeas corpus action? _____.

9. Do you realize that if you proceed pro se that you do not have an absolute right to present oral argument in the appellate courts or even to be present at the proceedings in the appellate courts? _____.

10. Why do you not want an attorney? _____. If it is because of a conflict of interest between you and your prior counsel or because there is a complete breakdown of communication, do you wish the court to consider appointing new counsel? _____. If the court determines that a substitute attorney should not be appointed, do you understand that your option is to represent yourself or to remain with your current attorney? _____.

11. Have any threats or promises been made to induce you to waive your right to attorney? _____.

12. Now, in light of the penalty that you might suffer if you are representing yourself, is it still your desire to represent yourself and to give up your right to be represented by a lawyer? _____.

13. Is your decision entirely voluntary on your part? _____.

DATED this _____ day of _____, 19___.

_____
DEFENDANT

I find that the defendant has knowingly and voluntarily waived his or her right to an attorney. I will therefore approve the defendant's election to represent himself.

DATED this _____ day of _____, 19___.

_____
JUDGE

Disruptive Behavior of Pro Se Defendant

The right to self-representation does not permit a defendant to disrupt a hearing or trial, nor is it a license for a pro se defendant to not comply with the rules of procedural and substantive law. *State v. Breedlove,* 79 Wn.App. 101, 106, 900 P.2d 586 (1995). A pro se litigant is required to comply with court rules to the same degree that an attorney must comply with the rules. *See, e.g., State v. Smith,* 104 Wn.2d 497, 508, 707 P.2d 1306 (1985); *Batten v. Adams,* 28 Wn.App. 737, 739, *review denied,* 95 Wn.2d 1033 (1981). A disruptive pro se defendant may have his or her right to self-representation terminated. *State v. Jessup,* 31 Wn.App. 304, 312, 641 P.2d 1185 (1982). A disruptive pro se defendant may be removed from the courtroom. *DeWeese,* 117 Wn.2d at 380-81.

A pro se litigant, just like an attorney, must present legal authority in support of his or her objections and motions. Failure to cite legal authority requires the court to assume that, after diligent search, the moving party has found none. In such a case, courts ordinarily will not give consideration to such error unless it is apparent without further research that the assignment of error presented is well taken. *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978).

"OK, I'll Take Your Attorney"—Withdrawal of Pro Se Status

Once a defendant exercises the constitutional right of self-representation and proceeds pro se, he or she does not have the absolute right to thereafter withdraw the request for self representation and receive substitute counsel. *United States v. Merchant,* 992 F.2d 1091, 1095 (10th Cir. 1993); *United States v. Solina,* 733 F.2d 1208, 1211-12 (7th Cir.), *cert. denied,* 469 U.S. 1039 (1984); *DeWeese,* 117 Wn.2d at 376-77; *State v. Canedo-Astorga,* 79 Wn.App. 518, 525, 903 P.2d 500 (1995), *review denied,* 128 Wn.2d 1025 (1996). Instead, the trial court has the discretion to grant or deny a motion to withdraw a pro se waiver. *Canedo-Astorga,* 79 Wn.App. at 526. The trial court's ruling will be upheld on appeal absent an abuse of discretion. *Id.* Judicial discretion is only abused when the court exercises its discretion on untenable grounds, or for untenable reasons. *State ex rel. Carroll v. Junker,* 79 Wn.2d 12, 26, 482 P.2d 775 (1971). In other words, an abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *State v. Blight,* 89 Wn.2d 38, 41, 569 P.2d 1129 (1977).

In exercising its discretion, the court may consider all the circumstances that exist when the request for reappointment is made. *Canedo-Astorga,* 79 Wn.App. at 526. A major factor to be considered is the timing of the request. As noted by the Tenth Circuit—

> A criminal defendant has a constitutional right to defend himself; and with rights come responsibilities. If at the last minute he gets cold feet and wants a lawyer to defend him he runs the risk that the judge will hold him to his original decision in order to avoid the disruption of the court's schedule that a continuance granted on the very day that trial is scheduled to begin is bound to cause.

Merchant, 992 F.2d at 1095, citing *United States v. Solina, supra. Accord DeWeese,* 117 Wn.2d at 379 ("A defendant may not manipulate the right to counsel for the purpose of delaying and disrupting trial."); *State v. Canedo-Astorga,* 79 Wn.App. at 525.

If a late motion to withdraw a waiver of counsel is granted, the newly appointed attorney may obtain a continuance of the trial over the defendant's objection. *See generally State v. Campbell,* 103 Wn.2d 1, 691 P.2d 929 (1984), *cert. denied,* 471 U.S. 1094 (1985).

"I Want the Assistance of 'Counsel'"—Freemen Request for Non-Attorney "Counsel"

Most of the Freemen we have dealt with when asked whether they wish to waive counsel will indicate that they wish to proceed with their "constitutional right to counsel." This "right to counsel," in their mind, includes a non-attorney. The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right…to have the Assistance of Counsel for his defence." U.S. Cont. amend. VI.

This guarantee, though, does not permit a criminal defendant to be represented by an advocate who is not a member of the bar. *United States v. Wheat,* 486 U.S. 153, 159, 100 L.Ed.2d 140, 108 S.Ct. 1692, 1697 (1988); *United States v. Nichols,* 841 F.2d 1485, 1504 (10th Cir. 1988); *see also State v. DeWeese,* 117 Wn.2d 369, 376, 816 P.2d 1 (1991) (a criminal defendant does not have the absolute right to be represented by the individual of his or her choice); *United States v. Willie*, 941 F.2d 1384, 1390 (10th Cir. 1991) ("[defendant's] clear expression that he could only work with an attorney who shared his views... [inter alia] constitute[d] a valid implied waiver of his right to counsel"), *cert. denied*, 502 U.S. 1106 (1992).

In Washington, it is a crime for a non-attorney to practice law in Washington. *See* RCW 2.48.180. A "pro se" exception to this prohibition exists. *See* RCW 2.48.190. The "pro se" exception permits an individual to act on his or her own behalf with respect to his or her legal rights and obligations without benefit of counsel. *See* RCW 2.48.190. This exception is very limited, and a person may not transfer his or her pro se rights to another. *See, e.g., State v. Hunt,* 75 Wn.App. 795, 805, 880 P.2d 96, *review denied,* 125 Wn.2d 1009 (1994) (statutory power of attorney does not allow an unlicensed person to practice law); *City of Seattle v. Shaver,* 23 Wn.App. 601, 597 P.2d 935 (1979) (layman husband may not represent wife in a prosecution for failure to yield right of way); *Christiansen v. Melinda,* 857 P.2d 345 (Alaska 1993)

(statutory power of attorney does not remove agent from prohibition of unlicensed practice of law; principal can only engage agent to practice law on his behalf if agent is licensed attorney); *Gilman v. Kipp,* 519 N.Y.S.2d 314, 315, 136 Misc. 860 (1987) ("The inherent right of a person to appear 'pro se' in legal proceedings cannot be assigned to another by executing the power of attorney."); *In re Baker,* 85 A.2d 505, 514 (N.J. 1951) (the consequences of a UPL statute cannot "be avoided merely by preparing for and having the 'client' execute a document designating the unlicensed practitioner an 'attorney-in-fact'").

Unauthorized practice of law ("UPL") statutes have repeatedly been found to be constitutional. *See, e.g., State v. Hunt, supra* (UPL statute not unconstitutionally vague); *Monroe v. Howitch,* 820 F.Supp. 682, 686-87 (D. Conn. 1993), *aff'd,* 19 F.3d 9 (2d Cir. 1994) (unsupervised paralegal's preparation of documents in divorce action constitutes the practice of law and state statute prohibiting the unauthorized practice of law did not violate paralegal's First Amendment freedom of expression or Fourteenth Amendment rights to due process and equal protection). Accordingly any request by the defendant that he be represented by a non-attorney "counselor" must be rejected by the court.

Hybrid Representation

A criminal defendant does not have a right to both self-representation and the assistance of counsel. *Faretta v. California,* 422 U.S. 806, 45 L.Ed.2d 562, 95 S.Ct. 2525, 2540-41 (1975); *United States v. Shea,* 508 F.2d 82 (5th Cir.), *cert. denied,* 423 U.S. 847 (1975); *Lee v. Alabama,* 406 F.2d 466 (5th Cir. 1968), *cert. denied,* 395 U.S. 927 (1969); *United States v. Swinney,* 970 F.2d 494, 498 (8th Cir.), *cert. denied,* 113 S.Ct. 632 (1992); *State v. Romero,* ___ Wn.App. ___, 975 P.2d 564 (Div. 3 April 29, 1999); *State v. Vermillion,* 66 Wn.App. 332, 340, 832 P.2d 95 (1992); *State v. Hegge,* 53 Wn.App. 345, 349, 766 P.2d 1127 (1989).

> The right to proceed pro se and the right to assistance of counsel are mutually exclusive. As noted in *Parren,* 523 A.2d at 264: "There can be but one captain of the ship, and it is he alone who must assume responsibility for its passage, whether it safely reaches the destination charted or founders on a reef." Thus, [a criminal defendant] is entitled to choose between two alternatives: proceeding pro se or relinquishing his defense to counsel. *State v. Gethers,* 497 A.2d at 415.

Hegge, 53 Wn.App. at 349. *Accord Vermillion,* 66 Wn.App. at 340. The determination of whether to allow hybrid representation remains within the sound discretion of the court. *United States v. Halbert,* 640 F.2d 1000, 1009 (9th Cir. 1981). In Freemen cases, hybrid representation will frequently be allowed for the convenience of the court.

Standby Counsel

A court may appoint standby counsel, even over the objection of the defendant, to assist the accused if and when he or she requests help and to represent the accused in the event that the defendant's self-representation is terminated. *State v. Breedlove,* 79 Wn.App. 101, 106, 900 P.2d 586 (1995). Standby counsel must carefully limit his or her role to ensure that the pro se defendant preserves actual control over the case the Freeman chooses to present to the jury, and to ensure that the jury's perception that the defendant is representing himself or herself is not destroyed. *McKaskle v. Wiggins,* 465 U.S. 168, 79 L. Ed. 2d 122, 104 S.Ct. 944 (1984); *State v. Estabrook,* 68 Wn.App. 309, 317-18, 842 P.2d 1001, *review denied,* 121 Wn.2d 1024 (1993). The appointment of a legal advisor or standby counsel does not obviate the need for a knowing and intelligent waiver of the right to counsel. *State v. Barker,* 35 Wn.App. 388, 393, 667 P.2d 108 (1983); *State v. Dougherty,* 33 Wn.App. 466, 655 P.2d 1187 (1982).

"I am in Control"—Attorney as Mouthpiece

Some Freemen believe that the phrase "assistance of counsel" means they control the proceedings and the attorney who has been appointed to represent them is their assistant. These Freemen will complain bitterly to the court if the attorney does not do their bidding. There are, however, only a few trial decisions which must be made by the accused in criminal proceedings and cannot be made for the accused by counsel. Those decisions include what plea to enter, whether to waive jury trial, and whether to testify. *State v. Hahn,* 106 Wn.2d 885, 892, 726 P.2d 25 (1986) ("basic respect for a defendant's individual freedom requires us to permit the defendant himself to determine his plea"); *State v. Stegall,* 124 Wn.2d 719, 728, 881 P.2d 979 (1994) (right to jury trial may only be waived by defendant); *State v. King,* 24 Wn.App. 495, 499, 601 P.2d 982 (1979)("defendant has an absolute right to testify on his own behalf which right cannot be abrogated by defense counsel"); *see also* 1 American Bar Ass'n, *Standards for Criminal Justice,* Std. 4-5.2 at 4-65 (2d ed. 1986).

Legitimate trial tactics such as making or foregoing a motion or objection and deciding which witnesses to call, other than the defendant, are primarily the responsibility of defense counsel. *See, e.g., State v. Garrett,* 124 Wn.2d 504, 520, 881 P.2d 185 (1994); *State v. Hess,* 86 Wn.2d 51, 52, 541 P.2d 1222 (1975); *State v. Allen,* 57 Wn.App. 134, 787 P.2d 566 (1990); *State v. Justiniano,* 48 Wn.App. 572, 740 P.2d 872 (1987). If the court holds firm regarding the proper role of the attorney, the Freemen will eventually enter a *Faretta* waiver and the attorney can then be reassigned to the role of standby counsel.

Court-Appointed Attorney's Request to Withdraw

Understandably, counsel who is appointed to represent a Freeman defendant over the Freeman's objection is put in a difficult position; a position that is only more uncomfortable when the victims of the charges are local judges or prosecutors.

Many attorneys appointed to represent Freemen will identify for the record the motions the defendant wishes to have heard and that the attorney believes he or she is barred from raising such frivolous motions by RPC 3.1. In such circumstances, the judge may allow hybrid representation or may merely deny the motions because they lack merit.

Some attorneys request permission to withdraw. While these attorneys deserve your sympathy, the same issues will arise with any attorney who is appointed. Agreeing that the motion to withdraw can be granted without first obtaining a proper *Faretta* waiver of attorney will result in repeated delays, and a possible appellate reversal.

A court-appointed attorney's request to withdraw because he or she has been "fired" by a Freeman must be denied because a criminal defendant does not have the absolute right to be represented by the individual of his or her choice. *United States v. Wheat,* 486 U.S. 153, 159, 100 L.Ed.2d 140, 108 S.Ct. 1692, 1697 (1988); *State v. DeWeese,* 117 Wn.2d 369, 376, 816 P.2d 1 (1991). Case law provides that a defendant may only discharge appointed counsel with court-approval and upon a showing of good cause. *State v. DeWeese,* 117 Wn.2d 369, 370, 816 P.2d 1 (1991).

A court-appointed attorney's request to withdraw because the defendant insists upon pursuing a course counsel finds to be imprudent should be rejected because there are only a few trial decisions which must be made by the accused in criminal proceedings and cannot be made for the accused by counsel. Those decisions include what plea to enter, whether to waive jury trial, and whether to testify. *State v. Hahn,* 106 Wn.2d 885, 892, 726 P.2d 25 (1986) ("basic respect for a defendant's individual freedom requires us to permit the defendant himself to determine his plea"); *State v. Stegall,* 124 Wn.2d 719, 728, 881 P.2d 979 (1994) (right to jury trial may only be waived by defendant); *State v. King,* 24 Wn.App. 495, 499, 601 P.2d 982 (1979) ("defendant has an absolute right to testify on his own behalf which right cannot be abrogated by defense counsel"); *see also* 1 American Bar Ass'n, *Standards for Criminal Justice,* Std. 4-5.2 at 4-65 (2d ed. 1986).

Legitimate trial tactics such as making or foregoing a motion or objection and deciding which witnesses to call, other than the defendant testifying, are primarily the responsibility of defense counsel. *See, e.g., State v. Garrett,* 124 Wn.2d 504, 520, 881 P.2d 185 (1994) (ineffective assistance claim may not be based on the defense attorney's legitimate trial tactics); *State v. Hess,* 86 Wn.2d 51, 52, 541 P.2d 1222 (1975); *State v. Allen,* 57 Wn.App. 134, 787 P.2d 566 (1990); *State v. Justiniano,* 48 Wn.App. 572, 740 P.2d 872 (1987).

A court-appointed attorney's fear of community or judicial backlash due to the representation of a Freeman is not adequate grounds for withdrawal. "All qualified trial lawyers should stand ready to undertake the defense of an accused regardless of public hostility toward the accused or personal distaste for the offense charged or the person of the defendant." 1 American Bar Ass'n, *Standards for Criminal Justice,* Std. 4-1.5(b), at 4-19 (2d ed. 1986).

> The highest tradition of the American bar is found in the obligation, in the lawyer's oath, never to reject "from any consideration personal to myself, the cause of the defenseless or oppressed." A lawyer has the duty to provide legal assistance "even to the most unpopular defendants." The great tradition of the bar is reflected in the history of eminent lawyers—such as John Adams, who defended the British "redcoats" after the Boston Massacre—who have risked public disfavor to defend a hated defendant. The sure way to guarantee adherence to this tradition of denying no defendant competent legal preparation is for all trial lawyers to prepare themselves to act in criminal cases. Consistent with these standards, the ABA Code of Professional Responsibility admonishes lawyers not to decline proffered employment "lightly." However, declining to accept a case is justified when "the intensity of…personal feeling, as distinguished from a community attitude, may impair…effective representation of a prospective client."

(Footnotes omitted). 1 American Bar Ass'n, *Standards for Criminal Justice,* Std. 4-1.5(b), at 4-20 to 4-21 (2d ed. 1986).

Challenges to the "Legality" of the Prosecutor

Oath. The prosecuting attorney is a constitutionally created office and is part of the executive branch of government. Const. art. 11, §§ 4 and 5. The constitutional provisions creating the office specifically require the election of the prosecuting attorney on a county-wide basis. Once elected, the prosecuting attorney must take an oath of office prior to assuming office. RCW 36.16.040. This oath must be filed with the county auditor and a bond obtained and filed with the county clerk. RCW 36.16.060. A failure to strictly comply with these requirements is not grounds for removal from office if the irregularities are subsequently cured. *See generally In re Recall of Sandhaus,* 134 Wn.2d 662, 953 P.2d 82 (1998) (delayed filing of bond not grounds for recalling prosecutor). *See* the Appendix, at 37, for a filed oath.

De Facto Prosecutor. Under Washington law, authority of a *de facto* prosecutor, i.e., one in actual possession of the office of prosecutor and exercising its duties and powers under color of title, is not subject to collateral attack. *State v. Carroll,* 81 Wn.2d 95, 500 P.2d 115 (1972); *State v. Gibson,* 79 Wn.2d 856, 490 P.2d 874 (1971); *State v. Britton,* 27 Wn.2d 336, 178 P.2d 341 (1947). As the supreme court has recognized, this rule necessarily mandates the proposition that an accused does not have the right to choose the prosecutor. *State v. Cook,* 84 Wn.2d 342, 350, 525 P.2d 761 (1974).

While RCW 36.27.030 authorizes the court to appoint some qualified person to discharge the duties of prosecuting attorney in the event that the elected prosecuting attorney is disabled or is otherwise unable to perform, most Freemen-asserted irregularities in the prosecutor's oath or bond will not constitute a "disability." *In re Recall of Sandhaus, supra.*

Conflict of Interest. "[A] Public prosecutor is a quasi-judicial officer. He represents the state, and in the interest of justice must act impartially." *State v. Huson,* 73 Wn.2d 660, 663, 440 P.2d 192 (1968), *cert. denied,* 393 U.S. 1096 (1969). If a prosecutor's interest in a criminal defendant or in the subject matter of the defendant's case materially limits his or her ability to prosecute a matter impartially, then the prosecutor is disqualified from litigating the matter, and the prosecutor's staff may be disqualified as well. *See generally State v. Stenger,* 111 Wn.2d 516, 520-23, 760 P.2d 357 (1988).

A prosecuting attorney's impartiality to act can be impacted by his or her prior representation of a defendant. *State v. Stenger, supra.* A prosecuting attorney's impartiality to act is not considered to be impaired by a defendant's threat to file bar complaints or lawsuits. *See, e.g., United States v. Kember,* 685 F.2d 451, 458 (D.C. Cir.), *cert. denied,* 459 U.S. 832 (1982); *State v. Tyler,* 587 S.W.2d 918, 929 (Mo. App. 1979).

Some Court of Appeals cases have intimated that the appearance of fairness doctrine may apply to a prosecutor's charging decision. *See, e.g., State v. Perez,* 77 Wn.App. 372, 891 P.2d 42 (Div. 3 1995); *State v. Ladenburg,* 67 Wn.App. 749, 754, 840 P.2d 228 (1992) ("appearance of fairness" doctrine "may apply" to charging decisions). The Washington Supreme Court, however, has held that the doctrine does not apply to a prosecutor's determination to file criminal charges, to seek the death penalty, or to plea bargain. *State v. Finch,* ___ Wn.2d ___, 975 P.2d 967, 1999 WL 274135, *6 (May 6, 1999).

This does not mean that careful thought does not need to be taken before filing a charge against a Freeman involving a prosecutor victim or one in which a prosecutor is a necessary witness.[70] A primary consideration in whether to retain such a case or to seek the appointment of a special prosecuting attorney is whether the anticipated Freemen defendant is likely to sue or victimize any prosecutor who is assigned to the case. If the Freeman's past behavior will support a finding that whoever is appointed as a special prosecutor will be subject to the same criminal activity as the already victimized office, then the ancient rule of necessity that applies to judges would appear to allow the retention of the case for charging and prosecution. *See generally Filan v. Martin,* 38 Wn.App. 91, 684 P.2d 769 (1984). After all, if all prosecutors will be subjected to the same tactics, why refer the case to another prosecuting authority?

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[70] RPC 3.7 discusses the propriety of having a member from the same prosecuting attorney's office that is trying the defendant appear as a witness. *State v. Bland,* 90 Wn.App. 677, 953 P.2d 126, *review denied,* 136 Wn.2d 1028 (Div. 1 1998).

Applications for Writs of Quo Warranto

A quo warranto proceeding seeks to test the right of an individual to hold title to a public office. *See generally* RCW 7.56.010. The substantive right and procedure for a writ of quo warranto is controlled by statute in Washington. *State ex rel. Carter v. Superior Court,* 18 Wn.2d 130, 132, 138 P.2d 843 (1943). By statute, a quo warranto action—

> may be filed by the prosecuting attorney in the superior court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise or corporation, which is the subject of the information.

RCW 7.56.020.

A "mere citizen, a voter or a taxpayer" or any person other than the prosecuting attorney may not initiate a quo warranto proceeding unless the person has an interest in the office separate from the common interest of the general public. *State ex rel Dore v. Superior Court,* 167 Wash. 655, 658, 9 P.2d 1087 (1932). *Accord State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 893-96, 969 P.2d 64 (1998); *Manlove v. Johnson,* 198 Wash. 280, 285-287, 88 P.2d 397 (1939); *Mills v. State ex rel. Smith,* 2 Wash. 566, 572-73, 27 Pac. 560 (1891). The separate interest that will support a private quo warranto action filed by an individual, as opposed to a public quo warranto action filed by a prosecutor, is the right of that individual to assume the office that will be vacated upon the issuance of the writ. *See Verharen,* 136 Wn.2d at 896-97; *State ex rel. Dore,* 167 Wash. at 657- 59; *Mills,* 2 Wash. at 573.

The Washington Supreme Court has original jurisdiction over a quo warranto action directed toward a state official. Const. art. 4, § 4; RAP 16.2; *Verharen,* 136 Wn.2d at 893. A quo warranto action may be filed in the superior court pursuant to Chapter 7.56 RCW.

Challenges to the "Legality" of the Judge

Oath. A judge is not subject to disqualification for failing to properly file his or her oath of office. *State v. Stephenson*, 89 Wn.App. 794, 807-09, 950 P.2d 38, *review denied,* 136 Wn.2d 1018 (Div. 2 1998) (a judge is still a public servant even if his or her oath has not been filed with the secretary of state). A judge who has failed to file his or her oath is still acting as an officer de facto.

> To constitute a person an officer de facto, he must be in actual possession of the office, exercising its functions and discharging its duties under color of title. *State v. Britton,* 27 Wn.2d 336, 178 P.2d 341 (1947). Color of title distinguishes him from a usurper; active possession, despite a defect in title, distinguishes him from a de jure office holder. As an officer de facto, he must be submitted to as such until displaced by a regular direct proceeding for that purpose. The proper and exclusive method of determining the right to public office is through a quo warranto proceeding. *Green Mountain School Dist. v. Durkee,* 56 Wn.2d 154, 351 P.2d 525 (1960).

State v. Franks, 7 Wn.App. 594, 596, 501 P.2d 622 (1972).

Bias. A judge is presumed to perform his or her functions regularly and properly without bias or prejudice. *Jones v. Halvorson-Berg*, 69 Wn.App. 117, 127, 847 P.2d 945, *review denied,* 122 Wn.2d 1019 (1993). *See also In re Bochert,* 57 Wn.2d 719, 722, 359 P.2d 789 (1961) (bias or prejudice on the part of an elected judicial officer is never presumed). Compliance with RCW 4.12.050 will be sufficient to overcome the presumption that the judge is free from prejudice. *State v. Belgarde,* 119 Wn.2d 711, 715, 837 P.2d 599 (1992). But once a defendant disqualifies a judge as a matter of right pursuant to RCW 4.12.050, subsequent motions to disqualify the trial judge involve an exercise of sound discretion in passing on the sufficiency of the showing made in support of the motion. *State v. Palmer,* 5 Wn.App. 405, 411-12, 487 P.2d 627, *review denied,* 79 Wn.2d 1012 (1971).

This same rule applies to motions to disqualify a judge brought after the judge makes a discretionary ruling in an action or has presided over the trial. *See, e.g., State v. Belgarde,* 119 Wn.2d 711, 715-17, 837 P.2d 599 (1992) (actual bias must be shown to disqualify a judge from presiding over a retrial following a reversal on appeal); *Howland v. Day,* 125 Wash. 480, 490-91, 216 P. 864 (1932) (actual bias must be shown to disqualify a judge from presiding over a motion for new trial); *State v. Clemons*, 56 Wn.App. 57, 782 P.2d 219 (1989), *review denied,* 114 Wn.2d 1005 (1990) (actual bias must be shown to disqualify a judge from presiding over a retrial following a mistrial). The trial court's decision on a nonmandatory disqualification motion must be upheld absent an abuse of discretion. *Palmer,* 5 Wn.App. at 411-12.

Casual and nonspecific allegations of judicial bias do not provide a basis for recusal. *State v. Cameron,* 47 Wn.App. 878, 884, 737 P.2d 688 (1987). Claims that the trial judge is prejudiced against the defendant based upon the trial judge having rendered prior rulings that were adverse to the defendant, whether in the same case or a different case, is insufficient to force recusal. *See generally, Palmer,* 5 Wn.App. at 411; *See generally,* Annot., *Disqualification of Judge for Having Decided Different Case Against Litigant,* 21 A.L.R.3d 1369 (1968). This rule exists because the bias and prejudice necessary to disqualify a judge must generally come from an extra-judicial source. *See, e.g., State v. Thompson,* 150 Ariz. 554, 724 P.2d 1223, 1226 (1986); *United States v. Boffa,* 513 F.Supp. 505 (D.C. Del. 1981).

Similarly, claims that the trial judge is biased as a result of a party filing a lawsuit against a judge for a judicial act as to which the judge is immune from suit will not constitute grounds for disqualification. *See, e.g., Matter of Extradition of Singh,* 123 F.R.D. 140, 149 (D.N.J., Jul 29, 1988); *Ronwin v. State Bar*, 686 F.2d 692, 701 (9th Cir. 1981), *rev'd on other grounds sub nom Hoover v. Ronwin,* 466 U.S. 558, 80 L.Ed.2d 590, 104 S.Ct. 1989 (1984) (mere filing of lawsuit against judge will not disqualify him or her); *United States v. Grismore,* 564 F.2d 929, 933 (10th Cir. 1977), *cert. denied,* 435 U.S. 954 (1978); *United States v. Bray,* 546 F.2d 851, 857-59 (10th Cir. 1976) (failure to recuse upheld where plaintiff stated, *inter alia,* that he had filed a brief with the court accusing the judge of bribery, conspiracy and obstruction of justice); *United States v. Alberico,* 453 F.Supp. 178, 187 (D. Colo. 1977) (no disqualification where plaintiff's affidavit indicated that judge would be sued); *Filan v. Martin,* 38 Wn.App. 91, 95, 684 P.2d 769 (1984) (rule of necessity allows a judge to remain on a case after being sued for actions performed in his or her judicial role when a defendant has established a propensity for suing all judges).[71] In fact, the *Ronwin* court stated that such an easy method for obtaining disqualification should not be encouraged or allowed. 686 F.2d at 701.

Finally, even a criminal defendant's threat or use of force against a judge in a courtroom does not mandate the recusal of the judge on the grounds of actual or potential bias. *See generally State v. Bilal,* 77 Wn.App. 720, 893 P.2d 674, *review denied,* 127 Wn.2d 1013 (1995).

Pro Tempore Judge in Courts of Limited Jurisdiction. The constitution grants sole authority in the Legislature to govern the jurisdiction and powers of inferior courts. The constitution places no restrictions on the Legislature in regard to pro tempore judges in inferior courts, and the supreme court has declined to do so. A defendant has neither a constitutional nor statutory right to withhold consent to the authority of a judge pro tempore in a court of limited jurisdiction. *State v. Hastings,* 115 Wn.2d 42, 793 P.2d 956 (1990).

Visiting Superior Court Judges. A duly elected superior court judge has the authority to preside over a case in a county other than the one in which he or she was elected. Const. Art. IV, § 7; RCW 2.08.150.

When in a county other than the one in which he or she was elected, the visiting judge has the same powers as a regularly elected judge of the county. *Demaris v. Barker,* 33 Wash. 200, 203-4, 74 P.2d 362

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71 The ancient rule of necessity is a common law principle which provides that—

> "although a judge had better not, if it can be avoided, take part in the decision of a case in which he has any personal interest, yet he not only may but must do so if the case cannot be heard otherwise." F. Pollack, a First Book of Jurisprudence 270 (6th ed. 1929).

United States v. Will, 449 U.S. 200, 213, 101 S. Ct. 471, 480-82, 66 L. Ed. 2d 392 (1980).

(1903). A visiting judge's authority to hear a case is not contingent upon the parties' consent. *State v. Holmes,* 12 Wash. 169, 40 P.2d 887 (1895).

Challenges to the "Legality" of Courtroom Personnel

Court Reporters. Court reporters are required to obtain a certificate. *See generally* RCW 18.145 .010. "Official court reporters" are individuals who have been appointed to serve a superior court judge or a superior court judicial district pursuant to RCW 2.32.180. All official court reporters are considered to be officers of the court.

Such reporters "before entering upon the discharge of his duties shall take an oath to perform faithfully the duties of his office, and file a bond in the sum of two thousand dollars for the faithful discharge of his duties." RCW 2.32.180. The location(s) for filing the oath and the bond are not specified in the statute. It is recommended that the bond be filed in the clerk's office and the oath in the county auditor's office. *See generally* RCW 36.16.060; RCW 36.16.070. The cost of the court reporter's bond appears to be a county expense. RCW 36.16.070.

If an official reporter is absent or unable to act, the presiding judge my appoint a competent reporter to act pro tempore. RCW 2.32.270. "The reporter pro tempore shall possess the qualifications and take the oath prescribed for the official reporter, and shall file a like bond, and shall receive the same compensation." RCW 2.32.270.

A court reporter may not act in a case in which a personal conflict of interest exists without the consent of the judge and all parties. *Cf.* WAC 308-14-130(6) ("Certified shorthand reporters shall…Disclose conflicts, potential conflicts, or appearance of conflicts to all involved parties."). The most common conflict of interest that will arise in Freemen prosecutions is that a court reporter should not report proceedings in a case in which the reporter is also a witness. Care should be made to ensure that any court reporter who has been endorsed as a prosecution witness in a case does not report any hearings held in that case.

Court Bailiffs. Bailiffs are appointed by each court. *See* RCW 2.32.320; RCW 2.32.330. There is no statutory oath or bond requirement for bailiffs. *See State v. Lane,* 37 Wn.2d 145, 150, 222 P.2d 394 (1950).[72] An error in the administration of an oath to a bailiff will not constitute grounds for reversing a conviction absent a timely objection and a showing of prejudice. *Lane,* 37 Wn.2d at 150.

Care should be taken to avoid conflicts of interest and no bailiff should be allowed to care for a jury in a case in which the bailiff will be or has been a witness.

Court Clerks. The clerk is required to take an oath and to file the oath with the auditor. RCW 36.16.060. The oaths of deputy clerks are also filed with the auditor. *Id.* The clerk's bond is filed with the treasurer after having first been recorded by the county auditor. *Id.* The amount of the clerk's bond is set by a majority of the judges presiding over the court the clerk serves. RCW 36.16.050(3); RCW 36.23.020.

Care should be taken to avoid conflicts of interest and no clerk should be allowed to serve in the courtroom or to care for exhibits in a case in which the clerk will be or has been a witness.

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72 The *Lane* case talks about an oath having been administered to the bailiff who had care of the jury. Neither the statute regarding the appointment of an officer to take custody of the jury, RCW 4.44.300, nor the court rules regarding the appointment of an officer to take custody of the jury, CrR 6.7(b) and CrRLJ 6.7(b), contain a requirement that such officer take an oath that the officer will faithfully discharge his or her duties.

If such an oath is administered to bailiffs, it is recommended that the oath be filed with the county auditor. RCW 36.16.060.

Challenges to the "Legality" of the Revised Code of Washington

Absence of Enacting Clauses and Titles. The Revised Code of Washington is a compilation of the session laws and is evidence of the laws of this state. RCW 1.04.020. The Revised Code of Washington is prepared by the code reviser. RCW 1.08.013; RCW 1.08.015. The Revised Code of Washington omits the titles to acts and enacting clauses, but these sections are still part of a session law. RCW 1.08.017. The omissions of these sections from the Revised Code of Washington does not invalidate the session laws. *Id.*

Need for Exemplified or Certified Copies of the Session Laws. The State is not required to admit a copy of the statute into evidence and the information/complaint is not required to contain the full text of all statutes. *See, e.g., State v. Tribble,* 26 Wn.App. 367, 369, 613 P.2d 173, *review denied,* 94 Wn.2d 1024 (1980); RCW 10.37.160. The State need not attach a certified or exemplified copy of a session law to the charging document because a charging document need not contain matters of which judicial notice may be taken. RCW 10.37.150. Evidence Rule 201 authorizes a party to request a court to take judicial notice of adjudicative facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. ER 201(a), (b) and (d). This rule applies at all stages of proceedings, including appeals. ER 201(f); *State v. Royal,* 122 Wn.2d 413, 417-18, 858 P.2d 259 (1993). A court may take judicial notice of session laws. RCW 5.24.010. The trial court, therefore, does not lack subject matter jurisdiction solely because the State did not make copies of the legislative titles and enacting provisions of the crimes charged a part of the record.

Copyright Infringement. A frequent Freemen objection to prosecutor pleadings is that the prosecution has not established that they have permission to cite or quote copyrighted laws, cases, and court rules. The Freemen concept of copyright law is obviously skewed, but even if correct, Freemen do not have standing to raise the copyright holder's rights. *See* 17 U.S.C. § 501(b) (only the legal and beneficial owners of copyright have standing to sue infringers).

Challenges to the "Legality" of the Jury

Number of Jurors. In *Chaff v. Schnackenberg,* 384 U.S. 373, 16 L.Ed.2d 629, 86 S.Ct. 1523 (1966), the United States Supreme Court determined that crimes carrying penalties up to 6 months do not require a jury trial if they otherwise qualify as petty offenses. This ruling, proscribing the minimum constitutional requirement however, does not prohibit Washington state from providing a greater right to jury. Wash. Const. art. 1, § 21, provides for a right to jury trial in all criminal cases, including misdemeanor offenses. *Pasco v. Mace,* 98 Wn.2d 87, 653 P.2d 618 (1982). The right to jury trial in misdemeanor cases under Washington law, however, is a right to a six person jury. *Seattle v. Hessler,* 98 Wn.2d 73, 83, 653 P.2d 631 (1982).

Vicinage. The right to have jurors selected from the place at which the trial is to be held, sometimes called the right of "vicinage," was considered to be of great importance both at the common law and by the Founding Fathers. Both the Federal and State Constitutions preserve a right to vicinage. U.S. Const. Amend. VI guarantees an accused "a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed" and Wash. Const. Art. I, § 22, guarantees a "speedy public trial by an impartial jury of the county in which the offense is charged to have been committed."

In view of the positive vicinage requirements of both the Federal and State Constitutions, it is difficult to see how a jury can be constituted of persons who are not residents of Washington. Such persons, by their residency, are not deemed to be implicitly biased in favor of the State. *See, e.g., Mironski v. Snohomish County,* 115 Wash. 586, 197 P. 781 (1921) (pecuniary interest of taxpayers in action against county for damages is not such as to disqualify them from serving as jurors and necessitate transfer of cause to another county for trial); *State v. Krug,* 12 Wash. 288, 41 P. 126 (1895) (fact that juror is taxpayer is not ground for challenge on trial of public officer charged with embezzlement of public funds); *Rathbun v. Thurston County,* 8 Wash. 238, 35 P. 1102 (1894) (interest of jurors as taxpayers of county in action against county will not disqualify them from serving as jurors to try cause).

Prosecution Violates Freemen's Constitutional Right to Travel in a "Private Vehicle"

A common Freemen motion to dismiss in cases involving a motor vehicle is that the instant prosecution infringes upon the Freeman's constitutional right to travel.[73] It has been long established, however, that states may rightfully prescribe uniform regulations necessary for public safety and order in the operation upon its highways of motor vehicles, and the state may require the licensing of drivers. *E.g., Hendrick v. Maryland,* 235 U.S. 610, 59 L.Ed. 385, 35 S.Ct. 140 (1915); *State v. Clifford,* 57 Wn.App. 127, 787 P.2d 571, *review denied,* 114 Wn.2d 1025 (1990); *Spokane v. Port,* 43 Wn.App. 273, 275-76, 716 P.2d 945, *review denied,* 106 Wn.2d 1010 (1986).

The burden that traffic laws and licensing requirements impose upon a single mode of transportation does not implicate the right to interstate travel. *See, e.g., Miller v. Reed*, ___ F.3d ___ (9th Cir. May 24, 1999); *Monarch Travel Servs., Inc. v. Associated Cultural Clubs, Inc.*, 466 F.2d 552, 554 (9th Cir. 1972) ("A rich man can choose to drive a limousine; a poor man may have to walk. The poor man's lack of choice in his mode of travel may be unfortunate, but it is not unconstitutional."); *City of Houston v. FAA*, 679 F.2d 1184, 1198 (5th Cir. 1982) ("At most, [the air carrier plaintiffs'] argument reduces to the feeble claim that passengers have a constitutional right to the most convenient form of travel. That notion, as any experienced traveler can attest, finds no support whatsoever in [the Supreme Court's right of interstate travel jurisprudence] or in the airlines' own schedules."). The Supreme Court of Rhode Island in *Berberian v. Petit*, 374 A.2d 791 (R.I. 1977), put it this way:

> The plaintiff's argument that the right to operate a motor vehicle is fundamental because of its relation to the fundamental right of interstate travel is utterly frivolous. The plaintiff is not being prevented from traveling interstate by public transportation, by common carrier, or in a motor vehicle driven by someone with a license to drive it. What is at issue here is not his right to travel interstate, but his right to operate a motor vehicle on the public highways, and we have no hesitation in holding that this is not a fundamental right.

Berberian, 374 A.2d at 794 (citations and footnotes omitted).

The ability to enforce traffic laws is not dependent upon whether the defendant is a resident of the state. RCW 46.08.070. *See also* the following—

- *Tanner v. Heise,* 672 F.Supp. 1356 (D. Idaho 1987), *aff'd in part, rev'd in part on other grounds,* 879 F.2d 572 (9th Cir. 1989) (driver's claim that as an "ambassador for the Kingdom of God" he was not subject to driver licensing requirements was rejected);
- *Jones v. City of Newport,* 29 Ark. App. 42, 780 S.W.2d 338, 340 (1989) (driver's claim that he was exempt from a driver licensing requirement because he was an "individual freeman at common law" was rejected);
- *Parsons v. State,* 113 Idaho 421, 745 P.2d 300 (Idaho App. 1987) (driver's claim that as a "free person" she was not bound by manmade laws, including driver licensing requirements, absent a contract or "agreement in equity" with the government rejected); and
- *State v. Von Schmidt,* 109 Idaho 736, 710 P.2d 646 (Idaho App. 1985) (driver's claim that as a "free man" he was not subject to state driver licensing and motor vehicle laws rejected).

The ability to enforce traffic laws is not dependent upon whether the defendant has a Washington

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[73] Freemen assert that state traffic laws do not apply to them since they were not involved in interstate commerce, arguing that the Commerce Clause (Article I, Section 8) only permits Congress to regulate interstate commerce, and Sovereign Freemen are not bound by any state legislation.

driver's license. RCW 46.20.022.[74] As noted by the Idaho Court of Appeals when it rejected a driver's argument that, in the absence of his acceptance of a motor vehicle operator's license, he has not consented to be regulated by the state—

> [Driver] "entered into" our society when be began to live in it. He has no right to unilaterally withdraw from that society, rejecting his obligations to that body, while at the same time retaining the advantages of that society—advantages for which others have sacrificed part of their liberty.

State v. Gibson, 108 Idaho 202, 697 P.2d 1216, 1218 (Idaho App. 1985). *See also Parsons v. State,* 113 Idaho 421, 745 P.2d 300 (Idaho App. 1987) (driver's claim that as a "free person" she was not bound by man-made laws, including driver licensing requirements, absent a contract or "agreement in equity" with the government rejected).

The driver's licensing statute applies to non-commercial operators of motor vehicles. *Spokane v. Port,* 43 Wn.App. 273, 277-78, 716 P.2d 945, *review denied,* 106 Wn.2d 1010 (1986); *accord State v. French,* 77 Hawai'i 222, 883 P.2d 644 (1994) (rejecting argument that traffic statutes apply only to businesses and State vehicles, not to a "sovereign" individual who utilizes his vehicle only for personal needs).

"My Religious Beliefs Prevent Me From Getting a Driver's License"

The State's compelling interest in law enforcement and highway safety justifies licensing of drivers even if it has a coercive effect on an individual's practice of a sincerely held religious conviction. *State v. Clifford,* 57 Wn.App. 127, 787 P.2d 571, *review denied,* 114 Wn.2d 1025 (1990); *see also Miller v. Reed*, ___ F.3d ___, Docket No. 97-17006 (9th Cir. May 24, 1999) (petitioner's 1983 action claiming that California is violating his religious beliefs by requiring him to disclose his social security number in order to obtain a valid driver's license dismissed as the facially neutral statute is rationally related to California's legitimate interests in locating the whereabouts of errant parents for purposes of carrying out child support programs, collecting tax obligations, and collecting amounts overdue and unpaid for fines, penalties, assessments, bail, and vehicle parking penalties.).

Prosecution for Driving While Suspended When Suspension Due to Failure to Pay Tickets is Unconstitutional Imprisonment for a Debt

Const. art. I, 17, provides that "[t]here shall be no imprisonment for debt, except in cases of absconding debtors." Freemen interpret this section as rendering criminal prosecutions for driving while license suspended in the third degree unconstitutional because such license suspensions are generally the result of failing to pay the fines assessed for traffic infractions.

This interpretation, however, is contrary to decisions rendered by the Washington Supreme Court. *See, e.g., Treffry v. Taylor*, 67 Wn.2d 487, 494, 408 P.2d 269 (1965) (the imposition of a fine or imprisonment for failing to comply with a statute requiring construction contractors to register and post a bond is not imprisonment for debt as proscribed by Const. art. I, 17, but is a statutory penalty imposed upon any person who knowingly and intentionally violates a lawful mandate of the legislature); *Austin v. Seattle*, 176 Wash. 654, 660-62, 30 P.2d 646 (1934) (a license or excise tax on an occupation does not constitute a debt within Const. art. I, 17's prohibition upon imprisonment for debt).

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[74] RCW 46.20.022, which was adopted after Division II's opinion in *Aberdeen v. Cole*, 13 Wn.App. 617, 537 P.2d 1073 (1975), essentially abrogates the holding of *Aberdeen v. Cole*. RCW 46.20.022 provides that—

> Any person who operates a motor vehicle on the public highways of this state without a driver's license or nonresident privilege to drive shall be subject to all of the provisions of Title 46 RCW to the same extent as a person who is licensed.

"I Do Not Trust Your Record—I Want My Own Tape or Video Recording"

Frequently Freemen defendants will bring their own tape or video recorder into court. Proceedings in open court are not "private communications" that require the consent of all the participants in order to record. *See generally State v. Clark,* 129 Wn.2d 211, 226, 916 P.2d 384 (1996); *State v. Slemmer,* 48 Wn.App. 48, 738 P.2d 281 (1987). Nonetheless, the judge has the authority to preclude the use of unofficial recording devises in the courtroom. *See, e.g., Bly v. Henry,* 28 Wn.App. 469, 624 P.2d 717 (1980), *review denied,* 95 Wn.2d 1020 (1981); RCW 2.28.010; RCW 2.28.060.

Frequently Freemen defendants wish to record every conversation they have with a prosecutor, perhaps surreptitiously. Case law would appear to allow this to occur with or without the prosecutor's permission. *Cf. State v. Flora,* 68 Wn.App. 802, 807, 845 P.2d 1355 (1992) (statements made by police officers when effecting an arrest in their official capacity do not constitute "private conversations" within the meaning of RCW 9.73.030, which makes criminal the recording of private conversations without all parties' consent). Statements made by a prosecutor as part of plea negotiations, though, are not admissible in court. *See* ER 410[75]; *United States v. Robertson,* 582 F.2d 1356, 1366 (5th Cir.1978); *United States v. Verdoorn,* 528 F.2d 103, 107 (8th Cir.1976); *State v. Woodsum,* 137 N.H. 198, 624 a.2d 1342 (1993); *State v. Davis,* 70 Ohio App.2d 48, 51, 434 N.E.2d 285, 287-88 (1980); *State v. Pearson,* 818 P.2d 581, 583 (UtahCt.App. 1991).

"Let Me Out of Jail Now!!!"—Writs of Habeas Corpus

Jurisdiction. The superior court, the court of appeals, and the supreme court have concurrent jurisdiction in habeas corpus proceedings. RCW 7.36.040; *Tolliver v. Olsen,* 109 Wn.2d 607, 610, 746 P.2d 809 (1987). A superior court's jurisdiction over the writ, however, is limited to persons in actual custody in the county in which the superior court is located. Washington Const. art. IV, § 6 ("Said courts and their judges shall have power to issue…writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties"); *Conway v. Cranor,* 37 Wn.2d 303, 233 P.2d 452 (1950), *cert. denied,* 304 U.S. 915 (1951).

Availability Pre-Trial. The function of the writ of habeas corpus was to set free people who had been imprisoned illegally. The writ was not a substitute for appeal and the celebrated Habeas Corpus Act of 1679 explicitly excluded from its operation persons convicted of a felony. 31 Car. 2, ch. 2.

In this country, the writ was guaranteed against suspension in the original Constitution. See U. S. Const., Art. I, 9, cl. 2. This clause, however, was well understood to refer to habeas for **federal** prisoners. The First Congress, consisting largely of the same people who wrote and ratified the Constitution, flatly prohibited the issuance of habeas for state prisoners by federal courts, except to bring them into federal court to testify. *See* Judiciary Act of 1789, 14, 1 Stat. 81. This provision was found to be constitutional. See *Calder v. Bull*, 3 U.S. 386, 390 (1798).

The Washington Constitution also contains a guarantee against the suspension of the writ of habeas corpus. *See* Wash. Const. art. 1, 13. This provision of the Washington Constitution preserves the writ of

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[75] ER 410 provides as follows—

> Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and in the presence of counsel. This rule does not govern the admissibility of evidence of a deferred sentence imposed under RCW 3.66.067 or RCW 9.95.200 to .240.

While some commentators have questioned whether the phrase "against the person who made the plea or offer" covers statements made by the prosecution, these commentators recognize that such statements would be protected by ER 408. *See, e.g.,* 5 K. Tegland, Wash. Prac., *Evidence Law and Practice* § 138, at 499 (3d ed. 1989).

habeas corpus as it existed when the constitution was adopted. *In re Personal Restraint of Runyan*, 121 Wn.2d 432, 441, 853 P.2d 424 (1993).

RCW 7.36.130 is derived from a statute passed by the first legislature of Washington Territory. As originally enacted, the statute was a strict limitation on the writ of habeas corpus—

> No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of confinement has not expired, in either of the cases following:
>
> 1. Upon any process issued on any final judgment of a court of competent jurisdiction...
>
> 3. Upon a warrant issued by the superior court upon an indictment or information.

Laws of 1854, p. 213, 445 (codified as Remington's Revised Statutes 1075). This statute remained in effect without amendment for over 90 years. The decisions of the Supreme Court made two points unmistakably clear: R.R.S. 1075 was constitutional, and it meant what it said.

Shortly after Washington became a state, this statute was unanimously upheld by the Washington Supreme Court. *In re Lybarger*, 2 Wash. 131, 25 P. 1075 (1891). The petitioner in *Lybarger* claimed that R.R.S. 1075 was unconstitutional because it did not allow the court, in habeas corpus proceedings, to go behind the final judgment of a court of competent jurisdiction for any purpose whatsoever. The petitioner claimed that the "writ of habeas corpus is a high prerogative writ known to the common law, and that it is this common-law writ that is secured to us by the constitution of the United States and of this state." *Lybarger*, 2 Wash. at 134.

The court's opinion was authored by John P. Hoyt, the president of the 1889 constitutional convention that had drafted Const. art. 1, 13. *See* B. Rosenow, THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION (1889; B. Rosenow ed. 1962), at 468. The opinion was concurred in by two other former delegates to the constitutional convention, R. O. Dunbar and Theodore L. Stiles. *Id*.

The Court examined the common law practice, and determined that it had been **more** restrictive than R.R.S. 1075. Under the common law, a return to the writ of habeas corpus could not be challenged. If the return claimed that the prisoner was held by virtue of process issued by a court of competent jurisdiction, further inquiry was precluded: the court would not even decide whether the alleged process **existed**. *Lybarger*, 2 Wash. at 134-36.

Justice Hoyt ruled:

> in the absence of a statute authorizing it, the supreme court could not go behind a judgment of a court of general jurisdiction to inquire as to the fact of jurisdiction in a particular case...[and that based upon] an examination of all the cases that we have been able to find we think our statute is constitutional, and that under it we are precluded from questioning a judgment of a court of general jurisdiction fair upon its face.

Lybarger, 2 Wash. at 136. Surely these judges understood the constitution that they themselves had adopted two years earlier.

Over the ensuing years, the Washington Supreme Court consistently refused to consider the challenges that were not apparent on the face of the judgment or to determine the validity of a detention upon an untried information. For example, the Court would not consider claims that the judge lacked authority to impose sentence, unless that fact appeared on the face of the judgment. *Compare In re Horner*, 19 Wn.2d 51, 141 P.2d 151 (1943) (claim considered because facts appeared on face of judgment) *with In re Voight*, 130 Wash. 140, 226 P. 482 (1924) (claim not considered because facts did not appear on face of judgment). The Court would not consider a claim that the defendant had been tricked into pleading guilty by the prosecutor's false promises. *In re Gerard*, 25 Wn.2d 237, 170 P.2d 332 (1946). The Court would not even consider a claim that the petitioner had been convicted of violating a statute that did not exist at the time—

> To say that an unconstitutional law or a repealed law is no law is both logical and sound, but to say that a judgment of a court of competent jurisdiction is no judgment,

> because some question of law properly before it was decided erroneously, is ... a non sequitur. The rule here announced fully satisfies the constitutional guaranties respecting the writ of habeas corpus, and prescribes an orderly system for the administration of public justice.

In re Newcomb, 56 Wash. 395, 404, 105 P. 1042 (1909).

The Court would not consider a claim that a petitioner who was detained pending trial was charged with statutes that had been repealed. *See Ex parte Hamilton*, 56 Wash. 405, 105 P.2d 1046 (1909). The Court would not consider a claim that a petitioner was detained pending trial on an "illegal" information that charged an "unconstitutional" statute. *Ex parte Putnam*, 58 Wash. 687, 109 P. 111 (1910).

The Washington Supreme Court reemphasized the scope of the constitutional privilege of the writ of habeas corpus in *In re Grieve*, 22 Wn.2d 902, 158 P.2d 73 (1945). The decision was written to make it clear to certain "unnamed and unknown advocates" that were clogging the motion calendar with improper habeas corpus writs that

> the writ of habeas corpus cannot be used as a medium to review trial errors, but that its authorized use is limited by law to those cases where it appears that the judgment and sentence, by virtue of which the petitioner is held in confinement, is void on its face.

Grieve, 22 Wn.2d at 904.

The Court went on to state that—

> In this opinion, we have, in addition to deciding the instant case, endeavored to make it clear that allegations that the petitioner was convicted by a confession secured by third-degree methods, or pleaded guilty upon the promise that he would receive a light sentence, or under a threat of the prosecuting attorney that he would be shot unless he did so, or was convicted because the trial judge refused to suppress evidence secured without a search warrant, all of which allegations, with others of a similar nature, have been hopefully set up as a basis for many of the numerous petitions, hereinabove referred to, furnish no basis for the issue of a writ of habeas corpus by the courts of this state to release a petitioner detained by virtue of a judgment and sentence fair on its face.

Grieve, 22 Wn.2d at 911-12.

These restrictions on the scope of habeas corpus were never altered by the Supreme Court; they were changed by the legislature. In 1947, the legislature expanded the scope of review in habeas corpus petitions filed after conviction. See R.R.S. 1075. The legislature, however, has never removed the restriction applicable to individuals who are detained upon a warrant issued from the superior court upon an indictment or information. Current RCW 7.36.130 provides as follows—

> No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge the party when the term of commitment has not expired, in either of the cases following:
>
> (1) Upon any process issued on any final judgment of a court of competent jurisdiction except where it is alleged in the petition that rights guaranteed the petitioner by the Constitution of the state of Washington or of the United States have been violated and the petition is filed within the time allowed by RCW 10.73.090 and 10.73.100.
>
> (2) For any contempt of any court, officer or body having authority in the premises to commit; but an order of commitment, as for a contempt upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications.
>
> (3) Upon a warrant issued from the superior court upon an indictment or information.

Thus, Freemen claims that the court lacks jurisdiction over them because of the nature of the flag, the absence of a grand jury indictment, the capitalization of their names, etc., are not cognizable in a pre-trial habeas corpus action.

Standing. Neither a federal court nor a state court has jurisdiction over an action unless the litigant demonstrates "standing." *Whitmore v. Arkansas*, 495 U.S. 149, 110 S.Ct. 1717, 109 L. Ed. 2d 135, (1990); *Improvement Ass'n. v. Pierce County*, 106 Wn.2d 797, 710, 724 P.2d 1009 (1986). The doctrine of standing requires that a person must have a "stake in the outcome" of a case in order to bring the action. *Gustafson v Gustafson*, 47 Wn.App. 272, 276, 734 P.2d 949 (1987). "[O]ne seeking relief must show a clear legal or equitable right and a well-grounded fear of immediate invasion of that right." *Id.* "It is well settled that a person whose only interest in a legal controversy is one shared with citizens in general has no standing to invoke the power of courts to resolve the dispute." *Casebere v. Civil Service Comm'n.*, 21 Wn.App. 73, 76, 584 P.2d 416 (1978); *see also Vovos v. Grant*, 87 Wn.2d 697, 555 P.2d 1343 (1976).

The doctrine of standing prohibits a litigant from raising another's legal rights. *Omega Nat'l Ins. Co. v. Marquardt*, 115 Wn.2d 416, 432, 799 P.2d 235 (1990); *Haberman v. WPPSS*, 109 Wn.2d 107, 138, 744 P.2d 1032 (1987). One limited exception to this requirement is the doctrine of "next friend" standing, in which a non-party is allowed to pursue an action (most commonly, a habeas corpus petition) on behalf of the real party in interest. The threshold inquiry in a next friend action does not depend in any way upon the merits of the claims, but instead upon the standing of the "friend" to file the action on behalf of the real party in interest. *Whitmore v. Arkansas*, 495 U.S. at 163.

There are at least two firmly-rooted prerequisites for next friend standing—

> First, a "next friend" must provide an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action....Second, the "next friend" must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate, ...and it has been further suggested that a "next friend" must have some significant relationship with the real party in interest.

Whitmore, 495 U.S. at 163-64 (citations omitted); *Demosthenes v. Baal*, 495 U.S. 731, 736, 110 S.Ct. 2223, 2225, 109 L. Ed. 2d 762 (1990). The purported next friend bears the heavy burden clearly to establish the propriety of her status. *Baal, supra; Whitmore*, 495 U.S. at 164; *Wells by Kehne v. Arave*, 18 F.3d 656, 658 (9th Cir. 1994). "These limitations on the 'next friend' doctrine are driven by the recognition that '[i]t was not intended that the writ of habeas corpus should be availed of, as a matter of course, by intruders or uninvited meddlers, styling themselves next friends'." *Whitmore*, 495 U.S. at 164 (quoting *United States ex rel. Bryant v. Houston*, 274 F. 915, 916 (2d Cir. 1921)). In the absence of any meaningful evidence of incompetency, there is no basis for next friend standing, nor is there any reason to hold an evidentiary hearing on the subject. *Baal*, 495 U.S. at 736.

In the context of a state habeas corpus action, a "next friend" may bring a petition on behalf of an incarcerated individual only when the terms of RCW 7.36.020 are met. This statute provides that—

> Writs of habeas corpus shall be granted in favor of parents, guardians, limited guardians where appropriate, spouses, and next of kin, and to enforce the rights, and for the protection of infants and incompetent or disabled persons within the meaning of RCW 11.88.010; and the proceedings shall in all cases conform to the provisions of this chapter.

Case law establishes that this statute is only met in the context of criminal cases when the defendant has been established to be mentally incompetent by a court of competent jurisdiction. *See generally In re Hews*, 108 Wn.2d 579, 741 P.2d 983 (1987) (court appointed defendant's mother as guardian to litigate a personal restraint petition on behalf of her son who was incompetent to assist counsel).

Note, though, that no one may serve as next friend who has been convicted of a felony or of a misdemeanor involving moral turpitude. *See* RCW 11.88.020.

Non-Lawyer Preparation of Pleadings. Washington prohibits the practice of law by individuals who have not been admitted to the practice of law by the Washington Supreme Court.[76] *See* RCW 2.48.170. An individual who has not been admitted to the practice of law by the Washington Supreme Court who nonetheless practices law is guilty of a crime. *See* RCW 2.48.180. [77]

Although an individual may prepare a habeas corpus petition and related pleadings for himself or herself under the "pro se" exception to the unauthorized practice of law, *see* RCW 2.48.190, an individual may not transfer his or her pro se rights to another. *See, e.g., Washington State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n*, 91 Wn.2d 48, 57, 586 P.2d 870 (1978) ("The 'pro se' exceptions are quite limited and apply only if the layperson is acting solely ***on his own behalf***" [emphasis in the original]); *State v. Hunt*, *supra* (paralegal was not allowed to exercise his client's pro se rights); *Gilman v. Kipp*, 519 N.Y.S.2d 314, 315, 136 Misc. 860 (1987) ("The inherent right of a person to appear 'pro se' in legal proceedings cannot be assigned to anther by executing the power of attorney."); *In re Baker*, 85 A.2d 505, 514 (N.J. 1951) (the consequences of a UPL statute cannot "be avoided merely by preparing for and having the 'client' execute a document designating the unlicensed practitioner an 'attorney-in-fact.'").

The "pro se" exception does not allow a "next friend" or guardian to practice law on behalf of an incompetent person. *See Chisholm v. Rueckhaus*, 124 N.M. 255, 948 P.2d 707, 709-10, *cert. denied*, 124 N.M. 268, 949 P.2d 282 (1997) (rule allowing representative to sue or defend on behalf of child or one

[76] Only the Supreme Court can authorize an individual to practice law in Washington. Statues that purport to authorize someone to practice law are unconstitutional as a violation of the separation of power doctrine. *Hagan v. Kassler Escrow, Inc.*, 96 Wn.2d 443, 451-52, 635 P.2d 730 (1981); *State v. Hunt*, 75 Wn.App. 795, 805, 880 P.2d 96, *review denied*, 125 Wn.2d 1009 (Div. 2 1994).

[77] *See Charging Options—How to Fit a Square Peg Into a Round Hole, supra,* for basic jury instructions for unlawful practice of law prosecutions. Additional instructions for this situation include—

NO.
An individual who is charged with a criminal offense has a constitutional right to the assistance of counsel. A criminal defendant's right to the assistance of counsel does not include the right to be represented by an advocate who is not a member of the State Bar.

United States v. Wheat, 486 U.S. 153, 159, 100 L. Ed. 2d 140, 108 S.Ct. 1692, 1697 (1988)

NO.
A "next friend" or guardian is an individual who directs an action for another person. A "next friend" or guardian may prosecute a habeas corpus petition seeking the release of an incarcerated person only if the incarcerated person has been found to be incompetent or disabled. "Next friend" or guardian status does not authorize the practice of law.

RCW 7.36.020
Whitmore v. Arkansas, 495 U.S. 149, 110 S.Ct. 1717, 109 L. Ed. 2d 135, (1990) ("next friend" doctrine in the context of habeas corpus litigation requires that the "next friend" establish an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action.)
Demosthenes v. Baal, 495 U.S. 731, 736, 110 S.Ct. 2223, 2225, 109 L. Ed. 2d 762 (1990) (in the absence of any meaningful evidence of incompetency, there is no basis for next friend standing)
Chisholm v. Rueckhaus, 124 N.M. 255, 948 P.2d 707, 709-10, *cert. denied,* 124 N.M. 268, 949 P.2d 282 (1997) (rule allowing representative to sue or defend on behalf of child or one otherwise legally incompetent does not create exception to general prohibition on unauthorized practice of law)
State v. Hunt, 75 Wn.App. 795, 805, 880 P.2d 96, *review denied,* 125 Wn.2d 1009 (Div. 2 1994) ("a statutory power of attorney does not authorize the agent to act pro se in the place of the principal....Furthermore, to the extent that Washington's statutes allowing use of powers of attorney would allow the unlicensed practice of law, they are unconstitutional....If the Legislature purported to allow laypersons to practice law, it impermissibly usurped the power of the courts and violated the separation of powers doctrine.")
Christiansen v. Melinda, 857 P.2d 345, 347-349 (Alaska 1993) (rejecting the argument that because a durable power of attorney allows the agent to act as the principal, and the principal would be able to proceed to court pro se, therefore the agent with a power of attorney can litigate pro se for the principal)
J.W. v. Superior Court, 17 Cal.App.4th 958, 22 Cal.Rptr.2d 527, 529-33 (Ct.App.1993) (neither common law nor guardianship statutes sanction an exception to the State Bar Act prohibition against the unauthorized practice of law in favor of guardians acting for their wards)

NO.
No person is qualified to serve as a "next friend" or guardian who has been convicted of a felony or of a misdemeanor involving moral turpitude

RCW 11.88.020(3)

otherwise legally incompetent does not create exception to general prohibition on unauthorized practice of law); *State v. Hunt*, 75 Wn.App. 795, 805, 880 P.2d 96, *review denied*, 125 Wn.2d 1009 (Div. 2 1994) ("a statutory power of attorney does not authorize the agent to act pro se in the place of the principal.... Furthermore, to the extent that Washington's statutes allowing use of powers of attorney would allow the unlicensed practice of law, they are unconstitutional....If the Legislature purported to allow laypersons to practice law, it impermissibly usurped the power of the courts and violated the separation of powers doctrinee"); *Christiansen v. Melinda*, 857 P.2d 345, 347-349 (Alaska 1993) (rejecting the argument that because a durable power of attorney allows the agent to act as the principal, and the principal would be able to proceed to court pro se, therefore the agent with a power of attorney can litigate pro se for the principal); *J.W. v. Superior Court*, 17 Cal.App.4th 958, 22 Cal.Rptr.2d 527, 529-33 (Ct.App.1993) (neither common law nor guardianship statutes sanction an exception to the State Bar Act prohibition against the unauthorized practice of law in favor of guardians acting for their wards). The "pro se" exception also does not allow a person to prepare habeas corpus pleadings on behalf of a spouse or child. *See, e.g., State v. Stange*, 53 Wn.App. 638, 648, 769 P.2d 873 (1989) (father may not file pro se supplemental brief on behalf of juvenile offender); *City of Seattle v. Shaver,* 23 Wn.App. 601, 597 P.2d 935 (1979) (layman husband could not represent wife in a prosecution for failure to yield right-of-way). Thus, even if a Freeman can establish next friend status, unless the Freeman is admitted to practice law in Washington, he or she will have to hire an attorney to prepare the legal pleadings and to present argument to the court on behalf of the incompetent detainee.

Removal of Action to Federal Court—"Diversity" Claims

Federal district courts have been granted original jurisdiction "of all suits of a civil nature, at common law or in equity," where there is the requisite diversity of citizenship and the amount in controversy exceeds $50,000. 28 U.S.C. 1332(a), formerly codified as 28 U.S.C. 41(1). This grant of jurisdiction has essentially remained unaltered since the adoption of the Judiciary Act of 1911, except for an upward adjustment of the amount in controversy. *Compare* 28 U.S.C. 1332(a) *with* 24(1), Judiciary Act of 1911, 36 Stat. 1091.

In discussing the scope of the district court's diversity jurisdiction under the Judiciary Act of 1911, the Supreme Court stated that:

> In this grant of jurisdiction of causes arising under state as well as federal law the phrase "suits of a civil nature" is used in contradistinction to "crimes and offenses," as to which the jurisdiction of the District Courts is restricted by section 24(2), 28 U.S.C.A. 41(2), to offenses against the United States. Thus, suits of a civil nature within the meaning of the section are those which do not involve criminal prosecution or punishment, and which are of a character traditionally cognizable by courts of common law or of equity. Such are suits upon a judgment, foreign or domestic, for a civil liability, of a court having jurisdiction of the cause and of the parties, which were maintainable at common law upon writ of debt, or of indebitatus assumpsit. [Footnote omitted.]

Milwaukee County v. M.E. White Co., 296 U.S. 268, 56 S.Ct. 229, 231, 80 L. Ed. 220 (1935).

Removal of state criminal prosecutions to federal court on the grounds of diversity of citizenship are, therefore, properly rejected. In addition, a federal court may not become involved in a state criminal prosecution where, as in Washington courts, there is a mechanism for litigating federal constitutional claims until after the criminal defendant fully exhausts all of his state court remedies. *See generally Harris v. Reed*, 489 U.S. 255, 109 S.Ct. 1038, 103 L. Ed. 2d 308 (1989); *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L. Ed. 2d 669 (1971).

Removal of a state infraction to federal court on a diversity theory is impossible because of the amount in controversy. The amount in controversy on a civil infraction is the amount of the fine plead on the infraction. *See City of Bremerton v. Spears*, 134 Wn.2d 141, 151, 949 P.2d 347 (1998). In general, the amount sought is well under $500.00. *See generally* IRLJ 6.2; RCW 46.63.110(a) (amount of infractions not to exceed $250.00).

"You Owe Me Money"—Damages Under 42 U.S.C. 1983

It is well-established that a litigant who claims an underlying state court conviction was obtained through unconstitutional conduct must first have his or her conviction overturned on those grounds through a federal or state habeas petition before the litigant may seek damages under Section 1983. *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). A failure by the litigant to establish that he or she was acquitted or that any conviction was subsequently overturned is fatal to such a claim. *See, e.g., Schneider v. Schlaefer*, 975 F.Supp. 1160, 1164-65 (E.D. Wis. 1997) (dismissing civil rights action predicated upon a claim that all prior court proceedings were unconstitutionally conducted under authority of form of flag representing foreign power); *Sadlier v. Payne,* 974 F.Supp. 1411, 1412 (D. Utah 1997) (same).

A Freeman's claims against a judge for damages under Section 1983 are subject to dismissal on grounds of absolute judicial immunity, insofar as the conduct the judges are alleged to have taken fell within their jurisdiction and the scope of their judicial duties. *See Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978).

A Freeman's claims against a prosecutor will be subject to dismissal on grounds of absolute prosecutorial immunity, insofar as the conduct the prosecutor is alleged to have taken falls within the scope of their prosecutorial duties and functions. *See Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976); *Kalina v. Fletcher,* 522 U.S. 118, 118 S.Ct. 502, 139 L.Ed.2d 471 (1997).

Actions that are entitled to absolute immunity include: (1) those performed as an advocate for the State such as the initiation of prosecution and the presentation of testimony; and (2) the out-of-court professional evaluation of the evidence assembled by the police and appropriate preparation for its presentation at trial or before a grand jury after a decision to file charges has been made. *See, e.g., Buckley v. Fitzsimmons*, 509 U.S. 259, 113 S.Ct. 2606, 125 L.Ed.2d 209 (1993); *Fletcher, supra*.

Challenges to Payment of Court Obligation with Paper Money

Money as defined in Washington includes gold, silver, and legal tender of the United States of America. RCW 84.04.060. "Legal tender" is valid under Washington law for the payment of taxes, debts, fines, and other obligations. *See generally Trohimovich v. Labor & Industries,* 73 Wn.App. 314, 319, 869 P.2d 95 (1994); *Federal Land Bank v. Redwine*, 51 Wn.App. 766, 769, 755 P.2d 822 (1988) (land patent filed by Freeman litigant in order to avoid foreclosure of family farm).

"I Want My Property Returned"—Fingerprints, Etc.

The question of the return or expunction of arrest records spurred a flurry of litigation in the 1970's. In *Eddy v. Moore*, 5 Wn.App. 334, 487 P.2d 211, *review denied*, 79 Wn.2d 1012 (Div. 1 1971), Division I of the Washington Court of Appeals held that police retention of an exonerated defendant's fingerprints and photograph violated her constitutional right of privacy. Subsequent to the release of the *Eddy* opinion, the United States Supreme Court issued an opinion in which the Court rejected an individual's post-dismissal of charges claim that the chief of police's distribution of his name and photograph in an "active shoplifter's" flyer violated his constitutional right to privacy. *Paul v. Davis*, 424 U.S. 693, 96 S.Ct. 1155, 47 L. Ed. 2d 405 (1976).

Following the Supreme Court's decision in *Eddy*, Division II of the Washington Court of Appeals had an opportunity to revisit the question of whether an exonerated defendant's right to privacy is violated by police retention of fingerprints and booking photographs. In *State v. Adler*, 16 Wn.App. 459, 558 P.2d 817 (Div. 2 1976), *review denied*, 88 Wn.2d 1011 (1977), Division II held that an individual has no constitutional right to privacy in photograph taken of him in connection with an earlier criminal charge that resulted in acquittal.

Since the *Adler* decision, no other Washington case has addressed the "return of fingerprints" issue. Our appellate courts, however, have addressed the limits of the court's authority over records held by police

agencies. In *State v. Gilkinson*, 57 Wn.App. 861, 790 P.2d 1247 (1990), the Court of Appeals determined that courts lack the inherent authority to delete and expunge criminal records. Rather, any alteration of criminal records may only be conducted pursuant to statute.

While a prior statute [78] permitted the destruction of identifying information held by the Washington State Patrol following an acquittal or the dismissal of charges, no statute currently allows a court to order the purging of fingerprints maintained by a city or county police agency. *See generally State v. Gilkinson*, 57 Wn.App. at 864 n.2 (court's authority to delete or modify non-conviction records under RCW 10.97.060 does not extend to ordering the destruction or expungement of the police records). *See also* RCW 13.50.050(22) ("No identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.").

[78] Former RCW 43.43.730 provided that—

> When any person, having no prior criminal record, whose fingerprints and/or other identifying data were submitted to and filed at the section, shall be found not guilty of the offense for which the fingerprints and/or other identifying data were sent to the section, or be released without a conviction being obtained, his fingerprints and/or other identifying data and all copies thereof on file at the section shall be destroyed by the section, Provided such person requests said destruction after the finding of not guilty or after the release.

Former RCW 43.43.730(1), quoted in *State v. Adler*, 16 Wn.App. 459, 464, 558 P.2d 817 (Div. 2 1976), *review denied*, 88 Wn.2d 1011 (1977). This statute only applied to State Patrol records and not to records held by city or county police agencies. *Adler*, 16 Wn.App. at 464.

TRIAL ISSUES

Defendant's Clothes

In our experience, most Freemen who have been detained prior to trial will insist upon wearing jail clothing during trial. A defendant's wearing of jail clothing during a jury trial does not violate the defendant's constitutional rights unless the defendant has been compelled to wear such clothing. *Estelle v. Williams,* 425 U.S. 501, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976). A defendant's failure to arrange for civilian clothing or to object at the time of trial to the jail garb is sufficient to negate the presence of compulsion necessary to establish a constitutional violation. *Estelle v. Williams,* 96 S.Ct. at 1697.

The best course to follow when dealing with a pro se Freeman who has been detained prior to trial is to have the jail offer to assist him or her in obtaining civilian clothing for trial. If the defendant rejects the offer, the defendant should be brought before the court to be advised by the judge that the jury might draw adverse inferences from the Freeman's appearance in jail attire, and that the court is willing to assist the Freeman in obtaining civilian clothing for the trial. If the defendant still rejects civilian clothing, the colloquy with the court will ensure a knowing and intelligent waiver of any prejudice that might inure to the wearing of jail clothing.

Defendant's Refusal to Leave the Jail

Some Freemen defendants have "refused" to leave their cell to come to court. If the hearing is a non-evidentiary one, such as an arraignment, the video conference procedure contained in GR 19 may be used. If video conferencing equipment is not available, the court, essential court personnel, the prosecutor, and the defense attorney, if any, may choose to hold the hearing in the hallway immediately adjoining the defendant's cell. The final option, when a jury is not present, is to bring the defendant under force to court in a wheelchair.

If the defendant refuses to come to court for trial, a colloquy should be conducted by the court with the defendant regarding the fact that the defendant's refusal to attend the proceedings will be deemed to be a knowing and intelligent waiver of the defendant's presence at trial. *See generally State v. Hammond,* 121 Wn.2d 787, 854 P.2d 637 (1993).

The defendant's refusal to answer questions during the colloquy will not bar a court from finding an implicit waiver of the defendant's right to attend the trial so long as there is a record that the detained defendant was personally advised that the trial would be starting at a certain time and his presence is required at that time in the courtroom. *See, e.g., Taylor v. United States,* 414 U.S. 17, 38 L.Ed.2d 174, 94 S.Ct. 194 (1973) (defendant's mid-trial flight from courtroom waived his right to attend the remainder of the trial); *State v. DeWeese,* 117 Wn.2d 369, 380-81, 816 P.2d 1 (1991) (pro se defendant waived his right to be present during trial by engaging in disruptive behavior); *State v. Rice,* 110 Wn.2d 577,619-20,757 P.2d 889 (1988), *cert. denied,* 491 U.S. 910 (1989) (capital defendant implicitly waived his right to be present when the special sentencing proceeding verdict was returned by attempting to commit suicide).

Witness Etiquette

In most state courtrooms, the attorneys are allowed to freely roam the courtroom and no restriction is placed upon where the attorney stands during questioning. Some witnesses have expressed discomfort with how close a pro se Freeman defendant stood next to them while conducting cross-examination. The best practice when dealing with a pro se defendant is to ask the court, pursuant to ER 611(a), to restrict how close any questioner can stand vis-a-vis the witness.

Disruptive Defendant

A judge does not have to accept disruptive behavior on the part of a criminal defendant. As noted by the United States Supreme Court—

> It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated. We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations. We think there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant…(1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly.

Illinois v. Allen, 397 U.S. 337, 343-44, 25 L.Ed. 2d 353, 90 S.Ct. 1057 (1970). The manner of maintaining order in the courtroom is within the trial judge's discretion, but the least severe remedy to accomplish the result is preferable. *State v. DeWeese,* 117 Wn.2d 369, 380, 816 P.2d 1 (1991); *Burgess v. Towne,* 13 Wn.App. 954, 960, 538 P.2d 559 (1975).

Summary Contempt. Supreme Court justices and commissioners, court of appeals judges and commissioners, superior court judges and commissioners, municipal court judges, and district court judges and commissioners may all punish an individual for direct contempt under RCW 7.21.050. *See* RCW 7.21.020.

A jury is not required, *State v. Hobble,* 126 Wn.2d 283, 892 P.2d 85 (1995), but the sanction that may be imposed is limited to a fine of not more than five hundred dollars or imprisonment in the county jail for not more than thirty days, or both, for each separate incident of contempt. RCW 7.21.050(2).

Any summary contempt order should recite that the contempt was seen or heard by the judge and should recite the facts of the contempt. *Hobble,* 126 Wn.2d at 295; RCW 7.21.050(1). The contemnor must also be provided with an opportunity to speak in mitigation of the circumstances. *Hobble,* 126 Wn.2d at 296; RCW 7.21.050(1).

Coercive Contempt. A defendant's refusal to comply with a lawful order of the court can yield a coercive contempt order. Such an order is appropriate when the defendant refuses to affix his or her fingerprints to the judgment and sentence, to provide a handwriting exemplar, or to perform other similar affirmative acts. A coercive contempt order may be summarily imposed. RCW 7.21.050(1). A coercive contempt order for failure to comply with a lawful discovery order will toll the speedy trial period. *State v. Miller,* 74 Wn.App. 334, 344-45, 873 P.2d 1197 (1994).

A coercive contempt order can provide the Freeman, the prosecutor, and the judge with breathing room. Often continuing the matter for a week or two pursuant to a coercive contempt order will result in the loss of the Freeman's audience. Once fellow supporters are absent, the Freeman defendant may be

willing to voluntarily affix his or her fingerprints to the judgment and sentence,[79] or may agree to comply with other discovery orders. A coercive contempt order that has been used in a Freeman prosecution follows.

CAPTION FOR ORDER RE: CONTEMPT

THIS MATTER having come on for sentencing following the jury's verdict of "guilty" on all counts; the defendant appearing pro se after having previously waived counsel; the State of Washington appearing by and through Patricia M. Stuart and Pamela B. Loginsky, Deputy Prosecuting Attorneys in and for Kitsap County; and the court having directly observed VERYL EDWARD KNOWLES' refusal to place his fingerprints upon the judgment and sentence as required by RCW 10.64.110, now therefore, enters the following:

FINDINGS OF FACT

I.

The defendant, VERYL EDWARD KNOWLES, has been ordered by the court to place his fingerprints upon the judgment and sentence that has been entered by this court on the 20th day of May, 1996.

II.

The defendant, VERYL EDWARD KNOWLES, refused to obey this direct order of the court in the presence of the undersigned judge.

III.

The defendant's refusal to obey the lawful order of this court constitutes contempt.

IV.

The defendant, VERYL EDWARD KNOWLES, has the power to perform the required act and to purge the contempt.

Based upon the foregoing findings of fact, the court enters the following:

CONCLUSIONS OF LAW

I.

That the above-entitled Court has jurisdiction over the subject matter and parties of this action.

II.

Every original judgment and sentence is required to have the fingerprints of the defendant affixed to it. RCW 10.64.110.

Based upon the foregoing findings of fact and conclusions of law, the court enters the following:

ORDER

I.

The defendant, VERYL EDWARD KNOWLES, is found in contempt of court.

II.

The remedial sanction of incarceration as authorized by RCW 7.21.030(2)(a) is imposed until the defendant, VERYL EDWARD KNOWLES, is willing to affix his fingerprints to the judgment and sentence.

III.

While the defendant is incarcerated pursuant to this contempt order, he shall receive no credit for time served against the judgment and sentence entered in this cause number or against the judgment and sentence entered in Kitsap County cause number 95-1-01138-0.

IV.

The defendant, VERYL EDWARD KNOWLES, may request a hearing at any time in order to advise the court of his willingness to purge the instant contempt.

V.

The defendant, VERYL EDWARD KNOWLES, shall be brought before the court on _____, at _____ p.m./a.m., and on every _____, thereafter, so that inquiry can be made upon whether the defendant is now willing to purge the instant contempt.

Gagging and binding. There appears to be only one Washington appellate case in which a disruptive defendant was gagged. While affirming the defendant's convictions, *State v. Crawford,* 21 Wn.App. 146,

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79 A defendant's continued refusal to affix his or her fingerprints to the original judgment and sentence can be responded to with the use of force. *See generally* RCW 43.43.750. While the officer who obtains the fingerprints through force has statutory immunity from civil and criminal liability, RCW 43.43.750, it is always preferable for the officer to obtain the fingerprints in open court under the direct order of the judge so that judicial immunity will offer another layer of protection from suit.

150, 584 P.2d 442 (1978), *review denied,* 91 Wn.2d 1013 (1979) does not establish a specific test to be used in determining whether to gag a defendant.

Removal of Defendant. If the defendant is removed from the courtroom, efforts should be made to allow the defendant to still observe the proceedings over a video monitor. *See, e.g., State v. DeWeese,* 117 Wn.2d 369, 380, 816 P.2d 1 (1991). The defendant should periodically be provided with an opportunity to return to the courtroom.

If the removed defendant is pro se, he should be provided the opportunity to write out cross-examination questions for the State's witnesses to either be asked by stand-by counsel or the court with a proper instruction to the jury that the questions are those of the defendant and not those of counsel or the court. *See State v. Estabrook,* 68 Wn.App. 309, 313-14, 842 P.2d 1001, *review denied,* 121 Wn.2d 1024 (1993).

Physical Restraints

The rule that a criminal defendant is entitled to appear at trial free of manacles or bonds is described as "ancient" and was recognized as early as 1722. *State v. Williams,* 18 Wash. 47, 49, 50 P. 580 (1897); *see Illinois v. Allen,* 397 U.S. 337, 344, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970).

This right is based upon the legal principle that a person accused of a crime is presumed innocent until guilt has been established beyond a reasonable doubt. *United States v. Samuel,* 431 F.2d 610 (4th Cir. 1970). Courtroom practices that unnecessarily mark the defendant as dangerous or guilty undermine the presumption of innocence. *Samuel,* 431 F.2d at 614. If a defendant is to be presumed innocent, he or she must be allowed "the indicia of innocence." *Id.*

Shackling or handcuffing a defendant has also been discouraged because it restricts the defendant's ability to assist his counsel during trial, it interferes with the right to testify in one's own behalf, and it offends the dignity of the judicial process. *See Allen*, 397 U.S. at 344; *State v. Finch*, ___Wn.2d ___, 975 P.2d 967, 1999 WL 274135 (May 6, 1999).

In Washington, the constitutional basis for the rule against using physical restraints on an accused is article I, section 22 (amendment 10), which provides: "[i]n criminal prosecutions the accused shall have the right to appear and defend in person[.]" This has been held to mean that if a defendant appears in chains or irons, the jury "must necessarily conceive a prejudice against the accused, as being in the opinion of the judge a dangerous man, and one not to be trusted, even under the surveillance of officers." *Williams,* 18 Wash. at 51.

This right is balanced against the State's interest in an orderly trial. *State v. Maryott,* 6 Wn.App. 96, 103, 492 P.2d 239 (1971). Consequently, the State may take measures to ensure an orderly trial but the measures should not be imposed upon the defendant until a need has been shown, and the control imposed should insure an orderly trial with the least interference with a defendant's rights. *Id.*; *Loux v. United States,* 389 F.2d 911, 919 (9th Cir.), *cert. denied,* 393 U.S. 867 (1968). As a general rule, restraints may be used only when necessary to prevent injury to those in the courtroom, to prevent disorderly conduct at trial, or to prevent escape. *State v. Finch*, ___ Wn.2d ___, 975 P.2d 967, 1999 WL 274135 (May 6, 1999).

The extent to which security measures are necessary is within a trial judge's discretion. *State v. Hartzog,* 96 Wn.2d 383, 400, 635 P.2d 694 (1981). That discretion "must be founded upon a factual basis set forth in the

record." *Id.* To this end, the trial court must conduct a hearing[80] at which the following non-exclusive factors should be considered—

(1) The seriousness of the present charge against the defendant;

(2) The defendant's temperament and character;

(3)The defendant's age and physical attributes;

(4)The defendant's past record;

(5)The defendant's past escapes or attempted escapes, and evidence of a present plan to escape;

(6)Whether the defendant has made any threats to harm others or cause a disturbance;

(7)Whether the defendant has demonstrated any self-destructive tendencies;

(8)The risk of mob violence or of attempted revenge by others;

(9)The possibility of rescue by other offenders still at large;

(10)The size and mood of the audience;

(11)The nature and physical security of the courtroom; and

(12) The adequacy and availability of alternative remedies.

Hartzog, 96 Wn.2d at 400.

It is clear that the existence of one or more factors does not necessarily mean that a defendant should be restrained. Courts must only consider those factors which indicate that "compelling circumstances that some measure [is] needed to maintain security of the courtroom." *Duckett* [*v. Godinez*, 67 F.3d 734] at 748 [(9th Cir. 1995)] (citations omitted). The trial court must base its decision to physically restrain a defendant on evidence which indicates that the defendant poses an imminent risk of escape, that the defendant intends to injure someone in the courtroom, or that the defendant cannot behave in an orderly manner while in the courtroom. To do otherwise is an abuse of the trial court's discretion.

State v. Finch, ___ Wn.2d ___, 975 P.2d 967, 1999 WL 274135, *33 (May 6, 1999) (reversing death sentence and remanding case for new penalty phase on the grounds that the defendant, who was charged with the aggravated first degree murder of a blind man and of a police officer, was improperly restrained during the trial). Unless the defendant has a past history of escape, has acted out during court proceedings, or has been violent during his pre-trial detention, the use of restraints will probably be error. *Finch*, *supra*.

If restraints are found necessary, the court should take steps to conceal the restraints from the jury. Placing skirting on the counsel tables, requiring counsel to remain at the tables during questioning of witnesses, and having the defendant take the witness chair out of the presence of the jury are all appropriate steps to take.

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80 The exact nature of the hearing is not firmly established in Washington. The North Carolina Supreme Court has noted—

> While the cases have established no definitive rule as to the exact form of evidentiary hearing to determine whether shackling of the defendant is necessary, the most prevalent conclusion is that the hearing may be informal and that the ordinary rules of evidence need not be observed, although the trial judge may decide, particularly where the need for physical restraint is controverted, to conduct a full evidentiary hearing with sworn testimony and formal findings of fact.

State v. Tolley, 290 N.C. 349, 226 S.E.2d 353, 368 (1976).

See also State v. Flieger, 91 Wn.App. 236, 955 P.2d 872 (Div. 3 1998), *review denied,* 137 Wn.2d 1003 (1999) (conviction reversed due to failure of trial court to conduct a hearing on the necessity of using a "shock box" to physically restrain defendant during trial; trial court incorrectly noted that it was not the one to determine necessary security precautions, preferring to defer to sheriff's office).

Conflicts of Interest Due to Courtroom Personnel as Witnesses

Prosecution of Freemen often involves testimony from judges, bailiffs, court reporters, and court clerks. A witness judge, bailiff, court reporter, or court clerk should not perform any official duties in the cause in which he or she testifies. The prohibition upon serving as a witness and judge in the same action arises in the Code of Judicial Conduct, ER 605, and the appearance of fairness doctrine.

The prohibition upon court reporters serving as a witness in the same action being reported stems from WAC 308-14-130(6) which requires all court reporters to disclose any actual or potential conflicts of interest and from the appearance of fairness doctrine. The prohibition upon other court officers serving in their official role in a case in which they will or have testified lies in the appearance of fairness doctrine.

Freemen Request for Subpoenas for Judges and Other Elected Officials

While a defendant has a constitutional right to compulsory process, this right is not absolute. The Supreme Court limits the right to compel witnesses to those witnesses who are material to the defense. Error from the denial of a request for compulsory process will only be found if the defendant is "denied access to a 'witness who was physically and mentally capable of testifying to events that he had personally observed, and *whose testimony would have been relevant and material to the defense*.'" *State v. Smith*, 101 Wn.2d 36, 41, 677 P.2d 100 (1984), quoting *Washington v. Texas*, 388 U.S. 14, 23, 18 L. Ed. 2d 1019, 87 S.Ct. 1920 (1967).

The burden is upon the defendant to establish a colorable need for the person to be summoned. *Smith*, 102 Wn.2d at 41-42. This burden is not met by a desire to have the witness testify to irrelevant or inadmissible evidence. *State v. Maupin*, 128 Wn.2d 918, 925, 913 P.2d 808 (1996). Pursuant to this authority, the a court may generally reject requests for subpoenas for the governor, president, and other public servants.

A request for a subpoena for a judge is subject to an even higher level of scrutiny.

> Only in the rarest of circumstances should a judge be called upon to give evidence as to matters upon which he has acted in a judicial capacity, and these occasions, we think, should be limited to instances in which there is no other reasonably available way to prove the facts sought to be established. A record of trial or a judicial hearing speaks for itself as of the time it was made. It should reflect, as near as may be, exactly what was said and done at the trial or hearing.

State ex rel. Carroll v. Junker, 79 Wn.2d 12, 20, 482 P.2d 775 (1971).

"I Cannot Swear"—Challenges to the Witness Oath

Every person who wishes to testify in court must "declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so." ER 603.

The form of the oath may be varied to accommodate a witness' religious beliefs, but some form of swearing in a witness is required. *In re Ross,* 45 Wn.2d 654, 277 P.2d 335 (1954). As a general rule, a witness must: (1) agree to tell the truth or understand that the witness must tell the truth; and (2) understand that a failure to tell the truth will subject the witness to prosecution under the jurisdiction's perjury laws. *See, e.g., United States v. Ward*, 989 F.2d 1015 (9th Cir. 1992).

"You Cannot Ask Me Any Questions"—Cross-Examination of Defendants

Once a criminal defendant takes the stand, the defendant is subject to all rules relating to the cross-examination of witnesses. A criminal defendant's constitutional right to remain silent may not be employed to defeat cross-examination of him as to a subject he has opened on direct examination after voluntarily taking the stand. *State v. Robideau,* 70 Wn.2d 994, 425 P.2d 880 (1967); *State v. Crowder,* 119 Wash. 450, 453, 205 Pac. 850 (1922).

"I Did Not Intend to Violate Your Laws"—Ignorance of the Law and Mens Rea

A statute may punish conduct alone, without making intent an element of the crime. Strict liability crimes are not unconstitutional. *Smith v. California*, 361 U.S. 147, 80 S.Ct. 215, 4 L. Ed. 2d 205 (1959); *State v. Rivas*, 126 Wn.2d 443, 452, 896 P.2d 57 (1995) (citing *State v. Cleppe*, 96 Wn.2d 373, 378, 635 P.2d 435 (1981), *cert. denied*, 456 U.S. 1006 (1982)); *State v. Stroh*, 91 Wn.2d 580, 583-84, 88 P.2d 1182, 8 A.L.R.4th 760 (1979); *Morissette v. United States*, 342 U.S. 246, 72 S.Ct. 240, 96 L. Ed. 288 (1952)); *State v. Winger*, 41 Wn.2d 229, 248 P.2d 555 (1952). Whether intent is an element of a crime depends upon the intent of the legislature. If intent is not made an element, the doing of the prohibited act constitutes the crime. *Stroh*, 91 Wn.2d at 584.

Where a statute does not specify a mental element, legislative intent may be determined by resort to another body of law generally guiding such an inquiry. Although there is no fixed test, courts have considered several factors in deciding whether a criminal statute provides for a strict liability crime where it does not specify a mental element. Whether a mental element is an essential element of a crime is a matter to be determined by the Legislature. *State v. Bash*, 130 Wn.2d 594, 604, 925 P.2d 978 (1996). Thus, deciding whether a statute sets forth a strict liability crime is a statutory construction question aimed at ascertaining legislative intent.

Numerous statutory crimes which are mala prohibita and which are upheld without proof of an evil intent or any mental element at all are crimes that are generally called "public welfare" or "regulatory" offenses. These public welfare offenses—

> are not in the nature of positive aggressions or invasions, with which the common law so often dealt, but are in the nature of neglect where the law requires care, or inaction where it imposes a duty. Many violations of such regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize.

Morissette, 342 U.S. at 255-56.

Examples of public welfare laws that are enacted in the exercise of a legislature's police power and which may be enforced as laws mala prohibita include statutes relating to pure food and drugs, labeling, weights and measures, building, plumbing and electrical codes, fire protection, air and water pollution, sanitation, highway safety and numerous other areas. *Bash*, 130 Wn.2d at 607; *State v. Turner*, 78 Wn.2d 276, 280, 474 P.2d 91, 41 A.L.R.3d 493 (1970).

Generally, a Freeman's claim that the prosecution must prove intent is really an argument that no conviction is possible since the Freeman was unaware of the particular law he or she is accused of violating when the acts underlying the charge were committed. The traditional rule in American jurisprudence is, however, that ignorance of the law is no defense to a criminal prosecution. *Cheek v. United States*, 498 U.S. 192, 199, 111 S.Ct. 604, 112 L.Ed.2d 617 (1991) (citations omitted); *see also Bryan v. United States*, ___ U.S. ___, 118 S.Ct. 1939, 1947, 141 L.Ed.2d 197 (1998) (traditional rule is that "ignorance of the law is no excuse"); *Lambert v. People of the State of California*, 355 U.S. 225, 228, 78 S.Ct. 240, 2 L.Ed.2d 228 (1957) (rule that "ignorance of the law will not excuse" is deeply rooted in American law); *State v. Reed*, 84 Wn.App. 379, 384, 928 P.2d 469 (1997) ("ignorance of the law is no excuse....Furthermore, a good faith belief that a certain activity does not violate the law is also not a defense in a criminal prosecution.").

"I Was Acting in Self Defense in Response to Your Violence"—The Defense of Necessity

Freemen will frequently contend that they filed a lien, served a bill of particulars, represented a friend, etc. in defense of themselves or others who had been kidnapped by the government (arrest), subject to extortion (bail or plea bargaining), or other similar crime. No Washington case exists that allows an individual to raise a claim of "self-defense" outside the context of an assault or murder prosecution. To the extent non-assault or murder cases allow a justification defense, the defense is limited to that of "necessity." *See, e.g., State v. Jeffrey*, 77 Wn.App. 222, 225-26, 889 P.2d 956 (1995) (necessity defense in unlawful possession of a firearm prosecution); *State v. Niemczyk*, 31 Wn.App. 803, 644 P.2d 759 (1982) (necessity defense to escape charge); *State v. Diana*, 24 Wn.App. 908, 604 P.2d 1312 (1979) (medical necessity defense to marijuana charges); *State v. Pittman,* 88 Wn.App. 188, 943 P.2d 713 (Div. 1 1997) (medical necessity); *State v. Williams,* ___ Wn.App. ___, 968 P.2d 26 (Div. 2 1998) (medical necessity).

A necessity defense will rarely be available to a defendant. The defense is available when the physical forces of nature or the pressure of circumstances[81] cause the accused to take unlawful action to avoid a harm which social policy deems greater than the harm resulting from a violation of the law. *Diana*, 24 Wn.App. at 913. But,

> if there [is] a reasonable, legal alternative to violating the law, "a chance both to refuse to do the criminal act and also to avoid the threatened harm," the defense will fail. LaFave & Scott 379.

United States v. Bailey, 444 U.S. 394, 410, 100 S.Ct. 624, 635, 62 L.Ed.2d 575 (1980). *Accord, Diana*, 24 Wn.App. 913-14.

For the defense to succeed, the defendant must prove by a preponderance of the evidence that: (1) the defendant believed the commission of the crime was necessary to avoid or minimize a harm, (2) the harm sought to be avoided was greater than the harm resulting from the violation of the law, (3) no legal alternative existed, and (4) the defendant did not recklessly place himself or herself in a situation where the defendant would be forced to engage in criminal conduct. *State v. Jeffrey*, 77 Wn.App. 222, 225, 889 P.2d 956 (1995); *State v. Gallegos*, 73 Wn.App. 644, 651, 871 P.2d 621 (1994). Most Freemen claims of necessity will fail the third and fourth prongs of the test.

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81 More recent cases hold that the "pressure" that led to the illegal actions must come from a force of nature and not from people.

See, e.g., State v. Jeffrey, 77 Wn.App. 222, 225, 889 P.2d 956 (1995) (necessity defense not available to a defendant who recklessly places himself in a situation where he would be forced to engage in criminal conduct); *State v. Turner*, 42 Wn.App. 242, 247, 711 P.2d 353 (1985), *review denied*, 105 Wash.2d 1009 (1986) (trial court properly refused to instruct jury on defense of necessity, even though defendant had been threatened with harm to herself and her husband if she refused to carry drugs to husband in penitentiary); *State v. Gallegos*, 73 Wn.App. 644, 871 P.2d 621 (1994) (friend's need for assistance insufficient to support a jury instruction on the necessity defense in an attempting to elude a police vehicle prosecution).

Jury Nullification

Jury nullification[82] is permitted in some jurisdictions, such as Indiana,[83] where the jury decides both the facts and the law. In Washington, however, the jury only decides the facts and the law is provided by the judge. Wash. Const. art. IV, § 16 ("[j]udges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law."). While juries have the power to ignore the law through their verdicts, courts have no obligation to tell them they may do so. *See, e.g., United States v. Edwards,* 101 F.3d 17, 19 (2d Cir. 1996); *United States v. Powell,* 955 F.2d 1206, 1212 (9th Cir. 1991); *United States v. Krzyske,* 836 F.2d 1013 (6th Cir.), *cert. denied,* 488 U.S. 832 (1988); *State v. Meggyesy,* 90 Wn.App. 693, 958 P.2d 319, 322, *review denied,* 136 Wn.2d 1028 (Div. 1 1998); *State v. Bonisisio,* 92 Wn.App. 783, 793-94, 964 P.2d 1222 (Div. 2 1998), *review denied,* 137 Wn.2d 1024 (1999) (citing *Meggyesy* with approval).

A party's arguments to the jury regarding the law is limited to the law as defined by the court. *State v. Rice,* 110 Wn.2d 577, 601-02, 757 P.2d 889 (1988), *cert. denied,* 491 U.S. 910 (1989). Accordingly, it is improper for a defendant to argue that the jury may acquit once it finds that the defendant's guilt is clear beyond a reasonable doubt.

Testimony Regarding the Law

By constitution, the judge is responsible for determining the law that is applicable to a particular case. *See* Wash. Const. art. IV, 16; *State v. Meggyesy*, 90 Wn.App. 693, 704, 958 P.2d 319, *review denied*, 136 Wn.2d 1028 (Div. 1 1998). It is a usurpation of this obligation for any witness to attempt to establish what the law is in a particular action. *See, e.g., State v. O'Connell*, 83 Wn.2d 797, 816, 523 P.2d 872 (1974); *Valley Land Office, Inc. v. O'Grady*, 72 Wn.2d 247, 253-54, 432 P.2d 850 (1967); *Marx & Co., Inc. v. Diners Club Inc.*, 550 F.2d 505 (2d Cir.), *cert. denied*, 434 U.S. 861(1977) (error to allow securities expert to testify as to the legal obligations of the parties to a contract; "It is not for witnesses to instruct the jury as to applicable principles of law, but for the judge. As Professor Wigmore has observed, expert testimony on law is excluded because 'the tribunal does not need the witness' judgment'."); 32 C.J.S. *Evidence* 546 (86), at 314-17 (1964); 7 Wigmore, *Evidence* 1952 (3d ed. 1940). Thus, neither a Freeman defendant nor any other witness may testify regarding the scope of the law of searches, the validity of any statute, the need for a grand jury indictment, nor whether any actions taken in the prosecution were illegal.

To the extent that the Freeman defendant wishes to get Freemen views about the law before the jury, the appropriate way is through jury instructions. A Freeman defendant's proposed instructions, if they accurately state the law and are relevant to the charges filed, should be tendered to the jury. No instruction proposed by a Freeman defendant, however, that is inaccurate in any way should be included in the instructions to the jury. *See generally State v. Robinson*, 92 Wn.2d 357, 361, 597 P.2d 892 (1979).

Juror Protection

Since most Freemen jury trials will be tried by pro se defendants, the prosecutor has a duty to bring appropriate motions in limine to restrict the areas of inquiry in order to preserve the jurors privacy. A motion to preclude the questioning of jurors about their religious views should almost always be brought. *See* Wash. Const. art. I, § 11. In all felony cases, a juror protective order that restricts both the State and the defendant from initiating any post-verdict contact with the jurors absent specific court approval should be obtained prior to jury selection. *See generally State v. Finch,* ___ Wn.2d ___, 975 P.2d 967, 1999 WL 274135, *43 (May 6, 1999) (upholding an order restricting the parties or their agents from initiating contact with jurors post-verdict).

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82 Andrew D. Leipold, *Rethinking Jury Nullification,* 82 Va.L.Rev. 253 (1996) ("Nullification occurs when the defendant's guilt is clear beyond a reasonable doubt, but the jury, based on its own sense of justice or fairness, decides to acquit.")

83 Article 1, § 19 of the Indiana Constitution, provides: "In all criminal cases whatever, the jury shall have the right to determine the law and the facts."

INFRACTIONS

The Infraction Calendar

A common intersection between Freemen culture and our legal culture occurs on the traffic infraction calendar. The concept of traffic laws is foreign to many Freemen and is frequently believed to be a violation of the constitutional right to travel.[84] An additional problem is that the Common Law (following Posse Comitatus dogma) does not recognize "non-victim crimes" such as speeding which do not result in damage to another individual's person or property. Finally, Freemen, who have signed their driver's licenses with the phrase "refused for fraud" or who have simply returned their driver's license to the Department of Licensing,[85] believe that they have opted out of the state and federal adhesion "contracts" which allows for the imposition of traffic rules, regulations, and fines.

Many of the issues discussed in the criminal prosecution section of these materials will arise during civil infraction proceedings and will not be repeated here. There are, however, some issues that are unique to traffic infractions because of their civil nature.

Most Freemen will request a contested hearing on an infraction. They will appear promptly and be respectful throughout the proceeding, which they will generally lose. The loss will almost certainly be followed by the filing of a RALJ appeal. This is the point at which most prosecutors become involved.

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84 It has been long established that states may rightfully prescribe uniform regulations necessary for public safety and order in the operation upon its highways of motor vehicles and the state may require the licensing of drivers. *E.g., Hendrick v. Maryland,* 235 U.S. 610, 59 L.Ed. 385, 35 S.Ct. 140 (1915); *Spokane v. Port,* 43 Wn.App. 273, 275-76, 716 P.2d 945, *review denied,* 106 Wn.2d 1010 (1986).

85 Washington traffic laws apply to everyone who operates a vehicle upon our highways regardless of whether or not they have a driver's license or whether they are a resident of the state. RCW 46.08.070; RCW 46.20.022.

Along with their Common Law sovereignty philosophy, Freemen often assert the following sophomoric statutory analysis in support of their position that Title 46 RCW (Washington's traffic code) does not apply to their activities. Their arguments rely heavily on the use of a thesaurus, and go something like this—

> RCW 46.20.022 says that Title 46 applies to any "person" who "operates" a "motor vehicle" on public highways regardless of residency or driver's license status.
>
> A Freemen is not a "person" as defined in RCW 46.04.405 ("'Person' includes every natural person, firm, copartnership, corporation, association, or organization.") but rather a human being. Thus, Title 46 does not apply. [*See* also *"I am not a Person but a Human Being," supra.*]
>
> A Freemen does not "operate" a motor vehicle as defined in RCW 46.04.370 ("'Operator or driver' means every person who drives or is in actual physical control of a vehicle."), but rather runs, pilots, uses, or sets in motion. Thus, Title 46 does not apply.
>
> A Freemen is not operating a "vehicle" as defined in RCW 46.04.670 ("'Vehicle' includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway..."), i.e. a "device," but rather a mechanical contraption or conveyance." Thus, Title 46 does not apply.
>
> A Freemen is not operating a "motor vehicle" as defined in RCW 46.04.320 ("'Motor vehicle' shall mean every vehicle which is self-propelled...") because the mechanical contraption is not self-propelled. A human being must use a key to start the contraption and keep it running, and a human being must also put the contraption in gear, depress the gas pedal, and steer it. The contraption is unable to run on its own. Thus, Title 46 does not apply.

RALJ Appeal—Waiver of Fees

Many Freemen are in economic distress. This means that they will generally be seeking a waiver of the superior court filing fee and other costs of appeal. In responding to this request, it is critical to recall that traffic infractions are civil. *City of Bremerton v. Spears,* 134 Wn.2d 141, 150, 949 P.2d 347 (1998); RCW 46.63.010; RCW 46.63.120(1).

There is no constitutional right to appeal in civil cases; the right exists in civil cases when granted by the legislature or at the discretion of the court. *City of Bremerton v. Spears,* 134 Wn.2d 141, 148, 949 P.2d 347 (1998); *In re Dependency of Grove,* 127 Wn.2d 221, 239, 897 P.2d 1252 (1995).

A right to appeal an order entered in a traffic infraction matter has been granted by the legislature. RCW 2.08.020; IRLJ 5.2. This right, however, is not accompanied with legislation authorizing the appeal to be prosecuted at public expense. In fact, the only general legislative grant for public funds for appeals is limited to those occasions for which a litigant has a constitutional right to appeal. *See* RCW 4.88.330 (limits provision of counsel and other costs to those cases where it has been judicially determined that the indigent party has a constitutional right to obtain review).

Absent legislation that specifically authorizes the expenditure of public funds to allow an indigent citizen to appeal a finding that he or she committed a traffic infraction, no municipal, district, or superior court,[86] can provide public funds for an attorney, preparation of transcripts, or preparation of the record. *See, e.g., Moore v. Snohomish County,* 112 Wn.2d 915, 774 P.2d 1218 (1989) (fees of expert witness appointed by court pursuant to court rule could not be paid out of public funds in the absence of express language authorizing the expenditure); *Honore v. State Board of Prison Terms,* 77 Wn.2d 660, 678, 466 P.2d 485 (1970) (courts have no power over public funds collected for public purposes absent legislative authorization); Const. article 8, § 4 (amendment 11) (no funds can be disbursed from the public treasury except upon appropriation).

This means that the individual who is appealing the finding an infraction was committed must pay the $40.00 record preparation fee, RCW 3.62.060(7), and the cost of transcripts in order to proceed.

Case law, however, establishes that even in the absence of an express statute, a court has the inherent authority to waive **its own** filing fee. *See, e.g., Ashley v. Superior Court,* 83 Wn.2d 630, 521 P.2d 711 (1974); *O'Connor v. Matzdorff,* 76 Wn.2d 589, 458 P.2d 154 (1969).[87] The Washington Supreme Court, however, has refused to—

> say that, in every action brought or appeal pursued by a poor person, his court fees should be automatically waived. If an action or petition is patently frivolous, or brought for

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86 The Washington Supreme Court—

> has the inherent power to waive the fees and costs of litigation in civil cases in those rare cases where justice demands it. *Saylors,* 87 Wn.2d at 742; *O'Connor v. Matzdorff,* 76 Wn.2d 589, 458 P.2d 154 (1969). We have held that in such cases, a litigant must prove indigency, good faith in bringing the appeal, probable merit of the issues raised and, further, that a miscarriage of justice has occurred. *In re Lewis,* 88 Wn.2d 556, 559, 564 P.2d 328 (1977); *Saylors,* 87 Wn.2d at 743; *Bowman v. Waldt,* 9 Wn.App. 562, 571, 513 P.2d 559 (1973). Additionally, the court, in determining whether to exercise its inherent power, may properly consider not only the interests of the indigent litigant, but the interest of the general public and other affected individuals as well. *Bowman,* 9 Wn.App. at 571.

Grove, 127 Wn.2d at 241.

An example of how compelling a showing of need must be for a court to authorize the expenditure of public funds is demonstrated in the *Grove* case. The third litigant in *Grove*, whose request for public funds was **denied**, was a worker who claimed that exposure to industrial chemicals resulted in an occupation-related illness. Pursuant to RCW 51.52 of the worker's compensation statute, the case was appealed first to the Board of Industrial Insurance Appeals which found in favor of the worker, and then to the superior court where a jury rendered a verdict in favor of the employer. *Grove,* 127 Wn.2d at 237 and 241.

87 The rule announced in the *Ashley* and *O'Connor* cases means that the $110.00 filing fee, RCW 36.18.020(2)(b), may be waived by the **superior** court. The district or municipal court, however, has no jurisdiction to waive the filing fee of another court. If a court of lower jurisdiction enters such an order, it is worth the effort to bring a CRLJ 60(b) motion to vacate the order to avoid future improper expenditure of public monies.

> purposes of harassment, the court should not lend its encouragement by waiving its fees. But where a case appears to have been brought in good faith and to have probable merit, the exercise of a sound discretion dictates that a litigant should not be denied his day in court simply because he is financially unable to pay the court fees.

O'Connor, 76 Wn.2d at 603. A mere finding that an appeal is not patently frivolous is not sufficient to justify waiver of fees. Rather, the judge being asked to approve the waiver must find that the indigent appellant has a significant chance of prevailing on appeal. *Carter v. University,* 87 Wn.2d 483, 554 P.2d 338 (1976).

In order to obtain a waiver of a filing fee, the Freeman defendant must establish: (1) good faith; (2) indigency; and (3) probable merit. In our experience, the application for waiver of filing fee can generally be opposed under the indigency or probable merit prongs.

RALJ Appeal—Waiver of Fees—Indigency

The burden of proof of establishing indigency is on the party seeking appellate review. *State v. Clark,* 88 Wn.2d 533, 534, 563 P.2d 1253 (1977). General statements of need are insufficient to satisfy the burden. *Jefferson v. United States,* 277 F.2d 723, 725 (9th Cir.), *cert. denied,* 364 U.S. 896 (1960) (where affidavits in support of motion of defendant in Court of Appeals for leave to pursue his appeal in forma pauperis recited that defendant was unable to pay costs but failed to state that he could not give security therefor, and did not state defendant's poverty with some particularity, definiteness and certainty, motion would be denied); *Dreyer v. Jalet,* 349 F.Supp. 452, 459 (S.D. Tex. 1972), *aff'd,* 479 F.2d 1044 (5th Cir. 1973) ("In order to preclude fraudulent or careless motions of poverty, the applicant moving for in forma pauperis status should state 'with some particularity, definiteness and certainty' the facts as to his poverty…Further, when the totality of the circumstances involved are weighed against the applicant's statement of poverty, and the result suggests incongruity, the Court may go beyond the mere statement of income and inquire into additional relevant matters including the applicant's earning capacity and ability." (citations omitted)); *Bey v. Syracuse University,* 155 F.R.D. 413, 92 Ed. Law Rep. 875 (N.D.N.Y. 1994) (plaintiffs' motion to proceed in forma pauperis denied because plaintiffs did not submit an affidavit which the court considered statutorily sufficient).

In order to prevail on a claim of indigency, the Freeman must demonstrate by a preponderance of the evidence that the funds to which the Freemen has access, whether in an account in the Freeman's name or in the custody of another, are insufficient to pay the expected costs of litigation and still meet the Freeman's personal needs. *State v. Rutherford,* 63 Wn.2d 949, 953-54, 389 P.2d 895 (1964) ("Indigence is a relative term, and must be considered and measured in each case by reference to the need or service to be met or furnished"; the burden rests upon a defendant to demonstrate to the satisfaction of the court, by affidavit or otherwise, his inability to advance or secure the costs of litigation); *State v. Buelow,* 122 Wis.2d 465, 363 N.W.2d 255, 258 (1984) (to sustain a claim of indigency, defendant must prove by a preponderance of the evidence that he or she is financially unable to afford the costs of litigation; a defendant's claim of indigency certainly should be rejected when he puts his own assets into others' names and those assets remain at his disposal); *Braden v. Estelle,* 428 F.Supp. 595 (S.D. Tex. 1977) (because inmates are provided the necessities of life, even small bank accounts may be able to afford the costs of litigation).

Courts have found inmate assets of far less than $2000.00 to be adequate to fund the costs of litigation. *See, e.g., Temple v. Ellerthorpe,* 586 F.Supp. 848, 851 (D. R.I. 1984) (surveying cases in which in forma pauperis status was denied for prisoners who had access to funds ranging from $45.00 to $500.00).

RALJ Appeal—Waiver of Fees—Probable Merit

Many Freemen applications for waiver of filing fees and/or notice of RALJ appeal will establish a disagreement with the factual determination made by the district or municipal court. The RALJ court, however, is barred from second-guessing the factual determinations of the district court. RALJ 9.1(b). Mere disagreement over factual matters will not, therefore, provide a basis for waiving the filing fee since probable merit on appeal cannot be shown on that basis.

Another common issue identified in an application for waiver of filing fee is the contention that the district or municipal court erred by considering the officer's statement on the citation. This claim will not provide a basis for waiving the filing fee if the district or municipal court record does not contain a timely, written demand by the defendant that the officer attend the hearing. *See* RCW 7.80.100.

The late filing of the notice of infraction is another frequent situation. IRLJ 2.2(d), however, grants the district or municipal court the discretion to dismiss an untimely notice of infraction without prejudice. Because the burden of establishing an abuse of discretion is so high and because any dismissal is without prejudice which would allow the refiling of the infraction, *see* IRLJ 2.2(b) and (c), this claim will not provide a basis for waiving the filing fee.

The fourth most frequent claim that will be asserted in a Freeman RALJ infraction appeal is that the case should have been dismissed because the plaintiff was not represented at the hearing. This practice, however, is authorized by RCW 7.80.090(3), and will not provide a basis for waiving the filing fee.

RALJ Appeal—Cost Awards

If a traffic infraction appeal does proceed, the prevailing party is entitled to certain costs on appeal. If the prosecution was the respondent, the costs will generally be limited to the $125.00 statutory attorney fees available in civil cases. *See generally* IRLJ 5.2 ("An appeal from a court of limited jurisdiction is governed by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction."); RALJ 9.3(c)(1) ("Expenses Allowed as Costs…(1) statutory attorney fees allowed for a superior court nonjury trial"); *State v. Obert,* 50 Wn.App. 139, 747 P.2d 502 (1987) (statutory attorney fees are only allowed in civil cases); RCW 4.84.010(6); RCW 4.84.080(1).

RCW 46.63.151 does not preclude this award because RALJ 1.1(d) and (e) make it clear that RALJ 9.3(c)(1) supersedes RCW 46.63.151 since RCW 46.63.151 was adopted after RALJ 9.3, and yet, it does not specifically reference RALJ 9.3(c)(1) by number. In addition, RCW 7.80.140, which specifically applies to civil infraction cases, authorizes the court to award attorney fees.

Further Review

The availability of post-superior court review of traffic infractions is extremely limited. *See generally City of Bremerton v. Spears, supra*. The cost of such an appeal is high, and the procedure for obtaining a waiver of the filing fee is cumbersome. *See* RAP 15.2(b)(3) and (c).

CITIZEN COMPLAINTS

The Citizen Complaint Court Rule Is Unconstitutional

A recent form of retaliation being experienced by prosecutors, judges, law enforcement officers, and other public officials who come into contact with Freemen is the filing of citizen complaints by Freemen. Many of these "citizen complaints" seek to charge various federal felonies and constitutional crimes. These complaints are generally sent by the Freemen to the local United States Attorney for processing.

Some of the citizen complaints, however, are filed in courts of limited jurisdiction pursuant to CrRLJ 2.1(c). These complaints allege crimes including unlawful practice of law in violation of RCW 2.48.180, official misconduct in violation of RCW 9A.80.010, search without warrant in violation of RCW 10.79.045, corporation doing business without license in violation of RCW 9.24.040, and misprison of treason in violation of RCW 9.82.030.

There is virtually no case law regarding the proper court procedure for dealing with an application for a citizen complaint. Further, the constitutionality of the citizen complaint process, which allows the judicial branch to impinge upon the executive branch's discretionary charging authority, is questionable.

It is the Kitsap County Prosecutor's Office's position that CrRLJ 2.1(c) is a judicial usurpation of a legislative and executive function, and accordingly violates the separation of powers doctrine. We have been successful in getting citizen complaints dismissed by the Kitsap County District Court based on this argument. *See Lorraine Kirtley v. Diane Frost, Carol Rainey, Michael Stowell, and Does 1-100,* Kitsap County District Court No. 980000004. A copy of the court's Findings of Fact and Conclusions of Law is attached in the Appendix, at 38-44. Our memorandum of authorities regarding the unconstitutionality of CrRLJ 2.1(c) is as follows—

THE CITIZEN COMPLAINT RULE IS AN UNCONSTITUTIONAL USURPATION BY THE JUDICIAL BRANCH OF THE EXECUTIVE BRANCH'S POWER TO DECIDE WHO IS OR IS NOT CHARGED WITH VIOLATION OF THE CRIMINAL LAWS

CrRLJ 2.1(c), governing a request for citizen complaint, provides as follows in pertinent part—

> **(c)Citizen Complaints.** Any person wishing to institute a criminal action alleging a misdemeanor or gross misdemeanor shall appear before a judge empowered to commit persons charged with offenses against the State, other than a judge pro tem. The judge may require the appearance to be made on the record, and under oath. The judge may consider any allegations on the basis of an affidavit sworn to before the judge. The court may also grant an opportunity at said hearing for evidence to be given by the county prosecuting attorney or deputy, the potential defendant or attorney of record, law enforcement or other potential witnesses. The court may also require the presence of other potential witnesses.
>
> In addition to probable cause, the court may consider:
>
> (1) Whether an unsuccessful prosecution will subject the State to costs or damage claims under RCW 9A.16.110, or other civil proceedings;
>
> (2) Whether the complainant has adequate recourse under laws governing small claims suits, anti-harassment petitions or other civil actions;
>
> (3) Whether a criminal investigation is pending;

(4) Whether other criminal charges could be disrupted by allowing the citizen complaint to be filed;

(5) The availability of witnesses at trial;

(6) The criminal record of the complainant, potential defendant and potential witnesses, and whether any have been convicted of crimes of dishonesty as defined by ER 609; and

(7) Prosecution standards under RCW 9.94A.440.

If the judge is satisfied that probable cause exists, and factors (1) through (7) justify filing charges, and that the complaining witness is aware of the gravity of initiating a criminal complaint, of the necessity of a court appearance or appearances for himself or herself and witnesses, of the possible liability for false arrest and of the consequences of perjury, the judge may authorize the citizen to sign and file a complaint in the form prescribed in CrRLJ 2.1(a). The affidavit may be in substantially the following form…

The separation of powers doctrine is not expressly set forth in either the United States or Washington constitution, but is nonetheless considered a fundamental tenet of our political structure. *In re Juvenile Director,* 87 Wn.2d 232, 237-245, 552 P.2d 163 (1976) (lengthy historical discussion of separation of powers and checks and balances doctrines). The separation of powers doctrine has some different meanings depending upon context, but its core concern is with protecting the powers and duties of the three branches of government. Although some small overlap can occur without violating the doctrine, one branch of government can not assume or exercise the power or duties of another branch, nor act to deprive the others of their lawful powers. *Id.; State Bar Association v. State,* 125 Wn.2d 901, 907, 890 P.2d 1047 (1995); *State v. Blilie,* 132 Wn.2d 484, 939 P.2d 691 (1997).[88]

The criminal prosecution function is an executive branch responsibility. Both the county Prosecuting Attorney and the state Attorney General are executive officials. *See, e.g.,* Wash. Const. Art. III, §1 (Attorney General is member of executive branch); *State v. Campbell,* 103 Wn.2d 1, 25-26, 691 P.2d 929 (1984), *cert. denied,* 471 U.S. 1094, 105 S.Ct. 2169, 85 L.Ed.2d 526 (1985) (recognizing prosecuting attorney as executive branch official); *State ex rel. Schillberg v. Cascade District Court,* 94 Wn.2d 772, 781-782, 621 P.2d 115 (1980) (same); *State v. Thorne,* 129 Wn.2d 736, 762, 921 P.2d 514 (1996) (same). The courts, of course, are members of the judicial branch of government. Wash. Const. Art. IV, §1.

The decision to file or not file charges, or the number of such charges, is a matter left to the discretion of the prosecuting attorney. *State v. Ammons,* 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796, *cert. denied,* 479 U.S. 930, 107 S.Ct. 398, 93 L.Ed.2d 351 (1986); *State v. Lewis,* 115 Wn.2d 294, 797 P.2d 1141 (1990). The prosecutor is given "wide" discretion since he must necessarily consider both the strength of the case and the public interest before making the charging decision. *Bordenkircher v. Hayes,* 434 U.S. 357, 54 L.Ed.2d 604, 98 S.Ct. 663 (1978); *State v. Judge,* 100 Wn.2d 706, 713, 675 P.2d 219 (1984).

The Constitution of this state authorized the Legislature to establish the powers and duties of the county prosecutor. Wash. Const. Art. XI § 5. It has responded by adopting chapter 36.27 RCW. One of the express duties imposed is to "Prosecute *all* criminal and civil actions in which the state or county may be a party…." RCW 36.27.020(4) (emphasis added). No legislation has been found that grants any portion of that power to the

[88] Court rulings, including the common law as well as court rules and regulations, are subject to constitutional challenges. *Gossett v. Farmer's Insurance,* 133 Wn.2d 954, 975, 948 P.2d 1264 (1997).

judiciary or to a private citizen of this state.[89] The Legislature however has seen fit to authorize another executive branch officer, the Attorney General, to seek criminal prosecution in some instances. *See* RCW 43.10.232; RCW 10.01.190.

CrRLJ 2.1 violates the separation of powers doctrine on two levels. First, it appears that the judiciary, through its own rule, is taking on the executive function of filing and prosecuting criminal charges, or is asserting that it can delegate that authority to a private citizen, who may or may not even be an attorney. This is a clear invasion of executive authority. *State v. Lewis, supra*. The Legislature has not seen fit to give this power or oversight to the judicial branch. The judiciary can not assume this power on its own.

Second, if the rule is interpreted to mean that the court can order the prosecutor's office to act upon the newly filed charge, it fails since the court has not been granted such authority by the Legislature, nor does it have inherent authority to do so. *Westerman v. Cary,* 125 Wn.2d 277, 298, 885 P.2d 827 (1994); *Ladenburg v. Campbell,* 56 Wn.App. 701, 784 P.2d 1306 (Div. 2 1990) (district court judge had no power to appoint special prosecutor to handle case that prosecutor refused to proceed with). Indeed, since the power to initiate charges is exclusively an executive one, the courts simply could not claim such authority. *State v. Lewis, supra* (number and nature of charges left to the prosecuting attorney).

The policy argument that a judicial citizen review process is a necessary check on the prosecutor's powers is one which must be addressed to the Legislature, not the courts. *See, e.g., Waggoner v. Ace Hardware,* 134 Wn.2d 748, 755, 953 P.2d 88 (1998). To the extent such a check was seen as necessary, the Legislature has provided for the Attorney General to intervene in appropriate criminal cases. RCW 43.10.232. The Legislature has not seen fit to give the courts that power.[90]

CrRLJ 2.1(c) is a judicial usurpation of a legislative branch decision to delegate to the executive branch the power to decide who is or is not charged with violation of Washington's criminal laws. CrRLJ 2.1(c) violates the separation of powers doctrine, and accordingly is unconstitutional.

The court's usurpation of the charging power presents multiple problems in the Freemen context due to the fact that most citizen complainants will provide the court with a one-sided version of events and the citizen complainants, unlike a prosecuting attorney or an attorney general exercising prosecutorial functions, is not subject to RPC 3.8's duty of fairness to the potential defendant. The following procedure is designed to reduce the potential for harassment of innocent "defendants" until the constitutionality of CrRLJ 2.1(c) is fully established.

Model Procedure

Prior to the Kitsap County District Court holding CrRLJ 2.1(c) unconstitutional, the court established the following procedure for dealing with applications for citizen complaints. This procedure allows for ample prosecutor input.

1.A court file is opened that bears the case name "[Name], Complainant v. [Name(s)], Potential Defendant(s)" and a special citizen complaint cause number is assigned.

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[89] A territorial statute which survived until modern times authorized an indictment obtained by a "private prosecutor" and also made the complainant liable for costs if maliciously brought. *See* former RCW 10.28.160; repealed by c. 67, 1971 ex. Sess., §20. The only case construing that statute arose after a jury acquitted the defendant, assessed costs against the complaining witness, and then jailed him pending payment. *In re Permstick,* 3 Wash. 672, 29 Pac. 350 (1892).

[90] The Legislature knows how to do so when it desires, as can be seen in another statute dating from territorial days, RCW 10.16.110. There the Legislature empowered the superior court to direct a prosecutor to proceed with a case after an indictment has been returned by a grand jury if the court is not satisfied with the prosecutor's written reasons for refusing to prosecute. The Legislature has not seen fit to create a similar check on the prosecutor's decision not to file an information or complaint.

2.A summons is sent to the complainant by the court staff for a hearing before an elected judge for the determination of probable cause. Notice of this hearing along with a copy of the application is sent to the county prosecuting attorney and, in appropriate cases, to any public servant who has been listed as a defendant in the application for citizen complaint.

3.At the hearing, the complainant is provided an opportunity to present the facts that will support the charge and reasons why the court should authorize a citizen complaint to be filed. Any potential defendant who wishes to speak to the court is given an opportunity to do so. Finally, the prosecutor's office is given an opportunity to address the adequacy of the showing and the seven factors contained in CrRLJ 2.1(c). Aside from lack of probable cause, the most common grounds for opposing the citizen complaint are: (1) prosecution is contrary to legislative intent, RCW 9.94A.440(1)(a); (2) antiquated statute, RCW 9.94A.440(1)(b); (3) improper motives of complainant, RCW 9.94A.440(1)(g); and (4) unconstitutionality of CrRLJ 2.1(c).

4.If the request for the filing of a citizen complaint is denied, a formal order with findings of fact and conclusions of law should be drafted by the prosecutor and entered. The court's findings should cover every element of crimes the Freemen may have committed in the filing of the citizen complaint (such as malicious prosecution and/or intimidating a judge or public servant). If the request is granted, a complaint will then be ordered to be filed. It is anticipated that such a complaint will be entitled "State of Washington ex rel. [Name], Complainant v. [Name(s)], Defendant(s)".

Who prosecutes a filed and authorized citizen complaint is far from clear. The ethical obligations of prosecutors may prevent the prosecutor from proceeding with the case if a conviction is unlikely or the prosecution is contrary to the office's standards. *See, e.g.,* RPC 3.8; 1 American Bar Association, *Standards for Criminal Justice* §§ 3.6, 3.7, 3.9 (2d ed. 1980). The citizen/victim may wish to further control the processing of the case and the ultimate sentencing recommendation, even though a victim's wishes, though relevant to a prosecution, is not dispositive. *See, e.g., State v. Garrison,* 71 Wn.2d 312, 315, 427 P.2d 1012 (1967) (the opinion of the victim of a crime regarding whether the defendant is guilty of the offense is irrelevant to the issue of whether there is sufficient evidence to support a verdict); *State v. Haga,* 8 Wn.App. 481, 491-92, 507 P.2d 159, *review denied,* 82 Wn.2d 1006 (1973) (same).

A citizen complaint is not required to be dismissed if the prosecutor does not agree to proceed, and the district court lacks the power to appoint a special attorney. *Ladenburg v. Campbell,* 56 Wn.App. 701, 784 P.2d 1306 (1990); *Eggan v. State*, 4 Wn.App. 384, 481 P.2d 571 (1971). The citizen complainant should, therefore, have to retain his or her own attorney. Public funds, of course, do not exist for such an appointment. *Cf.* Const. art. I, § 35 ("This provision shall not constitute a basis…for providing a victim or the victim's representative with court appointed counsel").

For further discussion on this issue, at least by analogy, *see Westerman v. Cary,* 125 Wn.2d 277, 892 P.2d 1067 (1994) (prosecutor's representation of two public bodies with directly adverse positions ruled a conflict necessitating appointment of a special prosecutor) and *Osborn v. Grant County,* 130 Wn.2d 615, 926 P.2d 911 (1996) (while prosecutor had conflict of interest in representing clerk in a position contrary to commissioners, prosecutor had no duty to bring litigation on behalf of county officer against the county; appointment of special prosecutor improper so superior court award of public monies for attorney's fees reversed).

Post-District Court Review

At least one individual whose application for citizen complaint was denied has sought review of that decision by the superior court pursuant to a "writ of error." The Kitsap County Prosecuting Attorney's Office takes the position that a criminal action is only begun by the actual filing of a complaint. Because the denial of an application for citizen complaint occurs prior to the actual initiation of a criminal proceeding, the case is civil in nature and the aggrieved person's ability to obtain a waiver of the filing fee and/or the preparation of the record is limited to the same degree as any other civil appellant.[91]

91 A full discussion of the law concerning indigent civil appeals is contained in the *Infraction* section of these materials, *supra*.

COPING WITH FREEMEN DOCUMENTS

The variety of documents that have been filed by Freemen in various state offices is staggering. A non-exhaustive list includes—

- In a felony theft prosecution: (1) a "Part One Non-Statutory Abatement" from the "supreme Court, Kitsap county, Washington;" (2) an "Order to Quash" and a "Part Two Non-Statutory Abatement from the Supreme Court, Washington State Republic, Common Law Venue;" (3) a notice of removal of action from the "Supreme Court, Washington State Republic, Common Law Venue;" and (4) a writ of habeas corpus from "in the venue of the Kingdom Of God under the jurisdiction of God's Law, Kingdom Of The Lord Ecclesiastical Common Law Court, Ecclesiastical Court and common law Court with original and exclusive jurisdiction, our one supreme Court, Washington state republic, common law venue "in and for the People of the Kingdom Of The Lord located as de jure Washington state republic, Kingdom of God."
- A "Distress (Bonded)" which instructed the bank to "distress All of the funds of the Lewis County Treasury, which are held in your case and custody and trust, until this Distress is satisfied."
- In a felony theft prosecution: (1) a 31 page document entitled "Constructive Notice of Non-Judicial/Pre-Judicial Commercial Process and Intent to File Security Instrument and Commercial/Common Law Lien" that was recorded with the Kitsap County Records Department. The Freemen document sought $7,914,100.00 from two superior court judges, the prosecuting attorney, a deputy prosecuting attorney, and a legal assistant for prosecuting the Freemen lien filer without a grand jury indictment, for causing the issuance of bench warrants, for compelling the defendant to submit samples of his handwriting, and for generally violating their oaths of office; and (2) UCC-2 Fixture Filings and Claims of Commercial Liens against the property of the prosecuting attorney, a deputy prosecuting attorney, and two superior court judges.
- A Declaration of Independence which purportedly expatriated the declarant's "res in trust to the foreign jurisdiction known as the municipal corporation of the District of Columbia …". This declaration was served by mail upon Ralph Munro, Christine Gregoire, Madeleine Albright, Janet Reno, Queen Elizabeth the Second, and Pope John Paul II. The declarant also paid $297.06 to have published a legal notice of his Declaration of Independence in the legal newspaper for Thurston County.
- A federal citizen complaint charging the prosecuting attorney and a deputy prosecuting attorney with numerous constitutional felonies and asking for an award of $10,000.00 per count per defendant; received from a Freeman defendant in a misdemeanor barratry prosecution.
- A "public servant questionnaire" that was directed to the sheriff and to various school district personnel after the individual received a written notice pursuant to RCW 28A.635 to stay off school property pending an investigation of an incident that occurred on school property.
- An "Official Act Reaffirmation of Oath of Office (Non-Statutory) and Private Security Agreement (To Protect and Affirm Unalienable Rights)" requesting Kitsap Prosecutor Russell D. Hauge to re-affirm by way of a private security agreement that he will not allow other government officials to knowingly violate the Freeman's rights and to waive any rights of immunity from any civil or criminal prosecution brought by the Freeman to redress any grievances received in a civil infraction case.
- A certification of administrative judgment that was recorded with the Kitsap County Records Department after the Kitsap County Clerk refused to accept the document in connection with a prosecution for failing to pay city taxes and for operating a business without a license. This document purported to be an affidavit from a Freeman acting as a "Private Administrative Hearings Officer." This Freeman identifies himself as having "been certified as qualified, effective 20 May, 1996, to be a Judicial Officer in and for STATE OF WASHINGTON by Barbara Durham, Chief Justice,

Washington State Supreme Court, and Nancy [sic] McQueen, Administrator of the Courts of STATE OF WASHINGTON* … *In Resume: Qualified STATE OF WASHINGTON GR-8 Judicial Officer".[92] This "judgment" provided that the Freeman defendant had no further duty to attend proceedings in the municipal court and that the municipal court had no authority in law to compel the Freeman defendant's attendance because the Freeman defendant was not a named party to the municipal court action and the prosecutor stipulated to the loss of jurisdiction by not responding to the Freeman defendant's "bill of particulars."

- A demand for bill of particulars served directly upon law enforcement officers following a traffic stop in cases in which charges had not yet been filed.

These documents are frequently lengthy and often contain a glossary of terms. Careful attention must be paid to the definitions assigned to various words, because these definitions are frequently at odds with our legal system's understanding of the same term.

Each document must be carefully read. Often, buried in the document, will be a reference to the **"public disclosure act"** or the **"freedom of information."** If these words appear, a prompt answer must be sent with a copy of the documents being requested that are in the possession of the office that received the document unless the requested document(s) is exempted from disclosure by RCW 42.17.310. The answer may properly request clarification of exactly what documents are being requested, so long as the clearly identifiable public documents are sent or made available for review.

The document(s) most frequently requested are copies of the oaths of office of the judges and/or prosecutors who have been involved in any manner with the Freeman. A lot of effort and time can be saved by collecting copies of every local judges' and prosecutors' oath in one place.

If a document has been recorded with the county auditor or recording officer, a decision must be made regarding whether a notice of invalidity should be filed or whether to proceed with a show cause procedure under Chapter 60.70 RCW. The cautious approach is to file a notice of invalidity with every document that names a public official or employee as a "defendant" or "respondent" regardless of whether the document uses the word "lien" or includes a money "judgment."

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92 General Rule 8 establishes a procedure for administering a qualifying examination for lay candidates for judicial office. These judicial officers are limited to practicing in district courts, municipal courts, police courts, and other courts that are inferior to the superior court, and as court commissioners and administrators. An individual who successfully passes the qualifying examination receives a certificate from the Chief Justice of the Washington Supreme Court and the Administrator of the Courts. A successful applicant may then be appointed or elected to certain courts.

GR 8 currently provides no mechanism for licensing such judges. The rule provides no mechanism for disciplining a successful test taker who uses the "GR 8" label of approval improperly. An individual who successfully passes the test, but who is not appointed or elected to serve as a judicial officer in a Washington state court is not subject to regulation by the C.J.C.

Individuals who misuse the "GR 8" label may be subject to criminal prosecution under a number of statutes, including RCW 9.12.010 (barratry); RCW 40.16.030 (offering false instrument for filing or recording); RCW 9.38.020 (false representation); and RCW 42.20.030 (intrusion into public office).

CLEARING FREEMEN LIENS

A lien is an encumbrance which one person places upon the property of another as security for some debt or charge. Rights to a lien on another's property are usually created by statute, through agreement of the parties, or through a court-imposed lien.

A common law lien is one granted under principles developed through judicial case law as distinguished from liens created by the agreement of the parties or by statute. The only common law lien which has been recognized in Washington pertains to personal property and requires that the one claiming the lien have independent and exclusive possession of the property. This type of common law mechanic's lien is issued in favor of persons who by their labor and skill have given additional value to the property in question. *See, e.g., Murray v. Eisenberg,* 29 Wn.App. 42, 627 P.2d 146 (1981) (involving asserted possessory lien upon aircraft for cost of repairs).

Freemen frequently file Common Law liens upon the property of public officials and employees because they are dissatisfied with public officials' or employees' decision. Freemen will also file Common Law liens upon the property of public officials and employees to secure the fines assessed by the Common Law courts for violations of a Freeman's Common Law rights.[93] A few examples of such filings include—

- A Freeman with the result of state and federal court proceedings, and with the disposition of a complaint before Judicial Conduct Commission, filed purported liens against six state court judges, two prosecuting attorneys and a deputy prosecuting attorney, a federal bankruptcy judge and the court bailiff and two former chairs of the Judicial Conduct Commission:
- A Freeman who wanted certain legislation enacted filed liens against nine state senators;
- A Freeman who received a speeding ticket filed liens against the state trooper who issued the speeding ticket and the district court judge who upheld the ticket;
- Freemen who claimed eight statewide elected officials did not have a right to hold office filed liens against these officials and a number of state representatives and senators.

These non-consensual, Common Law liens create the potential for delays in conveyance of property unless they are stricken by a court order. Although these purported liens are invalid under the provisions of RCW 60.70.030 and the common law of Washington,[94] they can potentially cloud title to property if a title company posts the bogus lien. This can be particularly troublesome because the property owner may not discover that a purported lien has been filed until in the midst of a transaction involving the property.

A person may file a purported lien by simply taking a piece of paper to the recording officer and paying a nominal fee. While county auditors and recording officers are not required to accept such liens for filing, they do not have a duty to reject for filing or recording any claim of lien. County staff have indicated that

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93 The order issued by the "Supreme Court, Washington State Republic, Common Law Venue" in relationship with the theft prosecution of Veryl Edward Knowles provided in part that—

> It is further ordered that Sovereign Veryl Edward, Knowles, sui juris, shall be immediately released from the custody of SUPERIOR COURT OF WASHINGTON, COUNTY OF KITSAP, and KITSAP COUNTY JAIL;
>
> It is further ordered that all private property taken from Sovereign Veryl Edward, Knowles, sui juris, be immediately returned to him;
>
> It is further ordered that should SUPERIOR COURT OF WASHINGTON, COURT OF KITSAP, fail to comply with this order, the JUDGE who is served with this order and fails to comply, will be held in contempt of court and fined one hundred million dollars. Said fine shall be secured by consensual commercial lien upon all property of said JUDGE and payable to the damaged party, Sovereign Veryl Edward, Knowles, sui juris. Failure to comply with this order is consent to lien any and all property of said JUDGE.

State v. Knowles, Kitsap County Cause No. 96-1-00235-4, Ex. 5, at 1-2.

94 *Shutt v. Moore,* 26 Wn.App. 450, 455-56, 613 P.2d 1188 (1980).

the high volume of filings and the difficulty of ascertaining the legal basis for each filing makes it impossible to decline such filings.

Prior to 1995, once a purported lien was recorded, the document would remain on file as a possible cloud on the title of property until legal action was initiated seeking a court order striking the purported lien. While such an order was liberally given, the legal expenses incurred, the waste of limited judicial resources, the difficulty of locating the individual who filed the lien in order to effect personal service, and the disruption in the personal affairs of the public officials and employees led the Legislature to enact legislation to make it easier to remove the purported liens.

Laws of 1995, Ch. 19, which was codified in Chapter 60.70 RCW, changed existing law in the following way—

- RCW 60.70.010 was amended to make the definition of nonconsensual common law lien more accurate. The new definition makes clear that a "nonconsesual common law lien" is any lien that is: (1) not provided for by a specific statute; (2) does not depend upon the consent of the owner to the property affected for its existence; and (3) is not a court-imposed equitable or constructive lien.
- RCW 60.70.010 was amended by the addition of definitions for the terms "state or local official or employee" and "federal official or employee."
- RCW 60.70.060 was adopted. This section provides an expedited, less expensive judicial procedure for removal of frivolous liens. The expedited procedure is available to any person who believes a claim of Common Law lien is invalid, regardless of whether he or she is a private citizen or public official or employee. The particular features of the expedited procedure include—
  - An expedited "show cause" procedure that will allow a person whose property is subject to a claim of Common Law lien to have the validity of the lien determined by a court in a time frame as short as six days.
  - The court may allow for service by mail upon the person who filed the lien.
  - The filing fee for a petition to strike invalid liens is set at $35.00.
  - The court must provide the prevailing party with costs and attorney's fees.
- RCW 60.70.070 was adopted. This section clearly states that Washington law does not recognize any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties, unless based on a specific court order or unless a specific statute authorizes the filing of such lien. This statement that such liens are not recognized will reduce the likelihood that a title company will give any credence to such liens.
- A new subsection (3) was added to RCW 60.70.030 to provide that a "notice of invalid lien" may be filed with the appropriate recording office by an attorney who represents the governmental entity which employs the individual against whom a lien has been filed. The attorney who files the notice of invalid lien is required to mail a copy of the notice to the person who filed the lien to seek to establish the validity of the lien if he or she chooses to do so.

A sample "notice of invalid lien" and sample show cause forms prepared by the Attorney General's Office are contained in the Appendix, at 45-58.

FINAL THOUGHTS ON OUR RESPONSES

Dealing with Freemen has been frustrating at times, and our patience has frequently been exhausted. The following thoughts from David Neiwert should be considered by all public officials and employees—

> The spirit of respect has been notably absent from most discussions of the Patriots, in large part because the Patriots themselves are so openly contemptuous of everything outside their belief system that it is difficult not to respond in kind. The Movement challenges so many of Americans' everyday assumptions about the core foundations of society that it is often difficult to even begin to respond. But that response ultimately, to be effective, must reflect the very values the Patriot's beliefs most deeply corrode: a public discourse based on mutual respect; a sense of fair play and decency; and an appreciation of the value of community and cooperative action.

David Neiwert, *Ash on the Sills: The Significance of the Patriot Movement in America,* 58 Montana L. Rev. 19, 43 (1997).

The inflammatory nature of the Freemen's pleadings and arguments usually inspires one of two responses: an equally heated counterargument, or stony silence, neither of which is effective.

> There is a third course: to respond with respect and courtesy, but firmly, with facts and reality. Point out that there is a legitimate, perfectly rational explanation for literally every piece of evidence the Patriots can produce for their theories that the government is part of a grand conspiracy to destroy the nation. Explain that the legal arguments they present for their constitutionalist beliefs have long been answered by real court rulings, many dating back to the Civil War, and that the web of pseudo-legal theory the Patriots espouse is a sham with no recognizable legitimacy, especially not in the body of law as practiced in America today.

Id. at 42.

Appendix