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Common Law and Uncommon Courts: An Overview of the Common Law Court Movement

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Introduction

The verdict of the county court was predictable. Caught driving without a license or proof of insurance, Sherry Scotka received a \$350 fine from the Kerr County, Texas, court for each offense. But Scotka, during the stultifying summer of 1993, was anything but predictable. Acting as her own lawyer, she appealed the county court's decision, requesting that the Texas Appeals Court transfer her case to the "Common Law Court of the United States of America." Her argument? That as a "sovereign citizen" she was outside the jurisdiction of Texas law or Texas courts.

The appeals court did not look upon her request with favor, noting that she could not even show that the "Common Law Court of the United States of America" existed (1). This was not the first time that the Court of Appeals had faced this sort of peculiar argument. From the Texas hill country had come a rash of such claims in the past several years, all from strangely similar cases: traffic violations, foreclosures, frivolous suits. Brought to court, the defendants, usually operating pro se --that is, defending themselves--would demand that the case in question be removed to the "Common Law Court for the Republic of Texas." Finally, in 1992, the Appeals Court noted officially that there was no such thing. "We hold," said the court, "that the Common Law Court for the Republic of Texas, if it ever existed, has ceased to exist since February 16, 1846" --in other words, when Texas state government was organized. It was then that the defendant changed the transfer reference in her pleading to the "Common Law Court of the United States of America," although interestingly the address on the legal documents remained the same (2).

What the Texas appeals court was just beginning to perceive were the beginnings of a movement created by recalcitrant self-proclaimed "sovereign citizens" determined to wrest control of their lives back from all forms of government or authority. Appearing first in isolated spots in Texas and Florida, the notion of "common law courts" soon spread to Kansas and other farm states, then quickly across the nation. The "common law court movement," as it has somewhat clumsily come to be called, now exists in some form in every state in the country. In some states, activity is minimal; in others common law courts are a serious nuisance; in some, they are a plague on the judicial system. Although featured on television shows like "20/20," common law courts did not really breach the public consciousness until the spring of 1996, when FBI agents surrounded a frigid eastern Montana farm to wait out two dozen recalcitrant tax protesters that locals dubbed "freemen." In reality, however, common law adherents had been active for years in different areas across the country. Frustrated county clerks knew of the strange filings made in their offices; puzzled policemen encountered confrontational motorists pulled over for homemade license plates; irritated lawyers discovered that bogus liens had been placed on their property by court opponents. But there

was little public awareness or understanding of the movement. The media reported that Oklahoma City bombing suspect Terry Nichols had declared himself a "sovereign citizen," but treated it as a random, bizarre act by a right-wing extremist, not as an action by someone consciously part of an ideological movement.

Few people knew then that these activities were not just isolated phenomena. Fewer still, even today, understand that they are not just part of some movement, but that this movement has a much longer and more active history than most people ever suspected. The "common law court," so called, can be traced back nearly two decades as a form of right-wing social protest, with roots stretching back still farther. What common law court activists do and say today often seems strange and incomprehensible to the average person, but their deeds and words possess a coherent internal logic and are part of a very conscious overall ideology.

Understanding the origins of common law courts and why their members act the way they do will increase our understanding of them and assist in developing strategies to combat them effectively. That is the purpose of this overview.

The Posse Comitatus

The common law courts and sovereign citizens are the direct ideological descendants of the Posse Comitatus; any attempt to understand the common law courts must start with this group. The Posse, though, is not necessarily an easy entity to understand.

On one level, the Posse was a right-wing extremist organization with a more or less definable beginning. In 1969 a retired dry cleaner named Henry "Mike" Beach (a former member of the 1930s pro-Nazi group, the Silver Shirts) formed the a group called the Sheriff's Posse Comitatus. In California, William Potter Gale started a similar organization, the United States Christian Posse Association, around the same time. From these beginnings, branches formed in other areas of the country, numbering around 80 or so by the mid-1970s. The farm crisis of the early 1980s, for reasons which will be explained below, caused membership to rise greatly, particularly in the plains states.

From the start, the Posse caused problems for local, state and federal authorities. As early as 1974, Thomas Stockheimer, head of the Posse in Wisconsin, was convicted on charges of assaulting an Internal Revenue Service agent. Indeed, the normally placid state of Wisconsin became a hotbed of Posse activity, due to leaders Stockheimer, James Wickstrom and Donald Minniecheskie. In northeastern Wisconsin, Wickstrom--who styled himself the "national director of counterinsurgency" of the Posse and liked to conduct paramilitary training--established the "Constitutional Township of Tigerton Dells," a "township" that consisted of a compound of trailers on a farm lot. From there Wickstrom waged a war against local authorities that resulted, in the mid-1980s, in the eventual destruction of the "township" and Wickstrom's arrest (one of many). In other states as well, most notably Kansas, Posse members repeatedly clashed--with resulting deaths and injuries--with local authorities.

It was, however, Gordon Kahl of North Dakota who achieved the most notoriety and became the Posse's first real martyr. Kahl was a virulent racist and tax protester who traveled to farm protest meetings across the country's midsection to win converts to the Posse cause. In 1983 four U.S. marshals and two local law enforcement officers set up a roadblock to arrest Kahl for violating the terms of his probation. A shootout ensued which resulted in the death of two of the marshals and the wounding of two others. Also wounded was

Kahl's twenty-year-old son. When Kahl fled the state, a nationwide manhunt--and nationwide publicity--began. Months later, Kahl was tracked down in Arkansas, where he died during another gunfight in which a county sheriff was killed.

Eventually, though, the Posse declined as an effective organization, largely through loss of leadership. Faced with repeated imprisonments, some leaders such as James Wickstrom scaled back their activities. Other leaders, such as Henry Beach and William Potter Gale, died natural deaths, the latter while appealing a conviction for threatening IRS agents. Still others, like Kahl, died violently. The result was that by the late 1980s the Posse was floundering. Always locally based, pockets of the Posse continued to survive here and there, but it was no longer a force (3).

As an organized right-wing group, the Posse did not really survive. But the Posse had never been simply an organization--indeed, it was hardly ever well-organized. The Posse Comitatus was much more durable as an ideology. Thousands, perhaps tens of thousands, of people who never formally belonged to any Posse group nevertheless subscribed to Posse ideology. The belief system survived even as the group faded.

The Posse ideology, and the justifications that result from it, are complex, but stripped of racist overtones, there are three main tenets to Posse ideology that are crucial to understanding how the Posse mindset works. In order of increasing importance, these tenets are 1) the importance of local control, 2) the need to avoid legal and financial authority, and 3) justifications derived from the revelation of "hidden history."

The Importance of Local Control

The importance of local control to adherents of Posse ideology was the simplest and most visible feature of their philosophy. Indeed, the term "posse comitatus" itself is a Latin phrase that means "power of the county." Accordingly, Posse teachings argued that the county government was the highest authority of government in the country, a belief sometimes misreported as the county being the only form of legitimate authority. Actually, the Posse recognized the other levels of government, but contended that federal or state officials had to bow before the power of the county sheriff (4).

Avoiding Legal Authority

Because of the emphasis given by Posse members to the county sheriff, many journalists well into the 1980s persisted in calling the Posse Comitatus a "law-and-order" group. But nothing was further from the truth. The Posse's motivation was essentially the exact opposite of law and order. The Posse wanted to be free of all obligations to laws its members didn't like, and to be free of financial obligations as well. Its entire ideology was specifically designed to achieve this. For instance, their emphasis on the importance of the county sheriff was not intended to support greater "law and order." The Posse argued that it was the sheriff's responsibility "to protect the people of his County from unlawful acts on the part of anyone, including officials of government...whether these be judges of courts or Federal or State Agents of any kind whatsoever." In other words, the local sheriff's duty was to shield the citizenry from the interference of federal, state and local government. If the sheriff neglected this duty, the people had "the lawful right under natural law to act in the name of the Sheriff to protect local jurisdiction." They could arrest people and hold them "for trial by a citizen jury empaneled by the Sheriff from citizens of the local jurisdiction, instead of by the

Courts as is the current procedure in most Counties and which has no basis under law, any act of any legislature or directives issued by the judiciary or Executive notwithstanding."

Especially important to the Posse was that sheriffs not be used to enforce court rulings: "The unlawful use of County Sheriffs as LACKEYS of the Courts should be discontinued at once...The Sheriff is accountable and responsible only to the citizens who are the inhabitants of his County." Indeed, the Posse offered a thinly-veiled threat to sheriffs and others who did not accommodate the will of local citizens: "In some instances of record the law provides for the following prosecution of officials of government who commit criminal acts or who violate their Oath of Office: He shall be removed by the Posse to the most populated intersection of streets in the township and at high noon be hung by the neck, the body remaining until sundown as an example to those who would subvert the law." Many Posse members proudly wore a pin shaped as a hangman's noose as a symbol of their membership (5).

"Hidden History" as Justification

The third defining characteristic of Posse ideology is the peculiar method by which Posse members justified their positions. They did this through an emphasis--some would say obsession--on "hidden history." In other words, they believed that the true history of the United States--and thus the true laws, the true obligations of citizens, the true government--had been hidden from the American citizen by a massive, long-lasting conspiracy. Indeed, the Posse's handbook noted that

>>> "the rule for the Judiciary, both State and Federal, has been subtle >>> subversion of the Constitution of these United States. The subversion and >>> contempt for the Constitution by the Judiciary is joined by the Executive >>> and Legislative branches of government. It is apparent that the Judiciary >>> has attempted to alter our form of Government. By unlawful administrative >>> acts and procedures, they have attempted to establish a Dictatorship of >>> the Courts over the citizens of this Republic. The legal profession has, >>> with few exceptions, conspired with the Judiciary for this purpose." (6)

Later Posse leaders would develop this simple beginning into a complex tale of conspiracy and cover-up, over a period of over a hundred years, designed to subvert liberty.

Given this notion, that the true laws of the United States had been covered up by conspiring legislators, judges and lawyers, Posse adherents seek to uncover the hidden history that has been deprived them. They do this through searching through law books and legal codes, the writings of the founders and early legal scholars, the Uniform Commercial Code, the Bible, and other documents. "People say we're creating our own laws," said Montana Freeman Russell Landers, "We're not creating anything. It's right there in the law already." Indeed, practically any document can become fodder for a Posse governmental theory. There is no end to what a creative Posse mind can come up with (7).

One example is the "Missing Thirteenth Amendment," popularized by Texas activist Alfred Adask. Posse adherents discovered a draft Constitutional amendment from the republic's early days, one that would deny citizenship to Americans accepting titles of nobility. This was one of many amendments which failed because not enough states ratified it. But Posse adherents decided not only that it had been ratified, but that its ratification had been covered up by a conspiracy. Their erroneous beliefs were bolstered by discovering some old printed copies of the Constitution which listed the draft amendment along with other, actually ratified amendments. Posse "scholars" combed through

state archives, looking for votes on ratification, or hints of cover-up, and concluded, not surprisingly, that there had indeed been a cover-up. Why did the Posse spend all this energy? Because of the way that they interpreted the meaning of the amendment. To the Posse, all lawyers had "titles of nobility," because they put the term "esquire" after their names. Therefore, lawyers were not legally citizens of the United States--but they had engaged to cover up the Thirteenth Amendment, which would have taken away so much of their power.

Another example of Posse creativity was the Committee of the States, the brainchild of Posse leader William Potter Gale in the 1980s. Gale argued that the Articles of Confederation, the document that governed the United States before the Constitution was ratified, had never been officially repealed and remained in force. Gale then pointed to a clause in the Articles which said that Congress could appoint a committee that would handle the general affairs of the United States when Congress was not in session (under the Articles, there was no executive branch). Gale interpreted this to mean that the Committee of the States was a second Congress, with full and equal powers--he promptly arranged for a (self-appointed) Committee to come into being.

These different facets of Posse Comitatus ideology shaped the evolution of the movement in the 1970s and 1980s. The Posse absorbed much of the tax protest movement, whose natural inclinations were very similar: to avoid the obligation to pay income taxes, and to use "hidden history" as a means, including re-interpreting obscure or out-of-context parts of the tax code and finding novel ways of declaring that the 16th Amendment had never been legitimately ratified. Another, more important, association made by the Posse during this time period was the development of close ties with the anti-Semitic religious sect Christian Identity. Christian Identity, whose members believe that Jews are descended from Satan, was small in number but disproportionately influential in the far right. From the very beginning, Posse ideology was attractive to Christian Identity leaders (and vice versa). For Posse adherents looking for the "true law" that conspirators had erased, Christian Identity advocates pointed to the Bible, saying that the Constitution was divinely inspired. For Posse adherents looking for the source of conspiracy, Christian Identity could point to Jews or "international bankers" as the culprits. Identity theology and Posse ideology complemented each other. William Potter Gale, one of the founders of the Posse, was also one of the most prominent Christian Identity ministers. James Wickstrom, the most visible Posse leader, was likewise an influential Identity figure. Although Posse ideology could always be utilized without a racist component, for many, Posse and Identity beliefs went hand in hand.

The development of the Posse ideology also helps to explain its first rise to prominence during the farm crisis of the early 1980s, when inflation, falling land values, rising interest rates, and poor lending practices combined to create a financial crisis that threatened to overwhelm farmers of little or moderate means. The Posse offered a culprit--the international (Jewish) banking conspiracy which had destroyed the Constitutional/Biblical monetary system and replaced it with one based on credit designed to suck people dry. The Posse also offered a solution: its version of the common law. In February 1981 Missouri farmer Wayne Cryts confronted federal marshals preventing him from retrieving his crop from the grain elevator in which it was stored by telling them, "I am a sovereign individual and a citizen of the state of Missouri and am operating under common law. The court order is without the weight of law and does not have jurisdiction over me." The marshals stepped aside, allowing Cryts to recover his soybeans. This action, which made Cryts a hero to desperate farmers, symbolized the hope and the promise of the "common law." (8)

The Posse and the Common Law

The term "common law" is itself common, but most people do not know exactly what it means. Its meaning, though, is pretty simple: it refers to unwritten, judge-made law (as opposed to written, or statutory, law). Centuries ago, in England, most petty crimes or complaints were settled by judge-made precedents, rather than elaborate legal codes. Robbery was a crime because it had always been a crime, rather than because there was actually a statute which described it as such. English common law was easily transplanted to the American colonies, where the lack of elaborate legal apparatus--or even law books--facilitated such a judicial system. Gradually, as legal codes became more systematic, statutory law began to replace English common law, with the areas reserved for the latter growing ever smaller. Common law survives to this day. In states such as North Carolina, "common law robbery" is a punishable crime. In Michigan, prosecutors (unsuccessfully) tried to convict Dr. Jack Kevorkian on charges of common law murder for his role in assisted suicides.

Posse ideology, however, places a far different meaning and reliance on common law. Though there are many different strains and theories of Posse common law, a common thread that runs through most of them is that the common law is a separate, parallel legal/judicial system, one independent from and not subordinate to statutory or written law. For example, throughout the 1980s and 1990s, Posse adherents came up with inventions such as "common law trusts" and "common law banks." What these concepts have in common is the notion that the normal written laws governing the establishment of trusts or the regulation of banks do not apply to these institutions, because they are beholden only to the "common law." In other words, the term "common law" was attached to the word "bank" as a (futile) attempt to avoid the law.

Every common law theorist or group has a slightly different explanation for the origins of and nature of their version of "common law," but the following broad summary of their beliefs is general enough to hold for most circumstances. The key, as mentioned above, is that Posse adherents believe in "common law" as independent of (and even hostile to) other alleged legal systems, rather than all being part of a whole (9).

According to common law doctrine, the common law originated in the Middle Ages to protect property rights. The American Revolution destroyed allegiance to the British crown, but kept common law rights of property. This situation made every man "sovereign" over his own property. Neither Congress nor state legislatures nor county or city ordinance nor judicial ruling by any courts could deprive people of their common law rights, including their rights to "allodial" property (an ancient concept describing property that could not be lost for failure to pay taxes; it never applied in the United States, although some states did enact "homestead" laws). Grievances were to be settled by common law juries which decided the facts and the law of the case.

Common law, however, was not the only form of law possible. Common law theorists describe many other types of law, although sometimes they distinguish between them and sometimes treat them as synonymous. One such is "Roman Civil Law," which some argue is the system of law generally used in continental Europe. Roman Civil Law ignores rights to due process. Another form of law is Law Merchant, which deals not with money "of substance" (silver and gold), but rather with credit and negotiable instruments. These terms are often used interchangeably; one common law publication lists as types of "Roman Civil Law" all the following: Admiralty Law, Law Martial, Law Merchant, Maritime Law, Martial Law, Martial Law Proper, and Martial Law Rule.

Essentially, common law theorists argue that these other forms of law have

been used by unscrupulous lawyers, merchants and others to subvert and replace the common law. Some include another type of law among the "unlawful" types; others consider it value neutral: this is Commercial Law, which governs commercial transactions "of substance." Commercial Law is very important to common law theorists; and is discussed below.

The subversion of the legitimate common law was a long process, with many steps. The original judicial system was based solely on common law and, when applicable, commercial law. Roman Civil Law in this country was confined to the law of the sea (Admiralty). Common law theorists cite the "missing" Thirteenth Amendment, the Limited Liability Act of 1851, the Civil Rights Act of 1866 and the Fourteenth Amendment as early steps along the way to the subversion of the common law. The last step is the most important. Most people know the Fourteenth Amendment as the Constitutional amendment that gave citizenship to the freed slaves after the Civil War. However, common law theorists see the Fourteenth Amendment as establishing an entirely new class of citizenship designed to make persons subordinate to the federal government. In the words of one theorist, "the Fourteenth Amendment was instrumental in shifting citizenship of each American from being primarily a state citizen to being a citizen of the private corporation of government." Previously, the federal government only had authority over Washington, D.C., and federal territories. With the ratification of the Fourteenth Amendment, however, citizens of the states could unwittingly give up their common law rights and contractually enter into the jurisdiction of the federal government. According to common law theorists, this was implemented by and designed to benefit large corporations or "international bankers." Now the law could be used to "financially enslave the masses and destroy the republican union." The theorists believe this led to further injustices from the removal of the gold standard and the declaration of states of emergency in the 1930s to the unjust "de facto" government that operates today (10).

Common law theorists offer a way out of the predicament they assert exists. They argue that Americans become "Fourteenth Amendment citizens" only voluntarily --through entering into some sort of contract with the federal or state governments. "Contracts" are obviously defined quite liberally as any sort of agreement or reciprocal relationship, including paying income taxes, applying for social security numbers, and using drivers' licenses. Common law theorists refuse to accept the alleged subversion of common law rights. In the words of one common law tract, "Each freeborn, Sovereign American individual has the authority and the Right to deny and to disavow all Equity jurisdiction, and to refuse to acquiesce to the jurisdiction of Courts of Equity, or to Equity jurisdiction of any Executive or Legislative branch of government agency or agent, State or Federal or County...Compelling a freeborn, Sovereign American individual to do anything, except upon the verdict of a Common Law Jury, constitutes an enforcement of the alien and evil Roman Civil Law and is in fact fascist totalitarianism." (11)

Simply stated, Americans can refuse to participate. Americans can revoke their social security numbers, their license plates, their income tax forms. They can declare themselves once more to be "sovereign citizens." In so doing, they remove themselves from the Roman or Admiralty Law, and are once again only bound by the common law. They gain near immunity from the "de facto" court system.

This solution explains much of the bizarre behavior of Posse adherents. Some are arrested repeatedly for driving without license plates, registration or a license, yet keep on doing it: they believe they have a biblical right to travel and refuse to enter into contractual relationships with the government. In court, sovereign citizens refuse to accept the aid of lawyers, who are "titles of nobility," and instead defend themselves, usually unsuccessfully.

Most important of all, they continuously challenge the court on questions of jurisdiction and claim that the court has no authority over them. For instance, it is common for Posse adherents to point to a gold-fringed flag in the courtroom, which they argue is a sign that the court is an Admiralty jurisdiction court. They believe they are only answerable to a common law court. Common law literature dictates that "when summoned into any court, the first thing a party must do is analyze and identify the nature of the charges, jurisdiction of the court, and the status of the accused, to determine if the status of the accused falls within the statute and the jurisdiction of the court." This fervent belief often leads them to obstreperous and outrageous behavior when brought into a court they claim is illegitimate (12).

The following brief excerpt from a March 1996 detention hearing for arrested Montana Freeman leaders Leroy Schweitzer and Daniel Petersen provides an excellent example not only of such behavior, but of the concerns of the defendants regarding jurisdiction and "titles of nobility":

>>> THE COURT: The record should also show that standby counsel for appointed
>>> for both --
>>>
>>> DEFENDANT PETERSEN: I object and take exception.
>>>
>>> DEFENDANT SCHWEITZER: I object to any reference to standby counsel and
>>> related to Leroy Michael it's an invasion of privacy. I object. I ask that
>>> he be removed from the courtroom.
>>>
>>> THE COURT: - are present in the courtroom.
>>>
>>> DEFENDANT SCHWEITZER: I do not have assistance of counsel. None. I reject
>>> it. I'm not pro se. I am myself. This is a common law venue.
>>>
>>> THE COURT: And I want to advise both defendants, Mr. Schweitzer present
>>> here in the courtroom, as well as Mr. Petersen from his cell, once again
>>> they are entitled--
>>>
>>> DEFENDANT PETERSEN: I object and take exception, you f-----g pervert.
>>>
>>> THE COURT: --to the appointment of counsel to represent them in all
>>> proceedings, and I urge you to accept appointed counsel.
>>>
>>> DEFENDANT SCHWEITZER: There will be no exception, no consent, unequivocal
>>> no. I will not accept a title nobility in common law venue. I do not waive
>>> common law venue.
>>>
>>> No one is going to represent me as sworn in from the appellate branch of
>>> the Supreme Court which is voluntary jurisdiction. And you better start
>>> reading your law. Why do you think the code commissioner is now putting
>>> the codes back into special television programs that came out just
>>> recently because of the edict that we put on the Joint Chiefs of Staff.
>>> And if you press want a story, go get it, because you are--
>>>
>>> THE COURT: Mr. Schweitzer, your objection is clear I think, you're
>>> refusing counsel. (13)

Common law adherents are not just obstructionist. They also strike back. Common law theorists have "discovered" how to use that other form of law, commercial law, as a weapon against those people who persist in misusing Admiralty Law. The key weapon in the commercial law arsenal is the lien. Common law theorists claim that once you place a lien on someone's property, they must either successfully rebut your commercial affidavit, convene a

common law jury, or pay the lien. The beauty of commercial liens, to common law theorists, is that they are "non-judicial." That is, the liens bypass the judicial system, which theorists believe has been thoroughly corrupted. Thus often one of the first retaliatory responses by a common law adherent to unwanted government interference is to place a lien upon the property of an offending official. In the real world, the illegitimate liens convey no obligations at all, but people on whose property such liens are placed often must go through considerable effort and expense to get them removed, even though they are invalid. Of course, the Posse adherents are well aware of this.

The First Wave of the Common Law Movement

Although the very first Posse booklet mentioned the importance of common law, it took years for such a complex and elaborate ideology to develop. But by the end of the 1970s the Posse common law framework was complete and well-disseminated. People across the country acted in similar ways, indicating the degree to which Posse ideology had solidified.

Though Posse members such as James Wickstrom and Gordon Kahl were in the news more often, a less-known figure, George Gordon; provides an excellent example of how the common law philosophy was used in practice. Gordon, from Boise, Idaho, was a cantankerous man who adopted Posse ideology wholeheartedly as a way to rid himself of unwanted societal obligations society. Primarily a tax protester, the high-school dropout began to study "common law" principles as a way to avoid paying federal and state income taxes, but his opposition expanded to include many court and police procedures. He developed a following in Boise, where he eventually established (in the basement of a local bar) the Barristers Inn School of Common Law. Gordon lectured on common law ideology to small audiences in return for fees. The following chronology offers some indication of the scope of his actions:

>>> --April 1982. Gordon is arrested after refusing to comply with a traffic officer's instructions when pulled over. After being booked, he appears in court clad only in shorts and a T-shirt, because he tore up all his jail clothing.

>>> --May 1983. Gordon files a \$700,000 federal suit over a \$615 tire bill he did not pay. A collection agency and local officials had taken him to court, and he filed his suit against them, claiming a violation of his constitutional rights in that he was coerced to submit to an oath against his religious beliefs. He also claimed to have been beaten and verbally abused by Ada County jail personnel. Officials successfully move for dismissal of the suit..

>>> --August 1983. Gordon leads 100 people in a protest in a statehouse hearing room to demand the elimination of state income taxes.

>>> --September 1983. Gordon leads another protest before a legislative subcommittee to demand reforms and reduction of government services and taxes. States Gordon: "I don't want your damned services and I don't want to pay for them...When the teachers scream for more money, let the children go home and be taught there. I don't want my children to go to public school. I'll teach them at home. I created them. I'll teach them." and "Did it ever occur to you that we might not want those services? Did it ever occur to you that we don't want the police driving up and down our streets spreading their police-court tyranny?"

>>> --November 1983. Gordon files a \$3 million lawsuit claiming a local

>>> hospital treated his daughter without permission and violated his civil
>>> rights in trying to collect \$2,000 for care expenses. He claims hospital
>>> staff performed "pagan practices" on her against his will, then sought
>>> payment for her six-day stay. The suit alleges the girl was taken to
>>> hospital by an unidentified person and admitted on the grounds that state
>>> law allows a hospital to hold a child if there is a suspicion the child
>>> has been abused. The hospital successfully moves for dismissal.

>>>
>>> --March 1985. Gordon loses a case in the Idaho Court of Appeals in which
>>> he argued that his constitutional rights to travel were violated by being
>>> required to have a driver's license. Gordon contends he is a "freeman" and
>>> exempt from regulations. The court sentences him to 35 days in jail for
>>> driving without a license, operating an unregistered vehicle and not
>>> having proof of liability.

>>>
>>> --February 1986. Gordon, having moved from Idaho to Isabella, Missouri,
>>> now operates the George Gordon School of Common Law. He also travels
>>> around the plains states giving seminars on common law tactics, charging
>>> fees of \$175 for individuals, and \$225 for couples. He offers \$1,000
>>> week-long seminars for people in small groups and sells videotapes of his
>>> seminars. A promotional leaflet says: "We'll teach you how to stop a
>>> foreclosure, the common and civil law of real property, why national banks
>>> may not lend credit, the use of liens to supersede a bank mortgage, why
>>> bank fraud is an affirmative defense to foreclosure, and the courtroom
>>> strategy and procedure to accomplish these actions."

>>>
>>> --November 1986. Gordon claims hundreds of students have been taught at
>>> his school, where he teaches them to not make "contracts" with the state.
>>> Payment for his classes must be made only in gold or silver, or barter. "I
>>> don't think I am a threat to anybody," he says. "I am a legal strategist.
>>> I don't give legal advice. I run a school and teach law, and that's
>>> freedom of speech." Gordon has been arrested more than 10 times in the
>>> past five years for various traffic violations relating to not having
>>> license or registration. He claims his school generated about \$100,000
>>> during the previous year, on which he paid no income tax.

>>>
>>> --August 1995. Gordon is still living in Missouri and still operating the
>>> George Gordon School of Common Law. He charges 21 ounces of gold for a
>>> seminar. Says Gordon, "The average guy who walks in here, he's an
>>> anarchist, he wants to break the law. He wants to do what he wants to do
>>> without putting himself in the envelope of laws and rules. All George
>>> Gordon's ever done is research the law and learn how it is applied and
>>> made sure he is in that envelope. And I'm as happy as a clam at high
>>> tide." (14)

George Gordon, though his commitment to common law theories has been quite-lived, was never a lonely practitioner. In fact, "common law" schools proliferated in the 1980s, under names like the "John Doe School of Common Law," the "School for the Last Days," and the "Universal Life University School of Law." Tax protest groups such as Your Heritage Protection Association also issued pamphlets, seminars and videotapes on common law ideology.

By the early 1980s, practitioners of common law ideology had gone so far as to advocate setting up their own court and jury systems, in full defiance of the "de facto" systems they opposed. William Potter Gale, visiting James Wickstrom in Tigerton, Wisconsin, in May 1981, responded to news that a Wisconsin legislator proposed a bill against paramilitary training by saying, "I think you guys ought to hang that son-of-a-bitch." Wickstrom replied that the legislator deserved some sort of hearing by a "citizen's grand jury" first. By

December of the following year, Wickstrom had actually formed such a "grand jury," one of the first "common law courts" to begin operation. Nor was it the only one. In January 1983, sheriffs in Kansas received letters from the "Citizens Grand Jury of Kansas," the members of which threatened local judges and said if they were not jailed, Grand Jury members "would take the law into their own hands and the judges would end up buried in a potter's field." (15)

These self-styled grand juries and courts demonstrated the willingness of Posse members not only to oppose local or federal government, but to go so far as to set up parallel governments of their own. One of the best examples of this growing sentiment in the early 1980s was the "township" movement. The township movement was started by a Utah tax protester named Walter P. Mann III, who sold information packets for \$20 detailing how to avoid filing federal income tax returns and offered \$1,000 seminars on forming "common law governments." His seminars became popular, as did his ideas about townships. As early as 1980 a group in South Carolina formed a "township" based on common law. Self-described survivalists who were convinced that the United States was about to collapse financially, they wanted to be ready with "an ancillary form of government." (16)

Walter Mann popularized the township concept. He argued for the creation of heavily armed communities based on "common law," which he claimed superseded the laws of the United States. By 1982, Mann boasted of chapters in 40 U.S. cities. The township concept was popular primarily because, according to the strictures, each township was completely autonomous, completely independent--most especially, independent from the federal government. Mann follower Gordan Jenkins established "Zion Township" in southern Utah, while James Wickstrom established the "Township of Tigerton Dells" in Wisconsin. Gordon Kahl was in the process of establishing a township the day marshals attempted to arrest him. Other notorious townships were established in Walla Walla, Washington and Texas. It was no coincidence that a decade later the Montana Freemen named their Montana refuge "Justus Township." These townships, according to Mann's theories, allowed their law to take precedence over the "'equity' court system."

Of course, local and state authorities were not particularly pleased with people setting up autonomous "townships" in their midst, often within the boundaries of other communities. Township advocates said that their townships had no geographical boundaries. Legitimate officials responded by enforcing tax laws, zoning laws and statutes against impersonating public officials. Typically clashes started over traffic tickets. For instance, a member of the "Southern District of Texas Township Court," a "people's court" operating north of Houston in the early 1980s, was issued a traffic ticket in Montgomery County, Texas. The townshippier attempted to pay the traffic fine with a bogus money order--thirteen years before the Montana Freemen would become famous for issuing such fraudulent financial instruments. When the city judge refused to accept the phony money order, the Township Court issued subpoenas and summonses for county officials to appear before it. Instead Texas Rangers and local officials raided the township court and arrested three members for tampering with government records and impersonating a government official.

Common law adherents responded to such moves with their favorite weapon: liens. Richard Cooper, "Supreme Court judge" of the common law court of Zion Township, for instance, filed 41 property liens totaling \$12 million in the early 1980s against various federal, state and local officials. In Walla Walla, Washington, Posse members issued "common law liens" totaling \$29 million against ten officials. The courts ruled the liens invalid, as always, but the tactic nevertheless proved highly frustrating to public officials trying to perform their duties. Common law court adherents found placing liens a successful tactic because the liens discouraged officials from acting

against Posse members, they clogged the legal system, and sometimes had other uses as well. For instance, when Maryland officials decided to dispute the status of a Posse Comitatus group in Maryland that had claimed their posse was legal, the leader of the local group sent his followers to every courthouse in the entire state to file property liens against every district and circuit court judge. Posse members hoped this would disqualify the judges from hearing the case against them. However, they inadvertently missed one judge, who was secretly assigned to hear the case. He threw out the liens and declared the Posse's activities illegal. Another imaginative creation was the notion of "signature liens," used by a common law advocate, Raymond L. Montee, in 1982. Montee filed "common law signature liens" against sixty public officials and their spouses, which he claimed would prohibit officials from signing their name. Montee argued that if they were not allowed to sign their name, they could not vote and would have to be removed from voter lists.

The total amount of bogus liens placed by common law advocates on officials in the early 1980s is not known, but estimates run into the hundreds of millions of dollars. Many if not most public officials were uncertain how to respond to such pseudolegal tactics. The federal government, however, soon made it illegal to place liens on Internal Revenue Service agents. Several states also adopted statues prohibiting the filing of bogus liens.

Decline and Resurgence

By the mid 1980s, the initial tide of common law activism surged and then waned. By this time a large number of leaders on the far right were either dead, in jail or in "retirement." Events such as the prosecution of members of The Order, the shutting down of the survivalist/Christian Identity compound of the Covenant, the Sword and the Arm of the Lord (CSA), the destruction of the township of Tigerton Dells, and the much-publicized trial of various white supremacist leaders for sedition in Fort Smith, Arkansas, worked to paralyze the leadership of the far right, including the Posse Comitatus and its adherents. For the Posse, too, the fact that the farm bankruptcy crisis had eased also resulted in a loss of support.

However, the Posse's ideas about the common law never disappeared. Tax protesters continued to espouse Posse ideology, and Posse believers continued, although with less frequency, to place fraudulent liens and use other Posse tactics. Perhaps one could think of the movement as existing in a state of hibernation, waiting to emerge again in a more favorable climate. The early 1990s seemed to provide that climate: Events such as the infamous standoff at Ruby Ridge, Idaho, and the tragic end to the standoff at the Branch Davidian compound in Waco, Texas, gave renewed energy to the "patriot" movement, as it now called itself. It fueled the fires of those who believed that a tyrannical and illegitimate government was usurping the sovereign rights of freemen.

From this climate of anger and paranoia emerged a new leadership for the common law movement. Some of the faces were familiar. From Wisconsin came Thomas Stockheimer, one of the leaders of the old Wisconsin Posse Comitatus. Stockheimer and his associates formed a new group called Family Farm Preservation, which encouraged the use of bogus checks and money orders as a way to defeat creditors and government agents. From Texas came a roofer named Alfred Adask, who started publishing AntiShyster Magazine, a periodical devoted to popularizing common law tactics, particularly the use of bogus liens. Adask, running for a seat on the Texas Supreme Court in 1992, received more than 200,000 votes in that state. In Colorado, a veterinarian named Eugene Schroeder, a former leader in the Posse-sympathetic American Agriculture Movement, began publicizing the notion that the Constitution had been suspended since 1933.

Nowhere more than in Florida, however, was the movement so strongly resurgent. Tax protesters, white supremacists, common law court advocates and others combined to give new energy to Posse ideology. Some of the sovereigns' concerns were traditional, such as the banking system and the Federal Reserve. Other concerns included those events that catalyzed the related militia movement, such as the standoffs at Ruby Ridge and Waco. And there were new issues as well. For all the talk by common law adherents criticizing the intrusive federal government, what angered many of them most were the actions of local governments, particularly regarding zoning and building regulations. A catalyzing issue for many in the largely-male movement was the issue of divorce settlements. Many "sovereigns" felt powerless in the face of a legal system that seemed to give them no say.

The emergence of Florida's first common law court in the mid-1990s reflected all of these concerns. The guiding spirit behind the court's emergence was Emilio Ippolito, a Tampa, Florida, property owner who possessed millions of dollars worth of low-income housing. Ippolito, along with his daughter Susan Mokdad, a co-owner, fought a long-running battle in the 1980s and 1990s with city authorities over various building code violations in Ippolito's apartment buildings. The structures incurred repeated fines for faulty wiring, and missing extinguishers and smoke alarms. Some were declared fire hazards and closed down. As their struggles with the city intensified, Ippolito and Mokdad became increasingly politicized. Ippolito first formed Defenders of Life and Property, Inc., in 1991, a group opposing city code enforcement boards. By 1993 he and Mokdad had become leaders in a more radical group that called itself Pro Se Litigants. Pro Se Litigants met monthly in the Orlando Public Library, where its members discussed their various legal problems and passed around copies of Alfred Adask's *Anti-Shyster*. Some fought local authorities over permits and ordinances; others contested divorce settlements or fought wage garnishments. They represented an increasing frustration with a non-responsive court system in which the only winners seemed to be licensed attorneys. Among the group's other leaders were Charles Eidson, founder of the white supremacist Church of the Avenger, who repeatedly clashed with local authorities, not only for his racial views but for flouting laws on dumping of waste, and Daniel Schramek (17).

Schramek himself had long been making a living by providing an alternative to hiring lawyers. Since the 1980s he had been a self-styled "estate planner," which meant drew up legal documents for people, although he was not an attorney. He was also local director of a relatively mainstream group, HALT (Help Abolish Legal Tyranny). Schramek's participation in divorce cases brought him into frequent conflict with local judicial authorities and lawyers, many of whom claimed he was practicing law without a license. Actions such as signing a dead man's name on a deed finally resulted in a court order in 1993 to stop Schramek from advising people on legal issues or preparing legal documents; this order caused Schramek's business to fail, but did not stop Schramek's practices.

Indeed, by 1993 Schramek, Ippolito, Mokdad, Eidson and others in the group had launched dozens of suits against lawyers, judges, the Florida Bar, and other organizations and individuals. Eidson went so far as to post a document in the Hillsborough County courthouse calling for the formation of a "posse comitatus." Ippolito and Mokdad even served brief stints in jail for fighting with bailiffs during one trial. By then they had lost much of their property in their continuing and losing battle with city authorities as it was seized or condemned for various building violations. Hardened veterans now, thoroughly disenchanted with the existing legal system, it was an easy step for them to form in mid-1993 a legal system of their own, the "Constitutional Court of We the People." Ippolito and Mokdad and others not only formed the

court, but advertised in local papers that they would hear divorce proceedings for a \$25 fee. Within a year they moved from bogus divorce proceedings to issuing arrest warrants for local judges. The Constitutional Court's "Fugitive Warrants Unit" warned judges to "schedule appointments" or face "physical arrest at your home or workplace by the Militia which could result in a dangerous confrontation." (18)

The common law court finally went too far when, in support of the California tax protest group called the Pilot Connection Society, it mailed threatening letters to the jury trying a fraud case against the tax protest group's leaders. Ippolito, Mokdad, and others were arrested and indicted in the spring of 1996 on conspiracy, obstruction of justice, and other charges, covering the arrest warrants, the Pilot Connection letters and threats against other federal officials and jury members.

The Constitutional Common Law Court of Ippolito and Mokdad was not the only such "sovereign" group in central Florida; indeed, it was merely at the center of a web of such activity. Charles Eidson had his own common law group, the "Tampa Freedom Center." He offered common law advice and issued bogus liens. Five sovereigns were convicted in the Premier Benefit Capital Trust scheme, which defrauded investors of more than \$7.5 million; two of the principles, Janice Weeks-Katona and her son, Jason Weeks, were convicted on additional charges, including plotting to kill U.S. District Judge Steven Merryday in Tampa, Florida. Similarly, two couples, members of a group called the American Citizens Alliance, received sentences for threatening two judges and filing fraudulent \$25 million liens against them in retaliation. Members of the Alliance openly advocated killing police officers; its leader is in jail on federal charges of fraud. Other Alliance members included George Sibley and Lynda Lyon, who fled Orlando on aggravated battery charges rather than give themselves over to a "fraudulent and unconstitutional court." While fugitives, Sibley and Lyon murdered an Alabama police officer and are currently on death row. Three freemen in Orlando, members of "American National Freeman" as well as Ippolito's common law court, were convicted in early 1996 on 21 counts of conspiracy, mail fraud and obstruction of justice relating to bogus liens they filed. Other common law groups, such as the Guardians of American Liberty, were less openly confrontational, but still operated to spread the Posse ideology across the state, as did numerous individuals, who labeled themselves "freemen" or "sovereign citizens." Individuals were able to wreak just as much havoc on the legal system as groups. (19)

Florida was an early hotbed of common law activity, but the movement grew. From Florida and Texas and Wisconsin, and from resurgent Posse members in other areas, the common law movement spread like wildfire across the country. At meetings in Kansas and Oklahoma hundreds of people congregated to learn common law tactics, some of them paying large amounts of money for the privilege. Across the country, common law adherents began establishing versions of common law courts, which they called "Our One Supreme Court." They believe that the Constitution, referring to the judicial power of the United States being vested in "one Supreme Court," did not mean the establishment of one Supreme Court, but rather meant local common law courts which are the highest judicial authority in the land. By 1995, officials in Nebraska detected common law activity in almost half of the states's counties. Similar surveys in Ohio discovered common law activity in almost every single county in the state. By mid-decade, certain hubs of activity had arisen: in Montana, the so-called Montana Freemen, fugitives from the law, offered classes on common law strategies, especially bogus money orders and checks, to people from around the country. In Ohio, groups such as "Rightway Law" offered common law seminars, while the central Ohio "Our One Supreme Court" received national attention for its activities. Indeed, by 1995 in Ohio, one common law leader had been killed in a traffic stop confrontation on a rural road, while another

was in jail for assaulting a police officer and a third a fugitive for the same offense. Still another prominent leader had been convicted on fraud charges. Common law court activity was also especially high in California, Colorado, Idaho and Missouri, but no state was completely devoid of such activity.

As in the 1980s, there were many different types of common law activity, including tax protest activities, issuing arrest warrants, and establishing common law courts. Many common law actions were triggered by some sort of confrontation between a "sovereign citizen" and some authority figure, whether it be the IRS, a loan officer, or a state trooper issuing a traffic citation. It is at that moment that the adherent's fanatical nature is revealed, often turning the most minor incident into a violent confrontation or even an armed standoff.

One typical example is the case of James Conrad Gutschmidt of Mercer Island, Washington. In February 1996, Officer Glenn Sawyer of the King County Airport Police/Aircraft Fire-Rescue Division spotted a burned-out headlight on a car in a restaurant parking lot near Boeing Field Airport in South Seattle. Sawyer pulled up to the vehicle, occupied by Gutschmidt and two friends. Sawyer told Gutschmidt that the stop was only a safety stop and no citation would be issued. He asked to see Gutschmidt's driver's license. Gutschmidt replied that he was not "driving." Sawyer repeated his request. When Gutschmidt finally complied, Sawyer went back to the car and pulled up the license number on the computer, where he discovered a restraining order from a family law court, two failures to appear, two paid speeding tickets, and two suspended license actions for failure to appear and two unpaid tickets. Sawyer asked Gutschmidt to step out of the vehicle. Gutschmidt refused, causing Sawyer to call for another officer to aid him. The two demanded that Gutschmidt leave his vehicle, which he finally did. After the confrontation, Gutschmidt was arrested on charges of obstructing an officer arrest. In the courtroom, Gutschmidt was no more cooperative. When the judge asked where he lived, Gutschmidt replied, "In my body, which is the temple of God." Gutschmidt having no fixed address, having been evicted earlier, the judge decided there was reason to believe Gutschmidt would again fail to appear at the readiness hearing and set bail at \$1,000.

The police officers might have thought that the irritating episode was over, but retaliatory sequels to such events are a common occurrence. A few months later, Gutschmidt took his grievances to the local "Our One Supreme Court," where he charged the two officers with a variety of offenses and asked for a judgment of \$10,000 in gold or silver (plus costs) against them. The common law court issued a summons to the two officers to appear before it, or face "judgment by default." The court also recorded for Gutschmidt an action against King County, the judge scheduled to try Gutschmidt's case, and Sawyer and the other police officer, and ordered that the case be dismissed and the thousand dollars in bail returned. The police officers ignored the summons and other documents, but were nevertheless worried about them, and not without reason. They could not guarantee that a group of sovereign citizens would not show up at their front doors and attempt to "arrest" them. In another, unrelated action, Gutschmidt secured \$170,000 common law court fine against Interest Savings bank, the bank that foreclosed on his house (20).

Not only do the common law courts issue summonses and judgments, but the courts and their adherents are especially active in placing bogus liens on the property of individuals or institutions with which they have disagreements. What was a nuisance in the 1980s turned into a serious problem nationwide in the 1990s. Common law court members filed liens against police officers, judges, city officials, banks, utility companies, businesses, and neighbors. Because such liens often go unnoticed until the recipient tries to sell his or

her property, there could be thousands more liens still undiscovered. The filed documents look legitimate; in early 1996 a county sheriff's department in Colorado even served some common law court documents on a local church before noticing that they were bogus. Not only have Posse adherents become adept in drafting such documents themselves, but in a disturbing trend, some are finding legal practitioners willing to participate in such schemes. Several disbarred lawyers--as well as the occasional practicing one--have been known to prepare common law documents. To give but one example, in the spring of 1996, attorney Jerry Wilkins of Waxahachie, Texas, was one of four men convicted in that state of passing more than \$61 million in fake money orders through their group "USA First." As a result, there is no shortage of people able to create realistic counterfeit money orders or bogus liens.

The paper value of the liens known about thus far runs into the trillions of dollars. The dollar amount of these liens is not as significant--because the liens, after all, are bogus--as is the fact that in many states it can up to thousands of dollars to have such liens removed. When the "Common Law Court of Pleas" in Arlington, Texas, filed a \$1 billion bogus lien against the A. H. Belo Corporation (owner of the Dallas Morning News), the company had to pay \$12,500 in legal fees to get it removed. A.H. Belo Corporation could spare the money; the average sheriff's deputy or county clerk cannot (21).

Recently, many states have passed new laws making such liens easy to remove or making the filing of bogus liens criminal. Other states have dusted off old laws against impersonating public officials or criminal syndicalism in an attempt to deal with the actions of these courts. In most cases it is too soon to tell whether these new efforts will enjoy success. It is important to note, however, that in almost every case, the states have been reactive in nature, responding sluggishly to the tactics of the common law court movement. In contrast, the common law movement itself has so far proven itself extremely creative in discovering new strategies and tactics.

The most prominent example of common law activity, of course, is the group of people known as the Montana Freemen. Near Jordan, Montana, a group of unsuccessful farming families decided to resort to common law activity to stave off debt and foreclosure, while to the south, in Roundup, Montana, a smaller group of tax protesters, steeped in Posse ideology, taught classes on how to use bogus checks and money orders. In both locations, quasi-standoff situations developed, local authorities not having the physical power to remove the Freemen from their foreclosed-upon land. Defiant, the Freemen escalated from frivolous lawsuits to bogus liens to common law courts and arrest warrants. In September 1995 the Freemen in Roundup drove in a convoy north to Jordan and merged with the other group. By now the Clark family ranch near Jordan had become, in true Posse fashion, "Justus Township." It also became a haven for common-law adherents fleeing from the law from Colorado, North Carolina, Utah and elsewhere. Garfield County, where the Clark ranch lay, simply did not have the resources to deal with so many armed and committed extremists. Common law adherents from across the country traveled to Jordan to learn how to use bogus checks from group leader Leroy Schweitzer. Not until March 1996, when federal authorities finally stepped in, was there a serious attempt at bringing the group to justice. Local citizens cheered as the FBI instituted a peaceful 81-day standoff that resulted in the surrender of the Freemen, now awaiting trial on numerous charges.

The resurgent common law court movement, though a direct descendant of its 1980s predecessor, has exhibited certain marked differences from its older incarnations. Of these, perhaps the most important is increased organization and increased cooperation between groups and individuals. The 1990s movement has exhibited an unprecedented degree of organization. Much of this has been due to the development of advanced technologies, including inexpensive fax

machines, laser printers and the Internet. While in the 1980s a typical group might have operated only locally after attending some seminar on the subject, in the 1990s such groups are in contact with people of similar persuasion across the entire country. Magazines such as The AntiShyster and The Americans Bulletin cater to common law views, while the number of people traveling around to offer seminars (or seminars by videotape) is greater than ever. Even more obvious has been the impact of the Internet. World Wide Web sites that offer common law material are very numerous. This range of this material is breathtaking, from long discourses and legal rationales for common law activity to detailed instructions on how to create "nonstatutory abateements" and "common law liens." Automated e-mail discussion lists allow common law adherents to share tactics with each other, something they do on a regular basis. The average common law proponent in the movement today potentially has much more information at his fingertips than did his predecessor a decade ago.

Another difference between the old movement and the new are the different strategies that have more recently emerged. While many of the goals of modern day common law court activists remain the same as those active in the 1980s, some goals have changed. The typical common law activist in 1983 might have been an angry farmer threatened by foreclosure who attempted to place a lien on his own property in a (futile) effort to forestall legal action. While a 1996 common law activist might engage in a similar battle, perhaps over a home mortgage, a zoning restriction, or in retaliation for a divorce action, there are a growing number of committed common law adherents who openly advocate common law tactics as a way to overload the legal and judicial system, with the ultimate goal of eventually bringing it down together. One of the reasons the Montana Freeman taught people how to issue bogus money orders was to destroy the hated Federal Reserve System. Others were content with lesser goals, such as flooding local county clerks' offices and local courts with so much common law activity that local officials would be too distracted to perform their lawful duties. This tactic has been especially effective in sparsely populated counties, where county governments have neither the staff nor resources to cope with such efforts. Another more immediate result of this strategy has been attrition, as many public officials and employees have become so frustrated dealing with these tactics that they have resigned from public service.

The common law court movement has also seen increasing violence and threats of violence, leading to great concern on the part of individuals whose jobs put them in contact with its members. Violence was always a possibility with the old Posse, particularly in farm states like Kansas, yet today the threat or actual use of violence seems much more widespread. Agencies like the Internal Revenue Service have long had to deal with the radical actions of the tax protest wing of the movement. People like Joseph Bailey, convicted of trying to blow up an IRS building in Reno, Nevada, in December 1995, keep the IRS vigilant. But now fanatical common law advocates have taken serious measures in their wars against other public officials. Many judges, prosecutors, police officers and other public servants have received arrest warrants; some have received death threats. In California, when Stanislaus County Recorder Karen Mathews refused to file the liens and other documents of the local common law group, Juris Christian Assembly, members of that group ambushed her in front of her home in early 1994, attacking her with blows and cuts from a knife. One assailant dry-fired a pistol repeatedly at her head, warning her to "do your job." In Montana, the Montana Freeman were thwarted in 1995 in what was apparently an attempt to kidnap (and perhaps hang) law enforcement and criminal justice officials who opposed the Freeman. The following year, in Idaho, common law proponent Gary DeMott, head of a group called "Idaho Sovereignty," announced his plans to arrest not only a local judge but hundreds of county officials across the state. In the end, he backed down from his confrontational statements, but not before creating considerable concern

necessary price for their beliefs. If the legally constituted authorities become more successful in dealing with common law tactics, it is possible that thwarted activists may resort to increased violence in an effort to meet their followers' expectations as well as to strike blows. Nevertheless, it is important that the government--federal, state and local--enforce the laws and put pressure on the bogus courts, for a key strategy must be to separate the committed leaders and members of the movement from the large body of the primarily curious, and other less committed followers and supporters, who might thereby be deterred from engaging in illegal activity. Enforcement resources must be concentrated on the comparatively small number of high-risk members who pose the greatest threats.

The most important need of all, however, is for increased awareness. Not only must public officials in areas with heavy common law activity be aware of the potential for violent confrontation or even domestic terrorism, but they must understand how to deal with the day to day activities of such extremists. County clerks and recorders must deal with their filings. Police officers must pull them over for traffic violations. Judges must face their courtroom antics, while prosecutors must learn how effectively to build cases against them. All these people and more besides must deal with the possibility of bogus liens or other retaliatory measures. Moreover, public officials in areas that have not yet seen an influx of common law activity must be aware of the warning signs of common law activity. Knowledge is a weapon that can be brought to bear to combat the rhetoric of the Posse adherents, decrease their membership, guard against their threats or acts, and punish them for any illegal activities they might commit.

Notes

1 Texas Lawyer , June 14, 1993.

2 Ilse Bailey, "Meanwhile, Back at the Ranch," Texas Prosecutor 25 (May/June 1995): 1, 8-14.

3 No adequate history of the Posse exists. Summaries can be found in David H. Bennett, *The Party of Fear: The American Far Right from Nativism to the Militia Movement* (New York, 1995), 350-355; James Ridgway, *Blood in the Face: The Ku Klux Klan, Aryan Nations, Nazi Skinheads, and the Rise of a New White Culture* (New York, 1990), 109-44; James Corcoran, *Bitter Harvest: The Birth of Paramilitary Terrorism in the Heartland* (New York, 1995), 5-42. A rather bad book, Cheri Seymour's *Committee of the States: Inside the Radical Right* (Mariposa, CA, 1991), includes information about William Potter Gale's involvement available nowhere else.

4 Posse Handbook, (n.p., n.d) 1.

5 Ibid.

6 Ibid.

7 St. Louis Post-Dispatch , November 3, 1996.

8 New York Times , February 17, 1981; Tim Bryant, "Wayne Cryts: American Hero?", September 19, 1982, UPI.

9 One of the more easily accessible versions of this common law doctrine is Howard Fisher and Dale Pond, "Our American Common Law," Delta Spectrum Research, 2100 W. Drake Rd., Suite 402, Fort Collins, Colorado, 80526. The summary of common law thought in this essay is largely, though not completely,

drawn from this pamphlet. Other versions differ only in details.

10 Quotes from "U.S.A. The Republic, Is The House That No One Lives In." World Wide Web document, http://www.ptialaska.net/~swampy/amend_14/usa.html.

11 Fisher and Pond, op cit.

12 Jerry Simmons, "Demand for Common Law 'Due Process'." Document in author's possession.

13 March 29, 1996, Hearing Transcripts.

14 George Gordon materials from articles in The New York Times , The Cleveland Plain Dealer , and various UPI wire reports.

15 Frank Ryan, "Capitol Commentary," May 26, 1981, UPI; January 21, 1983, UPI.

16 December 29, 1980, UPI.

17 Description of Pro Se meeting comes from The Tampa Tribune , April 28, 1996.

18 St. Petersburg Times , August 10, 1994.

19 (Fort Lauderdale) Sun-Sentinel , October 5, 1996.

20 The description of this incident was based largely on common law court documents sent to me by Glenn Sawyer.

21 The Washington Times , August 12, 1996.

22 San Francisco Chronicle , July 16, 1995.

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