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Militias [6]



Fact Finding Report

**BEYOND THE
BOMBING:
The Militia Menace Grows**

An Update of Armed & Dangerous

**Anti-Defamation League
1995**

CLINTON LIBRARY PHOTOCOPY



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INTRODUCTION

A new national survey by the Anti-Defamation League offers disturbing evidence that the militia movement has continued to grow since the Oklahoma City bombing. The pattern is not uniform, but militia gains plainly appear to outweigh losses -- contrary to the widespread expectation that public shock and revulsion at the bombing might prompt the militias to disband. The ADL survey also found that many hard-core militiamen believe that the United States Government itself conducted the bombing to create an excuse for further depriving citizens of their constitutional rights.

In October 1994 the ADL issued a Fact-Finding Report titled *Armed & Dangerous: Militias Take Aim at the Federal Government*, detailing militia activity in 13 states. The report sought to alert the American public and the law enforcement community to the danger posed by these extremists, many of whom were engaging in paramilitary training while spreading an incendiary anti-federal government message laced with conspiracy theories and, in some places, anti-Semitism.

Six months later, the militia movement came under intense national scrutiny after the deadly April 19, 1995, bombing of the Federal Building in Oklahoma City, when it was reported that two suspects in the bombing, Timothy McVeigh and Terry Nichols, had attended some militia meetings in Michigan. In addition, prosecutors have charged that McVeigh was motivated to commit the bombing out of anger at the federal government for its handling of the Branch Davidian confrontation in Waco, Texas -- an issue that has been one of the chief rallying cries of the militia movement.

A Growing Movement

Continued monitoring by ADL in the months after publication of the October 1994 report reveals that the militia movement has grown -- with some of the growth taking place after the Oklahoma City bombing. In this new survey, conducted through ADL's regional offices and completed six weeks after the bombing, militias have been found to be operating in at least 40 states, with membership reaching some 15,000. A continued flow of information indicates that these numbers could rise still higher. While these findings are not a definitive indication of the militias' future prospects, they do point to the need for ongoing close attention to this movement.

In California, more than 30 militias are presently operating, apparently having benefitted from the large amount of publicity the movement has received in recent weeks. Other states in which militia activity has increased are Michigan, Georgia, Alabama, New Hampshire, Missouri and Arizona. In a few states -- Ohio, Indiana and Colorado, for example -- activity has declined since the bombing. For some groups, such as the Northwest Oregon Regional Militia, a factor in their decline has been the belief that the government, having engineered the blast, is now poised to take extreme measures to destroy the militia movement.

Since the militias are mainly located in rural and small town communities, the burden of monitoring them falls largely on state and local law enforcement agencies. In the course of the current ADL survey, it became evident that many of these agencies -- in large measure for lack of adequate investigative resources -- have not yet managed to rise to this task. That job will be made even more difficult if, as some militias strategists are counseling, the groups adopt a strategy of organizing into small units designed to be less susceptible to detection, monitoring and infiltration by law enforcement. This approach echoes a strategic concept known as "leaderless resistance" that has been promoted in recent years by several far-right figures, including Tom Metzger of Fallbrook, California, who leads the White Aryan Resistance, and Louis Beam, a former Texas KKK Grand Dragon who has been "Ambassador-At-Large" of the Idaho-based Aryan Nations.

Weapons and Conspiracy Fantasies

The most ominous aspect of the militias' program is the conviction, openly expressed by many of them, that an impending armed conflict with the federal government necessitates paramilitary training and the stockpiling of weapons in preparation for that day of reckoning. According to the militias' conspiracy view, the federal authorities are enacting gun control legislation in order to make it impossible for the people to resist the imposition of a tyrannical regime or a "one-world" dictatorship. Many militia supporters believe that the conspiracy involves not only federal authorities, but also the United Nations, foreign troops and other sinister forces.

Sometimes mentioned among these sinister forces are Jews. ADL's first report on militias noted that a number of militia figures have histories of bigotry. The current survey confirms that some militia propaganda continues to exhibit an anti-Semitic strain that could well become more pervasive among militia groups as a result of the movement's obsessive conspiracy-mongering.

In this connection, the role of America's leading anti-Semitic organization, Liberty Lobby, and its weekly publication, *The Spotlight*, merit attention. In April 1995, ADL revealed that one of the Oklahoma City bombing suspects, Timothy McVeigh, advertised for sale in *The Spotlight* a military-style rocket launcher. On May 28, *The New York Times* reported that Terry Nichols, the other bombing suspect, and his brother James were readers of *The Spotlight*. Many of the conspiracy fantasies fueling the militias were promoted heavily in a September 1994 eight-page supplement of *The Spotlight*. The supplement, widely distributed among militiamen, intoned: "Is America on the verge of war? Is a 'national emergency' about to be declared and America placed under martial law? Is America on the brink of occupation by military troops under United Nations control?" In addition, the Militia of Montana has been promoting for sale in its catalog a comprehensive bomb-making manual entitled *The Road Back*, which was produced by Liberty Lobby's publishing arm, Noontide Press. The catalog describes the book as "a plan for the restoration of freedom when our country has been taken over by its enemies."

Spreading Their Message

The militia movement's continued growth is due -- at least partly -- to an effective communications network. Militia organizers have promoted their ideology not only at militia meetings, but also at gun shows, "patriot" rallies and gatherings of various groups with anti-government "grievances." Some militia firebrands reach their audience through mail-order videotapes and through computer bulletin boards and the Internet. Exploiting yet another medium, the pro-militia American Patriot Fax Network disseminates material from well-known hate group figures and conspiracy theorists, including some who proclaim that the government orchestrated the Oklahoma City bombing.

Of course, the fact that the men charged with the Oklahoma City bombing have had some association with one militia group does not make the entire movement responsible for the crime. But even if no further connection is established between the bombing and the militias, it should be clear by now that these extremists, particularly those engaged in paramilitary training, present a serious danger. The formula they have concocted -- belief in menacing conspiracies, hatred of the government, and the conviction that an armed showdown is coming -- is a prescription for disaster.

For these reasons, the Anti-Defamation League urges the vigorous enforcement by the states of existing statutes outlawing specific types of paramilitary training. Many of these

measures, currently on the books of 24 states, were patterned after a model bill formulated by ADL (see ADL's recent Law Report, *The ADL Anti-Paramilitary Training Statute: A Response To Domestic Terrorism*). The League has written to the governors of the remaining 26 states, urging them to work with their legislatures to adopt such a statute. In addition, ADL has called for federal legislation to address the terrorist threat associated with both international and domestic extremism. We are encouraged at the rapid progress that appears to be taking place on a bipartisan basis toward the adoption of a comprehensive anti-terrorism bill.

The following is a state-by-state summary of militia activity, supplementing the information contained in our October 1994 report, *Armed & Dangerous*.



MILITIA ACTIVITY IN THE UNITED STATES

Number of  indicates level of activity in 40 states with known Militia groups.

© Anti-Defamation League, June 1995.

ALABAMA

Alabama has a small, but steadily growing, militia movement. Its most active groups, which appear to be in regular contact with one another, are the Gadsden Minutemen of Etowah County and the Montgomery County-based Sons of Liberty. The Gadsden Minutemen, led by Mike Kemp and Jeff Randall, publish a regular newsletter and meet periodically to practice battle skills and hand-to-hand combat techniques.

The Sons of Liberty is a small group with a deliberately low profile. The organization's manual advises members to "keep the group size down. If you've got more than 10-12 spin off another group." Followers are also warned not to "keep all your eggs in one basket. If you have more than one rifle, keep it in a hideaway spot." Finally, the handbook counsels, "Don't lose sight of our objective.... Don't fire unless fired upon, but if they [federal officials] mean to have a war let it begin here."

ALASKA

Small militias have formed in Alaska. Despite their modest size, the groups have caused concern among observers. An Anchorage attorney and board member of the National Rifle Association has called some of the militias "extremely dangerous."

Alaskan militias are connected to the national militia movement via computers. The electronic bulletin board services "AmeriKa" and "Back Woods," based in Anchorage, provide users with conspiracy literature -- including articles by Linda Thompson (see **Indiana**) and on topics ranging from "NATO and U.S. Join Together For Total Civilian Disarmament" to "Why the British Had To Kill Abraham Lincoln." The bulletin board services also act as forums for users to lambast the purportedly encroaching powers of the federal government.

ARIZONA

A number of militia supporters and anti-federal government advocates hail from Arizona. William Cooper of St. Johns has broadcast a nightly shortwave radio program, "Hour of the Time," promoting militias and "New World Order" conspiracy theories. Gerald "Jack"

McLamb, a former Phoenix policeman and founder of Police Against the New World Order, aims to convince law enforcement officials of a plot to create a one-world government. McLamb targets a law enforcement audience with his conspiracy tract, *Operation Vampire Killer 2000*, and a newsletter, *Aid & Abet*, co-produced with Mesa police officer Rick Dalton. Another lawman, Graham County Sheriff Richard Mack, has spoken at "patriot" gatherings about his successful suit against the U.S. Government to avoid enforcement of the Brady Law in his county, an action that has earned him the admiration of militiamen nationwide.

Actual militia organizing in the state has occurred in the areas of Phoenix, Prescott, Payson, Snowflake, Kingman, Pinedale and the Four Corners, with some continued growth since the Oklahoma City bombing.

In April 1995, two men from Snowflake with reported ties to a militia were charged with illegal conspiracy to manufacture, possess and sell 20 grenades to a federal undercover agent. Kenneth Zesk, 40, and Danny Fite, 26, reportedly said that their group was arming itself for a confrontation with the federal government. The charges are pending.

On May 23, 1995, Stephen Gehring, a Mesa attorney and reputed leader of the Payson-based Militia of Arizona, was charged with fraudulent schemes and hindering prosecution, stemming from an alleged attempt to pass bogus money orders. Gehring is accused of trying to use the notes to pay off a property tax bill and to post bail for another reported militiaman, Ricki John Lawhon.

ARKANSAS

Militia organizing in Arkansas remains embryonic with one to three groups in the northwest region of the state. The groups are not known to engage in paramilitary training.

In Fayetteville, archery equipment producer Wayne Fincher of Elkins has organized the Militia of Washington County.

CALIFORNIA

California's militia movement has been growing rapidly, with approximately 35 units throughout the state. The locations of these groups range from urban centers to small towns, and extend from the state's northern to southern borders. Counties in which militias have been active include: Los Angeles, Orange, San Bernardino, San Diego, Kern, Placer, Alameda, Marin, Santa Clara, Shasta, San Joaquin, Stanislaus, El Dorado, Tulare, Sonoma, Mendocino, Butte, Tuolumne and Tehama.

This widespread activity has been encouraged on public access television and radio. "The Informed Citizen," a television program broadcast on Redding's public access channel, Michael Zwerling's radio talk show on KSCO in Santa Cruz, and "Truth Radio" KDNO in Delano, all promote militias.

Dean Compton, 33, a resident of rural Shasta County, has founded the National Alliance of Christian Militias in response to the perceived threat of an impending "New World Order." The group, whose members are armed, reportedly blends Biblical teachings and survivalism. Training sessions are conducted on Compton's 130-acre ranch.

Visiting Activists

Far-right organizer and former Green Beret Bo Gritz (see **Idaho**) has promoted his SPIKE program (Specially Prepared Individuals for Key Events -- a paramilitary survivalist training course) in California. Gritz conducted a SPIKE session and gave a speech in Butte County in February 1995, at which time the Butte County Militia was forming. On that visit, Gritz reportedly said that Americans might finally be awakening to the threats he sees: "Who would have ever thought," he was quoted as saying, "these militias would spring up everywhere?" Gritz also encouraged the formation of militias in a March 1995 speech in Glendale.

Over the past year, Mark Koernke ("Mark from Michigan") has spoken around the state as well. In August 1994, Koernke appeared in Concord, where he reportedly described a future takeover of the U.S. by foreign "New World Order" troops and claimed that the Federal Emergency Management Agency (FEMA) will establish concentration camps for American citizens. "The solution," he said, "is militias. It looks like we're going to pull the trigger. We eventually will. No doubt about that." In August and September 1994, Koernke also spoke to

audiences in Kern County, and in May 1995, he addressed 600 people at a "Taking America Back" conference in Palm Springs. The organizer of the event, Tom Johns, claims to be the "intelligence officer" for the Morongo Valley Militia.

Bob Fletcher of the Militia of Montana addressed a San Fernando Valley group called the Granada Forum in Tarzana in March 1995. The group, which gathers regularly to discuss "patriot" issues, has also heard speeches by longtime anti-Semite Eustace Mullins and California State Senator Don Rogers, who has proposed a resolution objecting to any U.S. assistance in the formation of a "global government" and the "merger of the United States" into such a world government.

COLORADO

Sources indicate that militia organizing in Colorado has been frozen in the aftermath of the April 19 bombing of the Oklahoma City Federal Building. Meetings have been put on hold, though it does not appear that the groups have disbanded.

Despite this development, anti-federal government and conspiracy-oriented tirades continue to be phoned in by listeners to radio station KHNC in Johnstown, which broadcasts a steady stream of "patriot" programs. In recent weeks some callers have expressed the view, held by many militia supporters, that the government itself carried out the Oklahoma City blast.

Another important vehicle for pro-militia activism in Colorado is *The USA Patriot Magazine*, edited by D. A. Weideman and published monthly by the USA Patriot Network in Johnstown. The periodical, whose cover price is "4 FRNs" (Federal Reserve Notes), contains a "Telephone & Address Book" listing dozens of contacts. Among them are *The Free American*, a pro-militia periodical from New Mexico; Militia Supply, identified as a "Patriot Hardware" outlet with a catalog and a toll-free phone number; Mark Koernke (listed as "Mark from Michigan"), whose speeches and videotapes have encouraged militia organizing throughout the country; and Bob Fletcher, of the Militia of Montana.

Fletcher has traveled to Colorado on behalf of his militia. In a January 1995 speech in Fort Collins, he instructed fledgling militiamen that "you better damn well learn how to use a gun if you don't know how to use one now."

Prior to the Oklahoma bombing, militias had organized in Larimer and Weld Counties near the Wyoming border, in counties around Denver, in Park County west of Colorado Springs, and in the southern region of the state.

Charles Duke

Colorado's militia movement has been publicly defended by State Senator Charles Duke, who has reportedly said that "the few militia people I know practice a policy of nonviolence, ... not altogether too different from a Boy Scout kind of idea." Following the Oklahoma City bombing, a *Denver Post* columnist reported that Duke raised the possibility of a government role in the bombing: "They're certainly capable of it. Look what they did to Waco. There's many people around the country who believe they did it.... Is it unreasonable to see the continuation of a pattern here?"

DELAWARE

The Delaware Regional Citizens Militia, located in the central part of the state, began organizing in the early months of 1995. Leader Andrew Brown has claimed that membership in the group is so secretive he would identify "only seven or so, even if you tortured me."

Brown has joined the chorus of militia leaders attributing the Oklahoma City bombing of April 19, 1995, to the federal government. "The government is behind this one," he has said. "I'm telling you, the government perpetrated that bomb. There's going to be more bombings, but it's not us, man. It's not us."

FLORIDA

Militias and their "patriot" supporters are operating throughout Florida in the following counties: Alachua, Duval, Clay, St. Johns, Marion, Orange, Brevard, Highlands, St. Lucie, Martin, Volusia, Indian River, Okeechobee, Pinellas, Sarasota, Pasco, Polk, Hillsborough,

Palm Beach and Monroe. Robert Gene Pummer, formerly of Martin County and once the key organizer of the Florida State Militia, has moved to Mayfield, Kentucky.

On December 3, 1994, outside Melbourne, a collection of anti-government activists and militia groups organized a "Patriot Alert Rally." Martin "Red" Beckman, a tax protestor from Montana, told the gathering, "They lied to us about Pearl Harbor and Vietnam and Korea and the energy crisis and the Kennedy assassination. We don't want to have to go to the militia if we can help it. But if we don't have truth in this country, part of the judgment that's going to come on this country is going to come from the militia."

Literature for sale at the rally included copies of *The New Federalist* (a publication of political extremist Lyndon LaRouche), *The Spotlight* (the organ of the anti-Semitic Liberty Lobby), literature from the St. Lucie-based Florida State Militia, 2nd Regiment, and a handbill from the Brevard County Militia proclaiming: "Wake-up America, Your country is being taken over bit-by-bit. Join Your fellow PATRIOTS to STOP this MOVEMENT."

The same month, the Gainesville City Hall briefly flew a United Nations flag. Members of militias from around the state and the nation, including then-Michigan Militia leader Norman Olson, issued a flood of complaints and threats to the city and local business leaders. The flag was removed. Gainesville's city manager stated, "The city commission meeting that we had regarding the U.N. flag was probably the meeting at which I felt more personal fear than any other public meeting I've ever attended in 20 years."

On the airwaves

In Pensacola, militias are promoted by Chuck Baldwin, the pastor of Crossroads Baptist Church. Baldwin hosts a radio show on the Christian Patriot Network and invites listeners to call in: "We're talking about citizens' militias, federal government's encroachment on individual rights, New World Order, United Nations, gun control, it's all related." Militias are also promoted on the public access channel in Alachua County, which airs a pro-militia video produced by the North Florida Patriot Association.

GEORGIA

Frank Smith, an Air Force veteran and retired tool-and-die maker, claims to lead the Georgia Militia. Days after the April 19 bombing of Oklahoma City's Federal Building, Smith echoed the sentiments of militia leaders across the country by blaming the U.S. Government for the blast. Speaking on the CNN television program "Talkback Live," Smith said the government was "trying to get the militia movement to come out and fight. We expected them to do something drastic. We didn't expect it to be that drastic."

In March 1995, the Voice of Liberty Patriots, a group led by Rick Tyler of Epworth, held a conference in Atlanta featuring state and county rights advocates -- including Colorado State Senator Charles Duke and California State Senator Don Rogers -- as well as conspiracy theorists. Several in attendance sported "Georgia Militia" T-shirts reading "Don't Tread On Me." Literature offered for sale at the rally included the anti-Semitic Liberty Lobby's *Spotlight* tabloid.

Tyler also directs a so-called constitutionalist, anti-tax group known as the Georgia Taxpayers Association, and co-hosts "Voice of Liberty," a daily shortwave radio program. Soon after the Oklahoma City bombing, "Voice of Liberty" listeners were told that the disaster was being used by the government as an excuse "to put across their agenda of establishing a police state.... They are ruthless, they are cunning, they are cutthroat, and furthermore, we are their target."

Another organization, known as Citizens for a Constitutional Georgia, meets weekly at an Atlanta hotel. Materials available for sale at the meetings have included pro-gun literature, but also *The Protocols of the Elders of Zion* and *The Spotlight*. The group has sponsored local appearances by well-known militia activists Mark Koernke (see **Michigan**) and Marietta native Linda Thompson (see **Indiana**). The latter gave a speech at the Cobb County Civic Center that was attended by some 800 people.

A militia group in north Georgia conducts paramilitary maneuvers on a 38-acre tract in Hall County, northeast of Atlanta.

IDAHO

In recent months, Idaho's militia movement has attempted to achieve mainstream acceptance. Carefully toning down his group's rhetoric, militia leader Samuel Sherwood, of the Blackfoot-based United States Militia Association (USMA), has told Idaho lawmakers that his organization is working for change within the political system. On other occasions, however, Sherwood has derided the state's government and has seemed to encourage violence against its representatives.

Sherwood has exploited local dissatisfaction with federal environmental policy to boost his recruiting efforts. In January 1995, a federal judge issued an order prohibiting mining, logging and ranching in five National Forests in Idaho to protect endangered salmon in the area. The move threatened the livelihoods of many Idahoans including residents of the small town of Challis. Sherwood, plying the fears and anger of the community, reportedly encouraged Challis residents to join his militia to fight such federal restrictions and declared:

We're ready to look the federal government in the eye. We want a bloodless revolution, but if the bureaucrats won't listen we'll give them a civil war to think about. All it's going to take, is this crazy judge to close down central Idaho and there'll be blood in the streets.

Threat to Legislators

Sherwood issued another menacing threat in March. After meeting with Idaho Lieutenant Governor Butch Otter, Sherwood complained that some Idaho politicians ignored the interests of state citizens in favor of a federal agenda. His advice to followers, widely reported, was: "Go up and look legislators in the face, because some day you may have to blow it off."

Sherwood has claimed that state militia members helped Republican Anne Fox win election last November as Idaho Superintendent of Education. According to the Associated Press, Sherwood said that 1,000 militia members were on hand to assist the campaign effort by answering telephones and providing other services. After Fox's victory at the polls, Sherwood served briefly as a member of her transition team.

In February 1995, Fox spoke at a USMA meeting in Boise. On the podium, she expressed approval for the militia's strong opposition to gun control and its calls for states' rights.

On April 15, 1995, militia members, tax protesters and constitutionalists from across the country, gathered in Post Falls for a day-long seminar. Speakers before the reported crowd of 300 included Militia of Montana leader John Trochmann, anti-tax activist M. J. "Red" Beckman, of Billings, Montana (see *Armed & Dangerous*), and Eustace Mullins, of Staunton, Virginia, a longtime anti-Jewish propagandist and conspiracy theorist.

Bo Gritz

Far-right figure and former Green Beret James "Bo" Gritz, who is building a survivalist community in central Idaho, has engaged in activities that have closely paralleled those of the militia movement. He has traveled the country conducting a weapons and survival training course he calls SPIKE -- Specially Prepared Individuals for Key Events -- and has called for the execution as traitors of the "tyrants" responsible for the government's actions in the Randy Weaver standoff in northern Idaho and the Branch Davidian conflagration at Waco.

Recently, Gritz deplored the April 19 Oklahoma City bombing yet praised its technique. At a speech in Dallas, Texas, he labeled the blast a "Rembrandt," and said he considered it a "masterpiece of science and art put together."

A radio station in Charlevoix, Michigan, alarmed by Gritz's remarks, decided to suspend indefinitely broadcasts of Gritz's daily shortwave program, "Freedom Calls." After the station was inundated with calls protesting the move, however, "Freedom Calls" returned to the air two days later.

ILLINOIS

A Lombard-based organization called the Illinois Minutemen describes itself as a militia and has echoed the anti-government themes of militia groups elsewhere. The group, formed in mid-January by Glen Ellyn resident Mike Bafundo, now claims members from Cook, DuPage, Will, Kane and McHenry Counties. It meets twice a month at a Lombard bowling

alley. Members do not wear uniforms or carry weapons, but they are reportedly considering a paramilitary training session with the Michigan Militia.

Another organization, the Southern Illinois Patriots League, held a rally on April 22 in Carbondale to protest the presentation by Governor James Edgar of the state's highest honor, the Order of Lincoln, to gun control advocate James Brady. Signs at the rally, which drew 150 participants, assailed some of the militia movement's favorite demons: one described James Brady and his wife Sarah as "diabolical misfits," another equated agents of the U.S. Bureau of Alcohol, Tobacco & Firearms with Nazi stormtroopers. Protestors were also invited to wipe their feet on a United Nations flag. Organizers of the rally included Glad Hall, Scott Slinkard and Ken Potter.

INDIANA

Militias have become active across the state in such counties as St. Joseph's, Allen, Johnson, Marion, Ripley, Warrick and Dearborn. Many of the groups in these counties are also part of the larger Indiana Citizens Volunteer Militia, a state-wide umbrella organization that coordinates militia activities.

Influential militia propagandist Linda Thompson, of Indianapolis, operates a computer bulletin board for militia groups across the country. She has announced to prospective new members that her bulletin board was for "doers, not whiners or talkers." She explained that potential members had to be willing to provide the movement with substantial assistance, such as a training site, ammunition, skills training, food, medical care, or money.

Like many others in the militia movement, Thompson blamed the government for the Oklahoma City bombing. "I genuinely believe the government did this bombing," Thompson told *The Boston Globe*. "I mean who's got a track record of killing children?"

On May 12, 1995, Thompson was arrested by Marion County police and charged with resisting arrest and disorderly conduct; the case is pending. According to officials, Thompson carried a concealed weapon into the county prosecutor's office and refused to show her permit for the gun.

Elsewhere in Indiana, the Boonville-based North American Volunteer Militia, directed by Joe Holland, enjoys a considerable following. Holland, who describes himself as a patriotic "freedom fighter," reportedly is under investigation by federal authorities for bank fraud, bankruptcy fraud, securities fraud and tax evasion.

The North American Volunteer Militia is active outside Indiana, particularly in Montana. In April 1995, Holland urged followers to travel to Ravalli County, Montana, to show their support for militia members there who had engaged in an armed confrontation with police (see **Montana**). Ravalli County law enforcement officials expressed concern that Holland was attempting to provoke a violent encounter. He surrendered to Indiana authorities after being charged in Montana with criminal syndicalism.

In Elberfield, a militia group called the Tri-County Carbineers, led by truck driver Jimmy Funkhouser, has been organized. To qualify for membership, candidates are required to own an assault rifle and 100 rounds of ammunition.

James Heath, a member of the Indianapolis Police Department, heads the Johnson County Militia, located just south of Indianapolis. Like others in the movement, members of the organization meet to express their deep distrust of federal lawmakers and share their fears of an impending "one-world government."

In early May 1995, speaking before a Greenwood-based group called the Sovereign Patriots, Heath derisively referred to Indianapolis Mayor Stephen Goldsmith as "Goldstein." Noting that the mayor's home address is unlisted, Heath also asserted that Goldsmith had something to hide. In a subsequent apology, Heath employed an anti-Semitic stereotype to argue that his slur was really a compliment. Several days later, Indianapolis Police Department officials disciplined Heath for his remarks by demoting him from sergeant to patrolman.

IOWA

Militia groups have formed in Iowa, but there is little evidence of their size and influence.

Paul Stauffer, an Air Force veteran living in Cedar Rapids and the self-described "national contact" for the Iowa Militia, has claimed that his organization operates in 35

counties; he has not offered specific membership figures. He contends that Iowa militia members are concerned with "intelligence" gathering activities, and that the group maintains contacts with militia leaders across the country.

A May 3, 1995, Cedar Rapids meeting organized by Stauffer found many among the audience of 60 parroting the fevered anti-government conspiracy theories of the militia movement.

KANSAS

C. D. Olsen of Lyndon leads the Kansas Citizens Militia (also known as the Kansas Unorganized Citizens Militia), the chief such group in the state. Olsen took over recently from Morris E. Wilson, previously the group's commander and now its "Executive Officer." Wilson claims militia units are organizing in Wichita, Junction City and Topeka, where at one meeting he played host to Michigan militia proponent Mark Koernke.

Several individuals, including Wilson, were recently involved in a brush with the law. On April 17, 1995, the Sheriff's Department in Osage County responded to a local farmer's complaint of prowlers on his land. Officers found four heavily armed men, all members of the Kansas Citizens Militia, parked on the farmer's property. The men claimed they had been informed of a possible burglary and had come to offer their assistance. After a search of their vehicles by the officers, Wilson and another man were arrested on charges of carrying concealed weapons; a third man was arrested for possessing a gun with a defaced serial number. While the charges against the other two men have been dismissed, Wilson's case is still pending.

Some militia figures in Kansas, like their counterparts elsewhere, have been quick to blame government officials for the April 19 bombing of the Oklahoma City Federal Building. Brad Glover, who calls himself Brigadier General of the Kansas Militia and commander of the 1st Kansas Mechanized Militia, has said, "My personal opinion is that it's a [government] set-up. There are just too many coincidences."

KENTUCKY

There are two main militia groups in Kentucky, both of which are newly formed and relatively small.

Danny and Diane Snellon are, respectively, the coordinator and the secretary/treasurer of the Kentucky Citizens Militia. Formed in Fall 1994, the group does not "have uniform or gun requirements," says Danny Snellon. Recent meetings have taken place at the main branch of the Lexington Public Library and at a sportsman's shop in Paris, northeast of Lexington. Attendance at these meetings has ranged from 10 to 20 people.

In Boone County, in northern Kentucky, a militia called the Defenders of Liberty is believed to have a core group of 30 to 40 individuals. Unlike the Kentucky Citizens Militia, the Defenders of Liberty do wear uniforms and undergo paramilitary training. Since the bombing in Oklahoma City, militia members in Kentucky appear to be lying low to avoid the scrutiny of law enforcement officials.

LOUISIANA

In Lafayette, the Militia of Louisiana has formed under the leadership of Thomas Parker. It has engaged in paramilitary and urban combat training, and is thought to number about 55 members -- some of whom have had affiliations with so-called constitutionalist groups.

Early in 1995, Michigan-based organizer and ideologue Mark Koernke addressed the militia.

MICHIGAN

The Northern Michigan Regional Militia, also known as the Michigan Militia, has attracted national attention in the wake of the April 19 bombing of the Federal Building in Oklahoma City.

Group leaders have said that Terry Nichols, a suspect in the Oklahoma blast, attended several of its meetings last year and that on at least one occasion he brought another suspect, Timothy McVeigh. Additionally, federal agents searching the Decker, Michigan farm of Terry Nichols's brother James -- who has been considered a material witness in the bombing case -- uncovered a number of documents relating to the Michigan Militia.

Not surprisingly, leaders of the Michigan Militia have disagreed with federal officials about the identity of the bomber, and have offered a theory of their own. A week after the blast, Michigan Militia commander Norman Olson, along with his chief of staff, Ray Southwell, announced that they believed the Japanese had bombed the Oklahoma building. The motive: retaliation for the recent nerve gas attack on the Tokyo subways, which Olson and Southwell said was engineered by the American government.

When their view was repudiated by a majority of the Militia's board, the two men immediately resigned from their positions. Olson assured the press that, nevertheless, "the Michigan Militia is as strong as ever," and that he and Southwell will remain members of the organization.

Despite negative publicity since the Oklahoma City bombing, the militia movement in Michigan has enjoyed some continued success in its recruitment.

Mark from Michigan

Minutes after the bombing in Oklahoma, outspoken activist Mark Koernke (a.k.a. "Mark from Michigan"), whose militant "how-to" videotapes have made him a prime recruiter for the movement, faxed a cryptic, handwritten message about the bombing to U.S. Rep. Steve Stockman, a freshman Republican from Texas. "First update," the fax read in part. "Seven to 10 floors only. Military people on the scene." Koernke insisted he had no prior knowledge of the bombing, and that he had only sent the fax hoping Stockman would "get cameras in place as soon as possible."

Koernke, of Dexter, Michigan, is employed as a janitor at the University of Michigan. He has been identified as spokesman of the Michigan Militia-at-Large, characterized as a more radical offshoot of the Michigan Militia. Koernke has promoted conspiracy theories to audiences around the country, including several in the Pacific Northwest while on a speaking tour sponsored by the Militia of Montana.

Until recently, Koernke also hosted "The Intelligence Report," a shortwave radio program that aired five times a week. Days after the Oklahoma bombing, Koernke told listeners that federal agents had outfitted suspect Timothy McVeigh in a bright orange jumpsuit in order to make him an easy assassination target.

Koernke's program was subsequently pulled from the airwaves by WWCR, the Nashville, Tennessee, shortwave radio station that had been broadcasting his daily diatribes. "We've got to get the gasoline off the fires," insisted the manager of the station, which reaches 2.7 million listeners in the United States and a number of foreign countries.

MINNESOTA

There are several small militia groups sprinkled across Minnesota. These include the Arrowhead Regional Militia in Duluth, the St. Cloud-based Metro Militia and the Red Pine Regional Militia, located in the Minneapolis area.

MISSISSIPPI

Drew Rayner of Ocean Springs has spearheaded recruitment for the Mississippi Militia; on April 28, 1995, he appeared before a group of 65 to 75 near Laurel. Literature available at the meeting included the Mississippi Militia "Information Booklet," which contained a 20-page manual on the formation of a militia, *The Revolutionary Spirit*, a Laurel-based tabloid that excerpted material from Liberty Lobby's *The Spotlight*, and *Operation Vampire Killer 2000*, a manual by former Phoenix, Arizona, policeman Jack McLamb that aims to convince law enforcement officials of a one-world government conspiracy.

MISSOURI

The Buckner-based Missouri Patriots are a recent addition to Missouri's militia movement. Its newsletter, *The Militia Minute*, rails against the federal government, "international bankers" and the media. While its size is not known, leaders of the militia are also members of the Kansas City-based White Knights of the Ku Klux Klan. In addition, a

promotional item for the White Knights in their publication, *The White Beret*, features the slogan: "Join the White Militia."

Statewide, militias have been established in an estimated 14 counties and are recruiting actively, with some continued growth since the bombing of the Oklahoma City Federal Building. Although they maintain separate identities, several units in the eastern section of Missouri appear to operate under the leadership of the St. Louis-based 1st Missouri Volunteers Militia, a group established in January 1995 and led by John Moore. Militia groups in the western part of the state are directed by the Missouri 51st Militia, of Kansas City. The Springfield-area 24th Missouri Militia is the largest and most influential such group in the southeastern part of the state.

In March, the 1st Missouri Volunteers assembled a gathering of six state militia groups for a "Missouri Regional Conference." At the event, speakers, including State Senator David Klarich, declared that unlike their counterparts in other states, the Missouri Militia does not promote an agenda of bigotry. However, literature offered at the meeting included extracts from hate publications like the Liberty Lobby's *The Spotlight*, *The Truth at Last*, published by anti-Jewish agitator Ed Fields of Georgia, and *The Jubilee*, a journal that espouses the anti-Semitic pseudo-theology of the "Identity Church" movement.

MONTANA

Militia groups in Montana, whose armed members have been embroiled in hostile confrontations with police, are among the most volatile in the country.

The Militia of Montana (M.O.M.), one of the movement's most visible and extreme groups, has continued to spread its message around Montana and the nation from its headquarters in the small town of Noxon.

M.O.M. was founded by John Trochmann -- who has been a speaker at a major conclave of the white supremacist Aryan Nations -- along with his brother David and David's son Randy. In public, John Trochmann has tried to play down his Aryan Nations experience. In a recent press release, however, Aryan Nations leader Richard Butler announced that

Trochmann had traveled to the group's Idaho compound "quite often ... for Bible study," and that he "even helped us write out a set of rules for our code of conduct on church grounds."

In December 1994, M.O.M. sponsored a five-stop speaking tour in Washington and Montana with Mark Koernke ("Mark from Michigan"), whose videos and speeches are key recruiting tools for the militia movement. John Trochmann and Bob Fletcher, another M.O.M. official, were also in attendance to answer questions from the audience. One month later, Fletcher traveled to Colorado to reach out to sympathizers in that state. He warned an audience of about 75 that a bloody battle was in store, and instructed them to be prepared. "You better damn well learn how to use a gun if you don't know how to use one now," he said. "If you don't have bullets now, you better flat get them."

M.O.M. Propaganda

An item in an issue of M.O.M.'s monthly newsletter, *Taking Aim*, printed several weeks before the bombing of the Oklahoma City Federal Building, underscores the centrality of the date, April 19, to the group's ideology. The newsletter noted April 19, 1995, as the upcoming execution date ("UNLESS WE ACT NOW!!!" it read) for convicted murderer and white supremacist Richard Wayne Snell. The item recounted that April 19 was also the day on which "Lexington burned.... Warsaw burned.... The feds attempted to raid Randy Weaver.... The Branch Davidians burned." By citing Lexington and Warsaw, M.O.M. seems to compare today's U.S. Government to colonial America's British rulers and, outrageously, to the genocidal Nazi regime, while simultaneously agitating on behalf of a racist and anti-Semitic killer.

As is the case with many militia groups around the country, M.O.M. leaders are obsessed with the notion that United Nations troops, aided by Soviet-made weapons, are planning a takeover of the United States. An "Intelligence Report" recently distributed by M.O.M. purports to provide followers with detailed documentation of this conspiracy. A National Guard base in Biloxi, Mississippi, is said to be filled with trucks "of Soviet origin," whose "fuel tanks have been topped off and apparently look ready to roll." The report adds: "These trucks are being marked at this time United Nations."

The Militia of Montana distributes a catalog that offers for sale numerous videotapes, audiotapes and publications on a variety of conspiracy themes. The catalog also offers a comprehensive bomb-making and warfare manual, *The Road Back*, which was produced by the

anti-Semitic Liberty Lobby's publishing arm, Noontide Press. M.O.M. describes the book thus: "A plan for the restoration of freedom when our country has been taken over by its enemies. 20 chapters on organization, recruiting, intelligence, communications, supply, weapons, sabotage, medicine, warfare, and training, etc."

Brush With the Law

In recent months, authorities in Musselshell County have learned that several M.O.M. members, including John Trochmann, have cooperated with so-called Freemen. Followers of this anti-tax movement have defied local and federal law and have operated their own common law court system, reflecting their view of the Constitution.

In early March 1995, rancher William Stanton, a follower of the Freemen movement, was sentenced by a judge in Roundup, Montana, to a 10-year prison term for criminal syndicalism -- the advocacy of crime, violence, or property damage for political ends -- related to Freemen activities. On the heels of Stanton's sentencing, and in an apparent show of support for the Freemen, John Trochmann and six of his followers embarked on a 500-mile journey to Roundup, armed with an arsenal of weapons. "I believe the men were here to attempt to capture or kill us," the Musselshell County Attorney told a local paper.

The seven men were arrested on charges of carrying concealed weapons and felony intimidation. A search of their vehicle revealed a collection of handguns and rifles, communications equipment, thousands of rounds of ammunition, quantities of gold and silver, and \$80,000 in cash.

Charges against all but two of the men -- Frank Ellena of Billings, and Dale Jacobi of Thompson Falls -- were dropped in late March after a state prosecutor concluded that there was insufficient evidence to support felony charges.

North American Volunteer Militia

The Boonville, Indiana-based North American Volunteer Militia (NAVM), directed by Joe Holland (see **Indiana**), has an active outpost in Montana. The group's attitude toward law enforcement officials may be discerned from a letter by Holland to the Montana Revenue Department: "How many of your agents will be sent home in body bags before you hear the pleas of the people?" asked Holland in his letter. "Proceed at your own peril!"

In early April 1995, an armed encounter between militia members and Ravalli County officials ended with the arrest of one militiaman. Drawing a parallel between this situation and the confrontations involving the Branch Davidians at Waco and Randy Weaver at Ruby Ridge in Idaho, Joe Holland urged followers to travel to Ravalli County in a show of support. "In my opinion," Holland wrote in an "alert" message distributed by fax, "it looks as though another Waco or Ruby Ridge may be in the planning stages in Ravalli County, Montana. There has been a build-up of police over the last few days." In May, Holland and two Montana men were charged with criminal syndicalism; Holland has surrendered to Indiana authorities.

NAVM's Montana coordinator is Calvin Greenup of Darby, a dump operator and elk rancher. In early May 1995, Greenup was charged with plotting to kidnap, try in a common law court, and hang local government officials. The charges, which were also filed against Joe Holland and two of his cohorts, followed an undercover investigation conducted by the state Justice Department. In addition, Greenup has been wanted by officials for tax evasion, obstruction of justice, and running an unlicensed game farm. For several weeks, though, he avoided arrest by hiding out on his large farm and threatening to shoot any law officer who approaches. In early June, Greenup turned himself in to local authorities, made bail, and was released. Greenup's son, Scott, who was sought by police for assaulting an officer and jumping bail, also surrendered.

Before ending his holdout, Greenup said his extreme stance was his only guarantee that "the crooked politicians" will take notice. "Do the political officials want this state to blow or do they want to get it back and hear our pleas?" he asked.

NEBRASKA

An Omaha-based militia has been organizing since January 1995. The group, which has used several names, including the Constitutional Reinstatement Group and the Nebraska Militia, meets bi-weekly; at these meetings, the notorious anti-Jewish screed *The Protocols of the Elders of Zion* has been offered for sale.

The group does not appear to engage in paramilitary training.

NEW HAMPSHIRE

The Hillsborough Troop of Dragoons, led by Fitzhugh MacCrae, has recently emerged as an active militia in New Hampshire. MacCrae told *The Boston Globe* that his group comprises 63 members, of whom two-thirds are allegedly combat veterans. While he emphasizes the group's benign and civic activities, he also boasts, "We're probably better armed than the Army."

Elsewhere, the White Mountain Militia operates in Cornish under the leadership of N. Scott Stevens, who describes himself as director of the militia's "Information Services." Stevens hosted a May 14, 1995, rally in the Cornish town hall for militia members, extreme anti-gun control groups, and others hostile to the federal government.

Ed Brown, head of the Plainsfield-based Constitution Defense Militia (see *Armed & Dangerous*), has claimed to operate groups in seven states, but his organization has not engaged in any publicly noted activity in recent months. According to *The Boston Globe*, shortly after the Oklahoma City bombing, Brown said, "We think it's an inside job.... These criminals within the U.S. Government want to make us look bad."

NEW MEXICO

Militias in New Mexico operate in counties around Albuquerque and Santa Fe and in the northwestern area of the state. On October 22, 1994, six militia organizations from these regions met in Raton in an unsuccessful attempt to form a combined New Mexico militia. More recently, Governor Gary Johnson was criticized for meeting with militia representatives on April 28, 1995, although he claimed that he met with them in order to ensure that they remain non-violent.

A Farmington militia is known to promote neo-Nazi and white supremacist sentiments.

The Free American

At the start of 1995, the state's leading pro-militia voice, *The Free American*, added anti-Semitism to its advocacy of armed preparedness. In its edition marked "January 1994" (the date was clearly erroneous since the issue reported recent events), the Tijeras-based monthly

newspaper, published by Clayton R. Douglas, included a coupon stating: "Know Someone Who Doesn't Believe in Conspiracies? Send them a copy of the Protocols of the Elders of Zion. The blueprint used for the New World Order. Only \$15.00."

Douglas, though he is not part of a militia, echoed many militia leaders around the country when he speculated after the April 19 Oklahoma City bombing that "factions within our government" may have engineered the deadly explosion.

NEW YORK

In recent months, several militias have surfaced in New York. A number of these groups are clustered in the region of south central New York along the New York-Pennsylvania line. While some of the organizing in this area remains inchoate, established militias include the Citizens Militia, Chemung Division, founded in Chemung County in November 1994 by Jerry Loper, a self-employed excavator and landscaper. Loper's group, which engages in paramilitary training, receives literature from the Militia of Montana and militia groups in Michigan, providing further confirmation that groups in those two states serve as important propaganda sources for militias around the country.

Militias have also organized in nearby Tioga, Steuben, Schuyler, Chenango, Cortland and Broome Counties. In Chenango County, militiaman Francis Catlin, who uses the code name "Moonshiner," has said that outrage over the Waco conflagration fueled the militia movement in upstate New York. "We figure this country is in real bad shape," he has commented, adding that "Jewish people" are responsible for the financial difficulties faced by grain farmers.

Near New York City, militias were formed in November 1994 in Dutchess and Orange Counties. The Orange County Militia, which has more recently been known as the Committee of Correspondence, has distributed literature incorporating conspiracy theories from political extremist Lyndon LaRouche. Founder Walter Reddy, while reportedly distancing himself from the group, has also expressed the suspicion that the federal government was involved in the Oklahoma City bombing. Reddy stated, "It was CIA-orchestrated, from the information I have."

NORTH CAROLINA

The Alamance Minutemen is a small and secretive militia group whose communications appear to be conducted largely through the "Spirit of '76" computer bulletin board, operated by the group's leader, Jeff Rudd of Alamance County.

Another organization, Citizens for the Reinstatement of Constitutional Government, meets in the towns of Monroe and Matthews, both near Charlotte. While it once promoted militia-style themes, it now claims to engage only in Bible study. Indications are that the group's one-time leader, Al Esposito (see *Armed & Dangerous*), may no longer be active in that role.

OHIO

The first few months of 1995 were marked by the widespread organizing throughout the state of the "Ohio Unorganized Militia" -- loose-knit groups that conduct various paramilitary exercises. However, low attendance at meetings since the Oklahoma City bombing suggests that the militia movement in Ohio may have lost some strength.

The Ohio Unorganized Militia has justified its activity by citing both the U.S. Constitution's Second Amendment and a provision of state law: the Ohio Revised Code provides for an "unorganized militia ... of all able-bodied citizens of the state who are more than 17 years of age and not more than 67 years of age." The group has been active in Franklin, Brown, Clermont, Hamilton, Stark, Coshocton, Columbiana, Williams, Lucas, Medina and Montgomery Counties.

Despite the claimed legal basis for its existence, the militia has used highly inflammatory language. Rod Scott, a captain in the Brown County group, has stated: "Any armed agent of the United States Government who comes to my home or any militia member's home to take a gun, to steal my property, to violate my freedom, will be met with deadly force."

OKLAHOMA

To date the most visible militia in Oklahoma, the Oklahoma Citizens Militia operates in Eufaula, southeast of Tulsa, under the leadership of denture maker Ross Hullett. Hullett has condemned the April 1995 Oklahoma City bombing, stating, "Christians don't do this to people." But Oklahoma militia members also share the characteristic, paradoxical "patriotism" of the broader movement. "I would lay down my life for my country," member John Harrell told *The Wall Street Journal*, "but I wouldn't spit on a congressman if he were burning to death."

OREGON

Oregon's militia movement, which began to emerge in late 1994, appears still to be in its infancy. Touting the familiar theme that "a Civilian Militia is a final line of defense against all enemies both foreign and domestic," the Central Oregon Regional Militia has operated modest units in the town of Prineville and neighboring Deschutes County.

The Salem-based Northwest Oregon Regional Militia was disbanded by its founder, insurance salesman Mike Cross, following the Oklahoma City bombing. Cross said he feared "persecution" by the federal government. He stated, "If they would blow up one of their own buildings, who knows what they could do to militias."

PENNSYLVANIA

In recent months, sporadic militia organizing has been conducted throughout eastern and southeastern Pennsylvania -- including Dauphin, Delaware, Bucks, Berks, Montgomery and Chester Counties. Some of this activity may have been spurred in part by a November 20, 1994, recruiting speech in suburban Philadelphia by Samuel Sherwood, head of the Idaho-based United States Militia Association. Sherwood subsequently appeared on local talk radio programs.

Similarly, in Crawford County in the western part of the state, a February 4, 1995, appearance by Michigan militia proponent and video agitator Mark Koernke attracted various militia sympathizers and groups. The Keystone Militia has a base in adjacent Warren County.

Militias have formed in Potter and Elk Counties in north central Pennsylvania. Ken Haupricht of the Elk County group has acknowledged that two members also belong to the Ku Klux Klan. The Potter County-based Bucktail Militia (named after Civil War sharpshooters who trained in the area) claims "brigades" in neighboring counties.

SOUTH CAROLINA

In the early months of 1995, the South Carolina Civilian Militia began actively recruiting in the Greenville-Spartanburg area, seeking, in particular, pilots and those with military skills. The militia's self-proclaimed leader, Ian Roebuck, a preacher, claims 80 members in several counties. Roebuck and "information officer" R. C. Davenport disclaim any ties with white supremacist organizations, but advance the notion, standard in the militia movement, that the United States is on course to succumb to a United Nations-led tyranny.

SOUTH DAKOTA

The Rapid City-based Tri-State Militia is described by its leader Rodger Chant as an umbrella organization for militia groups across the state. Chant also claims that the group maintains ties with 35 other militias across the country, including the Michigan Militia.

TENNESSEE

George Etter of Morristown leads the pro-militia Christian Civil Liberties Association. He publishes a newsletter, *The Militia News*, which he claims circulates to "millions" of militia members, and reportedly distributes materials that explain how to make automatic weapons and explosives. Etter, who has a felony record, is himself prohibited from handling firearms. Like many militiamen around the country, Etter reportedly claimed the federal government engineered the Oklahoma City bombing to discredit the militia movement.

Additionally, a militia has been reported to be operating near Memphis.

TEXAS

An active militia presence was established in Texas with the founding of the Texas Constitutional Militia in 1994. The organization's manual includes language identical to the Michigan Militia's literature, with a pledge to "stand against tyranny, globalism, moral relativism, humanism, and the New World Order threatening to undermine our form of government and these United States of America."

Since Fall 1994, the Texas Constitutional Militia has organized widely, with groups active in the San Antonio, Dallas, Houston and Beaumont areas. The militia's "commanding officers" include, in Collin County, welder John A. Turner of Plano, and in Dallas County, Russell Smith, a glass artist. A separate group, the Red River Militia (or Red River Militia Guard), has organized in east Texas, and is believed to be active in Gilmore, Marshall, DeKalb and Texarkana.

On November 12, 1994, the Texas Constitutional Militia convened an "Alamo Rally" in San Antonio "to honor the Alamo heroes ... and to petition the government for redress of grievances." The rally was advertised in the anti-Semitic Liberty Lobby's tabloid, *The Spotlight*. Anti-Semitic and racist materials produced by such groups as Liberty Lobby and William Pierce's neo-Nazi National Alliance were distributed at the rally.

The Dallas-area militia, known as the North Texas Constitutional Militia and based in suburban Richardson, has engaged in paramilitary and survival exercises near the Texas-Oklahoma border. These exercises have included the S.T.A.R. (Strategic Training for Assistance and Readiness) program. According to its materials, S.T.A.R. is conducted by a "cadre" of "former Rangers, Seals, Green Berets, and Martial Arts Experts." On April 19, 1995, the day of the Oklahoma City bombing, and two years to the day after the Branch Davidian compound at Waco erupted in flames, the North Texas Constitutional Militia erected near the site of the compound a stone tablet in memory of those killed in the blaze.

Several militias are also believed to be active in Kerrville, northwest of San Antonio, among them the U.S. Civil Militia, founded by Betty Schier and her son Carl. In early May, the pair reportedly turned over to federal authorities a variety of explosives, including TNT, nitroglycerine and a homemade material incorporating ammonium nitrate and paraffin. Betty Schier, 66, a retired gun dealer, said she and her 35-year-old son "don't condone" the Oklahoma City bombing, and claimed they only had the explosives for purposes of producing

a video called "The Mad Bomber," which the son has been trying to sell through a survivalist magazine. The authorities questioned the pair and took possession of the explosives after Carl Schier alerted the FBI that an acquaintance had asked him for information on making a car bomb. No charges were filed against the Schiers.

Gritz Visits Texas

On February 18, 1995, Bo Gritz (see **Idaho**) brought his SPIKE (Specially Prepared Individuals for Key Events) weapons and survival training workshop to Dallas. Several timeworn anti-Semitic screeds were sold at the seminar, including *The Protocols of the Elders of Zion*, *Jewish Ritual Murder*, by mid-century British anti-Semite Arnold Leese, *The Jews and Their Lies*, by Martin Luther, and *The Truth About the Protocols*, by Gerald Winrod, the Kansas-based Jew-hating demagogue of the 1930's and 40's known as the "Jayhawk Nazi."

The local contact person for Gritz's visit was Tom Baker, who runs Baker's Outpost, a "Survival & Preparedness Center" in nearby Plano. Along with survival and "defense" supplies, Baker sells conspiracy literature, including Peter Kershar's *Economic Solutions -- The Incredible Story of: How You and America are Being Bankrupt & What You Can Do to Avoid the Wipeout*, which advances the anti-Semitic canard that the Federal Reserve is run by eight Jewish families. The book carries an endorsement by Bo Gritz.

Gritz returned to Dallas the following month for "Preparedness Expo '95," where he shared the podium with, among others, the Michigan-based militia figure Mark Koernke. On a more recent stop in Dallas, shortly after the Oklahoma City bombing, Gritz deplored the tragedy, but went on to describe the bombing as "a Rembrandt, a masterpiece of science and art."

Congressman Steve Stockman

In an official letter dated March 22, 1995, Congressman Steve Stockman wrote to Attorney General Janet Reno claiming that "reliable sources" had informed him that several federal agencies were preparing a paramilitary style attack on the militias, whom he described as "Americans who pose no risk to others." Mr. Stockman even specified the dates and hour of the alleged impending attack: March 25 or 26 at 4:00 a.m.

Warning that the assault would "run the risk of an irreparable breach between the federal government and the public," Congressman Stockman asked for detailed information

about the military arrangements for the assault. The purported plan of attack, it turned out, was a fiction.

Stockman also wrote an article which appeared in the June issue of *Guns and Ammo* magazine, claiming that the raid on the Branch Davidian compound in Waco was conducted by the Clinton Administration "to prove the need for a ban on so-called assault weapons." Earlier, Stockman appeared as a guest on the radio program of Liberty Lobby, the leading anti-Semitic propaganda group in the nation; he has since said he was unaware of Liberty Lobby's anti-Semitism. ADL has recently conveyed its concerns over these matters in a meeting with Congressman Stockman.

UTAH

News accounts citing law enforcement sources report that at least seven militia units are operating in Utah. One group, the Box Elder County-based Unorganized State Militia of Utah, was disbanded this spring by leader Doug Christiansen, who said he disapproved of the growing militancy of the movement.

Johnny Bangerter, the leader of a St. George-based neo-Nazi Skinhead group called the Army of Israel, claims his organization has ties to militias in Montana, Texas and Utah. He and other Skinheads traveled to northern Idaho in 1992 to express support for white supremacist Randy Weaver during his standoff with federal law enforcement agents -- an event that later contributed to the genesis of the militia movement. Bangerter has asserted that he wrote a note delivered to Weaver during the episode by influential far-right figure Bo Gritz (see **Idaho**), who assisted in Weaver's surrender to authorities.

VIRGINIA

James Roy Mullins, a founding member of the militia-like Blue Ridge Hunt Club (see *Armed & Dangerous*), pled guilty to federal firearm offenses on February 27, 1995. On May 15, he was sentenced to a five-year prison term. The trial of Warren Darrell Stump II, another Hunt Club member accused of firearm offenses, was delayed on April 26, 1995, when a federal judge determined that the Oklahoma City bombing might affect jury deliberations. Two additional club members await trial.

In Bedford County, pastor and gun dealer William Waters claims to lead the 1st Virginia Freeborn Civilian Militia. Douglas Jeffreys, a state highway department worker from Hanover County, says that he has been touring the state working to form the Virginia Citizens' Militia, an organization of loosely affiliated groups.

WASHINGTON

Washington has been the site of frequent recruitment and organizing drives by militia groups based outside the state. Militias have emerged throughout the state, particularly in the counties surrounding Seattle, in the Spokane area, and in Clark and Cowlitz Counties in southwestern Washington.

In central Washington, leaders of the Lake Chelan Citizens Militia have been active in the Populist Party of Washington State and in the 1992 presidential campaign of far-right figure Bo Gritz (see **Idaho**), who was the Populist Party nominee.

In Clark County, along the Oregon border, David Darby leads a branch of the Idaho-based United States Militia Association. The Association's prime mover, Samuel Sherwood, has spoken to Darby's group.

The Militia of Montana (M.O.M.) has also recruited extensively in Washington. M.O.M. sponsored a tour of the Northwest by Michigan's Mark Koernke, during which he visited Spokane on December 2, 1994. In February 1995, M.O.M.'s Bob Fletcher recruited in Snohomish County, north of Seattle.

M.O.M. has continued its outreach efforts, particularly around Spokane, in recent months.

WEST VIRGINIA

The leading militia figure in West Virginia is Ray Looker, whose group, the Mountaineer Militia, holds periodic meetings. Echoing the oft-repeated militia story that mysterious unmarked black helicopters are surveilling leaders of the movement around the

country, Looker recently claimed that such copters have circled over his home in the Clarksburg area. He has also asserted that the West Virginia National Guard has been denied ammunition by the federal government.

WISCONSIN

The Militia of Wisconsin (also known as Freeman Militia of Wisconsin) is an amalgam of three small organizations -- one under the leadership of Don Treloar in Waupaca County, one in Vernon County under Will Holzli, and a third near Slinger. Unified around the pro-gun, anti-government, conspiracy-driven philosophies that characterize other militia groups, they meet regularly and claim to engage in weapons training and maneuvers. Treloar, speaking of the group's regular field exercises, says "we are preparing men for battle." Holzli, who called media within hours of the Oklahoma City bombing to say that he thought it might be part of a government plot, has boasted of 10,000 members statewide, a plainly exaggerated claim.

Ernie Brusubardis III of Slinger has developed a 10-minute video to be shown to recruits. While the militia claims to be open to any man 18 or older, the video reportedly states that only "professing Christians" can become officers.

WYOMING

The Western United Militia (WUM), a small group based in Cheyenne, is led by Robert Becker, identified as "Col. Becker" in WUM materials. The group has advertised for recruits in a free shopper's weekly in Cheyenne, and a WUM flier was distributed at a Cheyenne gun show in May. Headed "Patriots Unite!", the handbill contends, in familiar militia fashion, that President Clinton, the United Nations and other global conspirators seek to establish a one-world government, and that -- presumably toward this end -- Soviet-built tanks are being transported to various U.S. locations. The flier, which makes the (certainly exaggerated) claim that WUM has "21 divisions in 17 Western States," instructs would-be members to enclose 20 dollars with their applications.

In Sweetwater County, in southwestern Wyoming, leaflets headed "Wyoming Militia" have surfaced, possibly indicating some nascent local activity. The materials cite several laws

as justifying the militia's existence, but they also offer, for use in unsecured telephone communications, suggested code words for "enemy," "contraband," "weapons," and "making or using explosives." Recommended reading includes such titles as *The Ultimate Sniper* and *Can You Survive?* -- the latter work written by Robert B. DePugh, who served time in prison for firearms violations and other offenses related to activity with the Minutemen, a heavily armed, far-right group he founded in the 1960's. Other names that appear on the leaflets include "Sweetwater Citizen Emergency Response Group" and "Wyoming 'Unorganized' (Reserve) Militia, 4th Group."

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America Under the Gun: The Militia Movement and Hate Groups in
America

July 11, 1995

Testimony of Daniel Levitas¹

I appreciate the opportunity to testify about the militia movement and to offer some observations about possible legislative responses to the threats posed by violent, right-wing paramilitary groups.

My testimony will be divided into three parts: first, I will briefly discuss the effects of the Oklahoma City bombing on the militia movement itself; second, I will examine the historical roots of the movement and; third, I will evaluate the efficacy of anti-paramilitary training laws currently on the books in 41 states.

In the wake of the April 19 bombing in Oklahoma City, the militia movement has received unprecedented media coverage. This national visibility has been a boon to many militia groups, aiding them in recruitment and fundraising efforts. While it is true that negative publicity has prompted some militias to

¹Based in Kansas City, Missouri, the Institute monitors hate groups and right-wing social movements and analyzes political trends that impact democracy, diversity, pluralism and human rights. Daniel Levitas is a founding member of the Institute's board of directors and has been tracking the activities of hate groups since 1983.

disband or go underground, overall the militia movement is still growing.

Militia leaders have been successful convincing their supporters that the Oklahoma City bombing was orchestrated by federal authorities as a pretext for a government crackdown on "Patriot" groups. These conspiracy theories have contributed to a further radicalization of hard-core elements in the militias -- a trend which may well lead to further violence.

The roots of the militia movement can be traced back 26 years to 1969 and the birth of the right-wing Posse Comitatus (Latin for "power of the county") and the so-called "Christian Patriot Movement" which emerged more than a decade later during the farm crisis of the 1980s. In fact, the Second Amendment has long been a rallying cry for the Posse Comitatus.

From the outset, the Posse was anti-tax, anti-government, anti-Semitic and racist. Because of their strongly held beliefs, Posse members often were involved in conflicts with authorities, particularly IRS officials.

In 1975, news of a plot to assassinate then-Vice President Nelson Rockefeller prompted the FBI to investigate the Posse. It found 78 chapters in 23 states and estimated hard core membership at 12,000 to 50,000. As with today's militia movement, the Posse was most popular in rural areas, particularly the Midwest, Great Plains and Pacific Northwest.

The Posse invented and promoted Christian Common Law, a group of bogus and racially-based legal theories which hold that

white, Anglo-Saxon Christians (in contrast to blacks) were "organic citizens" or "sovereigns" by virtue of their racial and religious identity. Posse followers were taught that the United States was composed of two groups of citizens: blacks, who were "illegally" granted rights by the 14th Amendment, and whites, who were simultaneously enslaved by the 14th Amendment. The Posse also asserted that the United States had been established as a "white Christian Republic," not a democracy.

Another frequent source of conflict between the Posse and government authorities stemmed from its members asserting their "sovereign" status through "severation" - the cancelling of all "contracts of adhesion" with the State such as drivers' licenses, birth certificates, marriage licenses and the like. Both Terry Nichols -- now charged in connection with the Oklahoma City bombing -- and his brother James attempted to assert their "sovereign status" in this manner.

Numerous militia leaders like Montana resident Calvin Greenup of the North American Militia and John Trochman of the Militia of Montana -- as well as hundreds if not thousands of militia members and supporters -- have attempted to assert their supposed "sovereign" status by filing documents with government officials that declare their rights as "organic" citizens.

When we hear about groups like the "freeman" in Montana, or "tax protestors" in California it is important to note, that there is little that distinguishes these groups from what experts define as the militia movement today. In point of fact, the militia movement is nothing more than a reconstituted version of

the rural radical right-wing groups of the 1970s and 1980s.

Many of the ideas of the Posse are identical to those promoted by the present-day militia movement whose anti-"New World Order" rhetoric and hatred of the federal government is often rooted in elaborate, anti-Semitic conspiracy theories inspired by notorious tracts such as the *Protocols of the Elders of Zion*. Of course the militias' fantasies about "black helicopters" and invasions by U.N. troops seem unbelievable to the majority of Americans, but a disturbing number of otherwise sane people still believe them.

Leaders of the original Posse Comitatus instructed their followers to charter independent groups, each composed of a minimum of "seven male Christians," and to make their existence known to the local sheriff who supposedly represented the highest legal authority. Herein lies the origin of so-called "Sheriff Empowerment Legislation" that has been introduced in Montana, Michigan and several other states whereby federal law enforcement agents would be required to obtain permission from county sheriffs before carrying out their duties, or face arrest.

At a time when citizens and public officials are bemoaning the size of the federal government, criticizing "unelected bureaucrats," and urging a return of power to the states, measures like the Sheriff Empowerment Legislation have the potential to attract significant support. Indeed, such legislation passed the Montana legislature in 1995 -- albeit in modified form -- but was vetoed by Governor Marc Racicot.

During the rural economic crisis of the 1980s, the Posse Comitatus underwent a rapid transformation from a radical fringe

group to a mass movement and won widespread acceptance for its ideas about money, banking, property law and individual rights by preying on financially distressed farmers and rural people. A decade later, this phenomenon is repeating itself on a larger scale. Like their forerunners in the Posse Comitatus, militia propagandists are building a mass movement.

Many parts of rural America are still hemorrhaging economically, and it is in these farm and ranch communities -- Sanilac County, Michigan, home of James Nichols, is one good example -- where the militia movement has deep roots.

The issues raised by the presence of armed citizens' militias are complex and touch on core constitutional questions. Many militia organizers and followers have a clear goal in mind: to create private armies capable of resisting enforcement of existing and future gun control legislation. The militia movement has thereby joined its cause to that of the so-called "Second Amendment Movement" and its constituent groups, including such organizations as Larry Pratt's Gun Owners of America.

The bottom line is this: Given the guaranteed freedoms of the First Amendment and the fanatical embrace of the Second Amendment by militia proponents, what measures, if any, can be employed to prevent the creation of private armies composed of thousands of heavily-armed right-wing fanatics intent on creating a white, Christian so-called "Aryan Republic?"

Forty-one states now have laws banning either private militias or paramilitary activity -- 24 have statutes outlawing the existence of private militias while 24 ban only private paramilitary training when the intent is to commit a civil

disorder. In seven states both types of laws are on the books.

Despite the proliferation of these statutes, no more than a handful of prosecutions have ever been brought by state authorities. In fact, in two of the most celebrated cases in which anti-paramilitary training laws were used (in Texas in 1982 and again in North Carolina in 1985 and 1986) it was a private group -- the Southern Poverty Law Center -- that invoked these laws to shut down private armies sponsored by white supremacist groups.

Why are state Attorneys General so reluctant to use these laws? Is it because these statutes are somehow flawed? Perhaps. At least in those cases where a criminal predicate is needed to prosecute, it may well be that the effect of these laws is minimal beyond their value as a deterrent.

This is because in order to have proof of "intent to commit a civil disorder" -- the basic foundation for many of the statutes -- prosecutorial authorities must show that those charged had definitive plans to actually *do something*; blow up a building, cause a riot, etc. Many militia groups engage in hypothetical training exercises but until these groups actually cross the line and tell their followers that their exercise is for real, and take concrete steps to execute elements of the plan, it is difficult to secure convictions under existing law.

Perhaps the problem rests not in the language of the statutes themselves -- after all, some two-dozen states ban unauthorized militias outright -- but stems from a lack of political will to prosecute. If this is the case, it won't be the first time the federal government needed to establish

jurisdiction in order to prosecute cases which local authorities were reluctant to pursue.

The problem also may stem from a lack of investigative resources. State attorneys general may be having difficulty gathering the hard evidence they need to build winnable cases against militia groups. If true, then federal legislation may well be needed. U.S. attorneys at least can call upon the resources of the FBI.

Now is the time for Congress to pass a comprehensive federal anti-paramilitary training statute. Is it possible to draft constitutionally sound legislation outlawing the existence of private armies outright, regardless of the intent of participants? Yes.

Unfortunately, it is likely that the impact of H.R. 1544 (the "Domestic Insurgency Act of 1995," introduced on May 2, 1995, and referred to the House Judiciary Committee) will be minimal. Like its relatively ineffective counterparts at the state level, this law also requires criminal intent ("to unlawfully...oppose the authority of the United States") in order to prosecute. Besides, there is little difference between H.R. 1544 and existing federal law found at 18 U.S.C. Section 231-233 which bans training and the manufacture or transport of weapons with the knowledge or intent that they will be used "to create a civil disorder."

Is it possible to craft language that distinguishes between private, combat-ready, paramilitary armies and other groups such as the Salvation Army or gun and rifle clubs? Yes. As the Federal Court ruled in the Southern Poverty Law Center's case

against the Texas Knights of the Ku Klux Klan in 1982 (*Vietnamese Fisherman's Ass'n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198,219 (S.D. Tex. 1982)), paramilitary groups cross the line into prohibited activity when they endeavor to create viable military organizations with a "command structure, training, and discipline so as to function as a combat or combat support unit."

The time is ripe for Congress and the American people to ask themselves the question, "What possible purpose is served by the existence of private armies, unregulated by the state, trained in full-scale combat techniques, armed with semi-automatic weapons - - and perhaps even more deadly hardware? The answer? "None, whatsoever."

However, according to the logic of the militia, private armies are needed to defend against everything from the invading forces of the New World Order to Bureau of Land Management employees who seek to enforce federal environmental laws. In sum, the private armies being raised up by militia groups wholly reject the rule of law in favor of paranoia, and conspiracy theories.

For example, militia leader Linda Thompson of Indiana issued a call to arms last year, urging all militia units to assemble "armed and in uniform" in Washington, D.C. on September 19, 1994. Her goal? The repeal of all "unconstitutional laws," including abolition of the 14th, 16th and 17th Amendments to the Constitution. Thompson asserted that the income tax was unconstitutional, that "detention camps are already built, nationwide, to house 'dissidents'," and that, the federal government never had the authority to enforce criminal laws

outside Washington, D.C. These and other "facts" were used to justify her call to arms -- one which was, thankfully, never executed.

Thompson threatened to brand those elected officials who refused to comply with her demands as "traitors" and to bring them up on charges of treason before "a court of citizens." Thompson told her followers that so long as they were armed and wearing military insignia they would be "treated as a Prisoner of War, not as a criminal arrestee, by law."

In closing, I wish to offer the following observations about the militia movement:

1. Citizen Militias Are a Fraud. The language of the Second Amendment which provides for "a well-regulated militia" in no way authorizes or justifies the existence of the private gangs of paramilitary vigilantes that make up the militia movement. Of course the Second Amendment allows the states to authorize the creation of militias -- which they have essentially already done in the form of the National Guard, etc. However, when militia groups claim this Constitutional high ground as their own, they are on slippery footing, indeed. Through new legislation, Congress should, once and for all, put to rest the bogus concept of the so-called "unauthorized citizen militia" and ban the paramilitary activities associated with such groups outright.

2. Militias are Unpatriotic: Their Bigotry Must Be Exposed and Rejected. The paranoid fantasies about "One World Government" promoted by many in the militias and the paramilitary

right are especially poisonous because they are often rooted in age-old anti-Semitic conspiracy theories. The ideas of many self-described "constitutionalists" in the militia movement about the 14th Amendment are, likewise, rooted in racism. Although militia leaders claim to be "patriots" there is nothing patriotic about racism or anti-Semitism.

3. Threats, Intimidation and Lawbreaking Must Not be Tolerated. Militia activists, tax protestors and self-described "Christian Patriots" who harass and threaten public officials and private citizens or otherwise engage in criminal activity must be prosecuted to the fullest extent of the law.

4. People of Goodwill Have a Civic Duty to Respond. When members of hate groups commit illegal acts, we count on the criminal justice system to respond. However, when militia leaders and other right-wing activists spread hate propaganda and misinformation -- but break no laws -- citizens of goodwill have an obligation to speak out. Civic leaders, elected officials, clergy and everyday people all have a responsibility to confront the lies and the bigotry of hate groups with the truth.

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AMERICA UNDER THE GUN: THE MILITIA MOVEMENT AND HATE GROUPS IN AMERICA

A PUBLIC FORUM FOR MEMBER OF CONGRESS
Tuesday, July 11, 1995

Testimony by
Bill Wassmuth , Executive Director
Northwest Coalition Against Malicious Harassment

Thank you for convening this forum. Public dissemination of accurate information is most important as we deal with this threat to justice and peace in our society.

The Northwest Coalition Against Malicious Harassment, formed in 1987, is a coalition of over 250 public and private organizations and groups in the states of Colorado, Idaho, Montana, Oregon, Washington and Wyoming. Our purpose is to develop community based groups in the Northwest to address the threat of organized bigotry based on race, national origin, religion, gender and sexual orientation. In that capacity we monitor supremacist organizations and other groups that promote bigotry --"hate groups" in the common parlance.

Because of our concern about the rapid increase of militia activity in the region, we convened a meeting in January of this year of researchers and representatives of a number of national and regional organizations to share information about the militia movement. A summary of that meeting is included in my written testimony.

We see the militia movement as the paramilitary expression of the Christian Patriot Movement. Because there is a great deal of variation within the militia movement, we must avoid painting all militias with the same brush. However, we have serious concerns about the militia movement that seem to pervade all groups that identify themselves under that title. These concerns are:

1. The negative impact of the militia movement on the orderly and peaceful functioning of communities.
2. The promotion of racist and anti-Semitic philosophies within the militia movement, and its ties with white supremacist groups.
3. The potential for violence from the militia movement.

1. The Impact On Communities

In the Northwest, there are a number of issues that stir spirited debate. To name just a few: gun control, property rights, environmental concerns, mining and timber jobs, federal land management, and Native American Treaty Rights issues. These and other topics are certainly open to debate in the democratic process. However, they are also issues that are being exploited by the militia movement, often to the detriment of the orderly and peaceful conduct of society.

Public officials are being intimidated and in some cases are unable to carry out their responsibilities. The Forest Service in Montana has announced that they will not schedule fire prevention fly overs across certain sections of that state because of their concern that their aircraft and personnel would be in danger of being shot down by militia members. Federal personnel are using personal vehicles and not wearing their uniforms on their job in order to avoid identification as a federal employee. We hear reports from some smaller communities that people are deciding not to run for public office because they do not want to submit themselves and their families to the intimidation. In other cases, public officials have begun to keep loaded weapons in their homes to defend themselves from the threat they perceive to be coming from the militias.

Law enforcement officials are also being intimidated, in some cases to the point of not pursuing those who are breaking the law. A woman phoned me several months ago, for example, regarding some property that she had bought at a sheriff's auction in a small community in Western Washington. A person who apparently belonged to a Christian Patriot organization had refused to pay taxes and lost the property, but he refused to move himself and his family off the land. Several years have passed and the situation is unresolved. The local sheriff has stated that he does not think he can remove the man from the property without bloodshed. Other similar situations have been resolved in the region; I suspect there are others that have not been resolved because of the legitimate concern about violence.

The negative impact on the orderly conduct of society is felt in many arenas such as the courts, auditors' offices, and public meetings. Just recently it impacted the Board of Directors of the Northwest Coalition Against Malicious Harassment. On June 24 and 25 of this year, we held our Board meeting at the Sheraton Inn in Denver. The newspaper headline stated that an "anti-militia group" was meeting. A threat was phoned into a local T.V. station from someone who self identified as a militia member. Basically he said: "We'll be there, we'll be armed and someone is going to get hurt." Extra security was arranged, no militia persons showed up, we conducted our business without incident. But the threat was taken very seriously by ourselves, the hotel, the FBI and local police.

In short, people in the militia movement are using tactics of force and intimidation to disrupt the orderly and peaceful functioning of society.

2. The promotion of bigotry within the militia movement and its ties with white supremacy.

The bigotry of the militia movement is not as blatant as that of the Aryan Nations or the KKK. However, the philosophy of the movement is laced with anti-Semitic conspiracy theories and states rights theories that have been used in the past to support bigotry. The militia movement generally has determined that the federal government is in violation of what they perceive to be the real constitution, namely the constitution as written without all of the amendments and 200 plus years of court interpretations. They want to implement a vision of the constitution that would return to a form of society that provides more privilege for some -- generally, male, Christian, straight and white. This vision of the constitution has been used in the past to promote discrimination and bigotry. Simple denial of racism on the part of the militia leaders is not enough. This vision of society will contribute to the maintenance of current patterns of bigotry in American society, and indeed will trigger new attacks on the efforts for justice and equality.

Certainly, not everyone in the militia movement holds these anti-Semitic conspiracy theories or views of the constitution that promote privilege for some and oppression for others. But these theories are woven throughout the underlying current of the movement and do guide the vision of society that is being promoted. It is important for us to remember that bigotry is not limited to those who threaten physical harm or who use racial slurs. Also guilty of bigotry are those who promote a society which along the lines of race or religious belief grants privilege to some and withholds opportunity from others. I submit that the militia movement generally promotes such a vision of society.

Moreover, we find that in the Northwest the militia movement is providing a welcome home for members of the white supremacist movement. In some cases the leaders of the militias are known white supremacists. In other cases, there are frequent ties between the militia organization and members of white supremacist groups.

John Trochmann is one example of a militia leader who is a white supremacist. Mr. Trochmann is an Identity believer. Identity is the theology of racism which holds that white Aryans are the true Israelites, Jewish people are the children of Satan, and people of color are subhuman. It is impossible to be an Identity believer and not be a supremacist. Trochmann has had numerous ties with the Aryan Nations along with other supremacist individuals and organizations. John Trochmann is a white supremacist and is a key leader in the Militia of Montana. While he tones down his racism in his current public comments, his white supremacy pervades his life and impacts the spiritual war in which the Militia of Montana is engaging.

Bo Gritz through his SPIKE trainings (Specially Prepared Individuals for Key Events) has developed a group of followers that are part of the militia movement in every way except the name. With numerous ties to white supremacists from his 1992 campaign as a candidate for president for the Populist Party, Gritz continues to train followers for paramilitary "survival" in the face of what he sees to be oncoming government oppression.

His speeches and radio broadcasts provide fuel for the fires of fear and anger that burn in the hearts of militia people throughout the country.

An example of a community militias ties to supremacy can be found in Chelan County Militia in central Washington. The organizers of this group were leaders of the Populist Party Bo Gritz campaign in 1992. The Populist Party is controlled by past and present KKK members; its leader is a frequent participant in Aryan Nations activities.

The United States Militia Association in Southeastern Idaho claims to evict anyone with known ties to white supremacy. It appears, however, that such eviction has happened rarely and only after public pressure has been applied.

In short, the militia movement has many ties, both in terms of leadership and followers, with the White Supremacy movement. Because of the underlying philosophy of the militia movement, it provides a welcoming home to those who believe that to be white and Christian is to be superior over others, and who believe that somehow this country really belongs to them.

I submit that the underlying philosophy of racism in the militia movement, and its ties to white supremacy, present a serious threat to civil rights justice in this country. Not only does it threaten physical harm to individuals, but it also creates a certain climate in some communities, a climate that excludes whole groups of people from participating in those communities with a sense of comfort and fairness. It is hard to imagine, for example, that Jewish people or people of color could live in small rural communities which are seriously affected by militia type groups such as Noxon, Montana, or Kamiah, Idaho, without feeling threatened or feeling like second class citizens. Society as envisioned by the militia movement, is not a society designed to provide equality and justice for all.

3. The potential for violence.

To some degree, the philosophy of the militia movement promotes

- paranoia based on misinformation and half truths,
- conspiracy theories that point fingers and develop scapegoats,
- a vigilante type of "do it yourself" approach,
- a distrust of organized society, its system of laws and government, and sometimes even violent overthrow of the government,
- achieving one's purposes through intimidation and the point of a gun.

The militia movement, to a greater or lesser degree, promotes all of the above, and thereby creates an atmosphere that spawns violence. That violence erupts from this atmosphere should be a surprise only to those who do not understand the motivating power of extremist movements, and the instability of some who are attracted to such movements. There will be more violence.

The solution is not to limit the right to believe and speak various theories, even potentially harmful ones. Rather we must know the full agenda of the militia movement, expose it to the light of public discourse as this forum is doing, and hold its promoters accountable for the consequences of their words, if not in the court of law, at least in the realm of community responsibility. We must build up the democratic process to productively address the issues of the day rather than give in to intimidation. We must continue on the path to justice and equality for all, rather than fall back into old patterns of second class citizenship for whole groups of people. We must continue to build a system of government that is fair and responsible, based on the principles of truth and justice, not succumbing to paranoia and conspiracy theories. We all have a role to play in this task before us. As elected members of congress, you have a vital role as leaders in this country.

Thank you for arranging this forum.

Militias in the Northwest

Responding to an invitation from the Northwest Coalition Against Malicious Harassment, 25 researchers, community organizers and representatives from organizations in the Northwest and around the country came together in Issaquah, Washington for two days of dialogue about militias. All present were concerned about the rapid increase in militia activity, the potential for violence, and the ideology underlying the militia movement.

While militias are showing up in a variety of forms, they can generally be described as organized groups of people, often at the county level, that study and train with weapons to "defend" themselves against what they perceive to be the enemy.

Observations about militias:

- Militias are forming and conducting weapons training in many areas of the Northwest and the country.
- People are being drawn to militias around a number of issues including gun control, anti-government sentiment, property rights, and various conspiracy theories.
- In many locales there is a growing "pre-militia" atmosphere of discontent and unrest.
- Some militias have ties with organized white supremacist organizations.
- Some militias have ties with the religious right.
- Some of the violence around abortion clinics has been tied to people with militia connections.
- Wise Use, property rights groups, and militias are forming around the same issues and in some cases involve the same people.
- Anti-government sentiment is a major driving force of the militia movement.

Implications of militia activity:

- Violence has already taken place in connection with militias; there is every reason to expect the violence to increase.
- The militia movement is predominantly an expression of the Christian Patriot segment of white supremacy. While some individual members of militias are not racists, and most leaders claim that they are not racists, the militia movement is built on and promotes ideas that deny basic rights and create second class citizenship for people with whom they disagree.
- Many of the militia movement's themes are rooted in white supremacist states rights arguments and historic anti-Semitic conspiracy theories.
- People are turning to militias because they have real and deep fears for themselves and the country.
- Militia organizers are manipulating these fears and grievances by pointing to scapegoats: federal officials and law enforcement officers; minority groups and Jewish institutions; abortion providers and pro-choice supporters; environmentalists and conservation activists; gay/lesbian rights organizers, immigrants; welfare recipients.
- The militia movement claims to be a "people" movement, but thwarts the democratic process by intimidation and the threat of violence, such as the disruption of public meetings and the intimidation of public officials with guns.
- As the militia movement organizes around mainstream issues such as gun control, it is no longer productive to simply tag members as racist. The discussion must go to the issues and the ideology behind the rhetoric and activity which deny basic human rights.

Suggested responses to militia activity:

- Law enforcement officers are often the first targets of militias; information and trainings are needed to prepare law enforcement to address recruitment efforts from militias as well as potentially violent incidents with militias.
- A short publication for mass distribution is needed. This pamphlet would challenge people to look critically at the ideology behind the militia movement.
- We must be willing to acknowledge mistakes made by government and address real fears and questions of people.
- Those who are targeted and harmed by militia activity must be provided support. We should launch a media campaign around what it means to be targeted.
- Grassroots groups need information and support from research groups.
- Where constitutional provisions, anti-paramilitary training laws, or other legal provisions are applicable, encourage their enforcement.
- Find ways to focus media attention on issues, not just personalities.
- Find effective ways to engage students of all ages in the ideas of fairness, quality and the democratic process.
- Engage mainstream denominations and religious leaders in serious dialogue on the issues.

The meeting participants concluded by agreeing to share information about militia activity, and to cooperate with each other as programs are developed to address the threat posed by militias.

**TESTIMONY
DEBORAH J. KOTTEL,
STATE REPRESENTATIVE - MONTANA**

**PUBLIC FORUM ON THE MILITIA MOVEMENT AND HATE GROUPS IN AMERICA.
Washington, D.C.
JULY 11, 1995**

My name is Deb Kottel. I am a State Representative from Montana. This past January I served my first term in the House of Representatives. There was much that surprised me, but none more than the depth of the anti-federal movement. In the Montana House of Representatives and Senate many bills were introduced as a backlash against perceived federal government transgressions. One bill SB 160 required federal law enforcement agents to get permission from local County Sheriffs before they could proceed in an investigation or arrest an individual. Although this bill did not pass, it had strong support in the Senate and the House. Another bill S.B. 143, which proposed a change in the Montana Constitution, demanded that Congress recognize states' rights under the 10th amendment. Among many statements made in the Bill one comes to mind **"WHEREAS, IN 1995, THE STATES ARE DEMONSTRABLY WRONGFULLY TREATED AS SUBSERVIENT AGENTS OF THE FEDERAL GOVERNMENT, WITH 10TH AMENDMENT PROTECTION USURPED."**

With rhetoric running high in the halls of the legislature from legislators themselves, it is not surprising that citizen groups also engaged in this type of verbiage. During the Public hearing on House Bill 160 (An Act Regulating Arrests, Searches, and Seizures by Federal Employees.) the following statements were made:

"Federal death squads...firing on our citizens"

"They're (federal law enforcement) no different than a hit man from the mafia"

"...Black-suited baby burning neo-communists from the federal government."

"The IRS is a lawless terrorist organization -- they don't have any right to exist."

This type of rhetoric is given to you only as an example of the depth of dissatisfaction many citizens have with the federal government. It would be easy to dismiss these statements as the ravings of lunatics. But many citizens in my district feel something is amiss in the relationship between federal and state government. It would be a mistake to ignore the warning signs. These feelings of mistrust must be turned around. The Federal Government is not our enemy. It is a partnership of dual sovereignties. For the partnership to work there must be communication and civility.

For democracy to flourish, an environment must be fostered where there is a choice of candidates for political office. Our best should be drawn into public service not driven away. Unfortunately in Montana with the rise of violence from the Freeman and the radical right fringe of the Montana Militia many will choose not to serve.

Jo Ann Stanton is the Garfield County Clerk and Recorder. Last year she was confronted by

Freeman to file documents that were not "legal documents." She couldn't file the documents because of current statutes. When she refused, they began sending her threats in the mail. They threatened to kidnap her, attach her real and personal property. She was also commanded to appear in the Freeman "Court." Failure to appear would be contempt of court and she would be guilty of official misconduct, which is punishable by removal from office and possibly death. Jo Ann Stanton believes that the terror these "threats have caused is tremendous, not just to the public servants, but to the community as a whole. The majority of the people in our community do not feel that public servants should have to put up with this kind of harassment." The terrorism from the Freeman is not only verbal threats of violence but "paper terrorism." Paper terrorism is the thousands of documents that have been filed against County Attorneys, Sheriffs, Justices of the Supreme Court and other individuals with the sole purpose of terrorizing those individuals. Nickolas C. Murnion, Garfield County Attorney, stated that county officials in Garfield County have dreaded going to work, lost weight from the stress, their husbands have started packing guns and have considered resigning from office. He went on to say that threats have involved his family and those of the sheriff. "As public officials our oath of office does require us to take a certain amount of harassment from the public since we are public servants. It is clear that the threats and intimidation we have been subjected to by the Freeman is above and beyond anything that any public official should have to take."

District Judge Jeffrey H. Langton testified that "we recently had a case here in which certain individuals have attempted to file multi-million dollar liens against the Sheriff and his spouse because of their anger over the Sheriff's action in not arresting federal law enforcement agents serving a federal search warrant upon them." The judge himself was a target of the militia. They sent him a letter to "amend his ways" because of recent actions he has taken against other, so-called "strict Constitutionalist." The letter went on to say "[w]hen you violate your oath of office, you become renegade to the Constitution and guilty of treason. I am sure you know what the penalty for treason is." Judge Langton went on to say that "[i]f we are to administer the law fairly and without fear of reprisal we must have the backing of the legislature to be able to appropriately check and sanction offenders who wish to pursue their radical agendas by means of force, intimidation, threats, or violence..."

Because of the increase in threats to public official through out the State of Montana, I sponsored House Bill 347, AN ACT GENERALLY REVISING THE LAW RELATING TO THE CRIME OF THREATENING PUBLIC OFFICIALS; EXPANDING THE OFFENSE OF THREATENING A PUBLIC OFFICIAL TO INCLUDE INJURY TO THE PUBLIC OFFICIAL'S PERSON, SPOUSE, CHILD, PARENT, SIBLING, OR PROPERTY; REVISING THE PENALTY FOR THREATENING A PUBLIC OFFICIAL; INCREASING THE PENALTY FOR IMPERSONATING A PUBLIC OFFICIAL. This get tough attitude is important. No person should be allowed to further their political agenda through threats of violence. Our public servants must be free to vote in the best interest of their constituents. Once I introduced this bill, my child and I also became the target of several individuals upset with the legislation. One man called me a traitor and threatened to kill my children.

In Montana we have a citizen's legislature. We come from ranches, businesses, teaching and many other professions. Many of us choose to serve as an extension of our ethic to Community

Service. When our citizens refuse to run for city commission, the zoning board or the legislature because of concern over the welfare of their families then we have lost our democratic government. It is the first step down a road of violence in public service that countries like Columbia in South America must now deal with on a daily basis. Lets put a stop to this now.

HB 347 INTRODUCED BY KOTTEL, ET AL.

GENERALLY REVISE LAW RELATING TO CRIME OF THREATENING PUBLIC OFFICIALS

1/26 INTRODUCED
1/26 FIRST READING
1/26 REFERRED TO JUDICIARY
2/06 HEARING
2/10 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/11 2ND READING PASSED 76 22
2/13 3RD READING PASSED 75 24

TRANSMITTED TO SENATE

2/20 FIRST READING
2/20 REFERRED TO JUDICIARY
3/08 HEARING
3/09 COMMITTEE REPORT--BILL CONCURRED
3/10 2ND READING CONCURRED AS AMENDED 43 0
3/11 3RD READING CONCURRED 39 0
(SENATE 3RD READING VOTE REMAINED OPEN
TO ALLOW EXCUSED SENATORS TO VOTE)
3/13 3RD READING CONCURRED 49 0
3/14 3RD READING CONCURRED 50 0

RETURNED TO HOUSE WITH AMENDMENTS

4/03 2ND READING AMENDMENTS CONCURRED 83 17
4/04 3RD READING AMENDMENTS CONCURRED 76 22
4/07 SIGNED BY SPEAKER
4/07 SIGNED BY PRESIDENT
4/10 TRANSMITTED TO GOVERNOR
4/11 SIGNED BY GOVERNOR

CHAPTER NUMBER 351
EFFECTIVE DATE: 04/11/95



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE DEB KOTTEL
HOUSE DISTRICT 45

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COMMITTEES:
VICE-CHAIR, ETHICS
JUDICIARY
HUMAN SERVICES & AGING

BACKGROUND **DEBORAH J. KOTTEL**

Deborah Kottel (Democrat) was elected to the House of Representatives for the State of Montana in 1994. She began her term in January of 1995. She is Dean of the College of Professional Studies and Associate Professor at the College of Great Falls. She has been at the College for eight years. Ms. Kottel received her Law Degree from DePaul Law School in 1978. She is a graduate of Loyola University of Chicago.

Testimony of

Susan Schock
Director of Gila Watch
P.O. Box 309
Silver City, New Mexico 88062

Hate Groups under the Gun:
The Militia Movement and Hate Groups in America

July 11, 1995

I am founder and Director of Gila Watch, an environmental organization based in Silver City, New Mexico, dedicated to the preservation and restoration of the Gila ecosystem. I am a native Westerner, born and raised in Arizona. It is out of concern for the water supplies of the southwest - and the quality of my daughter's future - that I began my work in the Gila, where even headwater streams in the nation's oldest wilderness are severely degraded by overgrazing of domestic livestock, and where ravaged watersheds increase downstream flooding and threaten domestic water supplies. Gila Watch works in the field, restoring streams, in the community, sponsoring lectures and workshops and through the courts, ensuring enforcement of the environmental laws and regulations that protect the quality of the environment our children will inherit.

Southwestern New Mexico has been caught up in a sweeping anti-federal movement that now threatens both public lands and private citizens. During the past several years extreme, anti-environmental and "property rights" groups commonly known as the "Wise Use" movement, who are determined to take private control of federal lands - including the Gila National Forest and the Gila Wilderness that dominate Southwestern New Mexico's landscape - have run a campaign of misinformation and outright lies that has polarized the region and, in many instances, made civil dialogue impossible. They have demonized and intimidated those who oppose their views and threatened violence against the federal government and private citizens alike.

The militia movement in Catron County, New Mexico, was, in part, a natural outgrowth of the extreme philosophy and inflammatory rhetoric of these groups. With the formation of the Catron County militia in September, 1994, came a direct link to white supremacist, anti-Semitic and Neo-Nazi groups. At a militia meeting last fall, Catron County militia members burned a United Nations flag at the Catron County courthouse while a United States flag flew upside down. Self proclaimed Christian Identity minister Pete Peters from Laramie, Wyoming was a keynote speaker. Peters is a proponent of the racist, anti-Semitic theology of the Christian Identity which brands Jews as Satanic, blacks and other minorities as "mud people" and teaches that white, Anglo-Saxon Christians are the lost tribes of Isreal. It was Peters who organized the 1992 meeting of "175 Christian men", attended by former Klan leader Louis Beam, the "ambassador" from the Idaho-based Neo-Nazi group Aryan Nations. Out of that meeting grew the United Citizens for Justice, a support group for white separatist Randy Weaver.

The Wise Use groups and the militias are not directly connected, but they are driven by common ideas, beliefs and conspiracy theories as well as a shared affinity for vigilantism, lawlessness and confrontation. The anti-environmental movement, like the militia, operates on intimidation, threats and demonizing of the opposition. Whether or not a formal militia continues to exist in Southwestern New Mexico is immaterial. The Wise Use groups have proven to be just as potent, just as extreme and just as ruthless in achieving their goals.

Many of these groups, who claim private property rights to national forest lands, have close ties to the livestock industry. Their members often control county governments, and County Commissioners threaten violence and civil war.

An attitude of intolerance prevails within the Wise Use community, and their supporters openly flout the law and chill the civil rights of any who disagree with their position. Environmentalists in Silver City, New Mexico, were portrayed as "pagan nature worshipers" bent on the "dismantling of the technology and civilization which supports the human race" and compared to Hitler's Nazis in local radio ads produced by Minuteman Media, a coalition of Wise Use, livestock and mining executives which was linked to county governments. Members of the public exercising their legal rights to participate in public lands management receive hate mail, threats and harassment. Speaking out in public has become dangerous, and daily living is an ordeal.

Threats and harassment

The threats began in 1993 with a letter to the Editor in the Silver City Daily Press which contained a recipe for the murder of environmentalists: retired postal worker Robert Anderson suggested that "eco-pornographers" might "enrich" the water of the Gila River: "We might utilize some heavy wire and a few large, heavy rocks. We could attach the wire securely to the rocks on one end. The other end could be attached securely, very securely, to the arm, leg or other body extremity of an eco-pornographer. Deposit all three objects in one of the deep pools in the river and presto! Or adios, or something." In the same letter, Anderson advocated shooting spotted owls and poisoning the Gila River to kill endangered fish.

Last summer, a dozen angry ranch women encircled me on the porch of the Catron County Courthouse following the County Commission meeting where a resolution was passed urging each head of household to maintain a firearm and ammunition. They yelled "Why are you here?" "Go back to where you came from!" "Get out of our county!" "You're not welcome." One woman lunged at me and had to be restrained. When I told them that I was exercising my constitutional rights, another woman put her face inches from mine and growled "Do you want to go at it?"

At a Catron County Commission meeting early this year, the woman who had lunged at me last summer shadowed me, following a few steps behind me, the entire afternoon - through the halls, into the meeting room, across the street to the pay phone.

At a "Protect your constitutional rights" rally in Silver City in July, 1994, Al Schneberger, Executive Director of the New Mexico Cattlegrowers Association, and other Wise Use proponents, obviously believing that the First Amendment applies to their side only, disrupted an interview that a local news station was conducting with me. They baited me, interrupted me and finally shoved a "New Mexico for New Mexicans" bumper sticker in my face. Their tactics were effective: the reporter gave up.

I was targeted last April in a letter to the *Silver City Daily Press* from Ernest Cooper of Espanola, 200 miles away, who wrote "I wish to apprise (Susan) of the inherent danger of interfering in people's lives and businesses. The citizens in that quiet corner of New Mexico are, in most cases, willing to take up the use of force to ensure those rights."

A regional "wise use" newspaper, the *Hatch Courier*, has gone further, branding environmentalists as "eco-terrorists". The *Courier* targeted me with false accusations of cattle rustling and "collusion" with the Forest Service, and described my legally protected involvement in forest planning as "idiotic interference".

When a photo of my home appeared in the *Courier* last April, my ten year old daughter, Katie, asked "Won't this put us in danger, Mom?" I had to answer yes, it might. As I answered her I remembered a pickup truck skidding around the corner and a man yelling "Goddam hippie environmentalist bitch!" last winter as I walked to the door of our house where she was waiting for me alone. I had been warned that the *Courier's* editor, who was partner in a ranch investigated several years ago by the ATF for illegal firearms and explosives, had had me tailed by a private detective, but the photo of my home told me that I - and my family - were now being made targets. Since that incident, I never hear a car going by at night without wondering who it is, without waiting for an explosion.

It is intimidating to other members of the public when citizens who participate in public lands management are singled out. It sends the clear message: "Don't speak out". Although Gila Watch's membership is growing, fewer people speak out at public meetings, many of our donors now feel they must remain anonymous and some supporters avoid being seen with us in public for fear of reprisals.

gaining control

Wise Use groups such as People For the West, funded by the mining and livestock industries, are openly intolerant of public participation in public lands management. Their goal is unregulated extraction from public lands by private industries, and their tactics to take over county governments at the voting booth are ruthless. To make allies of hunters and fishermen just before election time in 1994, Grant County, New Mexico's People For the West chapter printed an outright lie in a flyer: "Look what happened to 194 miles of the Gila and Frisco River! Two minnows and a group of environmental extremists have closed down these areas to all human activity, including fishing, hunting, picnicking, simple sightseeing and more!" In reality, no portions of these rivers were closed due to endangered species protection. The "Protect your rights fund", a coalition of wise use groups, lied that because of the Endangered Species Act, flood control would no longer be permitted along the Gila and San Francisco rivers. That year all of Grant County's commission seats were won by Wise Use candidates.

Some Wise Use groups are not content to simply run the county. The Coalition of Arizona and New Mexico Counties for Stable Economic Growth - a coalition which county governments pay to join - claims that grazing permits on public lands, including National Forests and wilderness areas, are ranchers' private property and that attempts by land management agencies to schedule pasture use or lower livestock numbers, constitutes a "takings" of these perceived "rights". When the federal government attempts to enforce regulations on public lands, many members of these groups respond with righteous indignation, and even threaten violence. In Catron County, New Mexico, it was the perceived need to "protect 'their' land from intrusion" which opened the door for the militia.

the militia

At a "Protect your constitutional rights rally" in Silver City, New Mexico in July, 1994, approximately four hundred supporters of People For the West, livestock associations and sportsman's groups joined forces with the religious right, anti-gun control organizations and militia supporters in a rally that resembled an old time religious revival, complete with gospel music. The federal government and environmentalists were the targets. The rally focused on dismantling the Endangered Species Act, opposing gun control, rolling back grazing regulations and the return of federal lands to the states.

The rhetoric was violent and extreme. A sign depicting a hangman read "Clinton era federal police visiting a home near you soon". New Mexico Cattlegrower's Association Executive Director Al Schneberger demonized environmentalists as "anti-human" and Retired Army Lt. Colonel Kolman Gabel, representing the New Mexico Shooting Sports Group, told the crowd "These people cannot accept the fact that we live in an imperfect world, that wolves and lions kill because they like to kill . . . that some people don't understand things without a punch in the nose or a bullet in the head". The notion that United Nations troops were poised to take over America and establish a one World government was a common theme throughout the rally.

Soon after, flyers appeared advocating the formation of a militia. Playing on the 'United Nations conspiracy theory', a militia emerged and held a United Nations flag burning in Reserve, New Mexico in October, 1994, at which Reverend Pete Peters was a featured speaker. Catron Cowboy poet "Speedy" Shelton told new crews that the Anti Christ houses itself in the United Nations building. Supporters believed that they were preparing to defend their homes from invasion by government troops. When ATF agents appeared in Catron County on a drug investigation a few weeks later, militia members fled their homes and hid in the woods, believing that they would be routed from their homes by federal agents.

In a letter to the Albuquerque Tribune in May, 1995, Catron County militia supporter Nancy Brown stated "There wasn't 100% participation of the citizens when the

minutemen routed the British either, but they sure reaped the benefits of the blood of the men who had the guts to stand up and fight." She continued "just wait until the 'UN Rights of the Child' takes effect in your one world government, and see what rights you, as a parent has (sic), and when you are tried and convicted by a court of 3rd world countries who are not Christians and could care less if you are an American . . . and you are serving the 'true socialistic, Nazi government', then my friend, it will be too late. With no guns, no guts, God help you."

It should be noted that several of the Catron County militia organizers were not long time residents, but had moved to the county from other states only recently, as the area became a magnet for individuals seeking to defy the federal government. In fact, the majority of Catron's residents are not long time residents. The county's population is fluid: fifty three percent of Catron's residents were born outside the state of New Mexico, a higher percentage than for New Mexico as a whole. Thirty two percent of the county's population has moved in during the last five years. And after a Wall Street Journal article appeared last fall depicting Catron County as a hotbed of anti-government activity, the County Manager received over 50 calls from people across the country wanting to move to Catron.

The county connection

Instead of rejecting the extreme views of those in the "Wise Use" movement and the militias, some elected officials in New Mexico embrace the movement. New Mexico Governor Gary Johnson, who supports the return of federal lands to the states, toured the state the week after the Oklahoma bombing, meeting with militia members and proclaiming them "responsible citizens" and "patriotic people" in his press releases.

At the county level, the Wise Use movement often controls the government. Some officials have recently distanced themselves from the more militant factions of the Wise Use movement, and the Catron County militia has officially disbanded, but Catron County Commissioners - two ranchers and a logging contractor - openly defy federal laws and challenge the federal government's authority to govern federal lands by codifying their beliefs into county law. Catron County has attempted to supersede federal law through a series of ordinances designed to shift control of federal lands within the county to the County Commission. If the ordinances fail to attain their goal, two of the three commissioners have made it clear that there will be violence.

Catron County Commissioner/public lands rancher Hugh McKeen told the Albuquerque Tribune "We'll sue to protect our lifestyles, but there are a bunch of people here who are slowly buying ammunition". McKeen told BBC in an interview last spring "This rebellion this time - we've had the Sagebrush rebellion in the past, and we've had many skirmishes, but this one will go to the end. It will go to civil war if things don't change".

A second Catron County Commissioner, Carl Livingston, warned an Albuquerque TV news crew of violence should the Forest Service attempt to reduce cattle numbers in the Gila National Forest for resource protection. "If a move was made, let's say for example, a local rancher here, the government threatened to confiscate his cattle, there's no doubt in my mind they would meet with some kind of violence.

Twenty one ordinances attempting to supersede federal authority on public lands were passed in Catron County between 1990 and 1992. The most blatant ordinances define federal lands grazing permits as private property, then establish criminal penalties for violations of "property rights" - "violations" such as the Forest Service ordering cattle reductions or grazing rotations to protect National Forest lands. Other ordinances claim title to all Forest Service roads within the county, ban the release of bears, wolves and mountain lions into the wild, and give the county authority to condemn and manage public land for private use. A Catron County resolution labeled Secretary Babbitt's Range Reform '94 package as "unlawful seizure of power and property" and warned that the plan, "if left unchallenged, will undoubtedly lead to much physical violence".

Federal Targets

Feeling secure in the knowledge that they have support from both Wise Use groups and county governments, some public lands ranchers and other "wise suers" in southwest New Mexico are openly defying the law and have used threats of violence to intimidate federal employees. A hammer and sickle were painted on the Ranger Station wall in Reserve, the Catron County seat. A Smoky the Bear sign in the town of Glenwood was shot, decapitated and finally burned. Wise Use leader Dick Manning, a Catron County public lands rancher/miner, stated "You're in the beginnings of a revolution. This is going on all over the country. You are going to see a complete dismantling of the federal government".

Following a public meeting in Reserve, New Mexico regarding the endangered southwestern willow flycatcher, a man yanked open a car door and warned US Fish and Wildlife Service personnel not to return to Catron County, yelling "The next time you come down here we're going to blow your fucking heads off". In a letter to the agency, Charles Shumway of Arizona warned that unless the "curse" of the Endangered Species Act was repealed, there would be "rioting, bloodshed, rebellion and conflict that will make the Serbian-Bosnia affair look like a Sunday picnic".

Militia supporters Clyde and Nancy Brown, old time residents of Reserve, New Mexico, warned US Fish and Wildlife Service in a letter that there would be "hell to pay" if two fish species were listed as threatened and that "you bureaucrats had better back off before someone gets seriously hurt. Who among you would want to loose (sic) your life for a bird, even if it can sing, or a nearly microscopic size minnow? No, I'll bet you wouldn't. But the people of the west are willing to fight to the better (sic) end for their rights and their homes, no matter who the enemy is".

The climate of fear has had a chilling effect on the Forest Service's management of the Gila National Forest. Instead of responding appropriately to these situations, the federal government is backing down. Without adequate support from the Clinton administration, federal employees find it extremely hard to enforce existing environmental laws and regulations. Instead, agencies avoid confrontational situations and often excuse offenders. Meanwhile the public's National Forests and wilderness areas are left unmanaged. Forest streams and watersheds are grazed to the bone by cattle, and the water supplies of downstream communities are threatened by pollution and dropping water tables. By backing off on enforcement of regulations, the federal government is emboldening the most militant elements of the Wise Use movement, thereby setting the stage for further lawbreaking and confrontation.

On the day after the Oklahoma bombing a public lands rancher, Kit Laney, warned Forest Service personnel at a field meeting (also attended by congressional staffers and environmental groups) "If you come out and try to move my cattle off, there will be a hundred people out there with guns to meet you". "Its stupid, really stupid, but it will happen." Kit Laney's father, Alvin, was one of the authors of the Catron County gun ordinance. The District Ranger had issued a decision to temporarily reduce Laney's cattle numbers in the Gila and Aldo Leopold wilderness to compensate for severe forage depletion. Five days after Laney's warning the Ranger modified her decision - although she stated that her opinion about the condition of the resource had not changed - and increased Laney's cattle numbers by 450%.

The public at risk

With the federal government unwilling to enforce the law, the task of defending public lands has fallen to private citizens and environmental groups, through field monitoring and lawsuits against federal agencies. Subsequently, these individuals and groups have increasingly become "hard targets" for those in the property rights extremists.

Less than a month after the bombing of the Federal Building in Oklahoma City, an off duty Forest Service employee discovered eighteen sticks of plastic explosives in the Gila Wilderness. The explosives were stashed in a rock shelter near a trail in the portion of the wilderness lying within Catron County. ATF experts were called in to detonate the explosives in place due to the danger of carrying them out of the wilderness by horseback.

Although the investigation was turned over to ATF personnel, the Gila Forest Public Relations staff withheld information about the discovery from local media and the public. I learned about the incident two weeks later from a *Federal Times* reporter who had been in the area when the incident occurred. Gila Forest personnel have downplayed the seriousness of the incident, speculating that it may have been "kids" or "someone just trying to get rid of it". But by failing to notify the public, the Forest Service put the public

at risk. The explosives were close beside a trail where a hiker - perhaps a child - could have stumbled over them. The public should have been advised of this dangerous situation.

Just last Thursday, a pipe bomb was found in Catron County in the Gila Wilderness near White Creek. Again, the explosives were detonated in the forest. This time the information was released to the press. It is only a matter of time before a member of the public is injured or killed.

Conclusion

The parallels between the Wise Use movement and the militias are striking, and many of the same faces appear at Wise Use gatherings and at militia meetings. Many activists in the Wise Use movement share a common ideology and world view with that of the militias. Like the militias, the more extreme elements of the Wise Use movement subscribe to irrational, paranoid conspiracy theories about "one World Government" and believe that the United Nations troops are poised to invade the United States of America.

Like the militia, some members of the Wise Use movement take the law into their own hands. Many participants in the Wise Use movement are willing to use lies, harrassment and threats of violence to intimidate citizens who exercise their First Amendment rights to speak out in public forums, go through the legally protected channels for public participation or through the courts to ensure that environmental regulations are enforced. Like the militia, the Wise Use movement promotes stereotyping, racism and bigotry in the furtherence of their cause. They dehumanize and demonize the opposition. Like the militia, some members of the Wise Use movement believe that they are justified in using force - deadly force even - to achieve their goals.

The Wise Use movement also differs from the militia movement in ways that make them an even greater threat. Many of these groups lay private claim to the public's lands. In many instances, the Wise Use leaders in Southwestern New Mexico who openly challenge federal authority control the county governments. They pass laws based on misinformation and misrepresentation of case law, legislation and events, then threaten violence when the federal government attempts to enforce routine regulations. The Wise Use groups are tied to the powerful livestock and mining industries who have significant influence in government at the state and national level.

These groups are attempting to take away the public's lands. They are stockpiling ammunition and they threaten violence against anyone who gets in their way. By backing down in the face of their threats, the federal government is emboldening them in their actions, allowing our national forests and wilderness areas - our children's heritage - to be ravaged by the special interests, and placing both federal land managers and the public in danger.

for 3 - 11 2000



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104TH CONGRESS
1ST SESSION

H. R. 1899

To amend title 18, United States Code, to prohibit certain conduct relating to civil disorders.

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 1995

Mr. NADLER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit certain conduct relating to civil disorders.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Domestic Counter Ter-
5 rorism Act of 1995".

6 **SEC. 2. CIVIL DISORDERS.**

7 (a) IN GENERAL.—Section 231(a) of title 18, United
8 States Code, is amended.—

9 (1) by striking the one-em dash at the end of
10 paragraph (3) and inserting “; or”;

1 (2) by inserting after paragraph (3) the follow-
2 ing:

3 “(4) Whoever trains in the use, application, or mak-
4 ing of any firearm or explosive or incendiary device, or
5 technique capable of causing injury or death to persons,
6 knowing or having reason to know or intending that the
7 same will be unlawfully employed for use in or in further-
8 ance of a civil disorder which—

9 “(A) may in any way or degree obstruct, delay,
10 or adversely affect—

11 “(i) commerce or the movement of any ar-
12 ticle or commodity in commerce; or

13 “(ii) the conduct or performance of any
14 federally protected function; or

15 “(B) is in violation of chapter 13 of this title.”;

16 and

17 (3) in paragraph (1), by inserting “or is in vio-
18 lation of chapter 13 of this title” before the semi-
19 colon.

20 (b) DEFINITION.—Paragraph (7) of section 232 of
21 title 18, United States Code, is amended to read as
22 follows:

23 “(7) The term ‘law enforcement officer’—

24 “(A) means any officer or employee of the
25 United States, any State, any political subdivi-

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*ch in
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to old statute*

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of this title.”;
g “or is in vio-
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section 232 of
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mployee of the
olitical subdivi-

1 sion of a State, or the District of Columbia,
2 while acting in the lawful scope of such officer
3 or employee’s duties;
4 “(B) includes members of the National
5 Guard (as defined in section 101 of title 10),
6 members of the organized militia of any State
7 or territory of the United States, the Common-
8 wealth of Puerto Rico, or the District of Colum-
9 bia, not included within the National Guard (as
10 so defined), and members of the Armed Forces
11 of the United States while engaged in suppress-
12 ing acts of violence or restoring law and order
13 during a civil disorder.”.

○

THE WHITE HOUSE
WASHINGTON

Call Merrick -
watch it down.

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w/ assistance of

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Why not? (elements etc)

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memo from OCC to
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THE WHITE HOUSE

WASHINGTON

August 14, 1995

MEMORANDUM FOR THE PRESIDENT

FROM: ABNER J. MIKVA
Counsel to the President

ELENA KAGAN
Associate Counsel to the President

SUBJECT: SUMMARY OF MEMO ON FEDERAL LAW ENFORCEMENT

This is a summary of the memo on federal law enforcement that Leon has forwarded to your attention. That memo addresses three subjects: (1) threats to federal law enforcement officials, especially from militia members; (2) the "Good Ol' Boys Roundup"; and (3) Ruby Ridge.

The memo provides factual background on threats and resistance to law enforcement agents from right-wing extremist groups hostile to government. Challenges to law enforcement authority take a variety of forms, including bombings; specific threats of violence; the use of "common law courts" and "common law liens"; the filing of frivolous suits; the brazen violation of federal regulations, especially relating to land use; and the enactment of ordinances asserting control over federal lands. These activities have inspired new precautionary measures and probably have inhibited some enforcement efforts. Legislative hearings on militias and the threat they pose to federal agents began this summer; more will occur in September.

The memo also offers a brief description of the "Good Ol' Boys Roundup," the extent of participation in the event by federal agents, the status of ongoing agency investigations, and the recent hearing on the issue by the Senate Judiciary Committee. Senators at that hearing demanded that the agencies discipline not only agents who attended the Roundup, but also any supervisors who knew of their attendance. Several Senators hinted that they would use the findings of the investigations as a predicate for legislation disbanding the ATF and/or modifying the current system of federal employment protections.

The memo last discusses Ruby Ridge -- both the incident and the subsequent investigation of it. An ongoing Justice Department review has found credible evidence of a cover-up by FBI agents, involving perjury and document destruction, which occurred during the investigatory proceedings that began in late 1992 and continued into this administration. Sen. Specter will hold hearings on the issue in early September.

Included within the discussion of each of these subjects are suggestions as to both message and policy. The overarching

message is emphatically supportive of law enforcement agents, but also insistent that such agents live up to their own high standards; it is a message of reciprocal responsibility and respect as between law enforcement and the broader community. The policy proposals, summarized at the end of the memo, include the continued advocacy of the counterterrorism bill; the support of legislation banning paramilitary training, strengthening certain federal criminal laws, and withholding monies from communities that deny federal authority over lands; and the issuance of directives relating to the way in which the Justice Department handles cases involving threats or assaults against federal agents.

to be over
Jamie → Bowler personally

At center to weigh in also.

Transcript +

Viol Crimes Section
all kinds of domestic sps.
Already do everything

DET doing all it can
All lawful
This looks as if it
politicizes it.

© No pre centered laws in det

W/ some kind of direction from Pres,

looks as if it politicizes.

If you bring a process, the 1st thing that would
happen was the Pres would be subpoenaed

W/ FR + everything -
Do this really
scrapping up Kermit's stuff

To: Harold Ickes
Fr: Eliot Spitzer
Re: Possible Executive Actions re Militias
Date: September 13, 1995

A broad range of executive actions can be taken to initiate prosecutions of the militias using existing statutes. A unit should be created at Justice, which, working with support from the FBI and ATF and prosecutors at the US Attorney's offices around the country, would use the following statutes as the basis for prosecutions:

A. The statutes defining obstruction of justice, 18 USC 1501 et seq. are rather broad. Much of the press about the militias suggests that the militias have attempted to impede government functions, including law enforcement. Prosecutions under these statutes, especially 1509 (Obstruction of Court Orders) and 1510 (Obstruction of Criminal Investigations) could be highly effective. Several of the obstruction of justice crimes are already Rico predicates, possibly permitting either civil or criminal Rico actions against the militias. [The possibility of Rico prosecutions would be enhanced by amending the Rico statute to make gun offenses Rico predicates. This is a legislative proposal that might be considered.]

B. The criminal statute making civil disorders illegal, 18 USC 231, is directly applicable. This statute states in relevant part: "Whoever teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce..." shall be fined not more than \$10,000 or imprisoned not more than five years.

C. Local prosecutions would be enhanced by having ATF and the FBI share information with local prosecutors who often [though not always in the relevant states] have more effective gun statutes at their disposal than do the US Attorney's offices. If ATF and the FBI worked with local prosecutors to focus on the gun trafficking of the militias, there is a good chance that strong cases could be brought in a multitude of states.

Also, a legislative proposal that is simpler in many respects than a ban on paramilitary/militia groups might be considered: 18 USC 231, quoted above, should be amended to include as a jurisdictional hook any intent that any individual's federally-protected civil rights be violated. This is an amendment that should have enormous appeal.

[Large handwritten scribble, possibly containing names and dates like "Sept 13 1995"]

Just at Justice.

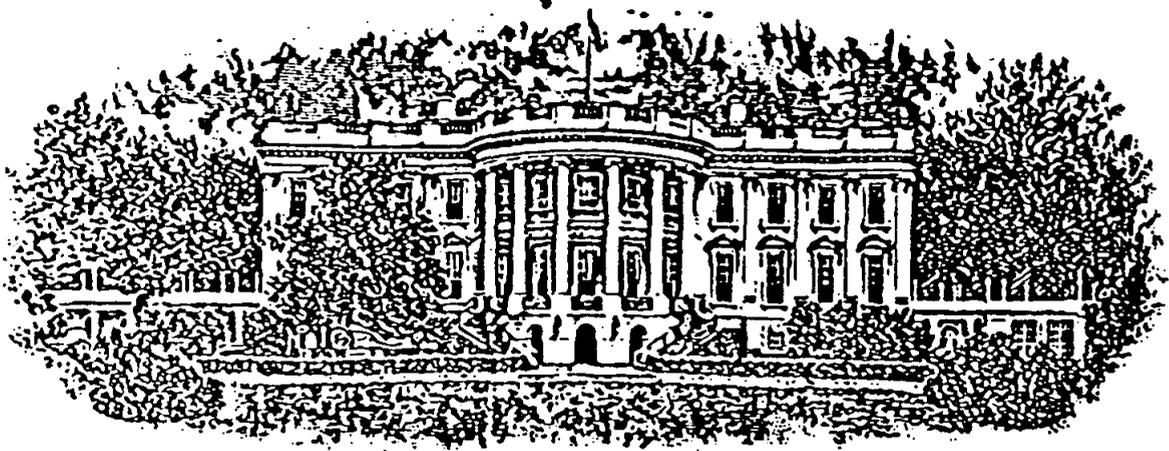
A. No charge - see Spd memo

B. No charge - who not other and

C. Done??

1/1 proposal - charge anything

The White House



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: 9/22/95

TO: Merrick Garland

FACSIMILE NUMBER: 514-9368

TELEPHONE NUMBER: _____

FROM: Elena Kagan

TELEPHONE NUMBER: 456-7594

PAGES (WITH COVER): 2

COMMENTS: Merrick - It's NOT dead yet. Would you take a look at this + call me?
Thanks. Elena

PLEASE DELIVER AS SOON AS POSSIBLE

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THE WHITE HOUSE

WASHINGTON

August 9, 1995

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: ABNER J. MIKVA
Counsel to the President

ELENA KAGAN
Associate Counsel to the President

SUBJECT: FEDERAL LAW ENFORCEMENT

The POTUS recently has noted interest in newspaper articles on the Ruby Ridge shooting; the "Good Ol' Boys Roundup"; and threats to federal law enforcement officials, especially from militia members. These articles all address federal law enforcement, but do so from different (if ultimately complementary) directions. The militia issue highlights what a community owes to its law enforcement officials; the Roundup highlights what law enforcement officials owe to their community; and Ruby Ridge highlights both. Together, the articles the POTUS has noted might be said to call attention to the reciprocal responsibilities of the protectors and the protected within a civil society.

The POTUS might use this broad issue to advantage in the next year. Coming off the Waco hearings, where the Democrats used their alignment with law enforcement to such great effect, he can come down foursquare behind law enforcement agents and against militias and other groups that would threaten or thwart them. This pro-law enforcement, anti-militia message should mesh well with continuing reminders of the Administration's efforts to gain a counterterrorism bill, now seemingly thwarted, and its success in gaining a crime bill. At the same time, the POTUS can insist that agents live up to their own high standards, by providing good, honest, impartial justice. Ruby Ridge and Roundup will in any event become issues in the fall; the POTUS can deal with these issues most effectively by placing them in a broader context. This memo addresses the three issues the POTUS has raised within this broader context, involving the creation of an ideal, mutually respectful relationship between a community and its law enforcers. The memo closes with a summary of suggested actions.

1. Threats to federal law enforcement.

Factual background. In recent months, partly because of the Oklahoma City bombing, attention has begun to focus on threats to and harassment of federal (and also state and local) law enforcement and land management officials. The problem comes

in many guises. Employees have received specific threats of death or injury to themselves or their family. A Forest Service office and Bureau of Land Management office recently were bombed, though with no injury. So-called common law courts, having no rightful authority, issue decrees against federal officials. Those who assert the legitimacy of such courts attempt to file bogus "common law liens" against officials (especially IRS agents), which until removed can cause inconvenience. They also resort to "paper terrorism," filing numerous harassing complaints and suits.

Available statistics, though incomplete, suggest some recent increase in threats against federal officials. The FBI reports that the number of cases opened involving threats or assaults against federal officials, other than Department of Treasury personnel, jumped from 639 in 1993 to 665 in 1994 to 361 in the first three months of 1995. (The 1991 and 1992 figures are closest to the 1994 figure.) The ATF, which retains investigative jurisdiction over threats and assaults against its own employees, reports a dramatic increase in threats against agents and other employees in 1993 (probably due to Waco), but a decline since then: the numbers are 31 in 1991, 36 in 1992, 69 in 1993, 43 in 1994, and 8 in the first quarter of 1995. Statistics from the Forest Service, Bureau of Land Management, Fish and Wildlife Service, and National Park Service are scanty, but these agencies believe that in the last year cases of harassment and of specific threats have increased.

Side by side with the increase in actual threats to law enforcement officials is the increase in resistance to their authority. Such resistance also takes many forms. Individuals may tear up their driver's licenses and other official papers. They may refuse to acknowledge the authority of courts, state or federal. Some persons, including county officials, brazenly violate federal land use regulations, for example by bulldozing open a forest road previously closed by federal officials or erecting fences on federally owned land or refusing to pay grazing or mining fees. Some counties (even states) have considered or passed ordinances (known as Catron County ordinances) claiming title to, or otherwise asserting authority over, federal lands. Under these ordinances, several county officials have arrested or threatened to arrest federal land management officials. (Actions in defiance of federal control over land are associated particularly with the county supremacy movement, noted below.) Other counties or states have considered enacting laws requiring all federal agents to obtain permission from sheriffs before carrying out official duties.

The widespread perception within the law enforcement community is that the increased risk and resistance to federal officials is attributable to the recent growth of right-wing extremist groups hostile to government: the militia, white supremacist,

tax protestor, and county supremacy movements (all of which overlap with each other). (Just a few months ago, two members of the Minnesota Patriots Council were convicted of conspiring to poison federal law enforcement agents.) The Anti-Defamation League estimates that active militias exist in 40 states, with 15,000 members. (Other estimates range up to 100,000.) The ADL claims that the movement has grown since the Oklahoma City bombing, but also has gone further underground, breaking up into ever smaller units, which are less prone to detection. Members of such groups, of course, often harbor special hatred of gun control laws and maintain large caches of firearms, which increases further the danger to law enforcement agents.

The rise of this anti-government movement has led to the use of new precautionary measures and also, perhaps, to the inhibition of some enforcement activity. The Director of the BLM in Idaho issued a "County Supremacy Movement Safety Guidance" memorandum instructing employees prior to leaving for the field, to notify a supervisor of destination, route, and expected time of return; to identify alternative routes; and to maintain constant radio contact. Other BLM supervisors have told field employees always to travel in unmarked vehicles. The Forest Service in Montana has declined to conduct fire prevention flyovers across parts of the state for fear of being shot at by militia members. Stories abound of individual federal officers so intimidated as to turn a blind eye to law violators.

Legislative action. Legislative hearings on this subject have occurred, and more will occur in the fall. Senator Specter's Judiciary Subcommittee on Terrorism held a hearing in June on the militia movement, at which both militia members and high-level officials of federal law enforcement agencies testified. Specter intends to hold at least one more hearing in the fall. Charles Schumer led a Democrats-only hearing in July on militia activities -- attended by threatened government workers and members of watchdog groups -- after Republicans on the House Judiciary Committee refused his request for formal hearings. Chairman William McCollum now has agreed to hold official hearings sometime in the Fall. The content of these hearings is still uncertain. Over the next few weeks, we should work with Rep. Schumer's staff to devise a hearing strategy.

Several legislative proposals addressing these issues are currently under discussion. The ADL has drafted a model paramilitary training law, introduced by Rep. Nadler in the House, which probably would pass constitutional muster. This bill, versions of which are on the books in about 40 states, would make it a federal crime (assuming a connection to interstate commerce) to train with firearms with the intent of using them in furtherance of a "civil disorder." (The Federal Civil Obedience Act of 1968 already makes it a crime to teach the use of firearms with such an intent.) Another, broader

version of the bill would remove the strict intent requirement; such a law would make it easier to prosecute those who participate in paramilitary training, but would raise severe constitutional (and perhaps political) problems. The pending Counterterrorism Act would expand federal jurisdiction over threats and assaults against both current and former federal officials. Other possible approaches would be to increase penalties for threats and assaults and also to cover threats and assaults against members of an official's family.

On another track entirely, the government might respond to so-called Catron County ordinances by withdrawing or escrowing all payments to counties based on federal land tenure (e.g., payments in lieu of taxes and shared proceeds from public land uses). (Trying to do this by executive action would be a stretch as a legal matter, but may be worth looking into).

Executive action. The most obvious response to these dangers is strictly to enforce existing laws against threats and violence. While federal law enforcement agencies insist this is what they are doing, some watchdog groups contend that federal officials shy away from confrontational situations. For example, these groups note, the Justice Department brings civil suits, but not criminal prosecutions, against persons who challenge federal ownership of lands by bulldozing roads, erecting fences, etc.

Thought might be given to restructuring, or at least reviewing, the way in which the government currently handles prosecutions against those who threaten or assault federal officials. The Justice Department recently has made increased efforts to coordinate and systematize its response to the kind of problems discussed in this memo. But further steps might be considered. For example, the FBI currently has investigative jurisdiction in cases involving threats or assaults against federal officials, but perhaps it also should have a special unit devoted to them. Similarly, prosecutions usually are handled by local US Attorneys' offices; perhaps the Criminal Division of the Justice Department should exercise greater control over these cases or provide some kind of centralized coordination. A Justice Department review of this subject might be in order. More dramatically, the President might issue a set of directives relating to the way in which such cases are handled.

2. Good Ol' Boys Roundup.

If the above discussion suggests something about what a community owes to its law enforcement officials, discussion of the Roundup suggests something about what officials owe to the community. The Roundup, of course, is an annual social event, largely for law enforcement agents and their families, with a racist tone: few non-whites have been invited, and racist incidents have occurred (e.g., the sale of "nigger hunting

licenses," the display of racist signs, the production of racist skits). The facts relating to federal law enforcement participation are incomplete; each agency is now undertaking an investigation. Of the agencies, ATF seems to have the greatest involvement with the Roundup: a now-retired ATF agent helped organize the event each year (probably using agency resources), and approximately 12 ATF agents (active and retired) attended in most years. The number of other federal agents who attended the event is smaller: 1 or 2 a year from the FBI, for example.

Chairman Hatch recently held a Judiciary Committee hearing on the Roundup. At that hearing, Senators from both parties urged a panel of enforcement officials (Freeh, Magaw, Constantine, Noble, Lau, and Gorelick) to discover not only the identity of employees who attended the event, but also the identity of any supervisors who knew that employees attended. This is a special concern at ATF, because knowledge of the Roundup was most widespread there and because the Roundup was specifically mentioned in a deposition, attended by ATF's counsel, last year. (The deposition was part of an ongoing race discrimination suit brought against ATF by African-American employees, who allege pervasive racism within the agency.)

We should anticipate two different kinds of legislative responses following the close of the agency investigations. First, some Senators might use the Roundup to strengthen the case for disbanding the ATF and transferring its functions to the FBI. Several Senators discussed this possibility at the Roundup hearing, and several Congressmen proposed it during the House hearing on Waco. The NRA seems to be pushing this proposal, but it is unclear whether such a move would harm gun law enforcement. The ATF is an agency in trouble: although there have been some recent improvements, all reports suggest that ATF agents suffer from poor morale and bad training; more, the precarious situation of the agency has caused it to shy away from certain kinds of investigations, including probes of licensed gun dealers. (The number of firearms ATF has taken into custody dropped considerably between 1992 and 1995.) In 1980, the NRA also pushed to dismantle the ATF; then, when Reagan announced he would shift its functions to the Secret Service, the NRA realized its mistake and reversed its position. The NRA might now be making the same error. Support of the ATF, as against proposals to transfer its functions to another agency, will not necessarily best serve the interest of gun law enforcement. It is, however, an attractive political position, given that the NRA is the ATF's principal enemy.

Second, some Senators may use the Roundup hearing as a predicate for legislation stripping federal employees of certain kinds of employment protection. A constant refrain of the Roundup hearings was the difficulty of disciplining federal employees for infractions of agency rules, given the current

Merit System Protection Board (MSPB) system. (This subject also came up at the Waco hearings: after the failed raid, the ATF reinstated two agents whom it initially had fired for fear that the MSPB would do so anyway, on terms even more favorable to the agents.) Reforms in the system may well be warranted from the standpoint of effective personnel management. Such a stance may provoke flak from unions. But supporting or even advancing a balanced proposal would enable the POTUS to respond to the Roundup in an activist way that allows him to note the "public trust" aspect of law enforcement and the need to remove the few agents who fail to understand responsibility.

3. Ruby Ridge. Sen. Specter is scheduled to hold hearings on Ruby Ridge beginning September 6. Those hearings probably will focus both on the incident at Ruby Ridge and on the subsequent investigation of that incident. The incident occurred during the Bush administration; the investigatory proceedings began in 1992, but continued into this administration.

The incident began in January 1991, when ATF agents arrested Randy Weaver, a white supremacist with violently anti-government views, for having sold sawed-off shotguns to an ATF agent. When Weaver failed to appear in court as scheduled in August of the following year, a deputy US Marshal went to his retreat to arrest him. A gunfight ensued in which the deputy marshal and Weaver's son were killed. The FBI then took over the scene, under rules of engagement that everyone agrees were improper: the rules allowed -- indeed, instructed -- agents to use deadly force not only in self-defense or defense of others, but whenever a person within the retreat was observed with a weapon. At some point, an FBI sniper shot and killed Weaver's wife. Freeh has insisted that the sniper was not following the improper rules of engagement, but instead was acting in accord with usual FBI policy on deadly force. That position is controversial. Those critical of law enforcement's performance at Ruby Ridge argue both that the rules of engagement were improper and that those rules caused the death of Mrs. Weaver.

The second issue concerns the adequacy and honesty of the subsequent investigation of Ruby Ridge. The FBI review resulted in a letter of censure to Larry Potts, who supervised the operation from Washington; Eugene Glenn, the field agent in charge, received a 15-day suspension. In May, Glenn wrote to the Justice Department's Office of Professional Responsibility, complaining that the FBI review had been distorted to protect Potts. Glenn alleged that Potts himself issued the faulty rules of engagement (Potts has disputed this); Glenn further alleged that documents shedding light on this matter had been purposely destroyed. OPR recently submitted a preliminary report to Deputy Attorney General Jamie Gorelick. The exact content of that report is unknown, but it appears to indicate that some agents engaged in activities obstructing justice. As

a result of that report, on August 11 Freeh suspended four senior FBI officials, including Potts. (A fifth official, Michael Kahoe, was suspended a few weeks earlier, when he admitted shredding certain documents relating to Ruby Ridge.) In addition, Gorelick referred the preliminary report to U.S. Attorney Eric Holder for criminal investigation. OPR's review is ongoing; the latest information is that the review will not be completed by the date the Senate hearings open.

The Ruby Ridge story highlights the way responsibilities between law enforcement and the broader community run in both directions. On the one hand, the incident would never have occurred had Weaver submitted to lawful authority (shades of David Koresh); too, the incident is being used by those who wish to undermine law enforcement (again, shades of Waco). On the other hand, the actions of agents at Ruby Ridge were, at the least, ill-considered; and a cover-up in the review process would violate every conceivable norm of law enforcement. The POTUS, in addressing this issue (should he have to do so later this Fall), might use this kind of two-pronged message.

Summary of suggested actions

This memo has suggested a series of actions to deal with issues of federal law enforcement, including the protection of federal agents from right-wing extremists, the Roundup, and Ruby Ridge. Within the context of discussing the mutual respect and obligation that ought to mark the relationship between law enforcement and the broader community, the Administration should, in summary:

- Continue to push counterterrorism legislation, blaming the failure to pass it on the Republicans;
- In consultation with members of Congress, develop a strategy for the hearings on militias and Ruby Ridge;
- Support anti-paramilitary training legislation and advance legislation strengthening federal criminal provisions relating to threats and assaults against federal agents;
- Advance legislation responding to Catron County ordinances by withholding certain federal monies, and consider ways to accomplish this object through executive action;
- Issue directives relating to the prosecution of cases involving threats or assaults against federal agents, either specifying specific changes in prosecution policy or instigating a general review by the Justice Department;
- Reform the MSPB system, to enable law enforcement agencies to remove more easily agents who violate codes of conduct.

cc: Secretary Robert E. Rubin

STATEMENT

Of The

ANTI-DEFAMATION LEAGUE

On

THE MILITIA MOVEMENT

AT A FORUM ON

"America Under the Gun: The Militia Movement and Hate Groups in America"

Rayburn House Office Building

Washington, D.C.

July 11, 1995

My name is Thomas Halpern, and I am the Acting Director of the Fact Finding Department of the Anti-Defamation League. I am accompanied today by Steven M. Freeman, ADL Director of Legal Affairs, and Michael Lieberman, Associate Director and Counsel in our Washington, D.C., office. It is an honor for me to participate in today's forum, and I commend the Members who have convened here today for their initiative in exploring issues raised by the growth of militia activity across the United States.

The Anti-Defamation League has fought racial and religious bigotry and has monitored the activities of extremist groups in America for more than 80 years. ADL monitors the activities of these groups by observing their rallies and demonstrations, listening to their speeches and their radio and telephone propaganda messages, viewing their video tapes and computer bulletins, reading their literature, and collecting news reports about them. The William and Naomi Gorowitz Institute on Terrorism and Extremism makes possible the wide dissemination of our reports detailing the results of our fact-finding efforts. These reports, which have been distributed to Members of Congress, Administration officials, thousands of law enforcement personnel, journalists, and numerous ordinary citizens, constitute an important component of ADL's mission: to inform and educate the American public about extremists by documenting their views and actions.

The ADL Fact Finding Department has issued two reports on the militias: *Armed & Dangerous: Militias Take Aim at the Federal Government*, published in October 1994, and *Beyond The Bombing: The Militia Menace Grows*, released in June of this year. We had begun, more than a year ago, to take note of these bands of armed right-wing militants cropping up across America. Many of the militias were engaging in paramilitary training. We perceived the fanatical anti-federal government message of the militia movement as fundamentally anti-democratic, with its exhortations to stockpile weapons in preparation for an inevitable conflict with our elected government. In the view of many militiamen, the federal government and its law enforcement agencies are the enemy, now widening their

authoritarian control and planning warfare against the citizenry.

To the militia ideologues, gun control measures -- especially the Brady Law and restrictions on assault weapons -- are major stratagems in a secret government conspiracy to disarm and control the American people. They are also obsessed with the role of government in two events of recent years -- the Branch Davidian confrontation in Waco in 1993, and the 1992 Randy Weaver siege in Idaho -- which they interpret as signs of impending tyranny. Their conspiracy-haunted views include the belief that mysterious "black helicopters" are surveilling Americans across the West, that the Federal Emergency Management Agency is secretly establishing concentration camps for American dissidents (including militia proponents), and that the federal government, in league with some nefarious "New World Order," is planning a "takeover" of the United States by UN troops. The answer, say these extremists, is ultimately, necessarily, paramilitary resistance. An armed and aroused citizenry, they assert, must be mobilized and ready for a call to war.

The militia movement came under intense national scrutiny after the deadly April 19, 1995, bombing of the Federal Building in Oklahoma City, when it was reported that two suspects in the bombing, Timothy McVeigh and Terry Nichols, had attended some militia meetings in Michigan. In addition, prosecutors have charged that McVeigh was motivated to commit the bombing out of anger at the federal government for its handling of the Branch Davidian confrontation in Waco, Texas -- an issue that has been one of the chief rallying cries of the militia movement.

Of course, the fact that the men charged with the Oklahoma City bombing have had some association with one militia group does not make the entire movement responsible for the crime. But even if no further connection is established between the bombing and the militias, it should be clear by now that these extremists, particularly those engaged in paramilitary training, present a serious danger. The formula they have concocted -- belief in

menacing conspiracies, hatred of the government, and the conviction that an armed showdown is coming -- is a prescription for disaster.

Extremist movements in American history, groups of both the far left and far right, have shared a hostility to democratic principles and processes. Such movements, to which can now be added the militia movement, threaten the sense of security and civic order necessary for the peaceful exercise of Constitutional freedoms. The threat may even be more graphic: Idaho-based militia leader Samuel Sherwood, insisting that some Idaho politicians ignored the interests of state residents in favor of a federal agenda, reportedly advised his followers, "Go up and look legislators in the face, because some day you may have to blow it off."

It is in the rabidly anti-federal government right-wing extremists of the 1980's that we may find some of the roots of today's militia groups and their sympathizers. These earlier groups shared a now familiar hatred of federal authority (which they regarded as controlled by the Jews), an extremist ideology, and a program of paramilitary training. They included the Posse Comitatus; the Covenant, the Sword, and the Arm of the Lord (or CSA); the Arizona Patriots; and, most serious of all, The Order -- a racist and anti-Jewish revolutionary gang, based in the Pacific Northwest, whose crimes included bank robberies, armored car heists, counterfeiting, shootouts with federal law officers, synagogue bombings, and murders, including that of Denver talk radio personality Alan Berg. The Order had planned further bombings -- designed to result in many deaths and in major devastation -- that thankfully were thwarted by federal law enforcement agencies, including the FBI and BATF.

Of particular interest, in light of the venomous anti-government views harbored by today's right-wing zealots, was a "Declaration of War" issued by 13 members of The Order in November 1984, as the authorities were closing in on them. The statement threatened the hanging of members of the U.S. Congress, and designated as "combatants" in its war -- and

therefore suitable targets for killing -- unfriendly federal agents, local police officers, state patrolmen, members of the armed forces, bankers, journalists, judges and business representatives.

The leader of The Order ultimately died in a firefight with law enforcement, and several other members were eventually tried and sentenced to long prison terms. Another major federal trial of right-wing extremists in the 1980's, however, had a different result. Twelve defendants were acquitted in 1988 by a Fort Smith, Arkansas, federal jury of charges of seditious conspiracy. Among the defendants was Richard Wayne Snell, who had already been convicted in Arkansas state court of the murders of a black state trooper and a pawnbroker Snell thought was Jewish; Snell was executed on April 19, 1995, the day the Federal Building in Oklahoma City was bombed. Another defendant at Fort Smith was Louis Beam, a former Texas KKK Grand Dragon who has been "Ambassador-At-Large" of the Hayden Lake, Idaho-based Aryan Nations.

Beam remains a fixture on the far right. Long considered a potential successor to Richard Girnt Butler as leader of the Aryan Nations, Beam designed for the group a computer network that featured an assassination "point system." Points were awarded based on the importance of the politician, civil rights leader, police officer, or minority group member that a participants, aspiring to be designated an "Aryan Warrior," managed to kill.

Today, Beam's ideas appear to be having some influence in the militia movement. Since the Oklahoma City bombing, some militia strategists have been counseling the groups to organize into small units designed to be less susceptible to detection, monitoring and infiltration by law enforcement. This approach echoes a strategic concept known as "leaderless resistance" that has been promoted in recent years by Beam and several other far-right figures (among them Tom Metzger of Fallbrook, California, who leads the White Aryan Resistance). "Leaderless resistance" is described as an alternative to the "leadership"

structure in "underground" groups. The intent of the concept is to keep secret the plans of terrorist assaults against the government, known only to a few individuals in small cells in order to prevent leaks or infiltration. This strategy was originally articulated in 1962 by Colonel Ulius Amoss, who feared a Communist takeover of America; it has also been employed as an organizational pattern by some foreign terrorist groups.

But with Soviet Communism no longer a threat, Beam wrote in the February 1992 issue of his quarterly publication, *The Seditonist*, that "the purpose of Leaderless Resistance is to defeat state tyranny." Further troubling parallels can be found between Beam's thinking and that of some militia leaders. Beam, in a terror campaign against Vietnamese fishermen in Texas in the 1970's, reportedly employed the slogan: "Where ballots fail, bullets will prevail." The approach is echoed by Militia of Montana leader John Trochmann, who was a featured speaker at the 1990 Aryan Nations Congress and, according to Aryan Nations leader Richard Butler, has participated in "Bible study" sessions at the group's Idaho compound. Trochmann last year displayed the militia's attitude towards taking up arms when he stated: "We don't want bloodshed. We want to use the ballot box and the jury box. We don't want to go to the cartridge box. But we will if we have to."

Numerous militias have endorsed a plethora of conspiracy theories, as we have shown. The main thrust of the militia movement has, so far, been its fierce hostility to the federal government. While there is a strain of anti-Semitism in some militias, it has not as yet encompassed the entire movement. But ADL believes, based on our research, that a more pervasive anti-Semitism is developing within the movement, largely due to the tendency -- observed also in earlier periods -- of obsessive conspiracy-mongers to focus ultimately on the Jews as central conspirators.

According to the militias' conspiracy view, the federal authorities are taking steps in order to make it impossible for the people to resist the imposition of a tyrannical regime or a

"one-world" dictatorship. (The belief that the federal government itself perpetrated the Oklahoma City bombing as a pretext for totalitarian rule has gained wide currency in the movement; some have even compared the bombing to the burning of the Reichstag in Hitler's day.) Many militia supporters believe that the conspiracy against the American people involves not only federal authorities, but also the United Nations, foreign troops and other sinister forces.

Sometimes mentioned among these sinister forces are Jews. ADL's first report on militias noted that a number of militia figures have histories of bigotry. The current survey confirms that some militia propaganda continues to exhibit an anti-Semitic strain that could well become more pervasive among militia groups as a result of the movement's obsessive conspiracy-mongering.

In this connection, the role of America's leading anti-Semitic organization, Liberty Lobby, and its weekly publication, *The Spotlight*, merit attention. In April 1995, ADL revealed that one of the Oklahoma City bombing suspects, Timothy McVeigh, advertised a military-style rocket launcher for sale in *The Spotlight*. On May 28, *The New York Times* reported that Terry Nichols, the other bombing suspect, and his brother James were readers of *The Spotlight*. Many of the conspiracy fantasies fueling the militias were promoted heavily in a September 1994 eight-page supplement of *The Spotlight*. The supplement, widely distributed among militiamen, intoned: "Is America on the verge of war? Is a 'national emergency' about to be declared and America placed under martial law? Is America on the brink of occupation by military troops under United Nations control?" In addition, the Militia of Montana has been promoting for sale in its catalog a comprehensive bomb-making manual entitled *The Road Back*, which was produced by Liberty Lobby's publishing arm, Noontide Press. The catalog describes the book as "a plan for the restoration of freedom when our country has been taken over by its enemies."

Given the revolutionary posturing of so many of the militias, and the role of hate-mongers as activists in or influences on the groups, the better part of wisdom dictates that close attention be paid to them. There is a role here for the press and for citizen organizations that monitor extremism. The Anti-Defamation League is pledged to do its part.

The chief responsibility for keeping on top of the militia threat, however, plainly rests with the law enforcement arm of government. That this responsibility must be implemented with all due respect for the legal rights to which everyone is entitled should go without saying. Law enforcement agencies need the requisite resources to monitor these groups and to take appropriate measures, when necessary, to protect the public.

One such tool is paramilitary training legislation already on the books of many states. Those laws (many patterned after a model bill first formulated by ADL) should be applied, where appropriate. In states where such laws have yet to be adopted, ADL urges that they be given prompt consideration.

ADL's model Anti-Paramilitary Training Statute arises from our pursuit of legal and legislative remedies to address the conduct of extremists when that conduct ceases to be First Amendment-protected speech and crosses a Constitutional divide to become subject to legal sanction. The model bill dates back to the early 1980's, and was drafted by ADL's Legal Affairs Department in response to a proliferation of paramilitary training camps then being operated by the Ku Klux Klan and other racist groups in clandestine training centers in such states as Alabama, California, Connecticut, Illinois, North Carolina and Texas. Through our fact-finding efforts, ADL determined that the training being provided at these camps was sophisticated and rigorous. In Texas, for example, it included tactical maneuvers, military drills, map reading and weapons proficiency. The aforementioned Louis Beam, then a Grand Dragon of the Texas KKK, boasted that Klan paramilitary training in Texas was more

rigorous than that given to U.S. Army soldiers stationed at Fort Hood.

In several instances, the anti-paramilitary statute proved effective against these extremist groups. For example, ten years ago, five members of the United Klans of America were arrested by the St. Petersburg, Florida Police Department and the Pinellas County Sheriff's office and charged with planning and training for terrorist acts against minorities. One year later, two pleaded guilty and two were convicted by a jury for violating Florida's anti-paramilitary training statute, which dates back to 1982. The goal of the Klan group, according to a police informant, was to incite blacks to riot so that whites would turn to the Klan for leadership. In addition to training with guns intended to be used against minorities, members of the group were instructed in the making of incendiary devices. The statute helped prevent a dangerous situation from escalating into the kind of violence which could easily have led to the loss of innocent life.

A demonstration of the deterrent potential of such laws was the reaction of the Christian Patriots Defense League (CPDL), an extremist survivalist group which, beginning in 1979, held propaganda-filled "freedom festivals" where over 1,000 people engaged in military-style field maneuvers and attended some 55 classes, receiving instruction in, among other subjects, "Guns and Reloading," "Demolition and Camouflage," "Anti-Aircraft and Anti-Tank," and "Knife Fighting." In 1984, when the CPDL festival was scheduled to take place in Licking, Missouri, CPDL director John Harrell instructed festival participants not to bring their firearms to the camp because Missouri had enacted an anti-paramilitary training law. Many extremists apparently stayed away from the meeting for this reason.

Extremist group paramilitary activities declined in the late 1980's and early 1990's, and the contribution of anti-paramilitary training laws to that trend certainly was important, if difficult to measure precisely. As the activity diminished, the laws went largely unused through those years. With the rise of the militia movement, anti-paramilitary training laws

took on new relevance. Their potential utility against militias characterized by vigilant resistance to gun control laws and government "overreaching" should be self-evident, particularly when investigations into some of the militias have uncovered stockpiling of lethal weaponry and connections to individuals and groups with a history of racial and religious bigotry.

In drafting the model anti-paramilitary training bill, ADL was guided by three primary objectives: first, the statute had to be constitutionally sound; second, in order to have a meaningful deterrent impact, the statute had to deal directly with the problem of paramilitary training camps; and third, the statute had to be drafted narrowly so as not to prohibit legitimate lawful activities, such as rifle ranges and karate clubs.

We used the Federal Civil Obedience Act of 1968, 18 U.S.C. 231 et seq., as the prototype for the ADL statute, modifying its provisions to include participants in paramilitary training camps as well as instructors. Importantly, this law had previously been upheld as constitutional by two different federal appellate courts. Furthermore, in *United States v. Featherston*, 461 F.2d 1119 (5th Cir. 1972), the Fifth Circuit explicitly stated: "if [the] Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required."

The ADL model statute provides a criminal penalty for anyone who "teaches or demonstrates to any other person the use, application, or making of any firearm, explosive, or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that same will be unlawfully employed for use in, or in furtherance of, a civil disorder." A second provision similarly prohibits a person from assembling with one or more others "for the purpose of training with, practicing with, or being instructed in the use of" the weapons and techniques mentioned in the first section.

The statute defines "civil disorder" as "any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of another individual."

In crafting this language, ADL endeavored to be sure that it would satisfy constitutional scrutiny in two ways. First, any infringement on rights granted by the First Amendment is more than counterbalanced by a compelling government interest, in accord with the applicable standards set by the courts. Second, the statute was drawn as narrowly and as precisely as possible in order to proscribe only those activities which may be constitutionally proscribed. Although it has not been tested in state court, we believe it is constitutionally sound.

One hurdle in obtaining a conviction under the model statute is the requirement that the person participating in the paramilitary camp must intend (or in the case of instructors, "know or have reason to know or intend") that his training will be unlawfully employed for use in, or in furtherance of, a civil disorder. The question thus becomes one of proof. In order to be able to obtain convictions under this statute, it will be necessary for law enforcement officials to investigate and prove that the goal of the individuals participating in these paramilitary programs is to create or foster illegal civil disorders. This obviously is not an easy standard to meet, but it helps address all three concerns noted earlier. The intent requirement, in a manner analogous to criminal conspiracy laws, helps to ensure not only that the statute is constitutional, but also that it serves its intended purpose.

There are a number of reasons why ADL drafted a statute for the introduction into state legislatures rather than simply pressing for amendment of the Civil Obedience Act of 1968. First, in this instance, the U.S. Constitution requires certain elements of proof such as a connection to interstate commerce in a federal statute; such elements do not have to be included in a state statute. This distinction may be even more significant in light of the U.S.

Supreme Court decision this term in *United States v. Lopez*, __U.S.__(1995), 1995 WL 238424 potentially narrowing the reach of the commerce clause.

A state statute offers another advantage, in that it gives state and local law enforcement authorities a mandate to control paramilitary training camps. These authorities have experience in dealing with weapons offenses and intrastate activities such as paramilitary training camps and are more familiar with the local communities where such training camps are based. Based on recent comments from one local official, they appear ready and willing to investigate militias when a criminal predicate exists, although this official indicated to ADL that more personnel and more training would be helpful. Indeed, ADL believes that many state and local law enforcement agencies require better investigative resources to help them monitor the militias for possible illegal activity. The burden of monitoring the militias falls largely on these agencies, because the militias are mainly located in rural and small town communities.

In addition to its efforts at the state level, ADL supports federal legislation such as H.R. 1899, introduced by Representative Nadler, which would expand the coverage of the Federal Civil Obedience Act to include those who participate in paramilitary training as well as those who conduct the training. The more legitimate, constitutionally sound tools we provide to those law enforcement officials at every level whose function it is to guard our safety and security, the better served we are.

The right to hold and promote one's views on the issues which are agitating the militias -- such as gun control, the environment, and abortion -- is inviolate under the Constitution. There is no right, however, to use force or violence either to impose one's views on others or to resist laws properly enacted. That is the crux of the problem presented by the rise of the militias.

**U.S. DEPARTMENT OF JUSTICE
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WASHINGTON, D.C. 20530**

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REMARKS:

**U. S. Department of Justice**

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

May 28, 1995

**MEMORANDUM FOR
WALTER DELLINGER
DAWN JOHNSEN
RICHARD SHIFFRIN****From:** Stuart Benjamin
Neil Kinkopf
Marty Lederman
Michael Small**Re:** Preliminary Analysis of Constitutional Issues Involved in Regulating the Activities of Paramilitary Organizations

You have asked us to determine the extent to which the Constitution authorizes federal legislation to regulate private paramilitary organizations and whether the Constitution, especially through the First Amendment, imposes any limitation on these powers. In the limited time allotted, we have not been able to complete all of the research that would be necessary to formulate final legal conclusions (nor have we had time to citecheck this memorandum). This memorandum sets forth the results of the research and analysis that we have been able to complete this weekend, and the preliminary conclusions that we think are supported. We note, however, that our conclusions are so tentative at this point that they should not form the basis for any significant actions. If it would be timely and helpful, we of course would be happy to continue to research the matter and provide a final draft opinion.

In section I of the memorandum, we examine two possible sources of affirmative authority for federal regulation of paramilitary organizations: the Militia Clauses and the Commerce Clause. The Militia Clauses grant Congress broad power to enact laws to organize a militia and ensure that it is able effectively to fulfill its statutory and constitutional role. Because Congress has not previously sought to regulate the conduct of private actors under this power, there is no judicial precedent ratifying such action. Nevertheless, as explained below, we believe that Congress's authority permits it to regulate any activities that undermine the ability of the militia to achieve its constitutional and statutory purposes. Regulation of this type must be supported by appropriate congressional findings. If so supported and absent other constitutional limitations, a statute could ban paramilitary

activities outright, prohibit contributions to paramilitary organizations, or require paramilitary organizations to file reports disclosing their existence, their membership, an inventory of their weapons, and other relevant information regarding their instruction, drilling, and maneuvers.

Congress's authority under the Interstate Commerce Clause extends to the regulation -- including the prohibition -- of the use of firearms that have ever traveled in interstate commerce (which includes the vast majority of firearms). As a result, the commerce power, absent other constitutional limitations, allows Congress to regulate all of the activities of paramilitary organizations that involve firearms -- such as training and maneuvers -- and to require organizations and members to register an inventory of firearms used in such activities. The commerce power would also permit Congress to regulate paramilitary organizations' use of interstate wire, electronic, and mail communications networks and to regulate their economic activities, at least when the regulation is part of a larger regulatory scheme.

In section II, we consider whether the Bill of Rights -- in particular, the First and Fifth Amendments -- imposes any affirmative restrictions on Congress's power to regulate paramilitary activities and organizations. First, we consider whether Congress may ban or regulate certain activities -- namely, paramilitary operations and maneuvers. We conclude that there would be no constitutional bar on a simple statute reading something like the following: "It shall be unlawful for any person over 18 years of age to engage in military or paramilitary operations, drills or maneuvers in association with X or more persons, using firearms or other dangerous weapons, if those weapons have moved in interstate commerce, or if the military or paramilitary operations, drills or maneuvers otherwise affect interstate commerce." However, because this type of broad ban on activity might sweep within its scope some activity that not only is explicitly and uniquely expressive in nature, but that also does not threaten the harms that Congress wishes to address -- for example, Civil War battle reenactments and the filming of television productions depicting combat -- such a statute probably should contain exceptions for activities such as these to avoid constitutional difficulties, or add an intent requirement that the proscribed activity be "with the intent to prepare for actual armed combat."

Congress alternatively could impose certain restrictions on such activity, or require persons wishing to engage in such activity to register with the government and provide certain information that is germane to Congress's regulatory interests. In order to avoid self-incrimination concerns under the Fifth Amendment, however, Congress must ensure that the required disclosures are not "invariably indicative" of unlawful activity by the affected individuals.

Next, we consider whether the Constitution would impose constraints on Congress's ability to regulate paramilitary organizations, as such. We conclude that it would be constitutionally unproblematic to require paramilitary groups to register with the government and to disclose their officers and paramilitary activities -- and to have the state make public

such information -- as a condition for engaging in concerted paramilitary activity. Nor would the Constitution bar a requirement that an organization disclose any firearms and weapons that the organization owns or possesses. (Again, Fifth Amendment concerns would be raised insofar as any of the required disclosures would be "invariably indicative" of unlawful activity by the organization.) The First Amendment almost certainly would, however, invalidate any statute requiring such organizations to disclose the names of their members or persons who have made contributions to the organizations, at least with respect to organizations that, in addition to paramilitary activity and training, engage in advocacy of particular beliefs and ideas.

Finally, we discuss whether Congress may prohibit certain financial contributions. A prohibition on financial contributions to paramilitary organizations may be at odds with the First Amendment. Many paramilitary organizations, in addition to engaging in paramilitary exercises, also advocate particular political views and goals. Thus, a contribution to such an organization is a form of political expression and association that is at the heart of the First Amendment. Nonetheless, assuming that it would be within its enumerated powers, Congress could pass a statute prohibiting financial contributions that are made with the intent of assisting paramilitary activities, where such activities are themselves unlawful under federal law. Such a prohibition would not violate the First Amendment if (i) the statute specifies that the contribution must be made with the knowledge that paramilitary activities were illegal and with the intent of furthering illegal aims, and (ii) the knowledge and intent requirements are sufficiently clear to survive a claim that the statute is either unconstitutionally vague or overbroad. It is a difficult question whether Congress also may prohibit financial contributions that are made with the intent of assisting paramilitary activities, even where such activities are not themselves unlawful. The critical inquiry is whether it is possible to distinguish a ban on contributions made for the purpose of assisting lawful private military activities from a ban on contributions to lawful private military organizations. In that regard, a ban on financial contributions for paramilitary activities arguably relates to separately identifiable conduct that may be perceived by others as expressive of particular views, but which, on its face, does not necessarily convey any message. To the extent that the contribution made for the purpose of paramilitary activities does contain elements of protected political expression and association, the prohibition would satisfy First Amendment requirements if it serves an important or substantial interest that is unrelated to the suppression of communication and the incidental restriction on speech is no greater than essential to the achievement of that interest.

I. Sources of Authority over Private Militias

A. The Militia Clauses

With respect to militias, the Constitution empowers Congress

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; [and]

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress[.]

U.S. Const. art. I, § 8, cls. 15, 16. The Constitution further sets forth that, "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. 2.

As used in the Constitution, the term "militia" was meant to refer to "all males physically capable of acting in concert for the common defense. 'A body of citizens enrolled for military discipline.'" United States v. Miller, 307 U.S. 174, 179 (1939). Prior to the ratification of the Constitution, militias were maintained in each of the colonies and, after the Revolutionary War, were maintained by the states. The framers of the Constitution were uneasy about the prospect of maintaining a standing army. It was feared that a standing army could become an instrument for domestic oppression and tyranny. The framers sought to alleviate these fears by providing for the maintenance of a militia. Because the militia was composed of men who were "citizens primarily, soldiers on occasion," id., it was considered unlikely that it could be coopted in this manner. It was thought that by providing for the militia, the need to raise a standing army might be obviated altogether and, to the extent it was not, the need to resort to a standing army for the enforcement of domestic laws would be greatly diminished because the federal government could first resort to the militia. See id. at 178-79; Joseph Story, Commentaries on the Constitution of the United States, 420-24 (1987); The Federalist No. 29, at 182-87 (Clinton Rossiter, ed., 1961) (Hamilton).

As the term "militia" is broadly inclusive, the Constitution vests the government with complete authority to regulate the militia. See, e.g., Arver v. United States, 245 U.S. 366 (1918); Martin v. Mott, 25 U.S. (12 Wheat.) 19 (1827); Houston v. Moore, 18 U.S. (5 Wheat.) 1 (1820). Pursuant to its authority to organize, arm, and discipline the militia, Congress has long provided for an organized, or "well regulated," militia, which presently consists of the National Guard. While individual citizens may, in a technical sense, continue to be encompassed within the militia, there is no right in individuals outside the

governmentally organized militia and the national armed forces¹ to associate as a military company or to parade, drill, or engage in maneuvers as such. Presser v. Illinois, 115 U.S. 252, 264 (1886). The Supreme Court has held that states may prohibit all such private military associations. Id. The states derive this authority from their general police power. See, e.g., Vietnamese Fisherman's Ass'n v. Knights of the Ku Klux Klan, 543 F. Supp. 198, 216 (S.D. Tex. 1982); Commonwealth v. Murphy, 166 Mass. 171 (1896).

The federal government has never sought to prohibit or regulate private military associations and for that reason there are no authoritative pronouncements as to its power in this sphere. It is clear that the federal government does not have a general police power. See United States v. Lopez, 115 S. Ct. 1624 (1995). The Constitution grants Congress authority to organize, arm, and discipline the militia, which represents extremely broad power over the militia. See U.S. Const. art. I, § 8, cl. 16. The groups that we have been asked about, however, are not part of the militia within the meaning of the Constitution, although some appropriate that name. The constitutional militia comprises the National Guard and the "unorganized militia," which is defined as all other "able-bodied males at least 17 years of age and . . . under 45 years of age." 10 U.S.C. § 311. It may well be that many members of the private military organizations we have been asked to discuss are also members of the militia, but that does not render any of these private organizations themselves a part of the militia, just as it would not render any other organization to which an able-bodied male between the ages of 17 and 45 might belong a component of the militia. To avoid confusion on this point, we will refer to private military associations as paramilitary organizations.

Although paramilitary organizations are not themselves part of the militia, they are not necessarily beyond Congress's regulatory authority under the Militia Clauses. The Supreme Court has admonished that

If "the power of regulating the militia and of commanding its services in times of insurrection and invasion are (as it has been emphatically said they are) natural incidents to the duties of superintending the common defence and watching over the internal peace of the confederacy" (Federalist No. 29), these powers must also be so construed as to the modes of their exercise as not to defeat the great end in view.

Martin, 25 U.S. (12 Wheat.) at 30. Thus, the Militia Clauses are to be read as a broad grant of authority to Congress to secure the "great end" of those Clauses. The great end is an effective, well-regulated militia force that could contribute to the common defense and secure the internal peace and thereby obviate the need to call upon a standing army to

¹ By armed forces we refer to the organs of the military established and maintained under Congress's war powers and organized under the Department of Defense, specifically the Army, Navy, Air Force, and Marines. See U.S. Const. art. I, § 8, cls. 11-14.

enforce domestic law in response to the founding generation's deep-seated fear of such a deployment of a standing army.

Congress has the extremely broad authority to enact provisions that it deems necessary and proper to securing these ends. See, e.g., M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 313 (1819). So, for example, we opined that the President, acting pursuant to a general delegation of authority from Congress, could require the states to maintain a racially integrated National Guard, even though the Constitution gives the states authority to appoint the officers of the militia and the National Guard had not been called into federal service.² See Executive Action to Eliminate Racially Discriminatory Practices in the National Guard while Operating as a State Unit (May 17, 1963); see also Advisory Opinion, 14 Gray 614 (Mass. 1859). If Congress were to determine that the existence or practices of paramilitary organizations tend to undermine the militia, as Congress has structured it, from achieving its purpose, Congress may take appropriate regulatory steps, including banning paramilitary organizations. In doing so, it would be incumbent upon Congress to define paramilitary organizations with reference to the specific activities that tend to undermine the militia; groups that do nothing that has such negative effects should be exempted.

There are a number of ways in which paramilitary organizations might be found to diminish the achievement of the goals underlying the Militia Clauses and the federal enactments on the subject. Given appropriate findings, Congress may view paramilitary groups as impeding the ability of the constitutional militia, in particular the National Guard, to "watch over the internal peace of the" United States. This conclusion could be supported in one of two ways. First any paramilitary group might in a specific situation purposefully attempt to block the militia from maintaining the peace. Second because paramilitary organizations are not organized, trained, disciplined, or equipped by the government within the militia system, they might take actions that, even if intended to assist the militia, actually undermine it. This was a concern of the framers, who urged that the militia be limited to a select corps that could be thoroughly trained and well-regulated. See, e.g., The Federalist No. 29, at 184-85 (Hamilton). If supported by adequate findings, such concerns would

² The militia has a dual status, as it serves both the federal and state governments. The Constitution contemplates and provides for this duality, authorizing the states to appoint officers of the militia and to train them, subject to the rules prescribed by Congress. The Constitution vests in Congress all remaining authority with respect to the militia, specifically empowering it to provide for the organizing, arming, and disciplining of the militia.

The militia is subject to the plenary authority of the President, pursuant to authority delegated by Congress, to call it into the service of the United States. In this status it is subject to the exclusive control of the federal government. See, e.g., Tarble's Case, 80 U.S. (13 Wall.) 397 (1871). Otherwise, the militia is subject to the concurrent jurisdiction of the federal and state governments, but the authority of the states in this instance is subordinate to that of the federal government. See, e.g., Houston, 18 U.S. (5 Wheat.) at 16.

justify banning paramilitary organizations³ and, a fortiori, prohibiting contributions to such organizations.

In addition to the foregoing concerns, there is a well-established constitutional interest in uniformity with respect to the militia that, in our view, would support imposing less drastic regulations on paramilitary organizations. The experience of the Revolutionary War demonstrated that, if the militia was to be effective, it was necessary that there be uniformity, especially as to organization, discipline, and equipment. See The Federalist No. 25 (Hamilton). As Justice Story explained,

It requires no skill in the science of war to discern, that uniformity in the organization and discipline of the militia will be attended with the most beneficial effects, whenever they are called into service. It will enable them to discharge the duties of the camp and field with mutual intelligence and concert, an advantage of peculiar moment in the operations of an army; and it will enable them to acquire, in a much shorter period, that degree of proficiency in military functions, which is essential to their usefulness.

Joseph Story, Commentaries on the Constitution of the United States 422; accord The Federalist No. 29 (Hamilton). Throughout the nation's first century, efforts to maintain an effective militia force were constantly retarded by the lack of uniformity, especially as to equipment. See generally Perpich v. Department of Defense, 110 S. Ct. 2418, 2423 & n.10 (1990).

In conjunction with this interest in uniformity, we see no reason to doubt that there is ample basis for Congress to conclude that a substantial percentage of the members of paramilitary organizations are also members of the unorganized militia. Because, as such, these individuals might be called into service, see 10 U.S.C. § 312, Congress has a legitimate interest in knowing who these individuals are, what they have been taught, and what sort of weapons and military equipment they are trained to employ. On these grounds, Congress possesses the constitutional authority (subject, of course, to other constitutional limitations, discussed in Part II of this memorandum) to require paramilitary organizations to file reports disclosing their existence, their membership, an inventory of their weapons, and other relevant information regarding their instruction, drilling, and maneuvers.

³ We believe it likely that there is an additional source of authority to ban paramilitary organizations. When the Militia Clauses are read together with the various war powers, particularly the power to raise armies, that the Constitution grants to Congress, see U.S. Const. art. I, § 8, cls. 11-16, it appears that Congress is granted plenary authority over military force and activity in the United States. If so, it would be well within that authority for Congress to determine to provide for one armed force -- those currently arrayed within the Department of Defense -- and one militia and to ban all competing military, or paramilitary, organizations. Again, we have not had the opportunity to research this point fully.

We hasten to point out that, so far as we have been able to research, the Militia Clauses have never been used as a source of authority to regulate private conduct. The text of the Militia Clauses would bear a construction that limited the authority of the federal government to acting directly and exclusively upon the militia. Nevertheless, experience with the other constitutionally enumerated powers of the federal government as well as judicial dicta regarding the extent of the militia power lead us to believe that this limited construction is inappropriate and that a broader assertion of authority would most likely be sustained. Because this authority has never been tested, it is advisable that it be exercised to the extent possible together with additional bases of jurisdiction, such as the power over interstate commerce.

B. The Interstate Commerce Clause

A second source of authority is the Interstate Commerce Clause, art. I, § 8, cl. 3. The Supreme Court has in the past interpreted Congress's commerce power broadly, as a "grant of plenary authority to Congress" that extends to all activities affecting commerce. Hodel v. Virginia Surface Mining & Reclamation Ass'n, 452 U.S. 264, 276 (1981). The Court's recent decision in United States v. Lopez, 115 S. Ct. 1624 (1995), however, creates some uncertainty, as it may signal a more narrow construction of the Commerce Clause. Moreover, because the decision is so recent, there is no body of case law assessing its impact. Nonetheless, we believe that, under Lopez, Congress has the commerce power to regulate (which includes prohibiting) many, but perhaps not all, of the activities of paramilitary organizations, subject of course to separate constitutional limitations on the exercise of that power.

In Lopez the Court set out three categories of activity that Congress may regulate under its commerce power: first, "the use of the channels of interstate commerce"; second, "the instrumentalities of interstate commerce, including persons or things in interstate commerce, even though the threat may come only from intrastate activities"; and third, "those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." Id. at 1629-30 (citation omitted). The Court concluded that the activity in question -- the possession of a firearm within 1000 feet of a school -- could not be considered to fall within either of the first two categories. Id. at 1630. The Court then held that the activity also did not fall within the third category, noting that the possession of a gun near a school "has nothing to do with 'commerce' or any sort of economic enterprise," that the statute contained no jurisdictional element that would insure an effect on commerce, that the statute contained no legislative findings regarding the effect on interstate commerce, and that education was an area "where States historically have been sovereign." Id. at 1630-32.

Lopez was concerned only with the third category, and nothing in the opinion purported to limit the scope of the first two categories.⁴ Thus, Lopez does not appear to affect Congress's authority to regulate channels or instrumentalities of commerce, even if the threat comes only from intrastate activities. Lopez, 115 S. Ct. at 1629. Moreover, Lopez did not overrule -- or even reject the reasoning of -- any prior cases. In fact, the Court cites many of the earlier cases that involved expansive uses of Congress's commerce power as consistent with its holding in Lopez and merely states that it is not willing to allow further expansion of that power. See id. at 1627-29 & 1634.

We believe that, consistent with Lopez and prior cases, the government can regulate activities that involve the possession or use of firearms that have ever moved in interstate commerce. The Supreme Court suggested in United States v. Bass, 404 U.S. 336 (1971), and squarely adopted in Scarborough v. United States, 431 U.S. 563 (1977), a statutory construction under which felons could be convicted of mere receipt or possession of a firearm if that firearm had traveled in interstate commerce -- even if the defendant had not been a felon when he received it and even if the firearm's travel occurred before it reached the felon. See Scarborough, 431 U.S. at 565 & nn.2, 3 & 5.⁵ The Court in Lopez did not intimate any disagreement with Bass and Scarborough; in fact, Lopez invalidated the Gun-Free School Zones Act in part because, "[u]nlike the statute in Bass, [it] has no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce." Lopez 115 S. Ct. at 1631. Lopez, Bass, and Scarborough thus strongly support the proposition that statutes with an explicit connection to interstate commerce -- which can be satisfied by

⁴ In fact, in a case decided just five days after Lopez, the Court held that a gold mine was "engaged in . . . interstate or foreign commerce" within the meaning of a statute -- because some of the mining equipment had been shipped in interstate commerce and because the proprietor had sought workers from another state and had taken some of the gold with him out of state. On this basis, the Court concluded that the government had no obligation to demonstrate that the gold mine "affected" interstate commerce. United States v. Robertson, No. 94-251, slip op. at 2-3 (U.S. May 1, 1995).

⁵ Admittedly, in neither Bass nor Scarborough did the Court directly address the constitutionality of allowing the movement of a firearm across state lines to satisfy the statutory interstate commerce requirement, as both cases focused on statutory construction. The Court's explicit approval of the statutory construction without mentioning any constitutional concerns strongly implies, however, that this construction raises no constitutional problems. Furthermore, the Court noted in Scarborough that it had construed the statute in Bass to extend the interstate commerce requirement to the entire provision because "there was some concern about the constitutionality" of a statute that proscribed mere possession. 431 U.S. at 575. If the Court in Scarborough had had any concerns about the constitutionality of the statute as construed by Bass, it presumably would not have relied on Bass's construction as eliminating the potential constitutional concerns. Moreover, it should be noted that, in Bass, the Court suggested on its own that the government could meet its burden by showing that the gun had traveled in interstate commerce, and it is difficult to imagine that the Court would have suggested a construction that it considered to be constitutionally problematic; the Court has repeatedly stated that statutes are to be construed to avoid constitutional problems, so we must assume that the Court's own suggested construction also avoids such problems.

showing that a firearm has ever traveled in interstate commerce -- are a permissible application of Congress's commerce power.

The significance for paramilitary organizations is that, under this reasoning, the government can regulate those activities of paramilitary organizations that involve firearms that have moved in interstate commerce. The experience of the Department of Justice has been that substantially all firearms have moved in commerce, so the interstate commerce requirement should present no real barrier to the regulation of such activities. See Memorandum for the President from the Attorney General, re: Recommended Strategy in Response to Lopez, at 3 (May 5, 1995). Accordingly, Congress's commerce power extends to regulation of paramilitary organizations' use of firearms.

Thus, paramilitary organizations can be required to give an inventory of their firearms that have moved in interstate commerce, to report any maneuvers or training that involve such firearms, and to register as an organization whose members possess these firearms.⁶ Moreover, even if a paramilitary organization itself does not possess any firearms, individual members' firearms can be subject to the same regulation. Thus, all members who have engaged in the group's activities that involve firearms can be required to give an inventory of the weapons that they use in such activities. In addition, it should be noted that this commerce power would permit Congress not only to regulate but also to prohibit the use of such firearms in specified activities, which would thereby prohibit the firearm-related activities of paramilitary organizations.⁷

There are, in addition, other bases for regulating certain activities of paramilitary organizations. For instance, Congress can regulate paramilitary organizations' use of the instrumentalities of interstate commerce. Obvious examples of such instrumentalities are wire and electronic communications networks and the mail system. In fact, a number of current statutes regulate such communications pursuant to Congress's commerce power. See, e.g., 18 U.S.C. §§ 2510 - 2521. Accordingly, we believe that the commerce power allows Congress to regulate paramilitary organizations' use of the mail system as well as interstate wire and electronic communications networks (e.g., through telephone calls, faxes, or computer modems), which would likely include most forms of organizing and other communication among members. This power would extend not only to interstate communications but also, at least when part of a national regulatory scheme, to intrastate communications. In addition, we believe that Congress could, pursuant to its commerce power, regulate the economic activities of paramilitary organizations, at least when it does so as part of a larger regulatory scheme.

⁶ We do not address the possible application of Congress's commerce power to maneuvers that do not involve firearms but instead involve replicas.

⁷ We also note that the commerce power would give Congress the authority to regulate fund-raising that is related to commercial activities or to the use of firearms.



Arguably, Congress's power over the various commerce-related aspects of paramilitary organizations' activities (i.e., involving firearms, instrumentalities of commerce, and commercial activity) would allow Congress to regulate every aspect of paramilitary organizations, not just those that are directly related to one of the three spheres. Also, it may be possible to regulate all aspects of paramilitary organizations on the theory that the impact of their activities is so great that the groups substantially affect interstate commerce (akin to the impact of weapons of mass destruction, use of which is prohibited by 18 U.S.C. § 2332a). We are uncertain of the viability of these arguments (unless the paramilitary organizations could be characterized as commercial enterprises), particularly in light of Lopez. In any event, the commerce-related aspects that can be regulated would cover many of the activities of paramilitary organizations, especially in light of the breadth of permissible regulations of firearms.

II. Constitutional Limitations on Congress's Powers

Drawing upon the sources of federal legislative power discussed in the previous section -- i.e., the Commerce Clause and the Militia Clauses -- Congress may choose to address paramilitary activities and paramilitary organizations in several different ways. In this section, we consider whether the Bill of Rights -- in particular, the First and Fifth Amendments -- imposes any affirmative restrictions on Congress's power to regulate such activities and organizations. In section A, we consider whether Congress may ban or regulate certain paramilitary operations and maneuvers. In section B, we discuss whether Congress may ban or regulate paramilitary organizations qua organizations. In section C, we consider whether Congress may impose certain restrictions on financial contributions to paramilitary organizations, or contributions intended to be used for paramilitary operations.

A. Regulation of Paramilitary Operations, Drills and Maneuvers

Congress can avoid certain constitutional and definitional problems associated with the regulation of organizations, see infra section II-B, by instead banning or regulating certain paramilitary activities, without respect to who engages in such activity.

1. The Constitution does not bar Congress from banning the possession of certain weapons, nor from banning certain uses of those weapons (within the scope of its affirmative powers under the Militia and Commerce Clauses). Furthermore, even where Congress has not barred individuals from certain uses of weapons, it may bar such persons from banding together to engage in similar activity, such as paramilitary operations, maneuvers, and exercises. "There are, of course, some activities, legal if engaged in by one, yet illegal if performed in concert with others." Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 296 (1981). Thus, a simple statute could read something like the following: "It shall be unlawful for any person over 18 years of age to engage in military or paramilitary operations, drills or maneuvers in association with X or more persons, using firearms or other dangerous weapons, if those weapons have moved in interstate commerce or if the

military or paramilitary operations, drills or maneuvers otherwise affect interstate commerce."⁸

We do not believe that such a ban would impermissibly infringe the First Amendment right to free association. It is possible, of course, that in a particular case, the paramilitary operations, drills, and maneuvers in question may have some expressive element or other associational component that is possibly worthy of some constitutional solicitude. But even where that is so, it would not change our conclusion, so long as Congress's purpose in outlawing such concerted action was unrelated to suppressing such expression or association but was instead designed solely to prevent certain conduct -- such as paramilitary operations, the formation of private armies, and the dangers associated with privately run military forces. Under the test articulated in United States v. O'Brien, 391 U.S. 367, 377 (1968), such conduct-focused regulation is permissible so long as any "incidental" restrictions on First Amendment freedoms are no greater than is essential to the furtherance of a substantial or important governmental interest. As the court explained in Vietnamese Fishermen's Ass'n v. Knights of the KKK, 543 F. Supp. 198, 208-09, 216 (S.D. Tex. 1982), a statute such as that suggested here, *i.e.*, one barring individuals from engaging in paramilitary activity, passes the O'Brien test comfortably. In particular, the proposed statute in essence would only ban association insofar as such association took the form of the conduct that Congress wishes to eliminate -- paramilitary preparation. Organizations and their members, and unaffiliated individuals, would remain entirely free to band together for other purposes, to meet as a group, and to express any viewpoints they desire.

Of course, this type of broad ban on activity might sweep within its scope some activity that not only is explicitly and uniquely expressive in nature, but that also does not threaten the harms that Congress wishes to address -- for example, Civil War battle reenactments and the filming of television productions depicting combat. Even under the O'Brien test, such an incidental restriction on activity protected by the First Amendment might in such cases be considered greater than is "essential" to further the government's interest. The statute probably should, therefore, contain exceptions for activities such as these. Care should be used, however, to ensure that the line between covered and noncovered activity is not implicitly drawn pursuant to impermissible content-based distinctions, for that would raise independent First Amendment concerns. Perhaps, therefore, Congress could add an intent requirement so as adequately to address these concerns -- for example, a requirement that the activity be "with the intent to prepare for actual armed combat."⁹

⁸ The age restriction is suggested so as to exclude from coverage the ubiquitous childhood playground cops-and-robbers escapade.

⁹ In most of the cases currently in the public eye, such an intent requirement will be susceptible of easy proof: the persons engaged in the activities readily acknowledge that such is their intent. This requirement would also have the benefit of being closely tied to the purpose underlying the statute. Another possibility is to limit the prohibition to operations undertaken with actual weapons that are operable or potentially operable. But

2. Instead of banning certain activity, Congress could impose certain restrictions on such activity, or require persons wishing to engage in such activity to register with the government and provide certain information that is germane to Congress's regulatory interests. This would be similar to disclosure requirements that Congress attaches to all sorts of activity, such as business transactions, lobbying, solicitation of charitable donations, and political activities. Moreover, the government can require that individuals register their firearms and other weapons. We therefore see no first constitutional bar to a congressional requirement that individuals register with, and reveal pertinent information to, the government as a condition for engaging in concerted paramilitary activity.

However, insofar as any of the required disclosures would be "invariably indicative" of unlawful activity by the individual, requiring such disclosure could violate the Fifth Amendment's protection against self-incrimination. Haynes v. United States, 390 U.S. 85, 96 (1968) (requiring disclosure of certain firearms impermissible because it almost automatically indicated illegal possession). If the "pervasive effect of the information called for . . . is incriminatory," the disclosure may not be compelled. Albertson v. SACB, 382 U.S. 70, 79 (1965) (requiring disclosure of membership in Communist party impermissible because such information would, virtually by necessity, be incriminatory). In order to trigger Fifth Amendment problems, however, the correlation between disclosure and incrimination must be "exceedingly high." Haynes, 390 U.S. at 97. Only "real and appreciable" risks of incrimination are impermissible, id.; "speculative and insubstantial" risks do not raise constitutional concerns, see Marchetti v. United States, 390 U.S. 39, 54 (1968).

B. Regulating Private Paramilitary Organizations

In this section we discuss whether the Constitution bars Congress from regulating, not activity as such, but paramilitary organizations. Congress might, for example, decide to regulate such organizations through registration and disclosure requirements.

As far as we are aware, Connecticut is the only state that has taken such an approach. See Conn. Gen. Stat. Ann. § 27-102 (1991) (requiring officers of "private military force" to file annual sworn statements with secretary of state including copy of organization's bylaws, rules and membership roster).¹⁰ Connecticut appears to impose its reporting requirements only upon groups or organizations with some continuity of structure and existence, such as a club or society. See id. (assuming that a "private military force" will have officers, members, bylaws and rules). The Connecticut statute further defines "private military force" as "any group of five or more persons organized or associated together in a camp, group, organization, company, association or society, or in any other manner, for the purpose of

such a limitation may not cover all of the instances of concern.

¹⁰ As we explain below, Connecticut's requirement of membership disclosure almost certainly is unconstitutional.

drilling or maneuvering with firearms or other dangerous weapons, or with imitations, copies or replicas thereof, or for the purpose of giving or acquiring military training or experience." Id. § 27-101. Even this definition might subsume many associations of individuals who have no intent of ever banding together for actual concerted paramilitary activities. Therefore, Connecticut explicitly excludes from its definition various groups such as governmental military units, reserve corps of any institution of learning, a society of war veterans, the Boy Scouts, and any person acting or appearing in any theatre, motion picture or television production while actually engaged in representing therein military characters or scenes. Id. If a federal statute is drafted, certain constitutional challenges could be avoided by including a similar list. Alternatively, it might be wise to track the definition of "military organization" offered by an expert witness in the Vietnamese Fishermen case, i.e., an organization that makes use of a "command structure, training and discipline so as to function as a combat or combat-support unit." 543 F. Supp. at 203.¹¹

Assuming that neither Congress nor the states made the activities of such organizations unlawful (that is, unless such organizations would be virtually certain to be breaking the law in some respect), there would be no constitutional bar to requiring "paramilitary groups" to register with the government, to disclose their officers, and to have the state make public such information, so long as the affected groups are defined with sufficient specificity.¹²

Indeed, even where there would be a first amendment violation in requiring disclosure or revelation of an organization's members, see below, it has never been disputed that if an organization engages in certain activity that the state properly may regulate, the state can require the organization to register with the state and to disclose its officers (i.e., the persons who speak and act on the organization's behalf) as a condition of engaging in such regulated activity. See, e.g., Communist Party of the United States v. SACB, 367 U.S. 1, 97-101 (1961); NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 463-64 (1958). The state may require information about an organization's purposes, activities, officials and even

¹¹ So, for example, Congress could define regulated "paramilitary organizations" as those organizations that are formed for the purpose of engaging in drills or maneuvers with firearms or other dangerous weapons, and that make use of paramilitary training and a command structure, in order to function as a combat unit or as a combat-support unit or to prepare for actual paramilitary combat. So as to avoid First Amendment problems, the definition should be drafted without reference to the organization's ideologies, beliefs, and advocacy.

¹² The characteristics of banned organizations would have to be defined with sufficient specificity to ensure fair notice to potential defendants of what constitutes a criminal offense and to protect against arbitrary and/or discriminatory enforcement. "[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Posters 'N' Things, Ltd. v. United States, 114 S. Ct. 1747, 1754 (1994) (quoting Kolender v. Lawson, 461 U.S. 352, 357 (1983)). For an example of a possible definition that likely would pass constitutional muster, see supra note 11.

employees. Id.¹³ This is true with respect to all sorts of organizational activity, such as business transactions, see NAACP, 357 U.S. at 464-65; lobbying, see United States v. Harriss, 347 U.S. 612 (1954), solicitation of charitable donations, see, e.g., International Society for Krishna Consciousness of Houston, Inc. v. City of Houston, 689 F.2d 541, 556 (5th Cir. Unit A 1982), political activities, see, e.g., Buckley, 424 U.S. at 63 (discussing requirement that political committees and candidates register with FCC), etc. There is, therefore, no reason that the state could not require paramilitary groups to register with, and reveal pertinent information to, the state as a condition for engaging in concerted paramilitary activity. For example, such an organization could be required to disclose its officers and its bylaws. Similarly, we see no difficulty in requiring such an organization to disclose any firearms and weapons that the organization itself (as opposed to its members) owns or possesses. Nor does the Constitution bar Congress from requiring such organizations to notify the state of any paramilitary activities or training in which it plans to engage.¹⁴

On the other hand, serious constitutional problems would be raised by a statute requiring paramilitary organizations to disclose the names of their members or persons who have made contributions to the organizations. In a long line of cases, the Supreme Court has ruled that such disclosure requirements are subject to the "closest scrutiny," because they impose considerable burdens on the organizations' members' freedom of association. See, e.g., Brown v. Socialist Workers '74 Campaign Comm., 459 U.S. 87, 91-92 (1982); Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 295-96 (1981); Buckley v. Valeo, 424 U.S. at 64-66; Bates v. Little Rock, 361 U.S. 516 (1960); NAACP v. Alabama ex rel. Patterson, 357 U.S. at 460-61. That scrutiny almost certainly would prohibit a requirement that paramilitary organizations disclose their membership or list of contributors, at least with respect to organizations that (in addition to mere paramilitary activity and training) engage in advocacy of particular beliefs and ideas. Such a requirement invariably would chill the associational rights of persons who wish to become members of, or contribute to, such organizations. Accordingly, a court would invalidate such a requirement, absent an

¹³ However, insofar as the services performed by employees of an organization may be motivated by a desire to thereby "contribute" to the group and associate themselves with the causes of the group, disclosure of the names of such employees may be barred, pursuant to a showing of actual deterrence of such association. See Brown v. Socialist Workers '74 Campaign Comm., 459 U.S. 87, 94-98 (1982) (suggesting that first amendment may permit small, unpopular party to decline to reveal persons who have provided services thereto, because of likelihood that such revelation would chill associational rights of those persons who "choose to express their support for an unpopular cause by providing services rendered scarce by public hostility and suspicion").

¹⁴ However, as explained above, insofar as any of the required disclosures would be "invariably indicative" of unlawful activity by the organization, requiring such disclosure could well violate the Fifth Amendment's protection against self-incrimination. If the disclosure requirements are "directed at a highly selective group inherently suspect of criminal activities," and if the "pervasive effect of the information called for . . . is incriminatory," such disclosure may be not be compelled. Albertson, 382 U.S. at 79 (requiring disclosure of membership in Communist party impermissible because such information would, virtually by necessity, be incriminatory).

"overriding and compelling state interest" and a "substantial relation" between the information sought and the state's interest. Brown, 459 U.S. at 92 (citations omitted). This is a test that is virtually impossible for the state to meet.¹⁵ Moreover, even if that strict test somehow were met in a particular case, unpopular organizations (and the private paramilitary groups certainly would fall in this category) nonetheless would receive an exemption from such a requirement upon a showing of a "'reasonable probability that the compelled disclosure . . . will subject [the members or contributors] to threats, harassment, or reprisals from either Government officials or private parties.'" Id. at 93 (quoting Buckley, 424 U.S. at 74).

C. Contributions

In this section we discuss whether the Constitution bars Congress from banning either financial contributions to paramilitary organizations, or contributions intended to be used for paramilitary operations.

1. A prohibition on financial contributions to paramilitary organizations may be at odds with the First Amendment. Many paramilitary organizations, in addition to engaging in paramilitary activities, advocate particular political perspectives. There is a strong argument that a contribution to such an organization is a form of political expression and association that is at the heart of the First Amendment, and thus restrictions on such contributions warrant exacting constitutional review. See Buckley v. Valeo, 424 U.S. 1, 16-25 (1976) (per curiam) (political contributions implicate freedoms of expression and association). See also Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 294 (1981) ("Contributions by individuals to support concerted action by a committee advocating a position on a ballot measure is beyond question a very significant form of political expression."). A statute barring contributions to paramilitary organizations probably would not be subject to the more lenient O'Brien standards that govern First Amendment challenges to the regulation of conduct that happens to have an expressive component. Indeed, in assessing a limitation on the dollar amount that persons could contribute to political campaigns in Buckley v. Valeo,

¹⁵ Buckley is the only recent case in which such a requirement has survived such scrutiny. There, the Court upheld a campaign-contributor disclosure requirement because of threefold governmental interests of a high magnitude: alerting voters of the sources of a candidate's funding, which would facilitate predictions of the candidate's future performance in office; deterring corruption; and detecting violations of contribution limitations. See 424 U.S. at 66-68. These sorts of interests would not be present in the case of a membership disclosure requirement for paramilitary organizations. Much older precedents in which the Ku Klux Klan and the Communist Party were required to disclose membership lists -- see Bryant v. Zimmerman, 278 U.S. 63 (1928) (KKK); Communist Party of the United States v. SACB, 367 U.S. 1, 97-105 (1961) (Communist Party) -- are of little lasting value, and arguably have implicitly been overruled or have lapsed into desuetude. See, e.g., Albertson, *supra* (disclosure of membership in Communist Party would violate Fifth Amendment); Courier-Journal v. Marshall, 828 F.2d 361, 365-366 (6th Cir. 1987) (Bryant has been implicitly overruled and should no longer be relied upon).

the Supreme Court said that the O'Brien standard did not apply to a limitation on the dollar amount that persons could contribute to political candidates.¹⁶

Although it applied heightened First Amendment scrutiny, the Court in Buckley upheld the limitation, on the grounds that it served the constitutionally sufficient interest of "prevent[ing] of corruption and the appearance of corruption spawned by real or imagined coercive influence of large financial contributions' on candidates' positions and on their actions if elected to office." Id. at 26. It is unclear whether a ban on contributions to paramilitary organizations could survive strict scrutiny. For one, the Court subsequently has described Buckley as "identif[y]ing" a single narrow exception to the principle that limits on political activity [are] contrary to the First Amendment: . . . the perception of undue influence of large contributors to a candidate." Citizens Against Rent Control, 454 U.S. at 296-97 (emphasis in original). The "narrow exception" of Buckley would be unavailable to justify restrictions on contributions to private military organizations. Cf. Brown v. Socialist Workers' '74 Campaign Committee, 459 U.S. 87 (1982) (interests advanced and accepted by the Court in Buckley are inapplicable when it comes to minor political parties). Moreover, Buckley involved a limitation on the amount of contributions that an individual could make, not an outright ban, thus leaving an outlet for persons to "assist in a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." 424 U.S. at 28.

2. Assuming that it would be within its enumerated powers, Congress could pass a statute prohibiting financial contributions to paramilitary organizations that are made for the purpose of assisting private military activities, where such activities are themselves made unlawful by federal law. Under principles articulated in cases involving restrictions related to affiliation with certain types of groups, such a ban would not violate the First Amendment if (i) the contribution was made with the knowledge that private military operations were illegal, and (ii) with the specific intent of furthering illegal aims. See Healy v. James, 408 U.S. 169, 186 (1972); Elfbrandt v. Russell, 384 U.S. 11, 16-17 (1966); Aptheker v. Secretary of State, 378 U.S. 500, 511 (1964). In addition, the statute would have to be written so as to describe the "knowledge and intent" requirements with sufficient clarity to survive a claim that it is unconstitutionally vague. See Kolender v. Lawson, 461 U.S. 352, 357 (1983) ("[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory

¹⁶ The full protection afforded political contributions in Buckley probably cannot be explained away on the grounds that Buckley is just a case about participation in electoral politics. Rather, as the Court in Buckley itself indicated, it was about political advocacy generally. See Buckley, 424 U.S. at 16-17. And in a later case involving campaign contributions, the Court defined that form of speech as encompassed within the broad First Amendment right to "discuss publicly and truthfully all matters of public consequence." First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 776 (1978) (quoting Thornhill v. Alabama, 310 U.S. 88, 101 (1940)). See also McIntyre v. Ohio Election Comm'n, No. 93-986, slip op. at 13 (April 19, 1995) (core political speech need not center on advocacy for particular candidates or for particular election issues; it involves the general "advocacy of a politically controversial viewpoint").

enforcement."). At the same time, the statute would have to be written so as to describe those requirements sufficiently narrowly to survive a claim that it "sweeps within its ambit other activities that constitute an exercise" of protected First Amendment rights. Thornhill v. Alabama, 310 U.S. 88, 97 (1940). See Village of Schaumburg v. Citizens For a Better Environment, 444 U.S. 620 (1980) (ordinance prohibiting door-to-door solicitations of contributions by charitable organizations that did not use at least 75% of their receipts for "charitable purposes" was overbroad in violation of the First Amendment).

3. It is a difficult question whether Congress also may prohibit financial contributions that are made with the intent of assisting paramilitary activities, even where such activities are not themselves unlawful. Again, such a statutory ban would have to be within the scope of congressional power, and it would need to be carefully drafted so as to avoid vagueness and overbreadth problems. The critical inquiry is whether it is possible to distinguish a ban on contributions made for the purpose of assisting lawful private military activities from a ban on contributions to lawful private military organizations that we believe would raise serious First Amendment concerns under Buckley v. Valeo. Although the issue is far from clear, plausible distinctions could be made.

To begin with, Buckley is not directly on point. Buckley involved a limitation on the purest form of political speech and political association: expression of support for a candidate. It was apparently for that reason that the Court said that it could not decouple any nonspeech elements that may have been reflected in campaign contributions from the speech elements. A ban on contributions to paramilitary organizations triggers concerns under Buckley, because it has a direct impact on the right to express support for, and associate with, a group with a particular set of values.

By contrast, a ban on financial contributions for paramilitary activities arguably relates to "separately identifiable conduct [that may] be perceived by others as expressive of particular views, but which, on its face, does not necessarily convey any message." Cohen v. California, 403 U.S. 15, 18 (1971). Compare Elrod v. Burns, 427 U.S. 347, 363 n.17 (1976) (plurality opinion) (political affiliation requirements imposed on government employees sought to control "association and belief per se, not any particular form of conduct"). That the contributor could still voice support for the values and goals of private military organizations by making a general purpose donation to such groups -- let alone speaking out on behalf of and joining one -- lends further credence to the distinction between the ban on financial contributions for paramilitary activities and a ban on contributions to paramilitary organizations. To the extent that the contribution made for the purpose of paramilitary activities does contain elements of protected political expression and association, the prohibition would satisfy First Amendment requirements if it serves an important or substantial interest that is unrelated to the suppression of communication and the incidental restriction on speech is no greater than essential to the achievement of that interest. O'Brien, 391 U.S. at 377. See Texas v. Johnson, 491 U.S. 397, 410 (1989) (asserted interest underlying statute prohibiting desecration of flag -- the preservation of the flag as a symbol

of nationhood and national unity -- was directly related to the suppression of expression, because it reflected concern over the expression of "less positive concepts" of the flag).

In Buckley, the Court said that even if expenditures on campaigns could be characterized as conduct, the restriction at issue in the case was directly related to the suppression of expression -- curbing the voice of individual voters in elections -- and therefore failed the O'Brien test. 424 U.S. at 17. A ban on contributions for paramilitary activities seemingly would not have the same relationship to expression as the limitation in Buckley. Therefore, that part of the O'Brien test would be satisfied. However, the ban still would have to serve an important or substantial interest. We do not assess in this memorandum the possible interests that might be weighty enough to justify the ban.

18 USC 231 -
- Civil disorders -

expand juris here -

- NOT just commerce

- "which

"a viol. of civil rts as protected by
14th Amend."

meaningful expansion? given -

18 USC 245 - fed protected activities

42 USC 1985

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