

### MCLE SELF-STUDY

# A Severe Yet Treatable Illness: The Crisis Facing Mental Health Regulation at the County Level

By *Ginetta L. Giovinco, Esq.\**

Despite strategic decisions crafted to give local governments increased flexibility in the design and delivery of mental health services, and a public that is increasingly receptive to mental health issues, counties face several challenges in effectively addressing the needs of their mentally ill populations. Budget constraints hinder efforts to provide consistent, high-quality and effective mental health care. Concern for mental health clients' civil rights looms over policy decisions about the extent, if any, to which local governments should employ involuntary treatment. Additionally, the longstanding "criminalization" of mental illness poses a significant hurdle to, and drain on, the resources of both county mental health services providers and their criminal justice counterparts. These three often-overlapping issues – funding, involuntary treatment, and the criminalization of mental illness – account for some of the toughest problems currently facing mental health policymakers and providers.

## I. FUNDING

### A. REALIGNMENT

In 1991 the Legislature comprehensively overhauled the public mental health, social services, and health systems when it enacted "realignment."<sup>1</sup> Realignment shifted the bulk of responsibility for these services from the state to counties, thus allowing each county to design and target its programs to the specific unmet needs of its individual community.

Concurrently, realignment provided a dedicated stream of funding to partially pay for services; in theory, counties would no longer be dependent on the vagaries of annual budget negotiations for funds. Realignment dollars came mostly from sales tax revenues, vehicle license fees, and vehicle license fee collections.

Realignment has encouraged a more narrowly tailored approach to mental health care, and has promoted community-based, voluntary programs at the local level. However, the portion of realignment funds provided to counties for mental health programs has not kept pace with population growth, service rates, and inflation.<sup>2</sup> Further, federal matching funds (provided for some programs such as Medi-Cal and Healthy Families), additional state funds, and grants have not filled the gap.

Realignment funds for mental health have not kept pace for several reasons. First, any growth in or "extra" realignment funds from sales tax revenues first go to social services.<sup>3</sup> Second, limited transfers among the three categories (mental health, social services, and health) are allowed, which has led to mental health services receiving a reduced share of the funds as more money gets transferred to social services.<sup>4</sup> Finally, an increase in the Medi-Cal population that receives mental health services, along with an overall increase in medical costs, has contributed to the strain on mental health funding.

### Inside this Issue

#### Paper Terrorism: The Impact of the "Sovereign Citizen" on Local Government

By *David Fleishman, Esq.* Page 7

#### Holding the Fort: Open Government Laws in the Homeland Security Era

By *Rufus Calhoun Young, Jr., Esq.* Page 11

#### A Message from the Chair

By *Fazle Rab Quadri, Esq.* Page 15



# Paper Terrorism: The Impact of the “Sovereign Citizen” on Local Government

By David Fleishman, Esq.\*

*Some people believe with great fervor preposterous things that just happen to coincide with their self-interest.<sup>1</sup>*

In 1994, members of a group known as the Juris Christian Assembly attacked the Stanislaus County Recorder in her home, repeatedly firing an empty gun at her head, because she refused to file bogus liens against Internal Revenue Service agents. In 1997, Margaret Elizabeth Broderick, who referred to herself as the “Lien Queen,” was sentenced to more than 16 years in prison for running a check scam based on liens she filed against private corporations and government agencies. In 2002, a man refused to roll down his window when stopped for a traffic violation in Pacific Grove, California, asserting that the police officers had no authority over him.

Though occurring over a period of many years and in different geographic areas, these events have a common thread. All have their roots in the so-called “Sovereign Citizen” movement. Stated simply, adherents of the Sovereign Citizen ideology believe that at one time in United States history every individual was “free,” a “sovereign” unto himself or herself, unburdened by governmental regulation. In many cases, this manifests into a distinctive disdain and contempt for governmental authority. Confronting people with these beliefs, therefore, can pose serious challenges for those engaged in governmental service, particularly those at the local levels of government. This article briefly outlines the history of the Sovereign Citizen movement, the tactics used by its followers, the impact of such tactics on local government, and possible responses by local government agencies to deal with the phenomenon.

## I. HISTORY

While the Sovereign Citizen movement cannot be attributed to any single event or

proponent, it may have its origins in the Posse Comitatus movement founded in California and Oregon in the early 1970s by William Potter Gale and others.<sup>2</sup> The followers of this ideology accepted no governmental authority higher than the sheriff of the county in which they resided. Beyond this experience, however, there is no real historical record of similar groups, but individual incidents are continually occurring and documented. Indeed, to label the Sovereign Citizen movement a “movement” may be to assign it more cohesion than actually exists. The variations and offshoots of the “movement” are numerous, with adherents taking those aspects of Sovereign Citizen ideology that suit the believer’s particular needs and rejecting those that do not.

### A. CITIZENSHIP CONTRACT THEORY

Despite the general rejection of governmental authority, some Sovereign Citizens use various state and federal laws as a basis for their novel interpretations of the relationship between themselves and governmental authorities. As one example, many Sovereign Citizens look to the Fourteenth Amendment of the United States Constitution as evidence of their “sovereign” status. Specifically, the Fourteenth Amendment provides in relevant part: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”<sup>3</sup> Sovereign Citizens read this language as making United States citizenship optional and indeed, contractual, subject to their consent to be “subject to the jurisdiction” of the United States.

In order to remain outside of any governmental jurisdiction, Sovereign Citizens will reject any evidence of a “contract”

between themselves and governmental entities, including driver’s licenses, license plates, Social Security cards, hunting licenses and other documents issued by branches of a federal, state or local government. They resort, instead, to documentation issued by “common law courts” or other para-governmental entities deriving their authority from the consent of the Sovereign Citizens.<sup>4</sup>

Believers in the ideology will also refuse to use zip codes on correspondence or to accept correspondence containing a zip code, believing that the use of zip codes constitutes acceptance of United States jurisdiction over the individual.<sup>5</sup> Some insist on strange punctuation in their names on any documents sent by governmental agencies, rejecting those that do not precisely conform.<sup>6</sup> Others refuse to recognize the authority of judges whose courtrooms contain a United States flag trimmed in gold fringe.<sup>7</sup> Still others refuse to use paper money, or “Federal Reserve Notes,” the ultimate hallmarks of governmental jurisdiction, preferring instead to use self-issued “public office money certificates.”<sup>8</sup>

The case reporters are filled with cases involving Sovereign Citizens claiming that they cannot be subjected to the authority of governmental agencies without their consent. In *U.S. v. Lorenzo*,<sup>9</sup> Lorenzo claimed that he was a “sovereign heir” entitled to occupy and possess Hawaiian crown lands. After the state evicted Lorenzo from the land, he filed false tax forms showing payment of compensation to various individuals, including the governor of Hawaii, the state attorney general, and other state employees. He then filed a federal tax return seeking a refund of over \$700,000. The IRS issued a refund check for over \$450,000, which was intercepted from Lorenzo’s mailbox after the agency realized the tax return was fraudulent. On prosecution for various federal crimes, Lorenzo argued that he was a citizen of the Sovereign Kingdom of

Hawaii, and therefore the courts had no jurisdiction to hear his case. Rejecting his claim of alternative citizenship, Lorenzo was convicted and sentenced to prison.

In *U.S. v. Hilgeford*,<sup>10</sup> Hilgeford was evicted from his farm, after a foreclosure by a bank to which he owed more than \$1 million. Hilgeford then began a legal odyssey of frivolous lawsuits and other actions, including the filing of a falsified judgment against the bank. Hilgeford found no recourse in his lawsuits, so he began sending invoices to the bank, to the new owners of his farm, and others, demanding payment of large sums of money allegedly owed to him. Hilgeford then claimed that he had paid more than \$10 million in “non-employee” compensation to local government employees, and he sought tax refunds of over \$30 million. When prosecuted for tax fraud, Hilgeford disclaimed United States citizenship, and asserted he was a citizen of the Indiana State Republic. The Seventh Circuit Court of Appeals quickly disposed of the argument and affirmed Hilgeford’s conviction, citing several similar cases in which the defendant claimed similar fictional citizenship.

**B. TARGETING GOVERNMENT LAWYERS**

Sovereign Citizens have attacked the persons they often see as most directly responsible for their ills – attorneys in government service. One of the reasons for this particularized contempt is the belief held by the movement’s followers that the United States Constitution originally contained a Thirteenth Amendment prohibiting attorneys from holding public office, since that amendment would have barred the granting of titles of nobility, of which “Esquire” was one.<sup>11</sup> This amendment was allegedly removed, perhaps naturally, by lawyers.<sup>12</sup> As an outgrowth of their suspicion of lawyers, and the legal system in general, Sovereign Citizens have established “common law courts” that pass judgment on the activities of governmental officials, often through the use of “arrest warrants” and “subpoenas” directed to government officials. In some instances, these common law courts have handed down death sentences against public officials.

**II. TACTICS**

The tactics of Sovereign Citizens against governmental entities are as varied as the differing constitutional theories espoused by

such individuals. Some common themes emerge, however, such as the massive and generally frivolous filings of paperwork against local officials. Indeed, a name has been coined for this practice: paper terrorism. While in most instances, the end result of this form of terrorism is not death or injury, Sovereign Citizens cannot reliably be counted upon to exercise physical restraint in disputes with local government agencies.<sup>13</sup> Thus, local agencies must be prepared at any time to deal with the issues raised by these contacts.

**A. LIENS**

It appears that many of the tactics, such as the filing of liens, have their basis in existing statutory or constitutional law, but only so much of the law as is convenient to the situation facing the Sovereign Citizen. For example, one tactic used by Elizabeth Broderick, the “Lien Queen,” was the recording of liens against the property of corporations, public agencies and public officials. Broderick learned her trade from seminars held by the Montana Freeman, and she in turn passed on the knowledge to others.

Described briefly, an aggrieved Sovereign Citizen sends to the offending government official a “confession” or “admission” form that asks the government official to admit that he or she has committed wrongful acts against the Sovereign Citizen. The form may contain language asserting that the government official’s silence or refusal to respond constitutes an admission of the alleged wrongful acts. Then, after the passage of a brief, designated time, the Sovereign Citizen will prepare a lien notice, in an amount equal to “whatever you feel your freedom is worth,” and provide a copy to the government official. The lien is then filed in the county clerk/recorder’s office. Very shortly after filing the lien, the Sovereign Citizen files a notice of foreclosure on the lien, and then, when the government official fails to respond to the notice, takes the default of the government official. Finally, the Sovereign Citizen may take copies of the lien documents to a bank and instruct the bank to deposit the liens in a bank account as an asset, and to establish a line of credit based on the lien.<sup>14</sup>

Using a variant of this procedure, Elizabeth Broderick sold blank “comptroller’s warrants,” ostensibly backed by billions of dollars in government liens.<sup>15</sup> Broderick is

believed to have taken in more than \$1 million in “real” money before she was sentenced to prison. Broderick by no means invented the bogus lien. In 1979, a branch of the Posse Comitatus in Carroll County, Maryland placed property liens against several county officials. When state officials challenged the liens in court, members of the Posse filed liens against every judge in the state to disqualify them from hearing the state’s challenge to the original liens. The Posse missed one judge, however, who heard the case and expunged the liens.<sup>16</sup>

**B. UCC AND CIVIL SUITS**

In another variant of the reasoning behind lien filings, Sovereign Citizens borrow liberally from the Uniform Commercial Code to reject governmental authority. In *Barcroft v. Texas*,<sup>17</sup> Sherri Ann Barcroft was stopped and cited for speeding. Barcroft was fined a total of \$311. She appealed the conviction, and on appeal, alleged that the trial court erred in failing to apply the UCC, specifically Section 1.103, to her case. According to Barcroft, the common law provided that there could be no criminal act unless there was damage. She then argued that since the UCC requires that contract law be in harmony with common law, and the state was assuming jurisdiction under a treaty (a form of contract), the state was bound by the UCC. Barcroft then concluded that because there was no damage as a result of the alleged speeding violation, she had committed no crime under Texas law. The court rejected her arguments and affirmed the conviction.

In another case out of Texas, *Kimmell v. Leoffler*,<sup>18</sup> Kimmell filed a \$5 million civil suit against the judge who found him guilty of speeding and against the county attorney who prosecuted the case. Kimmell argued that because the judge and police officers acted in a “commercial capacity” by accepting the currency of the United States, only the federal courts had jurisdiction to hear his traffic case. Kimmell further argued for disqualification of the county attorney and judge. He asserted that because they were members of the judicial department of government, and also members of the state bar, they were all disqualified from prosecuting and adjudicating his case because they had an interest in the proceedings, and because they were all related by an affinity or consanguinity within the third degree.

**III. RESPONSE**

Because the tactics used by Sovereign Citizens have, at least on their face, some basis in statute, local government officials can be tricked or intimidated into submission to the demands of the Sovereign Citizen. Even a cursory review of the documents and arguments put forth by these individuals, however, usually reveals that the Sovereign Citizen has no legitimate legal position. Nonetheless, they must be processed under existing laws, and defending against the voluminous legal filings generated by these individuals can try even the most patient government employees.

**A. COMBATING LIENS**

The Legislature, in recognition of the problems faced by all levels of government in dealing with Sovereign Citizens, has provided some tools with which to combat the problems. As to bogus liens, Government Code Section 6223 prohibits the filing of lawsuits, liens or other encumbrances against a public officer or employee, where the filing party knows the lien is false, and where the filing party intends to harass the public officer or employee, or intends to hinder the public officer or employee in the discharge of official duties. This section further provides for a civil penalty of up to \$5000.

In addition, Code of Civil Procedure Section 765.010 provides for expedited “show cause” hearings for public officers or employees whose property becomes subject to a bogus lien. If the court finds that the lien was filed in violation of Government Code Section 6223, the court may order the lien to be stricken and award attorney’s fees and costs to the affected officer or employee. The Judicial Council has prepared a form petition for government employees to seek the striking of such a lien.<sup>19</sup> Government agencies may provide counsel for affected officers or employees.<sup>20</sup> There are also criminal penalties for filing false liens.<sup>21</sup> Similar legislation has been introduced at the federal level.<sup>22</sup>

**B. OTHER REMEDIES**

With respect to lawsuits brought by Sovereign Citizens, there are similarly powerful tools available to government agencies. The so-called “vexatious litigant” statutes, beginning at Code of Civil Procedure

Section 391, provide some protection against Sovereign Citizens who have consented to the authority of the court system solely for the purpose of litigating against public agencies and their employees. Under Section 391, a “vexatious litigant” is very generally defined as a self-represented person who files and loses at least five lawsuits in a seven-year period; or one who attempts to re-litigate, in propria persona, the validity of a prior adverse determination. A vexatious litigant is also one who, while acting in propria persona, repeatedly files unmeritorious motions, pleadings or other papers, conducts unnecessary discovery or engages in other tactics that are frivolous or solely intended to cause unnecessary delay. The latter definition is probably the most useful to government officials addressing issues involving a Sovereign Citizen, since it imposes a lower standard than the “five in seven” rule applicable to lawsuits.

The remedies available under the vexatious litigant statute are strong too. A person declared a vexatious litigant can be forced to post financial security as a condition of maintaining litigation.<sup>23</sup> Even worse, the court may impose a sanction of requiring a vexatious litigant to obtain permission from the presiding judge of the court before initiating any further litigation.<sup>24</sup>

In addition, individual employees of a public agency can petition the courts for a temporary restraining order to prevent harassment, which is defined as a “knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.”<sup>25</sup> Finally, in those instances where the local government agency can demonstrate a credible threat of violence against its employees, the agency can petition the courts for a temporary restraining order to prevent the harassment of its employees.<sup>26</sup>

These judicial remedies are effective tools because the papers filed by Sovereign Citizens in opposition to any of these approaches are often voluminous, unintelligible, and filled with passages demonstrating contempt for the legal system, lawyers, and government in general. This assumes the Sovereign Citizen even recognizes the authority of the courts, which many do not. Thus, it is frequently easy for the courts to make the necessary findings to grant public agencies the relief they seek.

The difficult step for public agencies, however, is making the decision to spend the resources to challenge the Sovereign Citizen.

**CONCLUSION**

Calculating the precise financial impact of Sovereign Citizens on governmental agencies is impossible. In one instance, however, involving Richard McLaren, who believed himself a citizen of the “Republic of Texas,” a federal judge estimated that a private corporation spent at least \$450,000 defending against bogus liens filed by McLaren. Another private party involved in the fray spent 12 years and more than \$100,000 fighting McLaren.<sup>27</sup> Similarly, a private attorney who represented a bank in a foreclosure spent a year in court and \$14,000 in legal fees trying to expunge a lien placed on his home by the subject of the foreclosure.<sup>28</sup>

One court has noted that the keeping of time and expense records and the preparation of affidavits supporting requests for attorney’s fees incurred defending against frivolous lawsuits is, in itself, an avoidable cost.<sup>29</sup> Moreover, the court imposed sanctions under the Federal Rules of Civil Procedure, recognizing that even the sanctions could not cover the indirect costs of the litigation, including the costs that were incurred by legitimate litigants in waiting for their cases to receive judicial attention.

Local government agencies face tremendous burdens, both in terms of monetary expenditures and of staff psychological stress, from Sovereign Citizens and like-minded individuals. Even a simple traffic stop can ripen into years of legal battles with parties who do not recognize the authority of local government.<sup>30</sup> The courts and the Legislature have provided some tools by which public agencies and officials can begin to address the issue, but frequently the use of these tools only inflames the hatred for governmental entities that caused the problem in the first place. Local authorities who use these tools to protect themselves against Sovereign Citizens must recognize that the path of dealing with such persons can often be long, expensive and filled with potholes, not to mention possible physical risk to those who stand in the way. Nonetheless, doing nothing, or worse, acceding to the demands of such individuals, can often tax local agencies to the breaking point and take away valuable resources intended for those persons who accept the social contract of living under a government of laws.

**ENDNOTES**

1. Coleman v. C.I.R., 791 F.2d 68, 69 (7th Cir. 1986).
2. "Posse comitatus" means "[t]he power or force of the county. The entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases, as to aid him in keeping the peace, in pursuing and arresting felons, ..." People v. Wells, 175 Cal.App.3d 876, 878 n. 1 (1985) (citation omitted); See also Cal. Pen.C. § 150 (imposing penalties for refusal to join posse comitatus upon being required to so join by a peace officer). Gale was a retired army colonel. In 1987, he was convicted of threatening the lives of IRS agents and a Nevada state judge. Gale died in prison in April 1988.
3. Italics added.
4. The Anti-Defamation League maintains a pictorial exhibit of bogus driver's licenses, vehicle registrations and other Sovereign Citizen documents at its web page at <http://www.adl.org/mwd/gallery.asp>.
5. See Sussman, *Idiot Legal Arguments: A Casebook for Dealing with Extremist Legal Arguments* (1999), published by the Anti-Defamation League at <http://www.adl.org/mwd/suss1.asp>. Professor Sussman's publication contains an extensive listing of legal citations and rulings related to the various arguments raised by Sovereign Citizens and other like-minded litigants.
6. See U.S. v. Weatherley, 12 F.Supp.2d 469 (E.D.Pa. 1998). Weatherly threatened to sue various governmental officials if they failed to mail his paperwork to a very strange and long description of him with his name interrupted by a colon and his street address without a zip code.
7. State v. Whalen, 961 P.2d 1051 (Ariz.App.1997).
8. Pyne v. Meese, 172 Cal.App.3d 392 (1985). In Pyne, the plaintiff brought a Section 1983 action against various public officials who seized his vehicle and a trailer when he refused to pay his vehicle registration fees of \$145. Pyne asserted that he was willing to pay the fees, but wished to pay them in public office money certificates. The court noted that a public office money certificate was a type of promissory note, valid for 120 days or until an official determination was made as to what type of currency has been authorized as a substitution for gold and silver as the money of the United States. Those who use POMCs believe that only gold and silver are legal currency. Id. at 399, fn. 3.
9. 995 F.2d 1448 (9th Cir. 1993).
10. 7 F.3d 1340 (7th Cir. 1993).
11. Jol A. Silversmith, "The 'Missing Thirteenth Amendment': Constitutional Nonsense and Titles of Nobility," 8 S. Cal. Interdisc. L.J. 577 (1999).
12. The "history" of the missing Thirteenth Amendment was exhaustively discussed in David Dodge, *The Missing 13th Amendment, "Titles of Nobility" and "Honor"* (1991). This polemic appeared in the publication *Anti-Shyster*, published by Alfred Adask, who claims to write the magazine as a "Christian Ministry." Information on both Adask and Dodge are widely available on the Internet. Adask is alleged to have offered a \$10,000 reward for any five attorneys to prove in a debate that they are both honorable human beings and proud to be members of their state bar association. Edwards, "Texan Dissenters Create Own Courts," *San Antonio Express-News*, Mar. 3, 1996.
13. In April 1992, a Michigan resident wrote a letter to state officials, stating he was no longer a "citizen of the corrupt political corporate State of Michigan and the United States." He asserted he was subject only to the "common laws," and he expressed his desire to revoke his signature on any hunting or fishing licenses. See *Sovereign Citizen Movement*, published by the Anti-Defamation League, available at [http://www.adl.org/learn/ext\\_us/SCM.asp](http://www.adl.org/learn/ext_us/SCM.asp). That man was Terry Nichols, later sentenced to life imprisonment for his role in the 1995 bombing of the Murrah Federal Building in Oklahoma City that killed 168 people and injured over 500 more.
14. This procedure was published originally in a Montana Freeman newsletter entitled *Taking Aim*. The procedure was recounted in a report prepared by Gregory deGiere of the California Senate Office of Research, September 1997, available at [http://www.sen.ca.gov/sor/reports/REPORTS\\_BY\\_SUBJ/PUBLIC\\_SAFETY\\_JUDICIARY/TACTICS\\_ANTIGOV\\_EXTR.HTM](http://www.sen.ca.gov/sor/reports/REPORTS_BY_SUBJ/PUBLIC_SAFETY_JUDICIARY/TACTICS_ANTIGOV_EXTR.HTM).
15. A scanned image of one of Broderick's comptroller warrants is printed at <http://www.adl.org/mwd/gallery.asp>. In Sonoma County, another student of the Montana Freeman lien seminar attempted to bail his son out of jail using a check drawn on bogus liens like those established by Broderick. His son had been arrested for threatening two judges.
16. See Pitcavage, *Paper Terrorism's Forgotten Victims: The Use of Bogus Liens Against Private Individuals and Businesses* (1998) published by the Anti-Defamation League at <http://www.adl.org/mwd/privlien.asp>.
17. 900 S.W.2d 370 (Tex.App.1995).
18. 791 S.W.2d 648 (Tex.App.1990).
19. Judicial Council Form MC-100.
20. Cal. C.C.P. § 765.060.
21. Cal. Pen.C. § 115.5.
22. In April 2000, Representative Gary Condit introduced H.R. 4166 in the House of Representatives, entitled the "Karen Mathews Act of 2000," named after the Stanislaus County Recorder beaten by members of the Juris Christian Assembly for refusing to record their bogus liens. The Act would have amended 18 U.S.C. Section 1513 to prohibit the malicious or repeated frivolous filing of legal process or liens against the person or property of a victim. The bill was referred to the Committee on the Judiciary, but did not become law.
23. Cal. C.C.P. § 391.3.
24. Id. § 391.7.
25. Id. § 527.6.
26. Id. § 527.8.
27. Pitcavage, *supra* note 16.
28. Id.
29. Coleman, *supra* note 1.
30. In the Pacific Grove traffic stop noted at the beginning of the article, the defendant failed to appear for his arraignment and a bench warrant issued. When arrested on the warrant, the defendant served, via U.S. Mail, large packets of unintelligible documents on a number of city employees involved in his original traffic stop, all of which bore his name, with strange punctuation, and which did not bear zip codes. He also subpoenaed many city employees to his arraignment, along with the judge who had originally issued the bench warrant on his failure to appear at the original arraignment. Both the city and lawyers for the judge filed motions to quash the subpoenas as invalid. The defendant was later sentenced to six months in the county jail.

\* David Fleishman (fleishman@maglaw.net) is a partner with the Municipal Advocates Group, LLP, a law firm located in Atascadero, California. He is the City Attorney for Pacific Grove and Pismo Beach.