

## **The State of the Union under a failed Constitution.**

*February 8, 1995*

The time has come when it is necessary for someone to take upon himself the task of bringing to the attention of his fellow citizens that those who are sworn to uphold the Constitution are not doing so. That as a result the Nation is embarked on a very dangerous course, the ill effects in terms of financial cost,<sup>1</sup> emotional cost and loss of constitutional rights, can be seen everywhere. This writer proposes to make his case to his fellow Citizens by writing a series of articles under the banner of the Federalist, numbered in sequence after those written by James Madison and Alexander Hamilton. They signed: "PUBLIUS." This writer will sign: "PUBLIUS II."

**THE PROBLEM:** The nation does not now and has not for some years experienced constitutional or representative government. That is because notwithstanding that the US Constitution was specifically written to prevent any single "same hands" group from accumulating all powers of government, one particular group has succeeded in doing precisely that. James Madison, author of the US Constitution, wrote :<sup>2</sup> *"No political truth is certainly of greater intrinsic value or is stamped with the authority of more enlightened patrons of liberty than that ... the accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny."* **For then the laws are made not to serve justice, but rather to serve the personal profit of those who make them.** To avoid the "same hands" accumulation of power, the Constitution incorporated a system of "separation of powers" and "checks and balances". This system created three separate branches of government. The Legislative (Congress), which makes the laws, the Judiciary (the Courts), which interprets the laws and the Executive (the Presidency), which enforces the laws. By separating the powers of government in this manner it was intended that each branch would serve as a "check" and "balance" to the powers of the other two. This was done in order to make certain that the government would never possess sufficient power to oppress the people. **However for many years now, all three branches of government and the powers they command to control all government,<sup>3</sup> legislative,<sup>4</sup> executive<sup>5</sup> and judiciary have effectively "accumulated in the same hands". Those "same hands" belong to the legal profession. As a result the "same hands" lawyer/judges now make the laws, interpret the laws and enforce the laws, thus defeating the spirit, intent and purpose of the Constitution. Such control by this or any other**

**group, is unconstitutional because it violates both the separation of powers/checks and balances principles of the Constitution and the principle of representative government.** These constitutional violations strike at the very heart and soul of the US Constitution. These violations emasculate the Bill of Rights, create an elitist class similar to the European aristocracy of the eighteenth century, unaccountable to anyone but themselves. These violations enable both the Government and the elitist class, under color of law, to oppress the people, in ways too numerous to catalogue in a single article. The control acquired has also seriously undermined the integrity of the legal profession. Fortunately the profession still contains a substantial number of very honest individuals upon whom the nation can rely for the furthering of this just cause. ***The solution: The solution lies in returning constitutional government to the United States by ascertaining that members of the legal profession not be permitted to exercise control over either the Executive or the Legislative branches of government. The solution can be achieved through the ballot box by voting lawyers out of office, or through the courts, by constitutionally challenging their election to the non-judiciary branches of government. Lawyers would continue to function in all other areas as before. In other words constitutional government requires the people to control the legal profession, not the legal profession to control the people.*** The reader is asked to remember that space limitations control the writer's ability to fully document arguments made. Let us begin with an examination of our rights as citizens under our Declaration of Independence : *The Declaration of Independence holds certain truths to be self evident, " that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying it's foundations on such principles, and organizing it's powers in such form, as to them shall seem most likely to effect their safety and happiness."*<sup>6</sup> It is clear at the present time that the nation's government has become destructive of the ends intended in the Declaration of Independence. The people are more distrustful of their elected officials than ever before, and deeply disturbed with government's inability to provide them with many of their rights under the Constitution. Among which are: Honest government, moral leadership, security, freedom from oppression, proper education, affordable access to the nation's system of justice, and affordable health care. ***It is therefore the right of the people to alter the government.***<sup>7</sup> **(In this case only to enforce the Constitution as written).** What is unclear to the people is what to do or how to

do it. The fundamental source of the nation's problems is not easily apparent. That source does not principally lie in the flawed nature of particular individuals who are elected to government office, for all human beings lack perfection. ***Rather the "flaw" lies with the way in which the "system" itself is being made to function by those responsible for its functioning. The "systemic flaw" is that the nation, although generally unaware of it, has elected to effective control of the Legislative and Executive branches of government, a plurality or majority of the "same hands" legal profession, as have already acquired absolute control of the Judiciary Branch of government. It is the members of the legal profession who swore an oath to uphold the Constitution.<sup>8</sup> It is to them that the nation looks for protection from the oppression of government. It is they who bear the full responsibility of bringing to the nation's attention that the Constitution prohibits single group "same hands" control and that such control has occurred. They have done neither. Instead they have both acquired unconstitutional control for themselves and concealed the fact from the nation. Yet it is probable that many in the profession are not even aware of what has occurred.*** For many years the legal profession has proceeded, unchallenged and unchecked, knowingly or not, with a history of constitutional violations and abuses against the people of the United States. These activities escalated in the last half century with the establishing of the so-called "Integrated Bars" in the individual States,<sup>9</sup> to which all practicing lawyers were required by law to belong, thus making every lawyer and judge "a part" of the judiciary. "Integrated Bars" were unconstitutionally<sup>10</sup> created by the Judiciary Branches of the States as an "arm" of the State Supreme Courts. After which State Constitutions were amended to transfer the admission and disciplining of lawyers and judges to the Judiciary Branch of Government of the individual States.<sup>11</sup> Thus the legal profession became accountable to none but its own peer group, unlike any other profession in the land. These and similar activities, whether by design or otherwise, produced a consolidation of all government power in the hands of the legal profession resulting in the following:

**1.The profession has acquired virtually unlimited political power in the land, and with that the ability to make laws to serve its personal profit rather than justice.**

- 2.The profession has maximized its ability to acquire the highest possible share of the nation's wealth for itself.
- 3.The profession has collectively though not individually, become the most corrupt, least respected and according to its own surveys, least trusted profession in the land.<sup>12</sup>
- 4.The profession has (perhaps unwittingly), imposed on the nation enormous secondary costs essential for protection from the predatory

nature of the profession.<sup>13</sup>

5. Members of the profession, sworn to uphold the Constitution and the concepts of representative government and separation of powers, have (perhaps unwittingly for many) violated their oath by creating and operating a government, substantially without either.

The pursuit of power and control of government by the legal profession is the natural expression of any group's attempt to maximize its own members power and financial rewards. That is human nature. That is why the Constitution is opposed to any "single interest group" acquiring such control, whether tinker, tailor, soldier, sailor, lawyer, doctor or native American chief. What has occurred though not a "conspiracy", does have precisely the same effects. In law that is known as a "constructive conspiracy." ***These matters raise a number of critical questions: I. How and when did the profession acquire control? II. What are the abuses that allowed such control and the abuses that now afflict the nation? III. Why is the nation still generally unaware of the existence of the problem or how serious it is? IV. Who specifically is responsible? V. What can and should be done about it?*** Subsequent articles will address these questions. Most important at this point is for the nation to become aware that as a direct result of the legal profession's unconstitutional control of all government an abundance of laws have been enacted, interpreted and enforced, for the personal profit of the profession, not justice. This imposes on the people of this nation a very high financial and emotional cost, as well as substantially depriving the people of their ability to exercise their full constitutional rights in any of the following areas: ***1. Access constitutional remedies under the Bill of Rights, or 2. Gain reasonable access to the nation's courts, or 3. Exercise their first amendment right of free speech, or 4. Be free from a corrupt judiciary, or 5. Be free from the oppression of meritless lawsuits, or 6. Receive a fair trial, or 7. Live reasonably free from crime, or 8. Enjoy the right of self-determination through State constitutional amendments, or 9. Access affordable health care, or 10. Access safe and meaningful universal education, or 11. Access divorce without war, or 12. Receive fair treatment in bankruptcies, or 13. Receive fair treatment in the adoption of children, or 14. Be free from the criminalization of activities not criminal anywhere else in the civilized world, or 15. Be free from oppressive and unreasonable regulation imposed by bureaucrats immune from accountability and the democratic process 16. Have the President pick his judges and Supreme Court Justices free of unwarranted influence, as well as many other areas too numerous to mention.*** Excluding lawyers, and any other "same hands" group that may emerge, from the Executive and Legislative branches will correct the problem. A similar problem existed in Britain in 1832.<sup>14</sup> There the British Lords (called Peers), controlled both the House of

Lords and the House of Commons until they were excluded by Law and/or practice. The solutions called for here will do the same for this nation as excluding Peers from the Commons did for the British. This writer is merely calling for action tried and true and the application of sound and well established historical legal precedent. The first step and purpose of these articles in achieving either solution, requires informing and educating the people about the nature and extent of the problem, and how to resolve it.

PUBLIUS II  
(Ronald Bibace)

**About the author.** *This writer became aware of the problem in 1985. The views presented here were first developed and articulated by this writer in 1989. This writer has become a constitutional scholar in pursuit of the justice of this cause. Sufficiently so that Professor Albert Blaustein,<sup>15</sup> a world renowned constitutional lawyer, international consultant, and prolific author of numerous books on the law, having never before heard the proposals articulated here, was persuaded that this writer's views are sound and should prevail in a court of Law , and has said so in writing. This writer is President and co-founder of a national organization dedicated to the restoring of constitutional and representative government. This writer like James Madison, loves the law but is not a lawyer. This writer, like Alexander Hamilton, is an immigrant and a naturalized American citizen.*

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1. Estimates of financial costs to the nation vary between \$300 billion and \$1 trillion per year.
  2. Federalist # 47, Jan 30, 1788
  3. The US Senate has had an absolute majority of lawyers for years. The House of Representatives has had an overwhelming plurality and a near majority for just as long.
  4. Both the President and Vice President and a majority of the Cabinet are lawyers.
  5. The Judiciary consists 100% of lawyers.
  6. Declaration of Independence, 1776
  7. Declaration of Independence, 1776
  8. All lawyers and judges are required to swear an oath upholding the Constitution.
  9. In Florida the State integrated Bar was created in 1949.
  10. The Supreme Courts of the individual States created these entities in which the Court alone makes the law, interprets the law and enforces the law, affecting all citizens in the State in violation of the separation of powers principle of the Constitution. Many legal scholars have said so. No case has yet been brought to test the issue in federal court.
  11. In Florida it was done by constitutional amendment to Article V of the Florida Constitution.
  12. American Bar Association survey 1994. Occupational crime by Dr. Gary Green. (Nelson Hall 1990).
  13. Professor Steve Magee, University of Texas at Austin. Economist, White House, Nixon era.
  14. The Great Reform Act of 1832 by E.J.Evans 1983 (Methuen & Co. N.Y.,N.Y.).
  15. Albert Blaustein (1922-1994) Professor Emeritus, Rutgers University, Constitutional Consultant and counsel to Russia, Bolivia, Canada, Poland, Nepal, Uganda, Niger, Peru, Brazil, and many

more. Author of more than 25 books, among which "Constitutions of the World" 22 volumes, updated annually.