THE LIBERTY TREE

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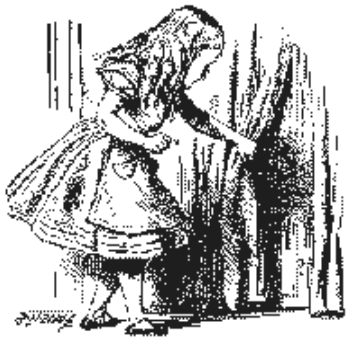
OSHA and HYPOTHETICAL JURISDICTION or, Variation on the theme of "the big

Do you know how many legitimate jurisdictions the federal government has within the 50 states of the Union? There are four:

1. Interstate Commerce
2. Postal Roads (post offices)
3. Counterfeiting (gold and silver coins)
4. Espionage matters

There are no other legitimate jurisdictions that the federal government has within the 50 states of the Union.

One might reasonably ask, "*Well, what about the FBI, EPA, DEA, FEMA, and all those other agencies? Surely those federal agencies, as we know them today, are lawful and legitimate!*" Not so.



Hypothetical jurisdiction: the darker side of Wonderland

While our federal Constitution authorizes the aforementioned four jurisdictions, nowhere in the Constitution can you find authority for the FBI, DEA, or any of those other agencies that exist today. These agencies are a blight on our nation. That the DEA is headed by a "Tzar" should tell you something. Such federal intrusions within the 50 states of the Union are antithetical to the concept of a Constitutional Republic and are evil. And when our federal government doesn't keep within the bounds of its limited constitutional authority, a condition called *anarchy* exists, and becomes manifest in our lives as *tyranny*. The case of Elaine L. Chao, Secretary of Labor, Department of Labor v. Economy Roofing illustrates this point rather well.

We have a family of members in Illinois whom I consider to epitomize the American ideal: the Komes'. The family also has a successful roofing and sheet metal business that the late Joe Komes Sr. started some years ago, which is now run by his sons.

One day, while they were working on a job, a man by the name of Tony Smith, of the Occupational Safety and Health Administration ("OSHA") drove by and observed workers on the roof of a large building under construction. Mr. Smith stopped his truck, climbed to the roof of the building, and proceeded to inspect the roof area. (Since he did not have a search warrant, he committed the crime of criminal trespass.) He observed some sort of "infraction" or other, and wrote three tickets, all totaling $4,500. Once this was done, OSHA sent bills to Economy Roofing, demanding money.

With the assistance of the *Save-A-Patriot Fellowship* paralegal department, Jeff Komes sent a letter to Ms. Diane Turek, Area Director for OSHA. He stated:

"Please be advised that neither Economy Roofing, myself, nor anyone working for Economy Roofing, are engaged in interstate commerce. All of the business of Economy Roofing takes place right here in Illinois, and is therefore intrastate. As such, neither Economy Roofing, myself, nor anyone working for Economy Roofing, come under your jurisdiction.

"As I am sure you are aware, Congress declared its intent and authority to police businesses in Section 651 of Title 29 of the United States Code. This is found in Chapter 15 of that title whereby OSHA is established. It states in relevant part:

29 U.S.C.A. § 651. Congressional statement of findings and declaration of purpose and policy

(b) The Congress declares it to be its purpose and policy, ***through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare****, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—[Emphasis added]*

"You will note that Congress cited its constitutional authority when it establish OSHA; this authority arises from Article I Sec. 8 Cl. 13 of the United States Constitution ("…to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"). Since we only do business within Illinois, we do not come under your jurisdiction…."

Rather than address this matter, another bill came, identical to the first. So Jeff sent another copy of the first letter to Ms. Turek.

What do you suppose happened next? Maybe Ms. Turek sent a letter of apology to Jeff, stating that she was not aware that he was not engaged in interstate commerce, that OSHA had no jurisdiction after all, to please disregard the $4,500 in fines, and that she took her oath to uphold and defend the constitution, very seriously? Not this time.

A very irate Mr. Smith of OSHA approached Jeff on a jobsight (again, criminal trespass), delivered some certified letters (does Mr. Smith moonlight for the USPS?) and insisted that OSHA did indeed have jurisdiction because Economy Roofing was using Honda trucks; and because Honda trucks are made outside the state of Illinois, he came under the Interstate Commerce Clause, hence the OSHA jurisdiction. It gets curiouser and curiouser.

The OSHA folks then decided it was necessary to file an action within the administration of OSHA. They take themselves very seriously! Oh, yes! They generate a complaint complete with exhibits and affidavits that looks just like the ones they have in a real court, and they even have a "judge".

Since Jeff didn't want to enter into the jurisdiction of the administration, rather than submit an answer, he submitted a "Special Appearance" (a document) to point out that subject matter jurisdiction didn't exist, and that the action should be dismissed. If he did accept jurisdiction, then his only remedy, if he lost, would be appeal in a real court, where a jury and other elements of due process are denied.

In his Special Appearance, in addition to what he stated in his letters, he included the following:

"The purpose of the interstate commerce clause is quite obvious. Our courts have frequently pointed out what this purpose is:

'The purpose of the commerce clause was not merely to empower Congress with the negative authority to legislate against state regulations of commerce deemed inimical to the national interest, but the power granted is a positive power and includes the power to legislate concerning transactions which, reaching across state boundaries, affect the people of more states than one, and to govern affairs which the individual states with their limited territorial jurisdictions are not fully capable of governing.' *U.S. v. South-Eastern Underwriters Ass'n, U.S.Ga.1944, 64 S.Ct. 1162, 322 U.S. 533, 88 L.Ed. 1440, rehearing denied 65 S.Ct. 26, 323 U.S. 811, 89 L.Ed. 646;*

'The purpose of the commerce clause was to create

an area of free trade among the states.' McLeod v. J. E. Dilworth Co., U.S.Ark.1944, 64 S.Ct. 1023, 322 U.S. 327, 88 L.Ed. 1304, dissenting opinion 64 S.Ct. 1030, 322 U.S. 349, 88 L.Ed. 1304. See, also, Boston Stock Exchange v. State Tax Commission, N. Y.1977, 97 S.Ct. 599, 429 U.S. 318, 50 L.Ed.2d 514, on remand 368 N.E.2d 284, 42 N.Y.2d 1008, 398 N. Y.S.2d 534; Great Atlantic & Pac. Tea Co., Inc. v. Cottrell, Miss.1976, 96 S.Ct. 923, 424 U.S. 366, 47 L.Ed.2d 55; Michigan-Wisconsin Pipe Line Co. v. Calvert, Tex.1954, 74 S.Ct. 396, 347 U.S. 157, 98 L.Ed. 583, rehearing denied 74 S.Ct. 528, 347 U.S. 931, 98 L.Ed. 1083;

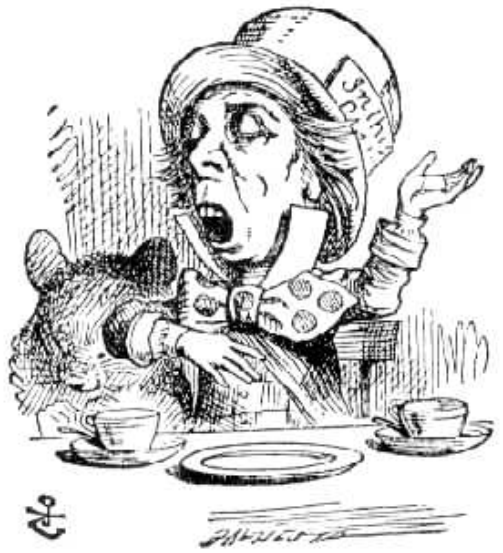
…and…

The purpose of adopting the constitution and granting Congress power to regulate interstate commerce was to avoid perpetual course of retaliatory legislation between neighboring states resulting from lack of such power in the Continental Congress, and to keep commercial intercourse among the states free from all invidious and partial restraints.' Neild v. District of Columbia, App.D. C.1940, 110 F.2d 246, 71 App. D.C. 306.

"Clearly, the sole authority the federal government has within the state of Illinois, is to regulate matters substantially dealing with interstate commerce; and the nexus between federal authority to prevent, for instance, states from imposing tariffs that interfere with free trade among the states; and the business Economy Roofing conducts solely within the state of Illinois, is just too tenuous and therefore incredible. In other words, the legitimate authority of OSHA via the interstate commerce over Economy Roofing doesn't legitimately exist.

One significant United States Supreme Court decision that demonstrates this fact, was the case of Railroad Retirement Board v. Alton Railroad Co., 295 U. S. 330, 55 S.Ct. 758 (1935). The Court found that the authority of Congress to require employers (as the word was defined prior to the Social Security Act), to be registered in, and thus required to participate in, programs to provide retirement income, free medical attendance, nursing, clothing, food, housing, and education was non existent:

'The catalogue of means and actions which might be imposed upon an employer in any business, tending to the satisfaction and comfort of his employees, seems endless. Provision for free medical attendance, nursing, clothing, food, housing, and education of children, and a hundred other matters might with equal propriety be proposed as tending to relieve the employee of mental strain and worry. ***Can it fairly be said that the power of Congress to regulate interstate commerce extends to the prescription of any or all of these things****? It is not apparent that they are really and essentially related solely to the social welfare of the worker, and therefore* ***remote from any regulation of commerce*** *as such? We think the answer is plain.* ***These matters obviously lie outside the orbit of congressional power.****" [Emphasis added]*



Elaine Chao, Secretary of Labor, explaining how far reaching OSHA's jurisdiction is.

"A more recent case, United States v. Lopez, 514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), the United States Supreme Court stated:

'Within this final category, admittedly, our case law has not been clear whether an activity must "affect" or "substantially affect" interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause. Compare Preseault v. ICC, 494 U.S. 1, 17, 110 S.Ct. 914, 924-925, 108 L. Ed.2d 1 (1990), with Wirtz, supra, at 196, n. 27, 88 S.Ct., at 2024, n. 27 (the Court has never declared that "Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"). We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity 'substantially affects' interstate commerce.'

As such, the intellectually honest person would agree that the activities of Economy Roofing don't substantially affect interstate commerce.

All employees of OSHA, including the members of this tribunal, took a solemn oath to uphold the Constitution of the United States. If any employee of OSHA, or government officers, generally, willfully violate their oath of office, are not only behaving unethically, but they are guilty of the crime of sedition. It behooves the members of this tribunal to obey their oath of office, recognize that jurisdiction is non-existent here, and dismiss this

action."

The Complainant responded stating:

*Statutory jurisdiction under the [OSHA] Act exists where a business engages in a class of activity, such as construction, that, as a whole, affects commerce. (fn 3: Usery v. Franklin R. Lacy, 628 F.2d 1226 (9th Cir. 1980); NLRB v. International Union of Operating Engineers, 317 F.2d 638 (5th Cir. 1963)) In this instance, Economy Roofing is 'engaging in a business affecting commerce' since it was engaged in construction and its employees used equipment that had moved in interstate commerce. * * * While working on the roof, Economy Roofing employees used a Honda all-terrain vehicle to load and spread gravel. Honda manufactures this equipment at assembly plants outside the state of Illinois. Economy Roofing's use of Honda equipment that has moved in interstate commerce also established that Economy is a business affecting commerce that is subject to the jurisdiction of the Act. That Economy Roofing may conduct business, as it asserts, 'solely within the state of Illinois' does not defeat jurisdiction.*"

As James Rockford would say, "*Isn't that rich!*"

The Komes' have since received a "Prehearing Order" and a "Notice of Hearing (Calendar Call)" from Administrative Judge James H. Barkley. It seems that a hearing is scheduled for an undisclosed location in Milwaukee, and that their attendance is "required." The Komes' have responded with a letter stating that they will not attend any such hearing, due to lack of subject matter jurisdiction and because they don't wish to enter into OSHA's jurisdiction, since it could adversely affect certain rights they have to due process.

We will conclude this article with an excerpt from Lewis Carroll''s Through the Looking Glass:

> *"Contrariwise", said Tweedledee, "if it was so, it might be; and if it were so, it would be, but as it isn't, it 'aint. That's logic."*

It will be interesting to see how Judge Barkley rules on the matter of OSHA's jurisdiction with respect to Economy Roofing.. Will he prove himself to be as logical as Tweedledee?

Our third article on the Selective Service and the draft has been postponed a month. There appear to be developments which indicate a war will be waged against Iraq and it is quite possible that this will ultimately result in a draft. There is some evidence that the federal government is gearing up for this. For instance: The Los Angeles Times ran an article (March 13, 2002) about a Senate Bill designed to force registration with the Selective Service by denying driver's licenses to 18 year old men. You can download this article at: www.latimes.com

Here's an interesting anagram:

"*The United States of America*";

Rearrange the letters, and you get:

In our next article on *hypothetical jurisdiction*, we will examine its genesis in our judicial courts. It is a creature of the 9th Circuit (go figure!) and was struck down by the United States Supreme Court.