

MEMORANDUM OF LAW SHERIFF

The modern word "Sheriff" means "Chief Law Enforcer of the County"

The purpose of this Memorandum of Law is to establish the role of the Sheriff as the only "Constitutional Law Enforcer" a/k/a Chief Law Enforcer of the County; Whose office cannot be abrogated by legislation or referendum. The Sheriff is the only Law Enforcer governed by Common Law, and not governed by any statute and, with the exception of lawful commercial codes, does not enforce code violations upon the People. The Sheriff is elected by the People and does not answer to any government agency. The Sheriff is the only law enforcer responsible for executing all "Lawful warrants." Federal law enforcement agents before executing a federal warrant must first notify the Sheriff before execution; Whereas it is the Sheriff's duty to oversee the execution of all "Lawful federal warrants" In his County.

US SUPREME COURT MACK V. UNITED STATES

The Sheriff is the Chief Law Enforcement Officer of the county

In the case of Mack v. United States, 856 F. Supp. 1372 (D. Ariz. 1994) Graham County Sheriff Richard Mack filed a complaint for injunctive and declaratory relief against the enforcement of 18 U.S.C. § 922(s), commonly referred to as the Brady Act by federal agents claiming authority over the Sheriff as Chief Law Enforcer under said code.

18 USC §922(s)(2). The CLEO is defined as "the chief of police, the sheriff, or an equivalent officer or the designee of any such individual."

The Court rightly found that in enacting section 18 U.S.C. 922(s) (2), Congress exceeded its authority under Article 1, section 8 of the United States Constitution, thereby impermissibly encroaching upon the powers retained by the states pursuant to the Tenth Amendment. The Court further found that that subsection 922(s) (2) violates the Fifth Amendment of the United States Constitution and entered a favorable judgment for the plaintiff Sheriff Richard Mack of Graham County. As such, the court recognized the office of the Sheriff as the "Chief Law Enforcement Officer" of the county.

KING'S ENFORCEMENT

The first known written record concerning the Sheriff is found in the Bible Daniel Chapter 3 mentioned as one of the officers of the king in 600 BC. The Sheriff is the "Chief Law enforcer of the county, known as a shire-reeve. The word shire-reeve eventually became the modern English word sheriff. The modern word "Sheriff", which means keeper or chief of the County, is derived from the Anglo-Saxon words "Shire-Reeve". The

Shire-reeve, in the days of King Alfred the Great of England, in 871 AD, was responsible for enforcing the Kings Orders.

A TREATISE ON THE LAW OF SHERIFFS, CORONERS AND CONSTABLES¹

by Walter H. Anderson, LL.B., LL, D.

THE SHERIFF IS THE LAWFUL CHIEF EXECUTIVE OFFICER AND HIGHEST PEACE OFFICER OF THE ENTIRE COUNTY IN WHICH HE WAS ELECTED. Unlike the State Police and Municipal Police, the Sheriff reports directly to the Citizens of the County. In today's terms, the Sheriff is the "Chief Law Enforcement Officer" (CLEO) of the County. The duties, responsibilities and/or authorities of the Sheriff cannot be diminished by those in the legislature or the courts of the State or of the County.

SECTION 42: POWERS AND DUTIES OF SHERIFF IMPLIED FROM NAME AND NATURE OF HIS OFFICE. – A sheriff is an officer of great antiquity, dignity, trust and authority. He was chief officer to the King within his county; no suit began, no process was served, but by the sheriff. He was to return indifferent juries for the trial of men's lives, liberties, lands, goods, etc. At the end of suits, he was and still is required to make execution which is the life and fruit of the law. So, it is seen that original process moved and was directed to the sheriff, subsequent proceedings were circulated in him and were at last finished and completed by him. The powers and duties of the sheriff as implied from the name and nature of his office are still the same today as they were at common law. He is still an officer of the court and subject to its orders and directions on behalf of the People. The sheriff is still made responsible as conservator of the peace.

SECTION 43: RIGHTS OF THE SHERIFF AS CONSTITUTIONAL OFFICER. – Where the sheriff is named in the Constitution his duties are the same as they were at the time the Constitution was adopted. Where the office of sheriff is named as a constitutional officer the people intended that those officers should exercise the powers and perform the duties then recognized as appertaining to the respective offices which they were to hold. This thought is well expressed in an early Wisconsin case.² "Now it is quite true that the constitution nowhere defines what powers, rights and duties shall attach or belong to the office of sheriff. But there can be no doubt that the framers of the Constitution had reference to the office with those generally recognized legal duties and functions belonging to it in this country, and in the territory, when the Constitution was adopted." The sheriff is

¹ **Source:** (Excerpts) This information is taken from: A Treatise on the Law of Sheriffs, Coroners and Constables with Forms, Vol. 1 of 2; by Walter H. Anderson, LL.B., LL, D.; Published by: Herbert D. Howard, 1941; There are many more similar historical sources that prove the facts and law presented.

² State ex, rel. Kennedy v. Brunst, 26 Wis. 412, 7 Am. Rep. 84

recognized as a constitutional officer, legislators cannot restrict or reduce his powers.

SECTION 44. THE SHERIFF ESSENTIALLY IS A COMMON LAW OFFICER. – From the very title and by virtue of occupying the office of sheriff, it carries with it all the common law powers and duties. The sheriff is the chief law enforcement officer in the county today even as he was at common law. His jurisdiction within the county includes all municipalities and townships.

THE PEOPLES COUNTY SHERIFF AND THE POSSE-COMITATUS

More than 1,300 years ago in England, small groups of Anglo-Saxons lived in rural communities similar to modern day towns. Often at war, they decided to better organize themselves for defense. Sometime before the year 700, they formed a system of local self-government based on groups of ten. Each of the towns divided into groups of ten families, called tithings. Each tithing elected a leader called a tithingman. The next level of government was a group of ten tithings (or 100 families), and this group elected its own chief. The Anglo-Saxon word for chief was gerefa, later shortened to reeve. During the next two centuries, groups of hundreds banded together to form a new, higher unit of government called the shire. The shire was the forerunner of the modern county. Each shire had a chief (reeve) as well, and the more powerful official became known as a shire-reeve. THE WORD SHIRE-REEVE BECAME THE MODERN ENGLISH WORD SHERIFF—THE CHIEF OF THE COUNTY. The sheriff-maintained law and order within his own county with the assistance of the citizens. When the sheriff sounded the ‘hue and cry’ that a criminal was at-large, anyone who heard the alarm was responsible for bringing the criminal to justice. This principle of citizen participation survives today in the procedure known as posse comitatus.

THE SHERIFF CROSSES THE ATLANTIC

The first American counties were established in Virginia in 1634, and records show that one of these counties elected a sheriff in 1651. As Americans moved westward, so did the office of sheriff and the use of jails. Settlers desperately needed the sheriff to establish order in the lawless territories where power belonged to those with the fastest draw and the most accurate shot. Most western sheriffs, however, kept the peace by virtue of their authority. With a few exceptions, sheriffs resorted to firepower much less often than we have seen depicted in movies and on TV.

The Sheriff is the chief executive and administrative officer of a county, being chosen by popular election. His principal duties are in aid of the criminal courts and civil “Courts

of Record;³ such as serving process, summoning juries,⁴ executing judgments, holding judicial sales and the like. He is also the chief conservator of the peace within his territorial jurisdiction.⁵ When used in statutes, the term may include a deputy sheriff.⁶

The general duties of the sheriff are, (1) To keep the peace within the county; he may apprehend, and commit to prison all persons who break the peace or attempt to break it, and bind any one in a recognizance to keep the peace. He is required by virtue of office, to pursue and take all traitors, murderers, felons and rioters. (2) He has the keeping of the county goal and he is bound to defend it against all attacks. (3) He may command the posse comitatus. (4) In his ministerial capacity, the sheriff is bound to execute within his county, all process issuing from the courts of the commonwealth. (5) The sheriff also possesses a judicial capacity, but this is very much circumscribed to what it was at common law in England. It is now generally confined to ascertain damages on writs of inquiry and the like. (6) History recalls that only the Sheriff and the Coroner has the authority to call for the Grand Jury. Generally speaking, the sheriff has no authority out of his county.⁷ He may, however, do mere ministerial acts out of his county, as making a return.⁸

The county sheriff is the last line of defense when it comes to upholding and defending the Constitution. The sheriff's duties and obligations go far beyond arresting criminals and operating jails. The Sheriff also has an obligation to protect the Constitutional rights of the citizens in our counties. This includes the right to free speech, the right to assemble and the right to bear arms.

Sheriffs took an oath to uphold and defend the Constitution, from enemies both foreign and domestic. In the history of our world, it is government tyranny that has violated the freedoms granted to us by our Creator more than any other. And, it is the duty of the sheriff to protect their counties from those that would take away our freedoms,

³ COURT OF RECORD: A judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it Proceeding according to the course of common law Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689; COURTS OF RECORD and COURTS NOT OF RECORD - The former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heining v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

⁴ Federalist No. 83 The Judiciary Continued in Relation to Trial by Jury: "The sheriff is the summoner of juries."

⁵ Harston v. Langston, Tex.Civ. App., 292 S.W. 648, 650.

⁶ Lanier v. Town of Greenville, 174 N.C. 311, 93 S.E. 850, 853.

⁷ 2 Rolle's Rep. 163; Plowd, 37 a.

⁸ Dalt. Sh. 22. Vide, generally, the various Digests and Abridgments, h. t.; Dalt. Sher.; Wats. Off. and Duty of Sheriff; Wood's Inst. 75; 18 Engl. Com. Law Rep. 177; 2 Phil. Ev. 213; Chit. Pr. Index, h. t.; Chit. Pr. Law, Index, h. t.

both foreign AND domestic – whether it is a terrorist from Yemen or a bureaucrat from Washington, DC.

THE SHERIFF TODAY

President Ronald Reagan stressed the importance of the modern sheriff in his address to the National Sheriffs' Association on June 21, 1984. He said, "Thank you for standing up for this nation's dream of personal freedom under the rule of law. Thank you for standing against those who would transform that dream into a nightmare of wrongdoing and lawlessness. And thank you for your service to your communities, to your country, and to the cause of law and justice."

There are over 3,000 counties in the United States, and almost every one of them has a sheriff, except for Alaska. Some cities, such as Denver, St. Louis, Richmond and Baltimore, have sheriffs as well. The office of sheriff is established either by the state constitution or by an act of state legislature. There are only two states in which the sheriff is not elected by the voters. In Rhode Island, sheriffs are appointed by the governor; in Hawaii, deputy sheriffs serve in the Department of Public Safety's Sheriff's Division.

There is really no such thing as a "typical" sheriff. Some sheriffs still have time to drop by the town coffee shop to chat with the citizens each day, while others report to an office in a skyscraper and manage a department whose budget exceeds that of many corporations. However, most sheriffs have certain roles and responsibilities in common.

LAW ENFORCEMENT: A sheriff always has the power to make arrests within his or her own county. Some states extend this authority to adjacent counties or to the entire state. Many sheriffs' offices also perform routine patrol functions such as traffic control, accident investigations, and transportation of prisoners. Larger departments may perform criminal investigations, and some unusually large sheriffs' offices command an air patrol, a mounted patrol, or a marine patrol.

SHERIFFS STILL ENLIST THE AID OF THE CITIZENS: The National Neighborhood Watch Program, sponsored by the National Sheriffs' Association, allows citizens and law enforcement officials to cooperate in keeping communities safe. As the sheriff's law enforcement duties become more extensive and complex, new career opportunities exist for people with specialized skills: underwater diving, piloting, boating, skiing, radar technology, communications, computer technology, accounting, emergency medicine, and foreign languages (especially Spanish, French, and Vietnamese.)

COURT DUTIES: Sheriffs are responsible for maintaining the safety and security of the court. A sheriff or deputy may be required to attend all court sessions; to act as bailiff; to

take charge of juries whenever they are outside the courtroom; to serve court papers; to extradite prisoners; to collect taxes, or to perform other court-related functions.

JAIL ADMINISTRATION: Most sheriffs' offices maintain and operate county jails or other detention centers and community corrections facilities such as work-release and halfway houses. Sheriffs are responsible for supervising inmates, protecting their rights and providing food, clothing, exercise, recreation and medical services. As jail conditions continue to improve, sheriffs and their departments are earning increased respect and recognition as professionals.

CONSTITUTIONAL OFFICERS -V- CODE ENFORCEMENT OFFICERS

The principal challenges to the Sheriffs are code enforcement officers. Codes (statutes) that control the behavior of People are repugnant to the Constitution and are therefore null and void. The Sheriff has a duty to uphold the Constitution. This poses a dilemma because the Sheriff must obey the United States Supreme Court rulings and the United States Constitution in order to uphold his oath; he must first understand it.

SHERIFF AND WARRANTS

AMENDMENT IV – “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

ALL WARRANTS AND SEIZURES, especially federal warrant are not to be served without going through the Sheriff's office. Any warrant without a sworn affidavit and a judge's wet ink signature (not a stamp) is not an executable warrant. It is the Sheriff's duty to make sure that all warrants, federal or state, served within their respective county pass constitutional scrutiny; IRS warrants rarely pass constitutional scrutiny. For example, the IRS has a form 4490 called Proof of Claim for Internal Revenue Taxes, which is an affidavit form that must be filled out and sworn to, without which the warrant with or without the wet ink signature is not executable.

Justice Scalia, writing for the majority in a 1997 decision⁹ said that the “States are not subject to federal direction” and that the US Congress only had “discreet and enumerated powers” and that federal impotency was “rendered express” by the Tenth Amendment. He further confirmed that the Sheriff is the Chief Law Enforcement Officer of the county and also proclaimed that the States “retained an inviolable sovereignty.” Scalia, in his infinite obligation to the Constitution, took this entire ruling to the tenth power when he

⁹ Printz v. United States, 521 U.S. 898 (1997)

said, “The Constitution protects us from our own best intentions... so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.” Obviously, the Sheriff is the Peoples last line of defense against a government gone rogue.

OFFICE OF SHERIFF IS AN UNALIENABLE RIGHT OF WE THE PEOPLE

Sheriffs Oath – *“I hereby do solemnly swear that I will support and defend this Constitution for the United States of America, against all enemies, foreign and domestic, so help me God.”* Sheriffs should not be deceived. The Law is not complex. Thomas Jefferson said, *“Common sense is the foundation of all authorities, of the laws themselves, and of their construction.”* If a Sheriff must depend upon a lawyer to determine the Law, it’s no different than giving the lawyer the responsibility for their oath. That is not honoring your oath. Lawyers already run our government and have the People ratcheted down in unconstitutional codes, statutes and illegal warrants. Therein is the problem in a nut shell and the reason we need Sheriffs who know the Law.

The Sheriff is the Peoples’ failsafe against tyrannical servants by ensuring that the law of the land is properly applied. The office of the Sheriff is the Peoples’ unalienable right. We the People depend upon the Sheriff knowing and performing his duties. As the United States Supreme Court said, *“the Sheriff is the Chief Executive and Administrative Officer of a county and Chief Conservator of the Peace within his territorial jurisdiction.”* Therefore, without a Sheriff there can be no “Court of Law.” Without a Sheriff there can be no lawful jail. Without a Sheriff there can be no lawful warrants served, no lawful evictions. Without a Sheriff there can be no lawful property seized. Without a Sheriff there can be no lawful eviction.

Any arrest by any village, city, town, county or state police officer or by any federal agent, including FBI and U.S. Marshal, is, in fact, a citizen’s arrest; and, must be finalized by the Chief Conservator of the Peace, a/k/a the Sheriff when he accepts a prisoner into his custody. It is the Sheriff’s duty to make sure there was a lawful Indictment and strict adherence of due process by a Court of Law supported by sworn Affidavit(s).

In fact, any seizure of any property or person under a Warrant by any village, city, town, county or state police officer or by any federal agent, including FBI and US Marshals, must be preceded by said officer or agent first notifying the Chief Executive Administrative Officer of the county, a/k/a the Sheriff whose duty it is to make sure that due process was adhered to by a Court of Law. The Sheriff is to make sure that before any warrant executes, there is a judge’s “wet ink signature” accompanied by sworn Affidavit(s), without which such warrant would be powerless.